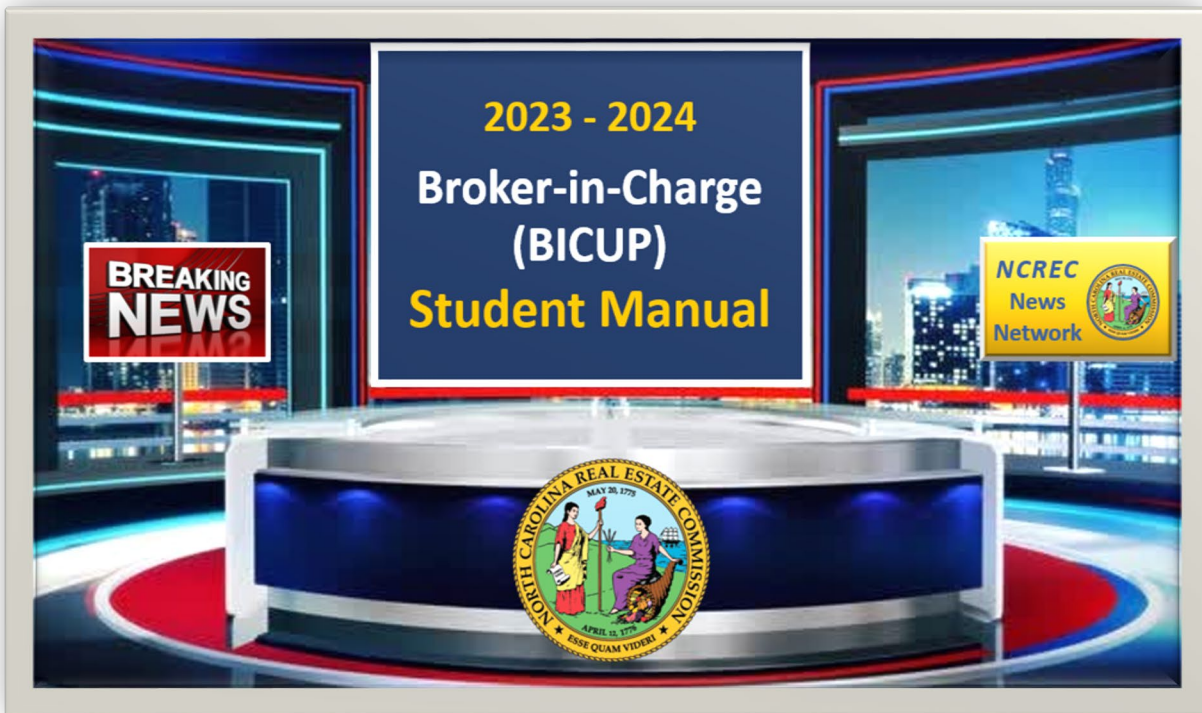


2023-2024 Broker-in-Charge Update (BICUP) Course



Student Manual

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Welcome to the 2023-2024 Mandatory Update

The North Carolina Real Estate Commission is honored and excited to bring you the General Update and Broker-in-Charge Update courses for the 2023-2024 CE season.

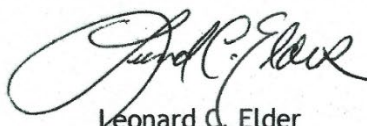
NCREC realizes that the Update courses form the core of continuing education for North Carolina brokers every year. They are the product of months of work, decades of experience and involve the time, energy and efforts of many people throughout the Education and Regulatory Affairs Divisions.

Beginning each fall the Commission members rely on input from brokers, instructors, surveys and staff to identify potential topics for the course. The topics eventually chosen by the Commission members are selected to provide current information about law and rule changes, areas of disciplinary concern, and evolving brokerage practices which affect compliance with NC statutes and Commission rules.

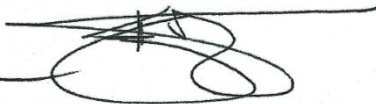
Many months of research and authorship are involved in drafting the course. Every word of content contained in the course is reviewed and refined on several levels at NCREC. The goal is to have the Education and Regulatory Affairs Divisions provide consistent, accurate information to consumers and brokers using a unified *voice*. The *voice* this year was created by education officers, the Commission's directors, staff attorneys, consumer protection officers and subject matter experts.

This year's course is built around the theme of a news broadcast. It features engaging "on the scene reporter" video clips to start the various news segments entitled, "Takin' it to the Streets," interactive Poll Everywhere engagement with the students, and tons of additional resources. Along the way we will share some best practices and compliance warnings for hot industry topics such as appraisals, assumptions of loans and wholesaling.

We trust you will walk away with a rewarding experience and lots of useful and practical information. Our hope is that you have a fun educational experience while taking this course just as we did creating it for you.



Leonard C. Elder
JD, DREI
Director
Education & Licensing



Kizzy Crawford Heath,
JD, DREI
Legal Education Officer



Beth McGonigle
Education Content Officer

NC Real Estate Commission’s Diversity, Equity, and Inclusion Statement

The North Carolina Real Estate Commission is committed to promoting a diverse and inclusive culture and community. We understand, and celebrate, the differences that make each of our Consumers, Licensees, Commission members, and Commission staff unique. Diversity, Equity, and Inclusion are a top priority for the Commission and we seek to enhance these principles in real estate brokerage through education, intentional actions, and partnerships.

For more information on the Commission’s Diversity, Equity, and Inclusion initiatives see the [Diversity, Equity, and Inclusion](#) webpage.

BICUP Student Manual Supplement

The Commission has provided a Supplement for the 2023-2024 BIC Update Course. This resource provides brokers with the Summary Points for each segment and explanations for the “Takin It to the Streets” and Interactive News Reporting” questions. You may access the supplement here:



INTRODUCTION

The *2023-2024 Broker-in-Charge Update (BICUP) Course* is a four (4) hour* course that must be completed by all brokers-in-charge and brokers who have *BIC-Eligible* status and who wish to renew their licenses on active status on July 1, 2024, for the 2024-2025 license year.

Brokers-in-Charge and brokers with *BIC-Eligible* status must take the BICUP course each year to satisfy the Update course requirement and to maintain BIC-Eligible status, as prescribed by Commission Rules 58A .1702 and 58A .0110.

*Per Commission Rule 58H .0101(7): *"Instructional hour" means 50 minutes of instruction and 10 minutes of break time.*

Development and Delivery

This course was developed by the staff of the North Carolina Real Estate Commission and is delivered by certified Education Providers and approved instructors.

Per Commission Rule 58H .0403(d): *Education providers shall use the Commission-developed course materials to conduct Update courses. Education providers shall provide a copy of the course materials to each broker taking an Update course.*

Per Commission Rule 58H .0207(d & e): *For each continuing education course taught, an education provider shall provide a course completion certificate signed by the education director to each student that meets the requirements of 21 NCAC 58A .1705. The course completion certificate shall identify the course, date of completion, student, and instructor.*

Commission Rule 58A .1705: Attendance & Participation Requirements

(a) In order to receive credit for completing an approved continuing education course, a broker shall:

- (1) attend at least 90 percent of the scheduled instructional hours for the course;*
- (2) provide the broker's legal name and license number to the education provider;*
- (3) present the broker's pocket card or photo identification card, if necessary; and*
- (4) personally perform all work required to complete the course.*

(b) With the instructor or the education provider's permission, a 10 percent absence allowance may be permitted at any time during the course, except that it may not be used to skip the last 10 percent of the course unless the absence is:

- (1) approved by the instructor; and*
- (2) for circumstances beyond the broker's control that could not have been reasonably foreseen by the broker, such as:*
 - (A) an illness;*
 - (B) a family emergency; or*
 - (C) acts of God.*

Comments and Complaints

Comments and complaints about the course, education provider, or instructor may be directed in writing to:

North Carolina Real Estate Commission
Education and Licensing Division
P.O. Box 17100
Raleigh, NC 27619-7100
Email address: educ@ncrec.gov

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Segment 1

Headlining Today's News NCREC Top Complaints





1. How many complaints do you think are filed with the Commission each year?

2. Provide examples of the types of complaints filed with the Commission.



Interactive News Reporting

Which of the following complaints would result in the Commission opening an investigation file?

- a) My broker stated that the property was on municipal water and sewer. The property has a septic system.
- b) My HOA is increasing my homeowner association fees to hire pool management and a landscaping company. They did not hold a vote on the increase.
- c) I rent from a private owner and don't have a property manager. The owner is refusing to return my security deposit.
- d) My broker won't return my phone calls and is always very rude when I interact with them.

LEARNING OBJECTIVES

After completing this section, you should be able to:

- define N.C.G.S. §93A-6(a);
- identify the types of complaints within the Commission's scope of authority;
- explain a broker's duty to cooperate with a Commission investigation; and
- list the most common complaints received by the Commission.

TERMINOLOGY

Complaint: A written statement which includes allegations of misconduct by a real estate broker.

Complaining witness: The person(s) who submits a complaint to the Commission.

Complainant = Plaintiff: Upon review of a submitted complaint, if the Commission opens an investigation against a Respondent, the Commission (NOT the Complaining witness) is the Complainant.

Letter of Inquiry: Written correspondence sent by the Commission often via email to a real estate licensee informing them that a complaint has been filed against them or another licensee and requesting a written response and, possibly, transaction documents.

Respondent = Defendant: The person against whom the complaint is made and who must reply to the complaint.

Commission Authority

Disciplinary Action by Commission

Where does the Commission get the authority to discipline real estate brokers? N.C.G.S. §93A-6(a) authorizes the Commission to take disciplinary action either on its own initiative or by complaint of any person. This authority allows the Commission to:

- investigate brokers and unlicensed activity;
- issue subpoenas for records and to compel attendance of witnesses to testify at hearings;
- hold hearings on broker misconduct; and
- impose sanctions for misconduct.

Complaints

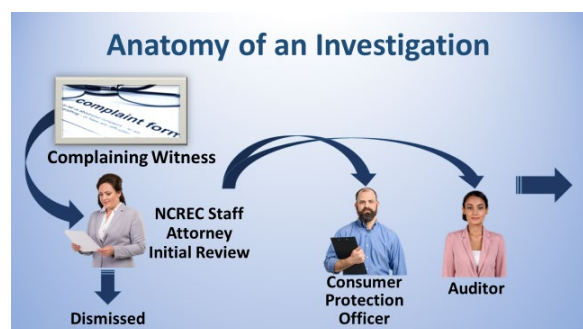
Each year the Commission investigates a multitude of disciplinary cases as a result of complaints filed against real estate brokers. In 2022, the Commission received 1,459 complaints. According to Rule 58A .0601, a complaint must:

- *be in writing;*
- *identify the respondent broker or firm; and*
- *apprise the Commission of the facts which form the basis of the complaint.*

Moreover, the Commission does not require a specific form to be used when filing a complaint; however, a standard complaint form can be found on the Commission's website.

Additionally, the Commission may receive an anonymous complaint. If the Commission does receive an anonymous complaint, the Commission will investigate it if the information that is supplied by the complaining witness provides sufficient detail. If a complaint is truly anonymous, then the Commission does not know the identity or contact information of the complaining witness. However, during the investigation, the identity may become known to the Commission and the Respondent. If a complaining witness asks the Commission to keep their identity anonymous, we inform them that, once an investigation begins, a complaint becomes part of the public record and the Commission cannot conceal the identity of the complaining witness.

ANATOMY OF AN INVESTIGATION



Upon receipt of a complaint, a Commission staff attorney in the Regulatory Affairs Division assigns a file number and evaluates the complaint to ensure that it falls under the Commission's authority. If it does not, the complaining witness is notified that the complaint is dismissed. If it does, a disciplinary case is opened and assigned to a Consumer Protection Officer (**hereafter known as "CPO"**) or an Auditor/Investigator who initiates a correspondence or field investigation.

NOTE: The Commission may also initiate its own complaint if it becomes aware of possible brokerage misconduct.

Letter Inquiry Investigation

A Letter Inquiry investigation is initiated when the CPO sends a Letter of Inquiry to the Respondent (i.e. the broker and/or brokerage against whom the complaint was filed) and to witnesses, some of whom may be brokers. Historically, Letters of Inquiry were sent via USPS in a brown envelope. However, Letters of Inquiry are now sent via email to the licensee's private email address on record with the Commission and include copies of the original complaint and supporting documentation.

Due to the Commission sending Letters of Inquiry electronically, it is important that brokers ensure their contact information within their license record remains current, including an active email address that they check regularly. Pursuant to Rule 58A .0103(b), every broker shall notify the Commission in writing within 10 days of each change of:

- *personal name;*
- *firm name;*
- *trade name;*
- *residence address;*
- *firm address;*
- *telephone number; and*
- *email address.*

NOTE: Brokers may make the above changes using specified forms under Licensee Forms on the Commission's website.

NEWS ALERT

All brokers must notify the Commission within 10 days of any changes in:

- Email address
- Name
- Firm Name
- Trade Name
- Home address
- Firm address
- Phone number

Rule 58A .0103(b)

INSTANT REMEDIATION
Log into your account right NOW and verify your email address

Is a response to a Letter of Inquiry necessary?

If a broker/brokerage receives a Letter of Inquiry, Rule 58A .0601 requires the submission of a written response within 14 days of receipt. The response to the Letter of Inquiry must include:

- *a disclosure of all requested information and*
- *copies of all requested documents.*

A broker's failure to promptly and fully respond to a Letter of Inquiry is itself an offense that may result in a disciplinary action pursuant to Rule 58A .0601(e). According to Rule 58A .0108(a), brokers must *retain records of all sales, rentals, and other transactions conducted in such capacity, whether the transaction is pending, completed, or terminated*. Further, subsection (c) of this rule also requires brokers to make all records *available for inspection and reproduction by the Commission or its authorized representatives without prior notice*. Therefore, a broker/brokerage must include copies of all requested transactional documents while responding to the Letter of Inquiry.

Before failing and/or refusing to respond to a Letter of Inquiry, a broker should consider their response as an opportunity to refute the allegations within the complaint. Also, if the broker has a factual or legal defense, then it should be raised in the response. If a broker receives a Letter of Inquiry from the Commission, they should speak with their broker-in-charge (BIC) about the allegations within the complaint. It is also permissible for a BIC to review a broker's written response *before* it is sent to the Commission. However, a BIC cannot submit a written response on behalf of their affiliated broker. Most importantly, the Commission expects a separate response from *each* party named in the complaint.

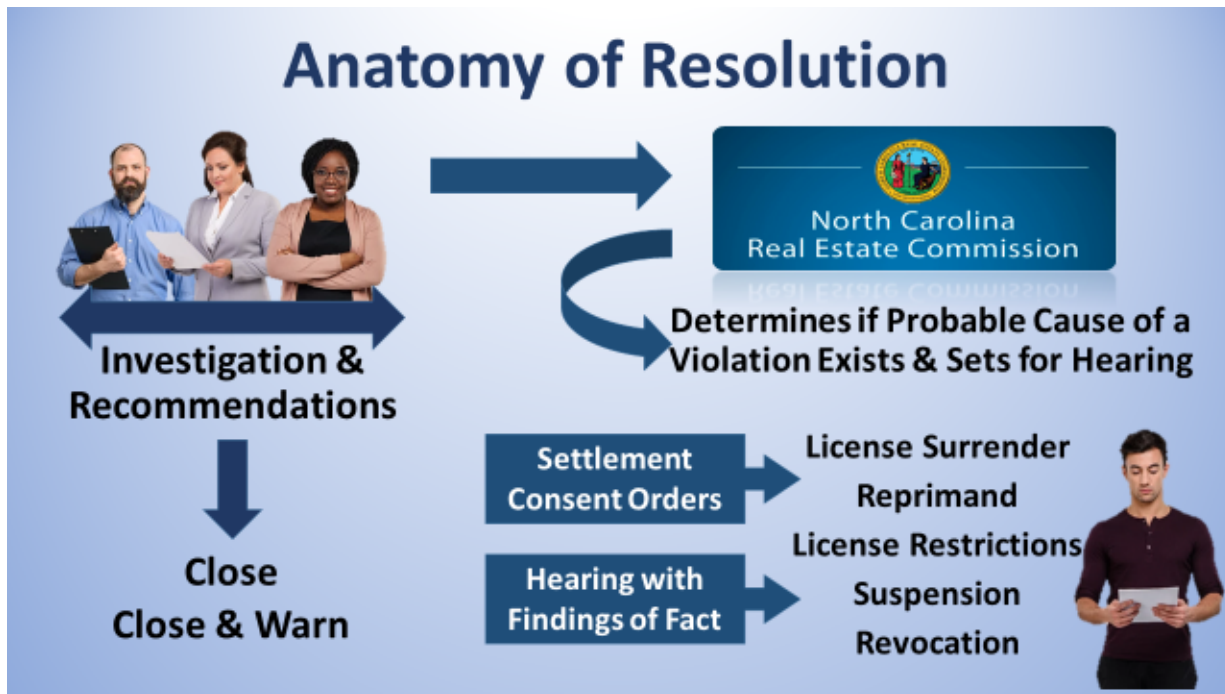
Further, if additional time is needed to provide a thorough response, the broker should contact the CPO who sent the Letter of Inquiry and request an extension in writing. A well-drafted thorough response to a Letter of Inquiry that includes supplemental documentation can potentially assist the broker in avoiding disciplinary proceedings.

While a Respondent is not required to hire an attorney to submit a response to a Letter of Inquiry on behalf of the Respondent, some Respondents choose to hire attorneys to assist them.

Field Investigations

The Commission also conducts field investigations. Field investigations are conducted when cases require in-person interviews, trust account audits, or the examination of evidence that cannot be easily identified/obtained through written correspondence. Auditors/investigators in the Regulatory Affairs Division are responsible for conducting field investigations. Once their investigation has concluded, written reports are submitted to staff attorneys for further evaluation.

ANATOMY OF A COMPLAINT RESOLUTION



Burden of Proof

According to the North Carolina Administrative Procedures Act (e.g. N.C.G.S. Chapter §150B-25.1), the petitioner (e.g. Commission) in a contested case has the burden of proving the facts alleged in the petition (e.g. complaint) by a preponderance of the evidence; although for the imposition of civil fines and penalties, the burden of proof is clear and convincing evidence. Basically, the burden is on the Commission to prove that the person who was sanctioned more likely than not committed the act for which the sanction was imposed. According to Merriam-Webster Dictionary, a sanction is defined as an action taken to enforce a law or rule.

NOTE: Brokers are presumed to be innocent until proven guilty. The Commission will not pursue disciplinary action against a broker without having sufficient, admissible evidence of a violation that warrants such action.

Probable Cause

If the investigation indicates that disciplinary action is warranted, Regulatory Affairs must convince the Commission that “probable cause” exists. Probable cause is essentially a judicial constraint. The United States Supreme Court has stated that there is not a precise definition because the existence of probable cause deals with probabilities (e.g. it is more probable than not that this conduct occurred) and the totality of the circumstances.

Further, probable cause submissions for the Commission's consideration contain only a summary of the facts without any names or locations. The Commission determines probable cause by evaluating a summary of the evidence and ascertaining if there is **sufficient indication** at the conclusion of the investigation/inquiry that the broker has violated License Law and Commission rules. Further, they decide whether to proceed with a hearing or dismiss the case based on the facts presented.

If there is sufficient indication, then the Commission orders a hearing which is conducted in accordance with the North Carolina Administrative Procedures Act, N.C.G.S. § 150B. If a hearing is conducted, the Commission receives the sworn testimony of witnesses and gives brokers the opportunity to answer charges and present evidence in their defense.

Settlements

Prior to the hearing date, the Commission attorney and Respondent may discuss possible settlement options in lieu of going to hearing. Sometimes a licensee will offer to voluntarily surrender their license in lieu of proceeding to a hearing and possible disciplinary action. The surrender may allow the licensee to reapply, reapply after a specified time period, or be permanent. Finally, the Commission must approve any final signed agreement or consent order.

NOTE: Statistically, only 10% of complaints proceed to a hearing.

Sanctions

At the conclusion of an investigation, the Commission may find that the broker has violated License Law and Commission rules. If the Commission imposes sanctions, they may include the following:

- license revocation with or without an option of re-applying for a license in the future. A broker whose license is revoked has no license.
- license suspension for a stated period of time. A broker whose license is suspended still has a license, but is prohibited from using it for a specified period of time.
- reprimand which is a public statement of disapproval by the North Carolina Real Estate Commission. A broker who has been reprimanded continues to have an active license and may engage in real estate brokerage activities.

In addition to having the ability to impose sanctions, the Commission may impose reasonable conditions, restrictions, and limitations upon a license. For example, the Commission may impose a restriction such as a broker being ineligible to become a BIC for 5 years.

Did you know that the Commission has additional requirements under state law if they revoke or suspend a broker's license? If the Commission revokes or suspends a broker's license for any period of time, state law requires the Executive Director of the Commission to transmit a certified copy of the disciplinary order to the Clerk of Superior Court in the county where the broker maintains their principal place of business. Once the certified copy is received, the Clerk of Superior Court enters the order in the judgment docket as part of the public record.

Brokers may also incur a possible *stigma* of incompetence or unprofessionalism due to their sanction(s) being discoverable via a basic search on the Internet, Commission website, eBulletin, and/or social media.

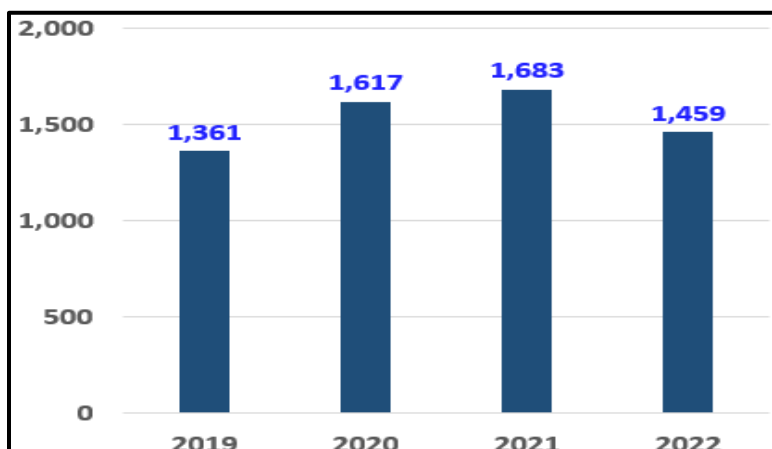
THE STATISTICS OF COMPLAINTS

The Most Common Complaints

- Agency agreements
- Competing offers
- False promises
- Material facts
- Trust accounts
- Unlicensed assistants



In 2019, Regulatory Affairs received 1,361 complaints, 1,617 in 2020, 1,683 in 2021, and 1,459 in 2022. Based on this data, Regulatory Affairs receives an average of 1,500 complaints each year.



Once a complaint is evaluated to determine that the alleged misconduct falls within the Commission's jurisdiction under its statutory authority, it is investigated to determine whether there is a probable violation of real estate license law or Commission rules.

Many complaints do not fall within the Commission's scope of authority. Some do not allege facts that indicate a probable law or rule violation, and others lack sufficient witness testimony or documentation to meet the Commission's burden of proof in either establishing probable cause or proving the allegations by a preponderance of the evidence.

Examples of complaints that are NOT actionable because they do not fall within the Commission's scope of authority include the following:

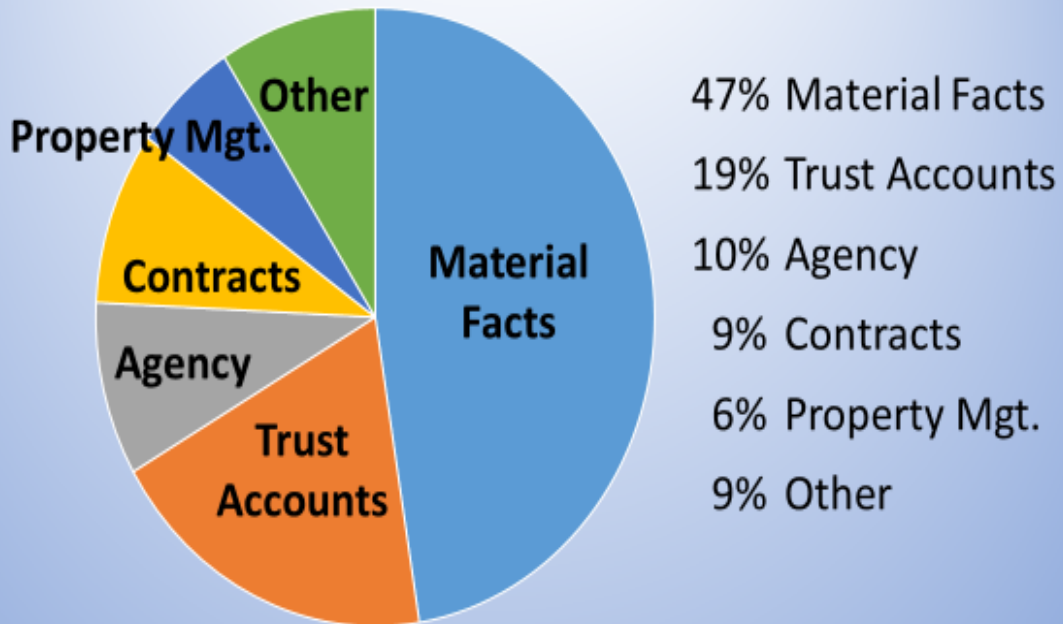
- Disputes between cooperating brokers regarding commissions;
- Disputes between affiliated brokers and their BICs regarding brokerage policies;
- Distribution of marital assets between brokers who get divorced;
- Disputes regarding the sale of heir's property by a disgruntled family member against the broker;
- Fake landlord scams;
- Homeowner association policies, procedures and fees;
- Out of state brokers who do not enter North Carolina to practice brokerage;
- Tenants renting directly from private landlords who are not licensees; and
- Timeshare resale scams by unlicensed, out of state individuals.

The Commission has jurisdiction over brokers. It does not have jurisdiction over unlicensed persons and entities. However, the Commission does have the authority to seek injunctive relief in Superior Court against persons and entities who are engaged in unauthorized and unlicensed brokerage services.

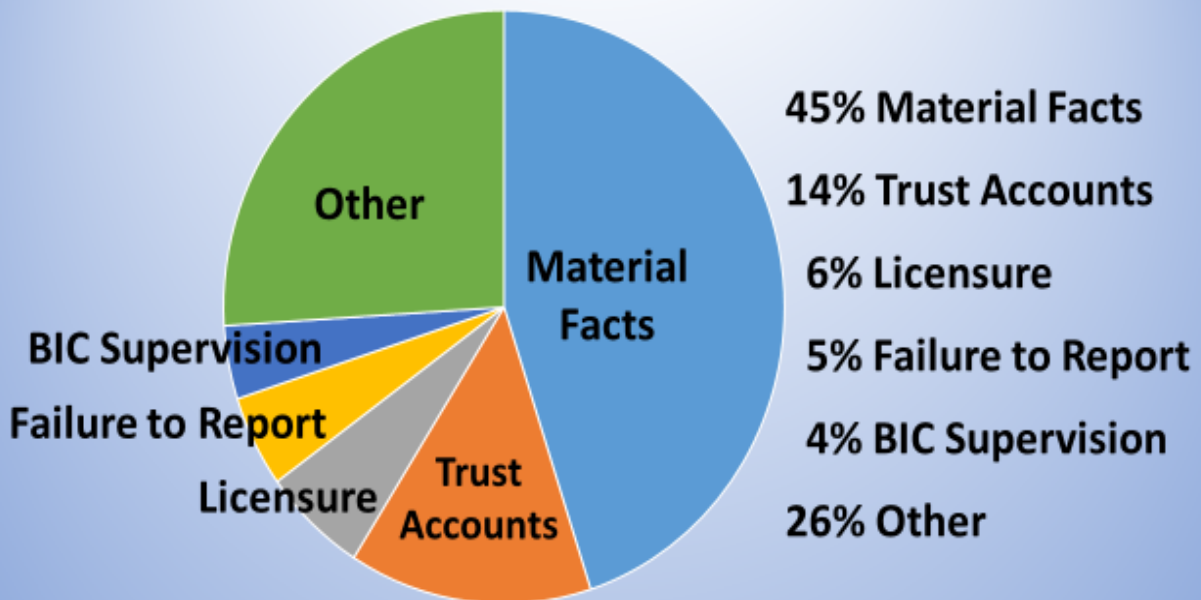
When the Commission closes a case without disciplinary action, because it lacked authority or was not able to establish sufficient evidence, the Commission notifies the Complaining Witness and Respondents in writing, usually using electronic communication.

The statistics of most common complaints do not align perfectly with the most common disciplinary issues. The following two charts provide insight into the statistics of actual disciplinary actions over the two most recent license years.

NCREC Disciplinary Actions 2020-2021



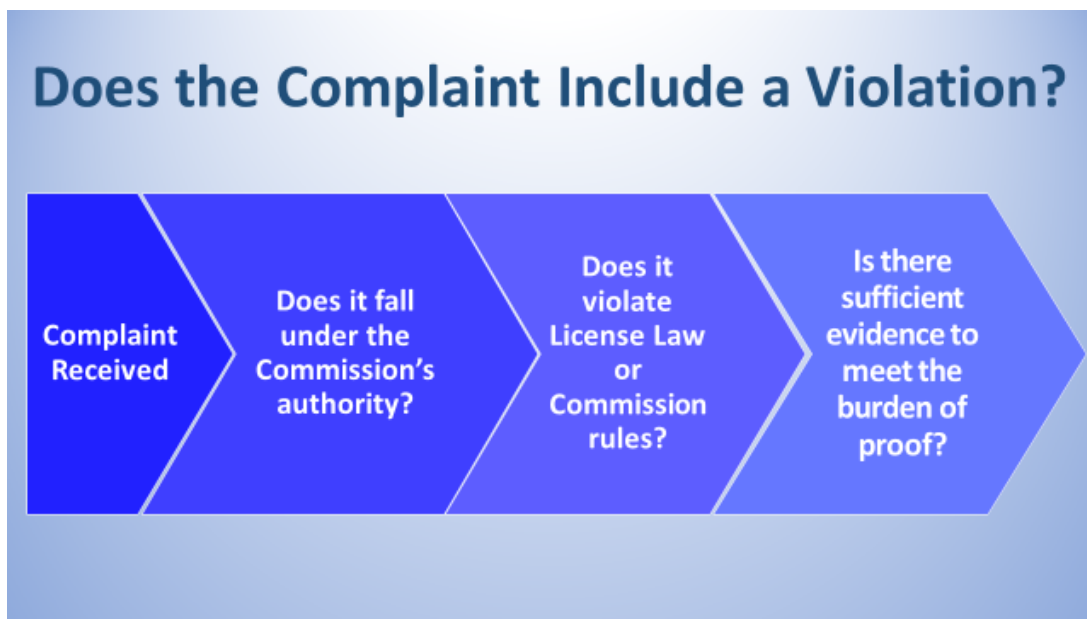
NCREC Disciplinary Actions 2021-2022



The inordinately high 26% “Other” category in the 2021-2022 license year contained a wide variety of topics including:

- Failure to follow a seller’s instructions;
- Falsifying documents;
- License examination improprieties;
- Communicating terms of offers without authorization;
- Failures to respond to Letters of Inquiry;
- Committing loan fraud; and
- Licensees who failed to comply with landlord /tenant laws.

Let’s discuss whether or not the following sample complaints allege a License Law and Commission rule violation.



AGENCY COMPLAINTS

Takin’ it to the Streets:



I went to ABC Realty to help me find a rental property. During my office visit, Terris, the BIC, informed me that ABC Realty has a sales brokerage division and a property management brokerage division. Therefore, they could assist me with locating a property for rent now and also assist me with purchasing a property in the future.

Sam, an affiliated broker who works specifically in residential sales, assisted me with locating a rental property. During the transaction, I thought Sam represented my interest. Instead, after I signed the lease for the property, it stated that ABC Realty represented the owner of the property. I think Sam misled me while he was assisting me. I never signed any agreements with Sam prior to signing the lease, and he did not tell me that ABC Realty represented the owner.

Upon initial review of these allegations, Commission staff may determine that these complaints involve a possible violation of Rule 58A .0104, Agency Agreements and Disclosures. Rule 58A .0104(a), states:

Every agreement for brokerage services in real estate transaction and every agreement for services connected with the management of a property owners association shall be in writing and signed by the parties thereto. Every agreement for brokerage services between a broker and owner of the property to be the subject of a transaction shall be in writing and signed by the parties at the time of its formation. Every agreement for brokerage services between a broker and a buyer or tenant shall be express and shall be in writing and signed by the parties thereto not later than the time one of the parties makes an offer to purchase, sell, rent, lease, or exchange real estate to another.

COMPETING OFFERS

Takin' it to the Streets:



My broker stated that the listing agent disclosed my offer to other parties so they offered more than me for the property. I think the seller didn't accept my offer because of their listing agent.

Commission Rule 58A .0115 prohibits brokers from sharing the price or other material terms with competing parties without the express authority of the offering party (usually the buyer). Express authority is an agent's power to act on behalf of their principal. In other words, the client gives the broker permission to perform some act. However, brokers should know that License Law and Commission rules strictly prohibits the "shopping" of offers without everyone's permission to do so. A listing agent should not reveal to anyone other than the seller-client that a 'full-price' or 'cash' offer has been submitted, because sharing such information with a competing buyer would be a violation of Rule A .0115.

For clarification, a seller has the right to consider and respond to one offer or all offers. However, if the seller finds the offers received unacceptable, the seller may request the listing agent to ask prospective buyers to submit their highest and best offers. The seller makes this decision, not the listing agent. If the seller calls for highest and best offers, the listing agent should advise buyers to submit a new offer or stand by their original offer. However, under no circumstances should the listing agent share the offer amount of any offeror without their express authority. Additionally, the listing agent cannot redact the *offering price* within an offer and share this information without express authority to competing buyers, because “other material terms” are still being shared.

In October of 2017, the Commission published the article, [“Be Prompt, Fair, and Honest When Dealing with Multiple Offers.”](#) This article focuses on ensuring that brokers present all offers immediately to the seller; however, the seller determines which offers to consider.



FALSE PROMISES

Takin' it to the Streets:



My buyer agent informed me that the HVAC system on the property was new. Once I was under contract on the property, I had the property inspected. The home inspector indicated in the home inspection report that the HVAC system was outdated. Further, my broker stated the home inspector was incorrect because the listing agent and the seller stated the

system was new. Also, my broker stated they would add an addendum to our agency agreement and pay me \$5K toward replacing the HVAC system if I went through with the purchase of the property. I purchased the property and I never received the \$5k from my buyer agent.

Subsections of N.C.G.S. §93A-6(a) indicate the Commission has the power to suspend or revoke at any time a license issued under the provisions of this chapter, or to reprimand or censure any licensee, if, following a hearing, the Commission adjudges the licensee to be guilty of (1) *making any willful or negligent misrepresentation or any willful or negligent omission of material fact*, (2) *making any false promises of a character likely to influence, persuade, or induce*, or (3) *pursuing a course of misrepresentation or making of false promises through agents, advertising or otherwise.*

MATERIAL FACTS

Takin' it to the Streets:



The listing agent did not tell my buyer agent that the seller's driveway encroached on the neighbor's property after they were informed by the seller. As a result, my buyer agent did not notify me of this encroachment. I asked if I should have a survey conducted on the property and my buyer agent said not to waste my

money. I purchased the property and now my neighbor wants me to dig up my driveway because it is on their property.

Material Facts

Any fact that could affect a reasonable person's decision to buy, sell, or lease

- 1) Facts about the property
- 2) Facts that relate directly to the property
- 3) Facts directly affecting the principal's ability to complete the transaction
- 4) Facts that are known to be of special importance to a party



The disclosure of material facts is mandatory and must be volunteered freely to all parties in a transaction without regard to whom the broker represents. A broker must disclose material facts in a timely manner.

If a material fact is known prior to contract formation, then the broker must disclose the material fact prior to contract formation. If a material fact is discovered after contract formation, then the broker must disclose the material fact immediately. The broker cannot decide to wait for a party to ask about the material fact or refrain from disclosing the material fact to any party because they believe that the material fact was common knowledge.

Therefore, the broker’s responsibility is to research whether a material fact exists and disclose the presence of a material fact or potential material fact to the transactional parties so they can possess the adequate knowledge to:

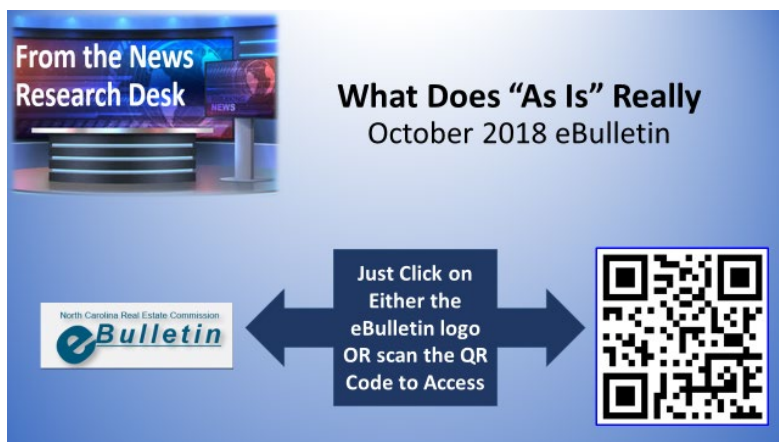
- make an intelligent decision regarding selling or acquiring the property,
- negotiate repair services, or
- decide to terminate an existing contract.

Additionally, the broker’s responsibility includes the following:

- facts the broker know exist,
- facts the broker reasonably should know exist, and
- information considered common knowledge.

In an effort to avoid complaints of misrepresentation or omission of material facts, brokers need to take affirmative action to research and check the accuracy of advertisements in print, MLS, and websites. For clarity, a broker may reasonably rely on the property description given by a listing agent unless the information seems suspicious or questionable.

The Commission has a plethora of resources on its website to assist brokers with comprehending their duties/obligations regarding the disclosure of material facts. The articles elaborate on the responsibilities under the General Statute for all brokers in a transaction. Specifically, articles such as [“What Does “As Is” Really Mean?”](#) and [“Regulatory Affairs Case Study: Get Answers First”](#) explain the statutory requirements for listing agents and buyer agents to discover and disclose material facts to all parties in a transaction.





From the News
Research Desk

NEWS

Regulatory Affairs Case Study: Get Answers First
December 2020 eBulletin

North Carolina Real Estate Commission
eBulletin

Just Click on
Either the
eBulletin logo
OR scan the QR
Code to Access

Also, the Commission has discussed the duty of a broker to discover and disclose material facts in the 2018-2019, 2019-2020, and 2022-2023 Update Courses. You can access these courses under *Publications* on the Commission's website.

TRUST ACCOUNTS

Takin' it to the Streets:



After entering into a contract for the property, I gave my buyer agent \$1,000 via the Venmo app for my due diligence fee and I have a screenshot of my receipt. My buyer agent then using their Venmo app sent it to the seller. Now I want to cancel and the seller and my buyer agent are telling me that I cannot get my due diligence

fee back. My due diligence time period has not expired yet.

What is Trust Money?

Trust money is defined as:

- any funds belonging to others,
- received by a broker,
- while acting as an agent in a fiduciary capacity related to a real estate transaction.

Trust money includes (but is not limited to):

- any cash,
- earnest money deposits,
- rent payments,
- final settlement funds,
- sales and use tax,
- tenant security deposits,
- HOA dues,
- advance rental deposits, and
- funds used to maintain owners' properties.

All brokers have an obligation to safeguard and protect the trust money and property of others that is in the broker's possession. Therefore, brokers are expressly prohibited from:

- converting the money or property of others to their use;
- applying such money or property to a purpose other than what it was intended for; or
- permitting or assisting any other person in the conversion or misapplication of such money or property.

NOTE: Brokers *must* deposit cash into a trust account before disbursing it. Real Estate License Law protects consumers by protecting their money. Brokers who handle money belonging to others are in a position of trust and must act with a high level of honesty and integrity at all times. Additionally, the due diligence fee is generally nonrefundable and brokers should ensure they clearly explain the due diligence process to their clients.

UNLICENSED ASSISTANTS

Takin' it to the Streets:



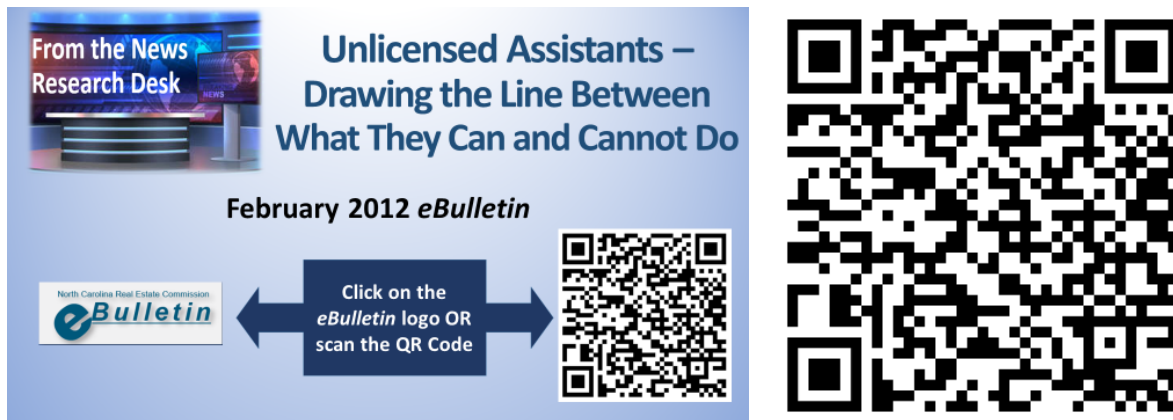
My buyer agent works for XYZ Realty. The firm's unlicensed office assistant took me to view a property I wanted to purchase. She informed me that I should offer \$275,000 for the property based on the "comps" that my buyer agent had given her. She assisted me with preparing the offer, but it was not accepted. I feel like

she did not represent my interest. My offer wasn't accepted because the seller said my offer was incomplete.

To clarify, the Commission has provided a chart that indicates the permitted activities of an unlicensed, salaried assistant relating to property management in the [2018-2019 Update Course](#).



The Commission has also written an article regarding the activities that are permitted by an unlicensed, salaried assistant. The following article can be used as a resource for brokers, [“Unlicensed Assistants - Drawing the Line Between What They Can and Cannot Do.”](#)



Managing real property in North Carolina often involves the leasing or renting of property. Therefore, any individual or entity that manages real property belonging to others for compensation or consideration must be an actively licensed real estate broker.

N.C.G.S. §93A-2(c)(6), permits brokers who engage in property management activities to hire unlicensed salaried employees to assist them with leasing activities. These unlicensed assistants may:

- show rental properties to prospective tenants;
- provide the prospective tenants with information about the lease of the units;
- accept applications for lease of the units;
- complete and execute preprinted form leases; and
- accept predetermined security deposits and rental payments for the units only when the deposits and rental payments are made payable to the broker employed by the owner.

However, under no circumstances is an unlicensed, salaried employee permitted to solicit landlord-clients, enter into property management agreements, or negotiate rental amounts or tenant security deposits. A licensed real estate broker must perform these tasks.

Transaction Coordinators

Brokers may also utilize the services of a transaction coordinator to assist them with managing administrative aspects within the transaction. However, if a transaction coordinator does not have an active real estate license, they cannot participate in brokerage activities like negotiating repairs and contingencies. Basically, an unlicensed transaction coordinator can assist with:

- the completion of preprinted documents with broker oversight;
- ensuring documentation is complete;
- scheduling inspections/surveys;
- ensuring appropriate deadlines are met; and
- ensuring the closing attorney receives all of the required documents prior to settlement.

Although a transaction coordinator handles administrative tasks, the broker is still responsible for their activities and must check to ensure the transaction coordinator is adhering to the law. If a transaction coordinator has an active real estate license, brokers must evaluate what the role/purpose of the transaction coordinator is during the transaction to ensure that all brokerage activity and related tasks are not violating the law, agency agreements, and company policies.

Further, if an unlicensed assistant does engage in activities that:

- are illegal,
- violate License Law and Commission rules, and/or
- violate state and federal laws,

the BIC of the brokerage and/or affiliated broker may be held liable for the conduct of the unlicensed assistant. In an effort to ensure that unlicensed assistants are not participating in brokerage activities, training programs and educational resources should be available for the company's unlicensed assistants. These training programs and resources should thoroughly explain the obligations that an unlicensed assistant must adhere to while performing their duties.

IN OTHER NEWS

During the course of an investigation or later disclosure by a broker, the Commission may become aware of a:

- felony or misdemeanor criminal charge or conviction,
- military court-martial,
- disciplinary action by another occupational licensing board,
- BIC who fails to supervise a provisional broker,
- BIC who doesn't fulfill their obligations under Rule 58A .0110(g), and/or
- broker who fails to respond to a Letter of Inquiry.

Rule 58A .0601(c) states, when investigating a complaint, the scope of the Commission’s investigation shall not be limited only to matters alleged in the complaint. Therefore, if Commission staff is made aware of a possible rule violation during the course of an investigation, they can discipline the broker for the “new” allegation in addition to the allegation(s) already set forth in the complaint.

For example, the Commission may initiate a complaint upon its own action when a broker fails to timely report, per Rule 58A .0113, their felony or misdemeanor criminal conviction, military court-martial, or disciplinary action received by another occupational licensing board.

Specifically, Commission Rule 58A .0113 requires:

Any broker who is convicted of a felony or misdemeanor, or who is disciplined by or enters into a conciliation agreement or consent order with any governmental agency in connection with any occupational license or whose notarial commission is restricted, suspended, or revoked, shall file with the Commission a Criminal Conviction Disciplinary Action Reporting Form of such conviction or action within 60 days of the final judgment, order, or disposition in the case.

Essentially, if a broker has a criminal conviction, they must file a Criminal Conviction Disciplinary Action Reporting Form. The Criminal Conviction Disciplinary Action Reporting Form is available on the Commission’s website at www.ncrec.gov or upon request to the Commission. The broker shall set forth the following in the form:

- 1) full legal name;
- 2) physical and mailing address;
- 3) real estate license number;
- 4) telephone number;
- 5) email address;
- 6) social security number;
- 7) date of birth; and
- 8) description of the criminal conviction and disciplinary action including the jurisdiction and file number.

NOTE: If a broker fails to timely report a felony or misdemeanor criminal conviction, military court-martial, or disciplinary action by another occupational licensing board but notifies the Commission when applying for BIC Eligible status, BIC designation, instructor approval, or completing a firm license application, the application for any of the aforementioned will be placed on hold. The Commission will initiate an investigation for the failure of the broker to report the conviction and to review the applicant’s fitness of character. The application that is placed on hold will be addressed once the investigation and any subsequent disciplinary action has been resolved.

YOU BE THE INVESTIGATIVE NEWS REPORTER

Read the following factual allegations.

Determine what, if any, License Law or Commission rules were violated.

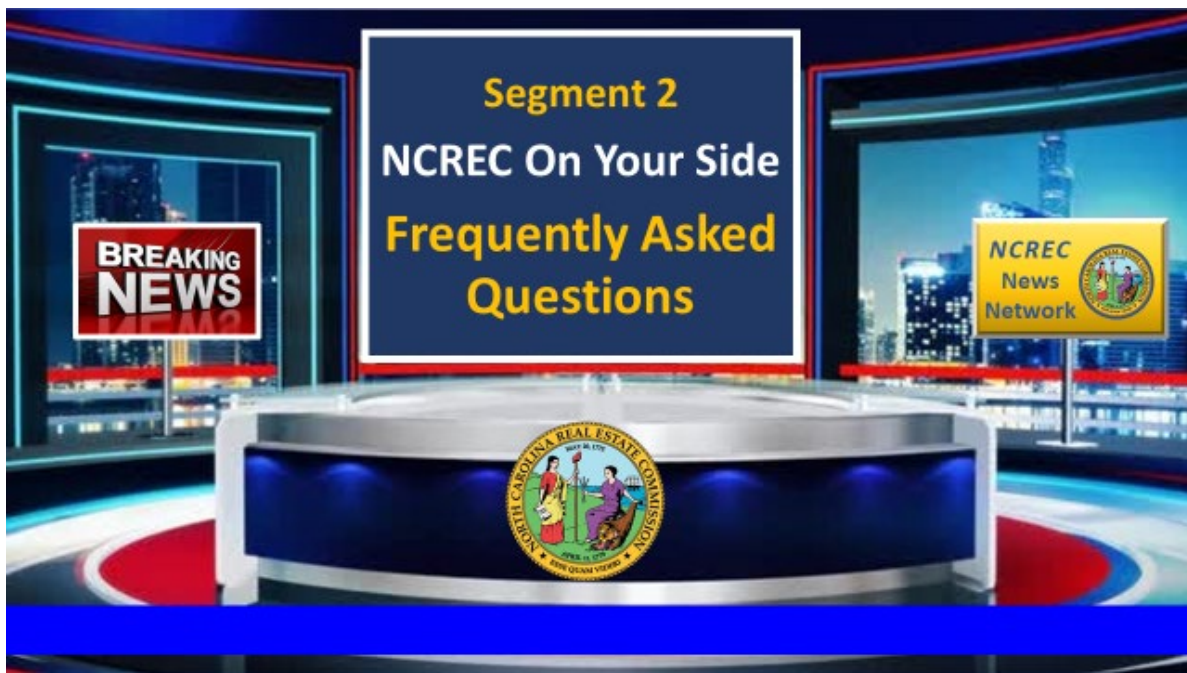
- 1. My landlord is the private owner of the property located at 123 Main Street. He does not have a property manager. I have directly paid him my lease payment for the last two years. I have chosen not to renew my lease and he is upset. He said I damaged 26 blinds and he needs to replace them. He refuses to return my security deposit.*
- 2. I am a licensed real estate broker. I represented a buyer in a transaction and had a cooperating agreement with the listing company that I would receive a percent of the commission. However, the listing brokerage has refused to pay me. The settlement occurred 21 days ago.*
- 3. My BIC stated that I could not affiliate with “Z Property Management Firm.” ABC Realty does not allow property management but I want the experience. My BIC is violating the license law.*
- 4. My broker is licensed in Florida, and I currently live in Florida as well. I purchased a property in Nags Head, NC. My Florida broker has assisted me in the past with purchasing properties in Florida so I trusted him. However, he did not tell me that the property in NC had recently flooded and the seller performed their own mold remediation. I also attended the property inspections alone. The broker never accompanied me to view the property. The broker owes me money because the property is infested with mold.*
- 5. Linda is a licensed real estate broker in NC. Linda had contacted me because she saw a “For Sale by Owner” sign in my yard. She stated that she was interested in purchasing my property. After we negotiated on a price, Linda and I entered into a contract for her to purchase my property. One week prior to settlement, I contacted Linda to make sure everything was okay and she told me that Joe is the new buyer and he will adhere to the terms in the contract. Apparently, after we entered into a contract, she sold her rights to buy my property to Joe for \$17,000. Joe was going to use my property as his primary residence. She provided me with Joe’s information and an updated contract. I contacted Joe and he stated he could not obtain financing; therefore, he was unable to purchase the property. I turned down several offers because Linda stated she was going to buy my property.*

6. *My HOA does not maintain the pool or common areas in my subdivision. They are increasing the fee from \$90 to \$135 in July of 2023. This fee is excessive because they are not using the money appropriately; further, they are already fining the owners for things like keeping their garbage bins outside in their yard. They are squandering my fees that I pay each month.*
7. *John and I are licensed real estate brokers who decided to start a company together and work as a team. We were married for 7 years and just recently got a divorce. John has not paid me for three transactions. If we split the commission as agreed upon previously, he owes me \$47,000. This fee was also decided by the court and referenced in the Equitable Distribution Order when our divorce case was finalized.*
8. *I attempted to purchase a 2-acre parcel of land listed by Jake, a private seller. My buyer agent assisted me with preparing a contract to purchase the vacant lot. We negotiated that I would pay \$10K as a due diligence fee. However, once I paid the due diligence fee, neither I nor my buyer agent heard from Jake, the seller, again. We contacted the telephone number provided and it is no longer in service. We also sent emails, and the emails came back “undeliverable.”*

Segment 2

NCREC ON YOUR SIDE

Frequently Asked Questions



Newsroom Roundtable Discussion

Do my social media posts about a property have to comply with Commission rules?

If a consumer has to click on an image or link in a post to get the name of the brokerage, is this in compliance with Commission rules?

LEARNING OBJECTIVES

After completing this section, you should be able to:

- explain how advertisements on social media must comply with Rule 58A .0105;
- identify when an assumed business name must be registered with the Commission; and
- define broker obligations when dealing with their personally owned property.

TERMINOLOGY

Assumed Business Name: A name other than the real legal name of the person, sole proprietorship, partnership, corporation, or limited liability company (LLC) in which they are conducting business.

Firm: A license issued to a business entity, such as a corporation, limited liability company, limited partnership, general partnership, association, or joint business venture. A sole proprietorship does not need a firm license because no entity has been created.

Limited Nonresident Commercial License (LNCL): A license issued to a person who:

- does not live or have any home, business, or delivery address in North Carolina (NC);
- has an active real estate broker or salesperson license in another state;
- wants to enter NC to engage in a commercial transaction as an affiliated agent with their out-of-state brokerage company; and
- must enter into a Declaration of Affiliation and a Brokerage Cooperation Agreement with a resident NC broker who will be responsible for supervising the nonresident.

INTERACTING WITH THE COMMISSION

Every day the staff at the Commission receives on average approximately 500 phone calls and 1,000 emails. Most of the communication are requests for information, explanations on processes or forms, and inquiries regarding a wide variety of topics.

Main number: (919) 875-3700

Regulatory Affairs (919) 719-9180



Incoming calls are mostly sent to one of two different divisions, either License Services or Regulatory Affairs.

Just over 60 people work at the Commission, and the primary responsibility of many of them is to respond and answer questions and concerns from brokers. There is a high probability that when you call the Commission you will be routed to the individual who is highly trained at dealing with your specific issue. That means that you may have to wait a few minutes for answers to your particular question, but the specialist you have been routed to can see that you are waiting and they will be with you as soon as they complete an existing call. Sometimes, you are asked to leave your phone number, describe the nature of your question, and a call ticket is assigned to an individual specialist to call you back. NCREC tracks those calls by the broker's license number.

Interactive News Reporting

Why are brokers asked to provide their license number when they call the Commission?

- a) NCREC uses what brokers say against them.
- b) A certain number of calls will result in an audit of that broker.
- c) So that staff can provide accurate information based on the broker's records.
- d) In order to send notification to the BIC that a broker has contacted NCREC.



NCREC receives many calls that are not within the scope of the Commission's authority. Here are some other helpful phone numbers that will be of value to you.

Other Sources for News & Information



- **NC Dept. of Revenue**
877-252-3052
- **NC Association of REALTORS®**
336-294-1415
- **NC Secretary of State**
919-814-5400
- **NC Banking Commission**
919-733-3016
- **NC Appraisal Board**
919-870-4854

ADVERTISING CONCERNS

Takin' it to the Streets:



Sally, a real estate broker with ABC Realty, practices residential brokerage. Sally is friends with Mary, who recently bought two investment properties. Mary offers to pay Sally to assist her with locating two tenants for her properties. ABC Realty does not allow affiliated brokers to practice property management; therefore, she would have to do it independently and use social

media to locate prospective tenants. Sally places an ad on her personal Facebook page that states:

Are you looking for a nice, relaxing place to call home? Have you ever experienced a sunrise while being at the lake? Look no further, I have the perfect 4-bedroom, 3-bath lake house for you that is available as a long-term rental.

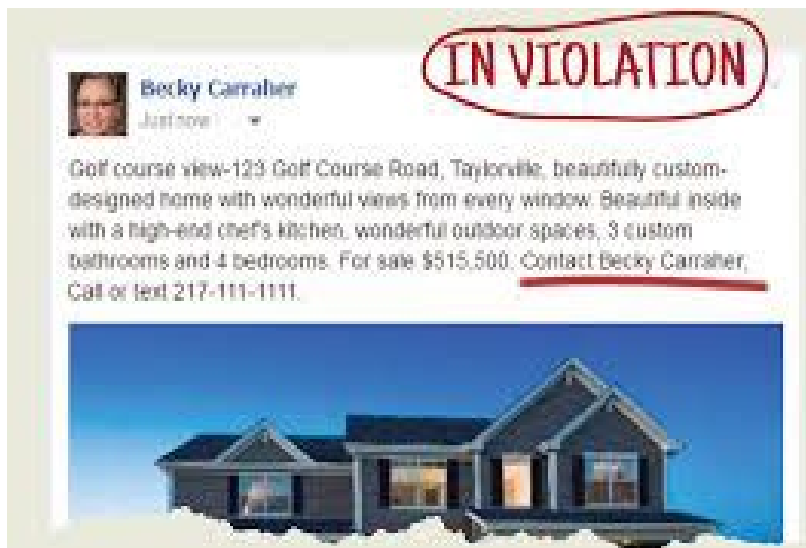


Nice, isn't it?! If you are interested, call Sally Wholesome at 555-555-5555 or email sally@wholesome.com.

Is Sally's Facebook post considered an advertisement? If so, is she in compliance with License Law and Commission rules?

Rule 58A .0105: Advertising

If a broker posts a property on their social media page for sale or lease, is this considered a form of advertising? Yes. According to *License Law and Rules Comments*, the Commission includes any offer to sell, buy, exchange, rent or lease real property by a broker, advertising.



Social Media

Do I have to get the consent of my BIC before I post an advertisement on social media? Yes. The Commission views posts by brokers on social media as a form of advertisement under Rule 58A .0105. Rule 58A .0105(a)(1) indicates a broker must have the authority to advertise. A broker derives their

authority by receiving consent from their BIC and including the name of the brokerage or sole proprietorship in the advertisement with which they are affiliated.

Further, according to subsection (a)(2), brokers are also required to obtain the written consent of the owner or owner's authorized agent prior to displaying a "for sale" or "for rent" sign on or otherwise advertising any real estate.

The Rule also prohibits blind advertisements in subsection (b). A broker "blindly" advertises a property they do not own when they fail to identify their brokerage company in the ad and thereby gives the false impression that the broker owns the advertised property. In an effort to prevent blind advertisements, every advertisement shall include the name of the firm or sole proprietorship.

NOTE: The BIC does not have to issue "permission" every single time an affiliated broker creates an advertisement. However, the BIC does need to give consent, which coincides with their policies and procedures in the brokerage's written office manual.

Can I use a logo to display the name of my brokerage in the advertisement?



Yes. Rule 58A .0105(b) prohibits blind advertisements and requires the name of the sole proprietorship/brokerage in the advertisement. However, the Rule does not specify the manner in which the broker posting the advertisement must comply with this requirement. Therefore, a broker may use a logo to identify the name of the sole proprietorship/brokerage in which they are affiliated as long as it is readable.

In addition, since a BIC is responsible for all advertising by or in the name of the brokerage, the BIC must take any step necessary to ensure that all advertising is truthful and complies with Commission rules.

NOTE: A generic franchise logo or personal logo is not sufficient to comply with the Rule because it is not the name of the brokerage.

Is it okay for the name of my sole proprietorship/brokerage to be displayed after the consumer clicks on my advertisement? No. The Rule specifically states in subsection (b) that every advertisement must indicate that it is the advertisement of a broker or firm. Therefore, if a broker posts a picture on their social media page advertising a property without the name of the sole proprietorship/brokerage in the post or on the picture, the broker may be in violation of Rule 58A .0105.

The Commission is also aware that brokers have mistakenly believed that as long as a consumer can get to the name of the sole proprietorship/brokerage within “one-click” on the post, they are adhering to the advertising rule.

For clarification, the Commission **does not** have a “one-click” rule. Therefore, when a broker uses social media to advertise property, they should include the name of the sole proprietorship/brokerage:

- in their social media name/handle;
- in the caption of their post;
- on the image of the property; and/or
- in their videos (e.g. stories, reels).

Once an advertisement is viewed on social media, a consumer should be able to identify the name of the affiliated sole proprietorship/brokerage upon sight. Consumers should not have to “click” on a link in an advertisement in order to identify the name of the sole proprietorship/brokerage.

Does the Commission prescribe the language that brokers must include in the advertisement? No. Although the Commission’s advertising rule does not regulate content, if an advertisement is discriminatory in nature and violates federal/state fair housing laws, the broker may be in violation of Commission Rules 58A .0120(d) and .1601. Therefore, brokers are expected to comply with federal and state laws regarding advertising content; specifically, federal and state fair housing laws. In plain words, to ensure compliance with federal and state fair housing laws, brokers should advertise the property and *not* who they would want in the property. Also, brokers should ensure that advertisements are truthful and accurate. Basically, the ads must not contain misleading statements or misrepresentations regarding the property.

Am I responsible if my advertisement is sent to multiple platforms? Yes. If a broker posts an advertisement on a website and authorizes the website to send the information to multiple platforms, the brokers are essentially agreeing to adhere to the websites’ terms of use. Therefore, brokers are impliedly consenting to the information being released to undisclosed websites, which increases the possibility that property information and content may be altered during dissemination.



Further, brokers mistakenly believe they cannot be held liable for property information distributed to third party websites. This is incorrect. The Commission may hold a broker responsible for all information that they create for any form of advertising or distribution of property information, regardless of the platform. Additionally, brokers are expected to

immediately update property information as it changes in any platform in which the broker placed the advertisement.

Takin' it to the Streets:



Rock Town, NC - Friday, Broker April visited the Commission regarding brokers sharing the Facebook posts of other brokers. Apparently, April's seller saw their property advertised on social media by a broker who did not have their permission to advertise their property.

The seller, who wishes to remain anonymous, is irate and wants to know if this is against Commission rules.

Is it permissible for a cooperating broker to share an advertisement on social media of the listing broker's advertisement without the seller's consent?

Do I have to get the permission of the broker who posted a property on social media before I share their advertisement? Yes. Pursuant to License Law and Commission Rule 58A .0105(a)(1) and (2), a broker must have consent of the BIC, indicate the name of the brokerage, and obtain the written consent of the owner or owner's authorized agent to advertise the property. Essentially, if a broker shares a post on social media without the consent of the BIC, name of the sole proprietorship/brokerage, or owner of the property (e.g. owner's authorized agent), they may be in violation of Rule 58A .0105.

Also, brokers who are REALTORS® have additional requirements they must adhere to under the Code of Ethics. NAR® considers the copying and publishing of another broker's listing information advertising. Since this is considered advertising, it requires specific authority from the listing broker/brokerage prior to sharing a post on social media because they have the written listing agreement with the seller.

Specifically, in the [Code of Ethics and Standards of Practice of the National Association of REALTORS® Article 12](#), NAR states:

REALTORS® shall not offer for sale/lease or advertise property without authority...



For clarity, sharing a social media post (e.g. story, reel, or video) without the permission of the listing broker may violate the Code of Ethics and Standards of Practice of the National Association of REALTORS®. Therefore, brokers should obtain permission, preferably in writing before they click “share” or repost an advertisement.



the Code of Ethics.

Further, NC REALTORS® published a *Legal Questions & Answer Update* on August 27, 2020, entitled, [“Can I advertise another firm’s property on social media?”](#) Basically, the article clarifies that a REALTOR® may be in violation of Article 12 in the Code of Ethics if they do not have the authority to share an advertisement. Therefore, if a REALTOR® is trying to share an advertisement on social media, they should obtain the permission of the listing agent *first* to ensure compliance with

Best Practices for Brokers Advertising on Social Media

The Commission will hold a broker/brokerage responsible for the property information that is posted on social media, authorized websites, or other advertising media. Therefore, brokers should consider implementing the following best practices prior to advertising on any media platform:

- obtain consent of supervising BIC;
- include name of sole proprietorship/brokerage;
- receive written consent from the property owner or their authorized agent;
- verify the accuracy of all information;
- research websites and third party platforms prior to advertising;
- consistently monitor the advertisement to ensure the accuracy of the property information; and
- create an “alert” so that you are notified when information is posted about the property.

Advertising, especially advertising on social media, can create some unexpected challenges. Therefore, brokerages should specify policies regarding the advertising platforms that will be permissible for their affiliated brokers.

NOTE: Rule 58A .0108(a) requires brokers to keep records of all sale, rental, and other transactions whether the transaction is pending, completed, or terminated. Specifically, subsection (a)(14) includes advertisements for marketing a property as a record that must be retained by brokers. In plain words, advertisements, including social media posts, regarding a property are considered records under Commission rules. Therefore, brokers should place a copy of each advertisement in the transaction file; this includes a copy of each variation of a published ad.

A POINT OF CLARITY



An individual licensee may choose to create a business entity under which to conduct real estate brokerage activity. The Commission does not mandate or advocate the creation of one business entity type over the other. However, in order to make an informed decision regarding an entity, it is imperative that brokers know the difference between an entity and a sole proprietorship. Regardless of the business structure selected for brokerage activity, each will have its own advantages and consequences. Therefore, brokers should seek the advice of legal counsel, a business consultant, and/or a tax expert to make an informed decision.

Entities

The Commission regularly receives inquiries regarding the distinction between entities and sole proprietorships. G.S. 59-73.1 defines a business entity as:

... a domestic corporation (including a professional corporation as defined in G.S. 55-B-2), a foreign corporation (including a foreign professional corporation as defined in G.S. 55B-16), a domestic or foreign nonprofit corporation, a domestic or foreign limited liability company, a domestic or foreign limited partnership, a domestic partnership, or any other partnership.

NOTE: In this case, “domestic” and “foreign” only indicates whether an entity was created in North Carolina or somewhere outside our state.

Commission staff does not advise individuals on how to structure their real estate business. However, if the business is a partnership, corporation, limited liability company, association, or other business entity that conducts real estate brokerage activity, then the entity must be licensed. Prior to the submission of a firm license application, the entity must be created and registered in North Carolina. Most existing entities created outside of North Carolina must be registered as a foreign entity with the NC Secretary of State before conducting brokerage activity in NC.

An entity is created by written agreement (e.g. Articles of Corporation, Operating Agreement, etc.), and registration with the North Carolina Secretary of State, if necessary. Once the entity is registered with the North Carolina Secretary of State, they must be licensed pursuant to G.S. 93A-1 and 2.

Further, License Law and Commission rules specify that any corporation, partnership, limited liability company, association, or other business entity (other than a sole proprietorship) must obtain a separate firm license. Therefore, a firm license must be obtained prior to the entity **engaging** in brokerage activity and/or **receiving** compensation for brokerage activity in NC. A broker may submit a firm license application by:

- going to www.ncrec.gov
- clicking on *Forms*;
- clicking on *Application Forms*;
- clicking on *Firm Application (Form REC 1.72)*; and
- completing the form.



Additionally, an entity must have a qualifying broker (QB). The QB must be a principal of the entity, such as an officer, manager, general partner, or person/entity owning 10 percent or more of the business entity. Also, the QB must possess an active NC broker license that is not on provisional status.

Further, an entity **cannot** practice brokerage in NC without having a designated BIC for each office. Therefore, one of the many responsibilities per Rule 58A .0502(g) is for a QB to designate a BIC for each office. A QB may designate themselves as BIC as long as they meet the requirements.

An entity can also be created specifically for the receipt of compensation earned as an affiliate of another licensed brokerage. If an entity is created solely to receive compensation, a QB is still required pursuant to Rule 58A .0502; however, a BIC is not required if the exception provided for in Rule 58A .0110(c) is met.

The Commission has several resources available regarding firm licensure. The following resources may provide some clarity for brokers:



[Do I Need a Firm License](#)



[Business Entity FAQs.](#)

Sole Proprietorships

A sole proprietorship is a business that is owned by an individual who is personally liable for all the debts/obligations of the company. If a broker is a sole proprietor, a firm license is not required because a sole proprietorship is not considered a business entity. However, to legally practice brokerage, a sole proprietor must have an active license because the business and the broker are one and the same.

Can I work as a sole proprietor without being a BIC? *Only in limited situations.* If a prospective buyer/tenant already knows that a broker is licensed and contacts the actively licensed broker, who does not advertise properties or brokerage services, then the broker can represent the buyer/tenant or refer the buyer/tenant to another broker for compensation without being a BIC.

Under Rule 58A .0110(b), a sole proprietor must designate a BIC if they:

- *engage in any transaction where a broker is required to deposit and maintain monies belonging to others in a trust account;*
- *engage in advertising or promoting services as a broker in any manner; or*
- *have one or more other brokers affiliated with the sole proprietorship in the real estate business.*

Therefore, brokers who will be conducting brokerage activity as a sole practitioner must also designate themselves as BIC. In a less common scenario, if the owner of the sole proprietorship allows other brokers to affiliate with the company, one of those affiliated brokers could serve as BIC instead of the owner if they meet the requirements of Rule 58A .0110.

FIRM LICENSING CONCERNS

Do I need a firm license if I only use my LLC to receive compensation?

Yes. Rule 58A .0502(a) requires:

...every business entity other than a sole proprietorship to apply for and obtain from the Commission a firm license prior to engaging in business as a real estate broker.

Subsection(c) of the aforementioned Rule indicates the required information to be included in the firm license application and that the *firm license application form* is available on the Commission's website.

The firm license application process requires the accurate completion of the [Firm Application Form \(Rec 1.72\)](#) and the appropriate submission of supporting documentation (e.g. documentation from the North Carolina Secretary of State).



If brokers need assistance with completing the firm license application, the Commission has provided a [“Firm Licensing”](#) video under Resources to assist brokers with navigating through this process.

Entities that are created for compensation only must have a QB according to Rule 58A .0502. However, Rule 58A .0110(c) indicates a BIC is not needed for the entity as long as the entity:

- (1) is organized for the sole purpose of receiving compensation for brokerage services furnished by its qualifying broker through another firm or broker;*
- (2) is treated for tax purposes as a pass-through business by the United States Internal Revenue Service;*
- (3) has no principal or branch office; and*
- (4) has no licensed person associated with it other than its qualifying broker.*

ASSUMED BUSINESS NAMES



What do I need to do if I want to conduct business in a name different from what's on my real estate license?

The Commission allows sole proprietorships/brokerages to conduct real estate activity using an assumed business name pursuant to Rule 58A .0103(c). However, in order to use an assumed business name, the sole proprietorship/brokerage must first register the assumed business name by submitting an [Assumed Business Name Certificate](#) to the North Carolina Secretary of State/County Register of Deeds Office.



Once the certificate has been filed, the sole proprietorship/brokerage must notify the Commission in writing of their use of an assumed business name pursuant to Rule 58A .0103(c).



A sole proprietorship/brokerage notifies the Commission by submitting a [Request Firm Name Change and/or Request to Replace Firm License Certificate or Pocket Card \(Form 1.47\)](#) on the Commission's website.

Interactive News Reporting

I am a broker with 123 Realty and I don't like my legal name. Can I file an Assumed Business Name Certificate so I can conduct brokerage activity under an assumed name?



- Yes, just register, record, and notify the Commission using Form 1.47.
- Yes, simply notify the Commission using Form 1.47.
- No, since you are a sole proprietor and not an entity, you cannot use an assumed name.
- No, since you are an individual broker, you cannot use an assumed name.

In adherence to the Rule, the Commission recognizes assumed business names for licensed firms and sole proprietorships, not individual brokers. Specifically, subsection (c) of the aforementioned Rule indicates:

...individual broker shall not advertise or operate in any manner that would mislead a consumer as to the broker's actual identity or as to the identity of the firm with which he or she is affiliated.

For example, if a broker is affiliated with a brokerage and their real estate license has their legal name as *Stickena Desktop*, then they must conduct brokerage activity using their legal name as shown on their North Carolina real estate license. So if *Stickena Desktop* advertised her real estate services as “*The Real Estate Angel*,” she would be in violation of Commission rules because she cannot use an assumed business name since she is not conducting brokerage activity as a sole proprietor.

In contrast, a sole proprietor may use an assumed business name that is different from their legal name as long as they have filed an Assumed Business Name Certificate and notified the Commission per Rule 58A .0103(c). For instance, if John Doe is a sole proprietor and wants to conduct business under the name “*Prince Realty*,” he must first search to ensure the name is not in use, complete and file the Assumed Business Name Certificate with the NC Secretary of State/County Register of Deeds office, and notify the Commission of the assumed business name using the [Request Firm Name Change and/or Request to Replace Firm License Certificate or Pocket Card \(Form 1.47\)](#).

However, a sole proprietor does not have to file an Assumed Business Name Certificate if they are using their legal surname or last name while conducting business. For clarity, if John Doe would like to conduct brokerage activity as Doe Realty, he does not need to file an Assumed Business Name Certificate because “Doe” is his surname.

Similarly, a licensed entity that conducts business using a name other than its legal name must file a Certificate of Assumed Business Name and notify the Commission as well. The rationale behind this requirement is to assist consumers with identifying the actual entity/sole proprietorship with whom they are dealing in real estate transactions.

Nicknames

Rule 58A .0103 requires a licensee to use the name printed on their license certificate when engaging in brokerage activities. If a broker who is licensed under the name, William Robert Smith, uses the name, Robert Smith, then, when his name appears in writing, it should indicate W. Robert Smith. If Mr. Smith uses the nickname, ‘Rusty,’ then, when identifying his name in writing, he must write, William ‘Rusty’ Smith. Simply writing Rusty Smith is prohibited. If a licensee changes their name and wishes to use the new name in their real estate business, they should submit the [Request for Broker Name Change and/or Request to Replace Broker License/Pocket Card \(Form REC 1.22\)](#) to the Commission on the website www.ncrec.gov.



On December 1, 2017, the NC legislature repealed Chapter 66, Article 14 and enacted Article 14A, the “Assumed Business Name Act.”



Article 14A, the “Assumed Business Name Act.”

N.C.G.S. §66-71.2, specifies that the purpose of the Assumed Business Name Act is to:

...afford the public the means to ascertain the real name of persons engaging in business in this State under an assumed name by requiring those persons to register the assumed business name...

The change modernized the assumed business name process to make it easier to register, find, and maintain assumed business name information for businesses. The Act altered the requirements for the assumed business name certificate and created the means by which a single registration in one Register of Deeds office can be effective for multiple counties. In the article, [“Assumed Business Name Filing Deadline Coming December 1, 2022,”](#) the Commission informs brokers about the modernization of the assumed business name registration process.

The change modernized the assumed business





Also, the article, [“A Rose by Any Other Name- Names, Name Changes, and Assumed Names,”](#) clarifies the proper usage of names in advertising and informs brokers about the modernization of the assumed business name process.

AFFILIATION

Do I need to be affiliated with a BIC in order to practice real estate? *It depends.*

Are you a full broker or a provisional broker? According to Rule 58A .0506(a), a provisional broker may only engage and hold themselves out as a real estate broker when their license is active and they are supervised by the BIC of the brokerage in which they are affiliated.

A full broker may hold a license on active status while not being affiliated with a BIC.

Can I work as a sole proprietor without being a BIC? *It depends.* A sole proprietor who is not a BIC can:

- make referrals and
- represent unsolicited buyers.

A broker who is operating as a sole proprietor without being a BIC **cannot:**

- maintain a trust account;
- advertise; and/or
- affiliate other brokers.

So if a full broker wants to maintain a trust account, advertise their services, or affiliate other brokers, they must designate themselves as a BIC and meet the requirements under Rule 58A .0110. As mentioned previously, if the owner of the sole proprietorship allows other brokers to affiliate with the company, one of those affiliated brokers could serve as BIC instead of the owner if they meet the requirements of Rule 58A .0110.

SELLING OR LEASING COMMERCIAL REAL ESTATE



Do I need a separate license to sell or lease commercial properties in North Carolina?

If you have a North Carolina real estate license, you have achieved minimal competency to practice any form of real estate brokerage in NC. Therefore, a separate license is not required prior to conducting commercial real estate transactions.

North Carolina's broker license authorizes the practice of all brokerage activity including commercial, residential, land, and property management.

However, a broker is strongly encouraged to speak with their BIC to ensure they have the requisite competence and the permission of their brokerage company to practice this specialty area of brokerage *prior* to engaging in it.

Can I get a Limited Nonresident Commercial Brokers license if I live in North Carolina? *No.* A Limited Nonresident Commercial license is only available if you are a nonresident broker licensed in another jurisdiction. If you wish to conduct commercial brokerage activity in North Carolina, you will need to obtain a Limited Nonresident Commercial License (LNCL) pursuant to Rule 58A .1801.

Rule 58A .1801(a) states:

Any person resident in a state or territory of the United States other than North Carolina may perform the acts or services of a real estate broker in North Carolina in transactions involving commercial real estate if said person first applies for and obtains a limited nonresident commercial real estate broker license as provided in this Section.

The LNCL is a license issued to a person who:

- does NOT live or have any home, business, or delivery address in NC;
- has an active real estate broker or salesperson license in another state;
- wants to enter NC to engage in commercial transactions as an affiliated agent with their out-of-state brokerage company; and
- must enter into a Declaration of Affiliation and a Brokerage Cooperation Agreement with a resident NC broker who will be responsible for supervising the nonresident.

The LNCL is a restricted license that permits the nonresident to enter NC to engage **only** in commercial real estate transactions as defined in Rule 58A .1802(1). If the LNCL broker obtains any home, business, or delivery address in North Carolina, the individual must apply for and obtain an unrestricted NC broker license in order to engage in any brokerage activity within NC.

The application for the LNCL can be found on the Commission's website here: [Limited Nonresident Commercial Real Estate License \(Form REC 1.78\)](#).



Also, the Declaration of Affiliation of Limited Commercial License is here: [Declaration of Affiliation Between a Limited Nonresident Commercial Real Estate Licensee and a Resident Broker \(Form REC 1.79\)](#)

NOTE: Corporations, business associations, and other entities are ineligible for licensure under Rule 58A .1802.

CODE OF ETHICS TRAINING

Do Commission rules require Code of Ethics training?

No. The Commission does not require Code of Ethics training. Code of Ethics requirements are set by the National Association of REALTORS® (NAR).

Not all licensees are members of NAR. Brokers who are members of NAR are required to complete Code of Ethics Training periodically in order to remain in good standing as a REALTOR®.



NATIONAL
ASSOCIATION of
REALTORS®

Members are required to complete Code of Ethics training every 3 years. The course must include at least 2.5 hours of instructional time and is offered in distance format, in synchronous courses, or in-person. These courses are offered through local REALTOR® associations. Some of these courses, if they are at least 4 hours long, may also provide Commission CE elective credit, but only if the course was submitted and approved for CE elective credit with the North Carolina Real Estate Commission.

CONTRACT SIGNATURES

What if a property has two owners and both have the legal right to sell the property or their interest in the property, but only one of them signs a listing agreement? *A listing agreement is generally enforceable against the person(s) who signed the agreement. However, the best practice is to obtain the signature of every owner on a listing agreement.*

Do all owners of the property have to sign the offer to purchase? *It is preferred/recommended.* Every owner whose name is on the title to the property should sign the offer to purchase. However, if there are multiple owners of a property, one or more of the owners may sign the offer to purchase. Although all of the owners did not sign the offer to purchase, clear title to the property may still be conveyed as long as all owners agree to sign the deed. Furthermore, the signature of all owners on the offer to purchase would make it more likely that they will cooperate because they are legally bound to the contract terms. Now if one of the owners does not want to sell the property, they may file a partition in court or sale in lieu of partition pursuant to N.C.G.S. §46A-75. Therefore, if one or more of the owners refuses to sign the offer to purchase, clear title cannot be passed to the prospective buyer unless that owner signs the deed.

Takin' it to the Streets:



Miss Smith, a property owner states: My significant other and I own a property together. We are breaking up and my significant other told the broker that we were both in agreement on selling the property. I didn't even know the property had been listed. Now it's under contract and they are telling me that I

have to sign. Well, I am not going to do it. I want more money than they are telling me that I will get from this property. This isn't right. I am going to file a complaint with the North Carolina Real Estate Commission.

If signatures cannot be obtained, will this result in a breach of contract? _____

Could the buyer be entitled to damages? _____

Is there a probable violation of License Law and Commission rules? _____

What if the property is an estate property? If the real property is part of an estate that has not yet been settled, then an executor will probably need to sign the listing agreement and deed to convey clear title to the property to the prospective purchaser. However, executors are not automatically given permission to sell an estate property. An executor is given permission to sell the real property by the Last Will in Testament or by petitioning the Court to hold a Special Proceeding. The petition must contain a description of the property to be sold, names and contact information of the heirs of the property, and a statement as to why selling the property is in the best interest of the estate.

If there are multiple heirs for an inherited property, all heirs (and possibly any spouses) must sign the deed to convey clear title. If all heirs do not agree for the property to be sold, they may petition the Court for the property/land to be partitioned.

Potential listing agents should always consult an attorney about what is required to successfully list and sell properties that are in an estate or owned by multiple heirs.

BROKER-OWNED PROPERTIES

Do I have to comply with License Law and Commission rules when I am selling my own property? Yes. Per N.C.G.S. 93A-6(b)(3), a broker must comply with License Law and Commission rules when selling their personally owned property. Quite frankly, the Commission does not require the broker to disclose they have a real estate license; however, the Commission strongly recommends this disclosure because having a license may enhance the negotiating position of the broker if/when working with an unrepresented buyer.

Additionally, a broker still must comply with N.C.G.S. 47E, Residential Property Disclosure Act, when selling their own property. The broker-seller may check “Yes,” “No,” or “No Representation” on the *Residential Property Owners’ Association Disclosure Statement* (hereafter known as “*RPOADS*”) but the broker-seller still has a mandatory obligation under N.C.G.S. §93A-6 to discover and disclose material facts in a timely matter, no later than the point in which the prospective buyer makes an offer on the property. The Commission does have the authority to discipline a broker who does not affirmatively and timely discover and disclose material facts when selling their own property.

Because a broker may be disciplined for failing to discover and disclose material facts, it is imperative that the broker exercise reasonable effort to ascertain any material fact about the property that may affect the reasonable buyer’s decision to purchase the property. Further, Rule 58A .0104(o) indicates:

...a broker who is selling property in which the broker has an ownership interest shall not undertake to represent a buyer of that property except that a broker who is selling commercial real estate as defined in Rule .1802 of this Subchapter in which the broker has less than 25% ownership interest may represent a buyer of that property if the buyer consents to the representation after full written disclosure of the broker's ownership interest.

If a broker attempts to represent a buyer for the broker's personal property this would create a conflict of interest. This is the reason it is a violation of Commission rules. However, if the broker-seller lists the property with their brokerage, another broker in the firm without an ownership interest may represent the prospective buyer as long as the buyer consents to the representation after full written disclosure of the affiliated broker's ownership interest.

Takin' it to the Streets:



Broker Daniel states: I don't know what the North Carolina Real Estate Commission thinks they are doing. I have a broker's license, but I don't use it to represent other people. I only manage residential rental properties that I own.

I have the right to create my own lease. What I charge for a security deposit and the requirements I put in my lease agreements are my personal business. The tenants agreed to everything and I have everything in writing. Frankly, that is all that is required. The Commission should mind their own business.

What rules and statutes apply? _____

Do all property owners have to follow provisions of the Tenant Security Deposit Act?

Is there a probable violation of License Law and Commission rules?

Although a real estate license is not required when an individual is managing their own property; an unlicensed individual and a broker must both comply with the Tenant Security Deposit Act and the Residential Rental Agreements Act.

The Tenant Security Deposit Act can be found in N.C.G.S. §42-50. This Act specifies that a tenant security deposit must be placed in a trust/escrow account or the owner may post a bond. The Act does allow a broker to post a bond when managing their own property. However, it is recommended that the broker place the tenant security deposit in a trust account and adhere to other requirements of the Act such as:

- informing the tenant of the location of the security deposit;
- submitting interim accounting with an itemized list of deductions or the full tenant security deposit within 30 days of the termination of tenancy; and
- submitting a final accounting within 60 days of termination of tenancy.

Additionally, a broker must comply with the Residential Rental Agreements Act as well. N.C.G.S. §42-42 essentially states that a landlord must:

- comply with building and housing codes unless the structure is specifically exempt;
- make all repairs and maintain fit and habitable premises;
- maintain common areas in safe condition;
- maintain and repair all plumbing, heating, ventilating, air conditioning, and sanitary systems including any appliances supplied or required to be supplied by the landlord; and
- install battery operated or electrical smoke detectors according to the standards of the National Fire Protection Association, etc.

Even while managing their own property, it is recommended that a broker inform the tenant that they have a real estate license. Most importantly, a broker must follow the Residential Rental Agreements Act and the Tenant Security Deposit Act while managing their own properties.

YOU BE THE CONSUMER PROTECTION OFFICER

Yes or No. Indicate whether the following scenarios violate License Law and Commission rules.

1. Sam and Julie are brokers with Z Realty and co-own a residential property. They list the property for sale with Z Realty; Sam is the listing agent. Z Realty practices dual agency. Tuck, a prospective buyer, is interested in Sam and Julie's property. Sam informs Tuck that he cannot assist him with the transaction because he has an 80% ownership interest in the property. However, Sam informs Tuck that Julie can represent his interest because she only has a 20% ownership interest in the property. Therefore, Julie represented Tuck in the purchase of the residential property she co-owned with Sam.

Did Julie violate License Law and Commission rules?

2. John Rock, a licensed broker affiliated with 123 Realty, advertises his brokerage services as "The Rock Realty."

Is John allowed to advertise using the name "The Rock Realty?" Why or why not?

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Segment 3

Challenges of a Changing Market



1. Is a comparative market analysis the same as an appraisal?

2. Can a broker communicate with an appraiser?

LEARNING OBJECTIVES

After completing this section, you should be able to:

- define appraiser pursuant to N.C.G.S. §93E;
- briefly describe the scope of the broker's and appraiser's role during the appraisal process;
- identify the types of assumable mortgages;
- list the common limitations a buyer may encounter when assuming a mortgage; and
- define wholesaling.

TERMINOLOGY

Appraisal: An analysis, opinion, or conclusion as to the value of identified real estate or specified interests therein performed for compensation or other valuable consideration.

Appraiser: A person who is licensed to develop and communicate real estate appraisals or otherwise gives an opinion of the value of real estate or any interest therein for a fee or valuable consideration.

Assumable Mortgage: A mortgage loan that can be transferred to another person.

Wholesaling: A strategy in which a party obtains a contract to purchase a property from a seller, and then prior to closing, assigns their contract rights to a buyer.

ADAPTING TO CHANGING WEATHER

Over the past couple of years, there were significant changes in the housing market that markedly affected the practice of brokerage. During a red-hot seller's market with limited inventory and escalating prices, many buyers completed transactions in which they:

- went under contract on properties sight unseen;
- waived inspections;
- conducted limited due diligence;
- waived appraisals;
- paid money for appraisal gaps; and
- agreed to pay more than the appraised value of properties.

As some of those same buyers now become sellers of the property, they are facing challenges due to information they ignored at the time of purchase.

Sellers who feel like they missed the peak of a market do not necessarily adjust their expectations and may be unhappy with appraisals that don't meet their expectations.

One bright spot for these frustrated new sellers is that many sellers have attractive existing mortgage rates on the property from an all-time low point in the 2%-3% range. Since the extremely low rates are no longer available, for the first time in decades, we are seeing interest in loan assumptions.

In addition to buyers determinedly looking for a place to live, the quickly escalating prices of homes in many areas of our state have resulted in an abundance of investors and individuals engaged in the wholesaling business.

The changing real estate market is forcing brokers to confront legal and compliance issues that many brokers may have seldom or never encountered. This segment focuses on three of those changes and provides some guidance to assist brokers in dealing with each of the following:

- The Storms of Appraisals,
- The Heat Wave of Assumable Mortgages, and
- The Tsunami of Wholesaling.

THE STORMS OF APPRAISALS



N.C.G.S. §93E requires anyone performing an appraisal in North Carolina to be licensed as an appraiser by the North Carolina Appraisal Board. A real estate appraiser is a person who for a fee or valuable consideration develops and communicates real estate appraisals or otherwise gives an opinion of the value of real estate or any interest therein.

Appraisers must follow the Uniform Standards of Professional Appraisal Practice (*hereafter referred to as "USPAP"*) because it is the generally recognized ethical and performance standard for the appraisal profession in the United States. The USPAP was adopted by Congress in 1989 and contains the standards that appraisers must follow while they are providing services.

Some of the standards set the:

- requirements for the development and reporting of real property appraisals; and
- development and reporting of an appraisal review.

Appraisers must also adhere to the ethics rule under USPAP. According to the presentation, [“Boundaries for Tax Appraisers,”](#) presented by the North Carolina Appraisal Board, the ethics rule indicates that an appraiser must promote and preserve the public trust inherent in appraisal practice by observing the highest standards of professional ethics.



The Role of the Appraiser and Their Standards

The liability of brokers pursuant to N.C.G.S. §93A-6(a)(1) for making misrepresentations is a big risk for brokers when it comes to the topic of appraisals. Misrepresentation of the appraisal process or report by a broker can possibly create both civil liability and a violation of Commission rules. Each of the following statements could be construed to be a factual misrepresentation:

- The appraiser undervalued the home. Its value is actually much higher.
- The value of the home is what you are paying for it, not the appraiser’s opinion of value.
- An appraisal is just as good as getting a home inspection.
- Don’t worry about the low appraisal. Once you own this home, you will have lots of equity in it because of what you paid.
- Home values always go up. Your home will increase in value and you can always refinance it in a year or two.
- Zillow and some appraisers often say the property is worth more than it really is. As a real estate broker, I know your home is actually worth less than what those sources say.

Understanding the extent of these misrepresentations requires mastering some vocabulary and recognizing the distinctions in roles and requirements between appraisers and brokers.

WORTH / VALUE - Interchangeable terms that should only be used by licensed appraisers. Appraisers determine value or worth.

PROBABLE LIST PRICE or PROBABLE SALES PRICE - The estimate provided by a real estate broker as to the proper amount at which to either list a property or to accept in a purchase contract.

ACTUAL PRICE -The amount actually paid in dollars for the real estate.

Brokers should always avoid using the words “worth” or “value” in their discussions with consumers. References to worth and value by brokers can lead to misrepresentations and potential liability for rendering an opinion that can only be legally provided by a licensed appraiser.



Interactive News Reporting

What is the difference between an appraisal and a comparative market analysis?

- a) A CMA can be used to originate a mortgage loan, but an appraisal cannot be used for that purpose.
- b) An appraisal estimates value, and a CMA estimates the probable sales price.
- c) Standards for a CMA are set by USPAP, and standards for appraisals are set by the NCREC.
- d) An appraisal can be performed for a fee, but a CMA cannot be performed for a fee.

The law defines a real estate appraisal as:

...an analysis, opinion, or conclusion as to the value of identified real estate or specified interests therein performed for compensation or other valuable consideration.

An appraisal results from an independent, impartial, and objective opinion of value that represents the appraiser's best judgment based on all relevant factual data reasonably available that is derived utilizing appropriate analytical methods.

Brokers perform an analysis of recently sold properties in order to derive an indication of the probable sales price of a particular property. This probable sales price of the property is estimated by a comparative market analysis (CMA).

A probable sales price is not an opinion or conclusion of value or worth. Matter of fact, the North Carolina Appraisers Act specifically exempts comparative market analyses from the real estate appraisal license requirements when it is performed by a licensed real estate broker for a prospective or actual client provided that the broker does not hold themselves out as being state licensed as a real estate appraiser.

NOTE: A CMA is an opinion of the probable sales price for the respective property based on the data of recently sold properties; it does not indicate the value of the property. An opinion of value of the property is provided in an appraisal, which is compiled only by an appraiser.



Interactive News Reporting

Does the buyer's choice of financing impact the appraisal process?

- a) No, all appraisals are the same regardless of the type of financing.
- b) No, the appraiser is not told about the type of financing the buyer is getting.
- c) Yes. The appraiser must comply with the requirements of the mortgage lender and guarantor.
- d) Yes, it impacts the type of value the appraiser must provide.

The appraiser must adhere to the USPAP when they are conducting an appraisal; however, the appraiser must also comply with the requirements from their client, the mortgage lender. Additionally, Freddie Mac, Fannie Mae, FHA, USDA, and VA loans have different requirements that must be met before they can guarantee a loan; therefore, the appraiser must ensure that the property meets the specific loan requirements of the lender.

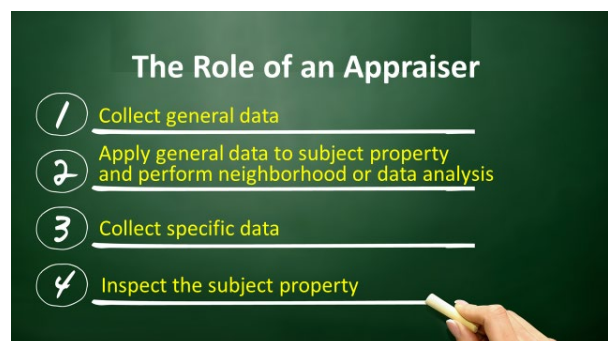
The appraiser evaluates all of the data of the subject property and the lender requirements to ensure the lender has enough information about the collateral property to guarantee the loan. If the property doesn't meet the requirements, the lender will not finance the buyer's loan.

Further, Government Sponsored Enterprises, such as secondary market entities like Fannie Mae, also specify that appraisers must receive a copy of the sales contract. Once the appraiser is in receipt of the sales contract, they:

- compare the terms of the sales contract to what is typical in the market; and
- verify the property seller is in fact the owner of public record for the subject property.

What is the role of an appraiser?

The role of an appraiser is to analyze the data and the property, then report the results to their client, typically the lender. The purpose of the appraisal is to ensure that the property is worth enough as collateral to guarantee the loan; therefore, appraisers may complete some of the following steps:



- collect general data,
 - social, economic, governmental, and environmental forces affecting the nation, the region, and neighborhoods
- apply general data to appraisal of subject property and perform a neighborhood or data analysis, and
 - analysis of the local real estate market
- collect specific data.
 - obtain a detailed description of the subject property
 - identify comparable properties to be used in the appraisal
 - inspect the subject property, verify square footage, and gather information on the characteristics and improvements to the property to use in estimating depreciation

Therefore, an appraiser is concerned about collecting relevant data and using that data to formulate an objective opinion of value. Consequently, brokers should not expect or attempt to pressure an appraiser to meet their client’s objective of having the property appraise for the list price of the property or more, without the data to support the desired amount.

According to the article, [“The Appraiser’s Role Isn’t to Kill Your Deal,”](#) an appraiser must not perform an assignment with bias nor accept an assignment that includes the reporting of predetermined opinions and conclusions. Unlike real estate agents, appraisers must not advocate the cause or interest of any party or issue. Basically, an appraiser does not care about the interests of the buyer of the subject property because the buyer is not their client.



Also, appraisers rarely see the material fact disclosures and home inspection reports. Appraisals are completed with the assumption that the property does not need repair.

Who is the appraiser’s client?



The appraiser’s client is the mortgage lender even though the buyer is generally charged for the appraisal. The mortgage lender orders the appraisal to determine that the value of the collateral property is adequate to support the guarantee of the loan for the subject property. It is imperative that a broker educates their client regarding who hires the appraiser. [“A Guide to Understanding a Residential Appraisal,”](#) published by NAR® is a good resource for buyers if they are unfamiliar with the process. Further, an appraiser owes confidentiality to the lender.



What is the role of a broker during an appraisal process?



The role of a broker is to advocate on behalf of their client and adhere to their fiduciary duties while providing agency representation. Additionally, brokers should ensure that they are assisting their clients with getting the best price.

During an appraisal process, a broker *may* communicate with an appraiser. For example, the broker may provide property specific information and a comparative market analysis for the appraiser to consider using in the preparation of their opinion of value.

Information that brokers may commonly provide as mentioned in the NAR® article, "[The Appraiser's Role Isn't to Kill Your Deal](#)", is as follows:

- a true legal description regarding the property;
- plat of survey;
- blueprints, if the property is a new construction;
- accurate and complete listing sheet;
- property features and upgrades as well as parameters for competing properties and local benefits;
- most recent real property tax bill;
- any closed sales or listings that support the listing price; and
- any insight on the current list price for the subject property.

If the subject property is located within an owners' association, such as a condominium or planned unit development, the broker might also provide:

- copies of the governing documents for the association;
- name, phone number, and email address of the association's property manager or board president if the property is not managed by a property management company; and
- answers to the questions found in the Fannie Mae questionnaire (FNMA Form 1076).

Although brokers are providing the property information for appraisers to ascertain their opinion of value, the communication of information is generally a one-way street *from the broker to the appraiser*. Brokers should not expect appraisers to discuss comparable properties with them or give them confidential information; in fact, they will not.

Appraisers will not communicate how they approached the impartial, independent, and objective opinion of value for the subject property. However, brokers should be aware that the data they provide to the appraisers will be helpful and assist them with having the requisite information to competently perform their duties. Therefore, in the article, [“Residential Appraisal Process - FAQs for Agents,”](#) NAR® also recommends brokers to prepare an Appraiser’s Package in advance and have it available for the appraiser at the property. If the appraiser does not accept the packet of information prepared by the broker, the broker may send an email to the buyer’s lender and include any documentation and data that was attempted to be shared with the appraiser. This communication with the lender will evidence their due diligence in adhering to their fiduciary duties of their buyer client.



In the Commission article, [“Can I Talk to the Appraiser?”](#), the Commission discusses the duties of the broker, appraiser, and the questions that the broker may ask during the appraisal process. Under no circumstances should a broker attempt to coerce, extort, collude, or influence an appraiser’s opinion of value of a property. Quite frankly, Commission Rule 58A .0120(c) prohibits such conduct.

Rule 58A .0120 (c), states:

A broker shall not coerce, extort, collude, instruct, induce, bribe, or intimidate a service provider in a real estate transaction in order to influence or attempt to influence their findings, report, or decision. Service providers include, but are not limited to, appraisers, attorneys, inspectors, financial lenders, and contractors.



Interactive News Reporting

Can brokers communicate with appraisers and maintain appraiser independence requirements?

- a) Yes, brokers may communicate with appraisers and not violate Dodd-Frank, TILA, and USPAP.
- b) No, it would violate Dodd-Frank.
- c) No, it would violate the Truth-in-Lending Act.
- d) No, it would violate USPAP.

Brokers may communicate with appraisers and not violate Dodd-Frank, TILA, or USPAP. The appraiser may speak with the broker during the appraisal process and request additional property information and the sales contract. However, the appraiser will not provide confidential information from their client, the lender.

In the article, [Issue Brief: Appraiser Independence](#), published by NAR®, it quotes Dodd-Frank as follows:



The requirements of subsection (b) shall not be construed as prohibiting a mortgage lender, mortgage broker, mortgage banker, real estate broker, appraisal management company, employee of an appraisal management company, consumer, or any other person with an interest in a real estate transaction from asking an appraiser to undertake one or more of the following:

1. *Consider additional, appropriate property information, including the consideration of additional comparable properties to make or support an appraisal.*
2. *Provide further detail, substantiation, or explanation for the appraiser's value conclusion.*
3. *Correct errors in the appraisal report.*

Basically, brokers may ask appraisers to consider additional property information, clarify their opinion of value, or correct any issues during the appraisal process as long as they are not coercing, influencing, or persuading the appraiser. If a broker participates in this type of conduct, they may be in violation of Rule 58A .0120(c).



What happens if the appraisal and purchase price do not match?

Brokers often say to their clients that the appraisal has come in “low.” Essentially, what brokers mean is that the opinion of value that the appraiser has indicated for the property does not support the sales price of the subject property. Brokers often question the compilation of data

used by the appraiser to determine the value and often attempt to communicate their dissatisfaction with the appraisal report to the appraiser after the process has concluded.

Moreover, brokers should be careful not to mislead consumers by indicating that the opinion of value is wrong and not the true market value of the property because the appraisal is different than the listing price.

The appraiser’s job is to develop an opinion of the fair market value for the property. The agreed upon contract price for the subject property between the buyer and the seller does not in any way determine the true market value of the property. The appraised value may not always match or support the sales price of the property.



According to the NAR® article, “[5 Appraisal Topics Every Agent Should Know](#),” the broker should communicate with the lender, not the appraiser, once an appraisal has been completed. If the broker would like to submit additional documentation and/or data for consideration, the broker must do so through the lender. The broker may submit pertinent information, such as new comparables for recently sold properties that the appraiser may not have had access to during the appraisal process.

Furthermore, if the broker would like additional clarification on how the opinion of value was derived on the subject property, the broker may request of the lender to receive additional clarification from the appraiser.

NOTE: Some lenders may choose not to speak with the broker; therefore, brokers should recommend to their clients to contact the lender regarding the appraisal. If the lender agrees to communicate with the broker, the broker should communicate with the lender.



Takin’ it to the Streets:

Sarah lists her property for \$500K. Sue, the buyer, has been preapproved for \$505K by ABC Bank but offers \$501K for the property. ABC Bank conducts an appraisal for the property. The property appraises at \$465K. Tommy, the buyer agent, calls the appraiser to see if the recent comparables he included in the Appraisal

Package were considered when the appraisal was conducted.

Is it permissible for Tommy to call the appraiser?



What if I think racial bias exists in the appraisal?

If a broker or buyer thinks racial bias exists in an appraisal report, the broker or buyer may file a complaint with the North Carolina Appraisal Board and the North Carolina Human Relations Commission.

Further, the broker may suggest that the buyer contact the lender to request a different appraiser and subsequent appraisal for the property. Brokers should not attempt to communicate with the appraiser their belief that racial bias exists in the appraisal report.

Best Practices for Brokers

Appraisers must collect data to support their opinion of value and will compile as much information as necessary to complete an independent, impartial, and objective appraisal report. Therefore, under no circumstances should brokers try to influence the appraiser by indicating the amount of value that should be contained in the report or insisting what specific comparables/data that the appraiser should use to determine the value.

Brokers should remember:

- it is illegal to attempt to influence appraisers;
- it is not within their scope of responsibilities to indicate value or demand an appraiser use specific comparables;
- it is permissible for them to communicate with appraisers to provide relevant information during the appraisal process; and
- they may cooperate but must not use coercion to manipulate information in the appraisal report.



Basically, brokers can give data but not direction, provide information but not influence, and cooperate with the appraiser without coercion. Brokers can provide supporting documentation for the appraiser to consider during the appraisal process, but brokers cannot insist that the provided information be used. Further, if a broker attempts to change, manipulate, or influence data in the appraisal report, this may be a violation of the Dodd-Frank Act. Additionally, brokers should remember that certain acts such as coercion, collusion, etc. are prohibited under Rule 58A .0120.

While an appraiser may note the overall condition of a property, an appraiser's role is to determine the market value of the property as collateral for a loan. An appraiser will not inspect a property to the extent that a licensed home inspector will inspect a property. A buyer agent should always recommend that a buyer order a home inspection and should never state or imply that an appraisal is equivalent to a home inspection.

THE HEAT WAVE OF ASSUMABLE MORTGAGES

Buyers today are being quoted higher mortgage rates. It has been a few decades since the market experienced this type of change. Many brokers practicing today have never handled transactions involving the possible assumption of a loan. There can be lots of complexity and pitfalls in this type of transaction.



Buyers are often perplexed about how to afford a property when rising interest rates are paired with rising property prices.

Therefore, brokers should be knowledgeable about various loan products to ensure that they are able to effectively assist their clients during the transaction. Assumable mortgages can be one of

the options that buyers may consider to finance their property.

If a prospective buyer inquires about obtaining an assumable mortgage, a broker should recommend a competent mortgage lender to thoroughly explain the pros and cons of this financing option. If a prospective buyer inquires about buying a property by assuming the seller's mortgage, a buyer agent should be able to explain the basics of assuming a mortgage, but must not act as if they are a mortgage lender. Listing agents can provide the prospective buyer the lender's information under the direction of the seller; however, the prospective buyer must speak with the lender regarding the specific requirements to assume the loan.

According to mortgage lenders, an assumable mortgage allows a buyer to assume the rate, repayment period, current principal balance, and other terms of the seller's exiting mortgage instead of obtaining a new mortgage. A buyer may choose this option if a seller has a lower interest rate than the current market's interest rate and if the seller's mortgage is *assumable*. Furthermore, the seller must be willing for their loan to be assumed since they may retain some obligations for the assumed loan.

Although assumable mortgages may be an attractive option for some buyers, not all mortgages are assumable. For example, most conventional mortgages are not assumable because they generally have a due-on-sale clause in the mortgage contact.

However, a prospective buyer may be able to assume the following types of loans if they meet certain requirements:

- Federal Housing Administration (FHA);
- Department of Veteran Affairs (VA); and/or
- United States Department of Agriculture.

In an effort to educate and assist prospective buyers with information on assumable mortgages, it is important for brokers to know the specific requirements for each basic loan product and educate their client prior to the buyer determining that assumption of the seller's mortgage would be in their best interest. Now, let's discuss the requirements of each of the aforementioned loans.

Federal Housing Administration (FHA Loans)

Under the HUD Reform Act of 1989, mortgages closed on or after December 15, 1989 require credit qualification of those borrowers wishing to assume the mortgage. This creditworthiness review requirement applies to both borrowers who:



- take title to a property subject to the seller's mortgage without assuming personal liability for the debt, and
- assume and agree to pay the seller's existing mortgage on the property.

FHA loans are usually considered very attractive loan products due to:

- the possibility of assuming a seller's mortgage,
- lower down payment options, and
- the ability to secure financing with less than perfect credit.

NOTE: Brokers should recommend that prospective buyers speak with a lender to determine their specific requirements for mortgage assumption.

Department of Veteran Affairs (VA Loans)



VA loans are loans backed by the Department of Veteran Affairs. This type of loan assumption is available to anyone. However, only military members and veterans can originate this type of loan. A buyer who is not a qualified current or former military service member cannot originate a VA loan, but they can still apply for a VA loan assumption. Be aware that a VA loan assumption is subject to approval by the

Department of Veteran Affairs and the original lender.

All VA loans originated on or after March 1, 1988, may be sold to a buyer if the buyer agrees to assume the loan and the lender/VA approves the creditworthiness of the buyer. If the buyer is creditworthy and assumes the liability to the lender/VA, the seller will be released from further liability on the loan.

According to the article, [Rights of VA Loan Borrowers](#), the Department of Veteran Affairs states, if the seller does not get the permission of the lender/VA prior to the buyer assuming the mortgage, the mortgage may become immediately due and payable. The seller will not be able to get another VA loan with their entitlement until the property is sold and the loan is paid in full or the buyer is a veteran and can qualify for a *substitution of entitlement*.



An entitlement is defined as the amount a veteran may have available for a guaranty on a VA loan.

NOTE: Sellers with VA loans need to obtain a release of liability if a buyer assumes their mortgage after closing. This release of liability should be provided to the Department of Veteran Affairs to reinstate the seller's entitlement of their military benefits.

United States Department of Agriculture (USDA Loans)

A USDA loan is assumable, but a buyer must have a minimum credit score of 620. Also, income limits and location requirements must be met. Once a buyer assumes a USDA loan, their mortgage will usually have new rates and terms unless the mortgage is transferred to a family member of the original borrower. If the transfer is to a family member, the rate and terms may be the same without the buyer-family member having to meet eligibility requirements.



Interactive News Reporting



Which of the following is an **INCORRECT** statement regarding a loan assumption?

- a) The mortgage note must have an assumption clause.
- b) The lender must agree to the assumption.
- c) The borrower has to meet the lenders creditworthy guidelines.
- d) So long as the borrower makes the payments on time, there are no issues.

First, if the mortgage is assumable, the mortgage contract will have an assumption clause. This assumption clause would permit the transfer of the mortgage to another party as long as they can meet the lender's requirements.

FHA, VA, and USDA loans have an assumption clause in their mortgage contracts. Basically, this assumption clause means that any new owner-occupant can qualify using the same standard the loan was issued under with the existing mortgage servicer.

The buyer must also meet the standard requirements set forth by the lender in order to assume the seller's mortgage. Lenders will evaluate the following criteria to determine if the buyer qualifies for financing:

- their credit score and debt-to-income ratio;
- their employment history;
- their income; and
- verification of their assets.

Due to the requirement that a buyer **must use** the seller's lender, it is important for the buyer to inquire with the lender regarding the requirements they must meet for the specific loan product.

NOTE: Brokers should be aware that investors cannot assume FHA, VA, or USDA loans. A property financed with these mortgages must be owner-occupied.

Advantages and Disadvantages of Mortgage Assumption



What are the advantages and disadvantages of assuming a mortgage? There are several advantages and disadvantages of assuming a mortgage from a seller; therefore, buyers should speak with a knowledgeable lender so that the buyer can fully evaluate all of their financing options prior to deciding to assume a mortgage.

The following are pros for assuming mortgages:

- homes can be easier to sell due to a simplified home buying process;
- a buyer saves money due to not having to pay for an appraisal; and
- a buyer receives a lower interest rate than the current market which will save them money over the life of the loan.

The cons of assuming mortgages are:

- sellers may still be held liable for the assumed loan by the lender which can increase financial risk due to the possibility of buyer's default;
- veteran sellers possibly lose their VA entitlement which impacts their future eligibility for VA loans;
- buyers may be required to have a large down payment or secure a 2nd mortgage, if seller has a lot of equity in the property; and
- if the buyer needs to secure a 2nd mortgage, they must fully inform all lenders of the financing for the property.

NOTE: If a buyer assumes the seller's mortgage, the seller generally remains liable for the payment along with the buyer for at least some period of time unless the lender has provided a "written release of liability" to the original borrower-seller.



Assumption Gap

Buyers may be eager to assume a seller's mortgage, but may be unaware of how to handle the assumption gap. An assumption gap is the difference between the purchase price and the assumable mortgage loan balance.

Buyers may be under the impression that the "assumption gap" can be easily financed. However, this is often times very difficult. If a buyer does not have a large down payment to cover the cost of the seller's equity, additional financing from a subsequent lender is needed but may alter their debt-to-income ratio and prevent qualifying for financing from the existing servicer of the assumable mortgage.

Brokers should not advise buyers to secure secondary financing from a different lender for the assumption gap without the buyer making the secondary lender aware they are planning to assume the existing loan on the subject property. If a buyer secures financing without fully disclosing the loans obtained to acquire the subject property to all of the lenders, the buyer (and the broker, if they are aware) may be liable for loan fraud.

Acquiring Title "Subject To" a Seller's Mortgage

When you hear the term, "subject to," it means acquiring title with a seller's existing mortgage still in effect on the property. Typical scenario: A buyer contracts to buy a seller's property promising to make payments on the seller's mortgage. **[Note: This is NOT a formal loan assumption which would obtain the lender's approval.]**

The seller often signs a quitclaim deed without informing the seller's lender so that it doesn't trigger the due-on-sale clause which would require the seller to pay off the mortgage. After signing a quitclaim deed, the seller no longer owns the property, but the seller's mortgage still exists. The quitclaim deed transfers ownership of the property to the buyer but not the debt.

The *buyer* can then:

- 1) borrow money using the house as collateral,
- 2) sell the property to someone willing to pay more for the property, or
- 3) lease the property.

Under option (2), the *buyer* might pay off the seller's mortgage.

Anytime a property is transferred with the existing loan in place, without the consent of the lender, all parties involved and the brokers in the transactions may be committing **LOAN FRAUD**.

Best Practices for Brokers

Real estate brokers can educate themselves on the complexities of assumable mortgages by:

- networking with mortgage lenders;
- participating in educational opportunities on mortgage loan products; and
- participating in training offered by local and national trade associations.

An additional resource for brokers is the article, [When the Seller Says, 'Please Take My Mortgage!'](#) published by NAR®.



OWNER-FINANCING



Owner financing occurs when the owner of the property is willing and able to provide some or all of the financing for the prospective buyer by carrying the mortgage on the property. Therefore, the owner-seller also becomes the lender and will collect the mortgage payment from the buyer each month.

Owner-financing can benefit a buyer who has a low credit score or is deemed a “high credit risk” by providing them loan terms that are more flexible than those offered by the financial market's prime lending institutions.

For sellers who experience challenges with selling their property, offering this creative financing may entice buyers. However, sellers should be knowledgeable about the inherent risks associated with the marginally qualified buyers attracted by this form of financing.

Owner financing can be advantageous to both the buyer and the seller, if it is possible for a particular property. However, the pros and cons should be carefully evaluated to determine if it will be in the best interest of both parties.

Some of the pros for owner financing are:

- ready financing for buyers with reduced closing expenses, such as lender and appraisal fees;
- seller's ability to earn additional fees on their money while transferring the property; and
- seller may reduce tax liability by receiving sale proceeds over several tax years.

The cons of owner financing may include:

- interest rates may be higher or typically higher than market rate for buyers;
- the possibility of buyer defaults requiring the sellers to pursue foreclosure; and
- the seller receives payments over the life of the loan versus all funds upfront at closing.

Brokers should encourage a seller and a buyer to seek legal counsel to determine whether owner financing is an appropriate financing option for their property sales transaction.

THE TSUNAMI OF WHOLESALING

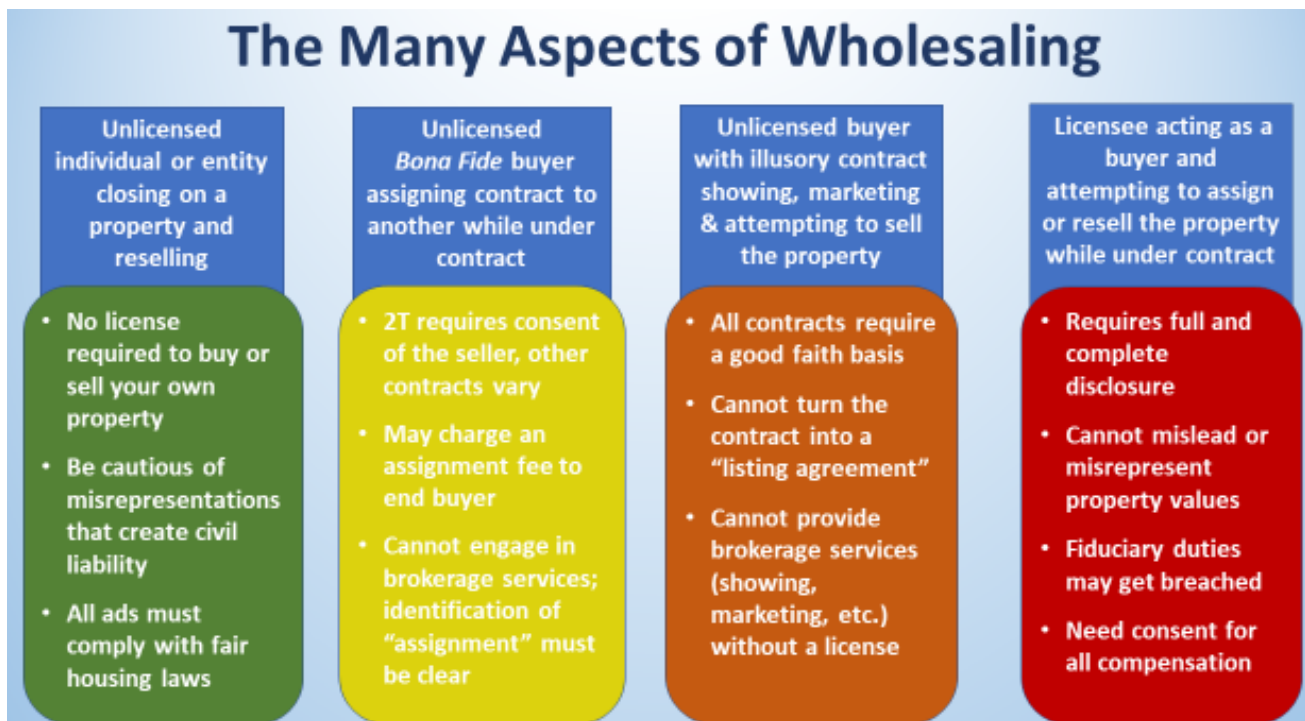
One of the current hot topics that exists in today's changing real estate market is the concept of "wholesaling." The term is being utilized a lot and becomes a "catchphrase" for a wide variety of circumstances. There are literally hundreds of videos currently posted on YouTube featuring instructions and coaching for how to wholesale properties. Some of the titles currently available are as follows:



- **"Make \$10,000 in 30 Days Wholesaling Real Estate"**
- **"Five Methods to Wholesale a House with No Money in 2023"**
- **"Make \$1 Million a Year Wholesaling Real Estate"**
- **"Watch me Wholesale this House and Make \$5,000 in Less than 1 Hour"**

Promoting real estate as one of the basic principles of building wealth, individuals are being enticed to "wholesale" real estate believing it is an option to make a quick profit in a short amount of time while not spending any cash. Nearly all of the solicitations emphasize the fact that wholesalers act as investors and therefore do not need a real estate license.

Because the term “wholesaling” is being applied to a lot of different activity, it is helpful to look at four major categories that cover the scope of much of the activity. The chart below provides this categorization.



Unlicensed Individual or Entity Closing on a Property and Re-Selling

There may be some instances where a wholesaler enters into a purchase contract and intends to take title to the property. Once they close on the property and take ownership, they immediately attempt to resell the property for a profit without making any repairs/renovations. If a wholesaler takes title to a property before reselling it, then there is no requirement for the wholesaler to have a real estate license.

N.C.G.S. §93A-2(c)(7) specifically exempts from licensure any individual owner who personally leases or sells their personally owned property.

If an entity is purchasing and reselling the property, it is important to know who exactly is exempt from licensure pursuant to NCGS §93A-2(1):

- Corporations - officers and W2 employees;
- Partnerships - general partners and W2 employees; and
- LLCs - Managers, member-managers, and W2 employees.

This means that wholesalers claiming to represent entities who do not fall into the exempted categories could be involved in brokerage services that require active licensure. If the individual or entity properly meets the qualifications for exemption from NCREC licensure, such individuals still need to be cautious regarding all of the following:

- Making misrepresentations or committing fraud that can result in civil or criminal actions;

- Complying with federal and state fair housing laws;
- Avoiding the unauthorized practice of law; and
- Engaging in activities which pay fees or compensation to unlicensed persons for the referral of business
 - an active real estate license is required to receive a referral fee.

Unlicensed Bona Fide Buyer Assigning Contracts to Another While Under Contract

There may be some instances where a wholesaler enters into a purchase contract and possesses the ability to purchase the property. The sale or assignment of the purchase contract is not a licensed activity. Whether the purchase contract can be assigned depends on the language contained in the purchase contract itself. In the NC REALTORS'® Offer to Purchase and Contract, Standard Form 2T, the seller's informed consent is required to assign the contract. Other contracts may freely permit the assignment.

In a typical assignment, the assignee is obligated to perform on the contract based on its original terms and conditions. The assignor remains secondarily liable to perform if the assignee is unable to perform their obligations. There is no prohibition against the assignor charging the assignee an assignment fee. The assignment of a contract does not involve brokerage licensure. It is important to note that neither the assignor nor assignee are typically permitted to change the terms and conditions of the original contract.

Individuals who are trying to sell some equitable right or interest in the property by virtue of an existing contract which they want to assign should be careful to avoid engaging in brokerage services that require licensure. They cannot:

- advertise the property as if they are the owner,
- hold open houses, or
- solicit potential buyers in an effort to secure a buyer for the seller's property.

Unlicensed individuals or entities involved in transactions of this nature should be cautious regarding all of the following:

- Making certain the original purchaser is a bona fide buyer actually capable of performing the obligations in the contract which they sign;
- Making misrepresentations or committing fraud that can result in civil or criminal actions;
- Engaging in brokerage services such as showing the property, advertising the property, or attempting to represent the seller;
- Avoiding the unauthorized practice of law;
- Engaging in activity which pays fees or compensation to unlicensed people for the referral of business; and
- Making certain that the assignee has the ability to perform the contractual obligations and the assignor is capable of performing the obligations in the event of default by the assignee.

Unlicensed Buyer with Illusory Contract Engaged in Brokerage Services to Find a Buyer



Engaging in these types of practices is one of the more troubling aspects of what is being labeled as wholesaling. This type of wholesaling process usually begins when an unlicensed wholesaler locates a property with a motivated seller. Unlicensed individuals are sometimes driving neighborhoods, searching property records, and using social media to identify distressed properties or sellers.

Approaching the seller from the standpoint of an “investor,” the wholesaler attempts to get the seller to accept a “cash” offer and enter into a purchase contract at a below market price with no intention of personally closing on the property. The wholesaler then attempts to find a buyer to purchase the property at a higher price and on different terms than the original contract with the seller.

Oftentimes the wholesaler does not have the ability or qualifications to actually purchase the property. Therefore, as part of this process, it is common for the wholesaler to advertise and market the property as the owner, engage in the showings of the property, and solicit buyers to be an “end buyer” for the property. If the wholesaler can find such a buyer for the property, the plan is usually to create a new purchase contract with the “end buyer.” The wholesaler’s profit in the transaction is the difference between what they agreed to pay the seller and what the buyer agrees to pay for the property in the transaction.

There are many issues with this approach to wholesaling. Jurisdictions, including North Carolina, are analyzing the effects that wholesaling has on the real estate industry. For instance, Oklahoma is one of the first states to pass the “[The Predatory Real Estate Wholesaler Act](#),” to address the issues that wholesaling has caused to consumers.



The Predatory Real Estate Wholesaler Act became effective on November 1, 2021, and requires wholesalers to obtain a real estate license and abide by Oklahoma laws which protect consumers and promote ethical behavior. Likewise, Nebraska just passed legislation requiring a real estate license for this type of activity.

North Carolina already has language which applies in this situation. In N.C.G.S. §93A-2 indicates that a real estate broker is any:

- person, partnership, corporation, limited liability company, association, or other business entity who for compensation or valuable consideration or promise thereof,
- lists, leases, buys, exchanges, auctions, negotiates, or sales real estate,
- for others.

In North Carolina, only licensed real estate brokers can represent others in real estate transactions. Therefore, wholesalers who market a property as if they have legal title or a written agreement to provide agency representation are in violation of the law.

To legally advertise a property for others, an individual must have an active NC real estate license and a written agency agreement to provide brokerage services to the owner of legal title to the property.

If a wholesaler is unlicensed and wishes to be exempt from the Real Estate License Law, then the wholesaler may have to prove that they have entered into a bona fide purchase contract that they have the ability to perform and they are not entering into what appears to be a net listing to provide brokerage services to the seller. For clarity, a net listing is defined as a brokerage fee arrangement in a listing contract whereby the seller will receive a fixed price for their property and the broker will receive any amount realized (i.e., the “net”) in excess of that price. They also must refrain from engaging in brokerage activities involving showing, advertising, and marketing the property in an attempt to help the seller find a buyer.

Individuals or entities involved in transactions of this nature should be cautious regarding all of the following:

- Engaging in brokerage services that require licensure;
- Making misrepresentations or committing fraud that can result in civil or criminal actions;
- Entering into illusory contracts that the wholesaler is not capable of performing;
- Avoiding the unauthorized practice of law; and
- Engaging in “joint venture” activities which pay fees or compensation to unlicensed people for the referral of business.



Takin' it to the Streets:

Chad, an unlicensed real estate investor, enters into a contract with Lucy, the seller, to purchase her 7,000 square foot farmhouse with 5 acres of land in Vance County for \$300K. After entering into the contract, Chad markets Lucy's property for \$375K on the internet. Stew, a prospective buyer, is

interested in purchasing the property for \$375K. Therefore, Chad assigns his rights to purchase Lucy's property to Stew for an assignment fee of \$75,000. Stew is now under contract to purchase Lucy's property. If the transaction is consummated, Chad will profit \$75K for assigning his rights to purchase Lucy's property.

What concerns might the Commission have about this transaction?

Real Estate Licensees Acting as a Buyer and Attempting to Assign or Resell the Property While Under Contract

Wholesaling often leads to complaints by consumers for deceptive practices and predatory language. This should pose additional concerns for any NC real estate licensee. Brokers who act in any "wholesale" capacity are subject to a higher standard than unlicensed individuals. Brokers are subject to all of the basis set forth in N.C.G.S. §93A-6 as grounds for disciplinary action.

Brokers who engage in wholesaling should be cautious about all of the following:

- Proper and full disclosure of probable sales price and probable listing price to the parties in the transaction so as to not create any misrepresentations or omissions as to market value;
- Full and complete disclosure to the parties in the transaction of all material facts concerning the property;
- Strict adherence to agency disclosure, rules, and agency agreements;
- Compliance with fiduciary duties to represented clients; and
- Avoidance of any conduct that can be construed as making false promises or engaging in conduct that rises to the level of improper, fraudulent, or dishonest dealing.

Although North Carolina does not have any laws/regulations that prohibit wholesaling at this time, it is important for brokers to be knowledgeable regarding the legal consequences they may incur as a result of participating in a wholesale transaction.

Real Estate Brokers: What You Must Know



Is assignment of contracts in wholesale transactions permitted in North Carolina?

It depends. The ability to assign equitable rights depends upon the terms of the contract. If a contract expressly states that it cannot be assigned or it prevents assignment by one party without the consent of the other party, or contains qualifying language, the wholesaler cannot legally assign their equitable interest without the sellers' consent. The Standard Form 2T requires all parties to provide written permission to assign a contract in Paragraph 15 (except for 1031 exchanges).

What should I do if I am contacted by a wholesaler who wants me to represent them in a transaction?

If a real estate broker is contacted by a wholesaler for agency representation, the real estate broker should speak with their BIC to ensure that this is permissible according to the office policies of the brokerage. If the BIC/brokerage allows affiliated brokers to represent wholesalers, the broker should educate the wholesaler on their fiduciary duties during representation, their obligation to operate in good faith and honesty, and the duty to disclose material facts to all parties in a transaction.

Can a wholesaler assign a purchase contract in NC?

It depends. If a wholesaler is represented by a broker and the broker uses Standard Form 2-T, Offer to Purchase and Contract, to submit an offer, the purchase contract is not automatically assignable as specified in Paragraph 15 without the seller's consent for the assignment. Therefore, the wholesaler may not, without the seller's written permission, assign their equitable rights to an end buyer without breaching the contract. However, if a wholesaler uses a contract that does not restrict assignment of rights, the wholesaler's equitable interest in the property may be assigned. A wholesaler may also assign their equitable rights in a purchase contract using an Assignment of Contract to an end buyer as long as it does not violate the contract terms within the purchase contract.

What should I tell my seller-client who receives an offer from a wholesaler?

A broker who receives an offer from a wholesaler must present the offer to comply with Rule 58A .0106, which requires brokers to deliver to the customer or their client copies of any offer within three days of the broker's receipt of the executed document. The broker should present and review the offer with their seller-client. If the seller-client has questions regarding the contractual language used in the offer, the broker should advise their seller-client to speak with an attorney.

Must a real estate broker notify the seller that their buyer client, a wholesaler, intends to assign their contractual rights to purchase the property to an end buyer?

Yes. A real estate broker who represents a wholesaler should inform the seller of their buyer client's intent to assign their equitable rights to the contract. Pursuant to §93A-6(a)(1), a broker must disclose any information that may affect the principal's rights, interests, or influence the principal's decision in the transaction regardless of which party they represent.

The broker should disclose this information because it is about the intentions of the wholesaler and possibly their financial ability to consummate the transaction. Further, the broker may have to assist the client with obtaining additional information regarding the wholesaler's ability to complete the transaction.

May a real estate broker market a property on behalf of their principal, the wholesaler, when the principal only has equitable interest?

According to Rule 58A .0104, an agent must have a written agreement with an owner prior to listing/advertising their property. The real estate broker who represents the wholesaler does not have a written agreement with the owner of the property to provide brokerage services; therefore, the real estate broker of the wholesaler may not advertise the property that is the subject of the purchase contract. The wholesaler only has equitable interest and not legal title to the property. Consequently, the real estate broker may not market/advertise the property as if their principal, the wholesaler, is selling the property. If the broker participates in this conduct, they may be in violation of License Law and Commission rules.

Must I notify the seller when my principal, a wholesaler, assigns their contractual rights to the purchase contract to an end buyer?

It depends. If the contract terms are the same and the contract permits assignment, then the broker does not have to notify the seller. If the contract terms are different, then the broker must disclose this information. The wholesaler is still responsible for adhering to the terms in the original underlying contract.

I am a listing agent who learns that the buyer is a wholesaler after my seller accepts the offer. Should I inform my seller?

Yes. A listing agent must disclose to the seller that the buyer is a wholesaler as soon as they find out, because this information is considered a material fact under N.C.G.S. §93A-6(a)(1) and may directly affect a principal's ability to complete the transaction. Further, an agent has a fiduciary duty to protect the best interests of their client and this includes disclosing all relevant information that will assist them in making an informed decision regarding how to proceed in the transaction.

Can a broker act as a wholesaler in a real estate transaction?

Yes. A broker may utilize wholesaling as a personal investment strategy. However, the broker must not represent the prospective seller or end buyer in the transaction.

If a broker decides to wholesale and enters into a purchase contract with a prospective seller, the Commission encourages brokers to inform the prospective seller that the broker is licensed but does not represent their interests. Due to brokers having real estate licenses, they are held to a higher standard and must ensure that they are dealing in good faith and not engaging in deceptive fraudulent practices. To ensure they are not engaging in deceptive practices, real estate brokers should inform prospective sellers of their intent to assign their equitable interests in the purchase contract to an end buyer for a fee. Further, the broker should recommend to the seller to seek the advice of another broker or legal counsel prior to entering into a purchase contract.

Also, N.C.G.S. §93A-6(b)(3) states,

The Commission may suspend or revoke any license issued under the provisions of this Chapter or reprimand or censure any licensee when the licensee has violated any of the provisions of G.S. 93A-6(a) when selling, leasing, or buying the licensee's own property.

Although the Commission recommends that brokers indicate they have a real estate license when engaging in a transaction for personal benefit (i.e. self-interest), they **must** state that they have a real estate license if they are a REALTOR®.

NOTE: Wholesaling is a very popular investment strategy; however, if done incorrectly, may violate License Law and Commission rules. Therefore, the Commission highly encourages brokers to thoroughly understand the usage of wholesaling as an investment strategy and the legal consequences that may arise from deceptive practices. The Commission also cautions brokerages to develop written office policies regarding wholesaling and whether an affiliated broker may provide agency representation to a wholesale investor. Moreover, brokers should recommend that sellers seek legal counsel when they have questions regarding wholesaling.

RED FLAGS AND MISREPRESENTATIONS

Black Knight, Inc. is a data analytics company that provides software solutions for governments, mortgage lenders, and real estate companies.

According to Black Knight, Inc., more than 270,000 borrowers were underwater on their mortgages (e.g. have a mortgage loan balance higher than the value of the collateral property) as of December 2022, which represented approximately 8% of all homebuyers.

On January 5, 2023, *Business Insider* published an article entitled, "[An Increasing Number of Lawsuits are Being Filed against Real Estate Agents as Home Prices Begin to Fall across the United States.](#)" The article alludes to the fact that recent buyers and sellers are regretting their decision to purchase or sell a property due to real estate prices



starting to decline in the United States. Further, buyers and sellers are filing complaints alleging that their real estate agent omitted or misrepresented material information during their transaction.

Some of the challenges that brokers may experience when dealing with a changing market are:

- a broker's failure to discover and disclose material facts;
- the lack of a survey when the buyer purchased the property; and
- a listing agent's omission of material facts from a prior home inspection.

Brokers may increase their chances of liability when they only rely on the seller's assertions when listing a property and fail to personally discover and disclose material facts. The Commission will hold the listing agent responsible for the accuracy of the information in the listing description and what is communicated to the buyer and/or their real estate agent.

Additionally, the buyer agent may incur liability if they fail to discover and disclose material facts on behalf of their client. Although the Commission will hold the listing agent accountable for the accuracy of the advertised information, the buyer agent may also incur liability if the information received from the listing agent is suspicious and a reasonably prudent broker would not have relied upon it.

Information derived from material facts, the lack of surveys, and home inspection reports are some of the primary areas in which brokers incur the most liability. Therefore, it would be prudent for brokers to ensure they are knowledgeable about material facts, the need for surveys, and home inspection reports.

Brokers should review the following information and the specified resources to gain further knowledge on material facts, surveys, and home inspection reports:



[2018-2019 Disclosure of Material Facts](#)



[2019-2020 Material Facts](#)



[2019-2020 Home Inspections](#)

Material Facts

Brokers must ensure that they affirmatively discover material facts and timely disclose them to all parties in the transaction to comply with N.C.G.S. §93A-6. The broker is tasked with the discovery and disclosure of material facts or potential material facts to their client/customer so the client/customer can possess the adequate knowledge to:

- make an intelligent decision regarding the property;
- negotiate repair services; or
- decide to terminate the contract.

Surveys

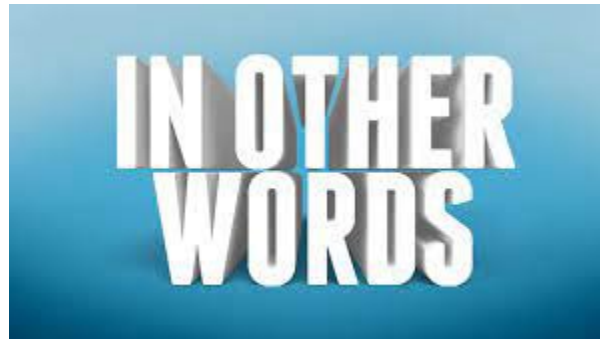


According to the [2013-2014 Update Course](#), buyers who obtain a written verification from a licensed professional surveyor will be knowledgeable about boundaries of the property and the location of all improvements affecting the subject property without having to rely on the sellers' assertions. Additionally, a location survey will identify any encroachments and determine whether fences or driveways are within the boundaries of the property and not violating an adjacent owner's property rights.

Home Inspection Reports

The Commission encourages brokers to advise every buyer-client to hire a home inspector to evaluate the condition of the property. If the client does order a home inspection, the broker should attend the inspection with the buyer and then review the contents of the home inspection report with the client. While reviewing the report, the broker should not attempt to interpret it. Any questions about what the home inspector meant in the report should be addressed to the inspector.

However, brokers should still review the entire home inspection report with their clients so they can advise them on possible repairs and/or price negotiations. If a home inspector recommends further inspection, the broker should encourage their client to follow the inspector's recommendation and to order a re-inspection after repairs have been completed.



Essentially, brokers should ask about and request documentation regarding:

- material facts and whether the issues have been repaired, are going to be repaired, and/or will likely need a repair in the future; and
- if the information rising to the level of material facts in the home inspection report or in the listing description was disclosed to all parties in the transaction.

NOTE: In NC, buyers are not required to order surveys. Therefore, a buyer does not have a right to know why a seller did not order a survey when the seller purchased the property.

YOU BE THE INVESTIGATIVE NEWS REPORTER

1. Joe, an unlicensed wholesale investor from Florida, locates a property at 125 Church Street, Rock Sims, NC. Joe submits an offer to the owner of the property for \$85K. After the owner accepts the offer, Joe lists the property for sale in the local newspaper for \$125K.

Is Joe illegally practicing real estate brokerage without a license?

2. Samantha, a licensed broker, is interested in investing in real estate. Samantha goes to her hometown, Cone Hill, and locates several distressed properties for sale. Samantha submits offers to the respective owners of the distressed properties. When she submits the offers for the properties, she does not inform the owners that she has a real estate license. One owner accepts her offer. Samantha is now under contract for the property. She advertises the property in her local MLS to find a buyer.

Is Samantha in violation of License Law and Commission rules? If so, why?

Segment 4

Legislative Desk

Law & Rules Updates



1. What do you know about the process the Commission must follow to implement rule changes?

2. What new rule changes have you heard about?

LEARNING OBJECTIVES

By the end of this section, you should be able to describe updates to License Law and Commission rules that became effective on July 1, 2023.

TERMINOLOGY

Office of Administrative Hearings (OAH): The Office of Administrative Hearings is an independent quasi-judicial agency that was established to ensure that the functions of rulemaking, investigation, advocacy, and adjudication are not combined in the administrative process. OAH performs legal analysis and administrative and technical work in the review, compilation, and publication of the NC Register and the NC Administrative Code. It also provides administrative support and legal counsel to the Rules Review Commission.

Public Comment Period: The time period after proposed rule text is published that affords interested parties an opportunity to express support or opposition for the proposed rule. The comments can be submitted to the Commission during a 60 day comment period, or at a public hearing held shortly after the proposed rule text is published.

Rule: A rule is adopted by administrative agencies to clarify laws and the processes for compliance. Rules have the effect of law. The North Carolina Real Estate Commission rules are published in the North Carolina Administrative Code which is the official publication of the rules that govern the state's agencies, boards, and commissions.

Rules Review Commission (RRC): The executive agency created by the General Assembly in 1986 charged with reviewing and approving rules adopted by state agencies. The Rules Review Commission's substantive review procedures are set by the General Assembly and are codified in the Administrative Procedure Act, Chapter 150B, Articles 1 and 2A.

Statute: Statutes are laws which are passed by the North Carolina General Assembly. The General Assembly consists of the Senate and House of Representatives.

THE RULEMAKING PROCESS

Rulemaking is the process by which the Commission clarifies laws through the adoption, amendment, or repealing of rules. During permanent rulemaking, the Commission proposes rule language and sends it to the Office of Administrative Hearings (*hereafter known as "OAH"*). OAH publishes the proposed rule text in the North Carolina Register which provides notices to interested parties that the Commission has started the process to amend, adopt, or repeal a rule.

Once the text is published, interested parties have two opportunities to comment on the proposed language. The first opportunity is the public comment period. Public comments can be submitted to the Commission during a 60 day comment period. The second opportunity is during a public hearing that is held shortly after the proposed rule text is published. During the public comment period or public hearing, interested parties have the opportunity to express support or opposition for the proposed rule.

Once the comment period and public hearing have passed, the Commission must consider all of the comments and decide whether to amend, adopt, or reject the rule text. If the Commission rejects the rule text, the rulemaking process will end. However, if the Commission makes a substantial change to the rule text based upon the comments, then the revised proposed rule text is republished and another 60 day comment period begins. Further, if the Commission adopts the rule text as written, the proposed rule is sent to the Rules Review Commission (hereafter known as “RRC”).

Once RRC is in receipt of the proposed rules, the proposed rules are reviewed to ensure the Commission has followed the rulemaking requirements, the rule text establishes a purpose with clear language, and the Commission has the legal authority to make the rule. During the review of the rule, RRC can either approve or object to the rule(s). If the rule(s) are objected, the Commission has the authority to either revise the proposed rule or end the rulemaking process. However, if RRC approves a Commission rule, it is entered in the North Carolina Administrative Code.

Basically, the rulemaking process takes several months. The Commission has to ensure that rulemaking adheres to the rules required by OAH, analyze all of the comments received during the public comment period/public hearing, and evaluate how the amendment, adoption, or repealing of rule text will affect stakeholders (i.e. brokers, brokerages, education providers, and instructors) prior to the RRC approving the rule.



BEST PRACTICE: Brokers can subscribe to the Commission's mailing list to receive notice of rulemaking at <https://www.ncrec.gov/Home/Subscribe>.



COMMISSION RULE CHANGES EFFECTIVE JULY 1, 2023

The Commission revised several rules with an effective date of July 1, 2023, in Chapters 58A, 58B, and 58H. The changes that directly impact brokers will be summarized in this section.

The rule revisions are reprinted at the end of this section. Also, all revised rules can be viewed on the Commission's website.

Rule 58A .1708: Equivalent Credit

Purpose of the Rule Change

Rule 58A .1708 was changed in part to save brokers the cost of \$50.00 to submit a course for approval because the education provider did not do so. North Carolina now provides an opportunity for brokers to take their courses in a variety of instructional methods (e.g. blended, distance, synchronous, etc.) that would meet their educational needs, which previously did not exist. There are over 600 different approved CE electives available to NC brokers via various delivery methods.

Elimination of this Rule will also reduce the number of brokers going inactive because equivalent credit was not granted for last minute applications and will also generally reduce confusion regarding continuing education.

Prior to July 1, 2023, Rule 58A .1708 permitted brokers to submit an equivalent credit waiver to receive equivalent credit for continuing education elective courses for:

- teaching a Commission Update Course,
- teaching a Commission approved continuing education elective for the first time any given continuing education elective credit is taught,
- completing an unapproved course that the Commission finds equivalent to the elective course component of the continuing education requirement in Rule 58A .0407(a),
- developing a continuing education course approved by the Commission,
- authoring a real estate textbook, or
- authoring a scholarly article on a real estate topic published in a professional journal or periodical.

Rule 58A .1708 was amended on July 1, 2023, to **eliminate** submission of equivalent credit waivers for continuing education elective credit courses. The Rule now states:

- a) *The Commission shall award an approved instructor continuing education credit for teaching a Commission Update course. An approved instructor seeking continuing education credit for teaching a Commission Update Course shall submit a form available on the Commission's website, that requires the approved instructor to set forth the:*
 - 1) *approved instructor's name, license number, instructor number, address, telephone number, and email address;*
 - 2) *Update course number;*
 - 3) *education provider's name and number;*
 - 4) *education provider's address; and*
 - 5) *date the course was taught.*

- b) *The Commission shall award a broker continuing education elective credit the first time an approved continuing education elective course is taught by the broker. A broker seeking continuing education credit under this Paragraph shall submit a form, available on the Commission's website, that requires the broker to set forth the:*
 - 1) *broker's name, license number, address, telephone number, and email address;*
 - 2) *course title;*
 - 3) *course number;*
 - 4) *education provider's name and number;*
 - 5) *education provider's address; and*
 - 6) *date the course was taught.*

- c) *The Commission may award continuing education elective credit for developing a continuing education elective course the first time it is approved by the Commission pursuant to 21 NCAC 58H .0401. However, a broker shall only receive credit for the year in which the continuing education elective course is approved. A broker seeking continuing education credit under this Paragraph shall submit a form, available on the Commission's website that requires the broker to set forth the:*
 - 1) *broker's name, license number, address, telephone number, and email address;*
 - 2) *the course title;*
 - 3) *the course number;*
 - 4) *the date of course approval; and*
 - 5) *a fifty dollar (\$50.00) fee for each course for which the broker seeks credit.*

In order for any application for equivalent credit to be considered and credits applied to the current licensing period, a complete application, the appropriate fee, and all supporting documents shall be received by the Commission no later than 5:00 p.m. on June 17.

Anticipated Impact to Brokers

The impact brokers will incur is minimal. Although the Commission is no longer taking waivers for continuing education courses, brokers have a multitude of courses they can take to receive continuing education elective credit. Additionally, the courses that the brokers must take going forward, are already approved continuing education courses by the Commission.

Best Practices for Compliance

As a best practice, brokers may wish to search continuing education courses that are approved on the Commission's website. Brokers can find courses by following these steps:

- go to www.ncrec.gov;
- click on the Education menu;
- click on Search CE Course Schedule; and
- click on Search Providers.



NOTE: A full listing of courses currently scheduled across the state will be displayed. A broker may wish to enter search criteria, such as education provider, instructor, or city for a narrowed list. The broker should contact the Education Provider directly to register for a course.



Interactive News Reporting

Can I get any CE credit for CCIM® courses, appraisal courses, or courses offered by the REALTOR® Associations such as GRI®?

- a) No. CE credit will no longer be given for any of these courses.
- b) You might, but you are going to have to make a special request to get CE credit.
- c) Any course you take that lasts at least 4 hours provides CE credit.
- d) Yes. Many of these courses are already approved. They just have to be submitted by the provider and you don't have to file a special request or pay \$50 if NCREC has approved them.



Takin' it to the Streets:

Ashley, a broker with XYZ Homes, lives in Oklahoma. On June 6, 2023, Ashley certified that she had an active license in Oklahoma when she renewed her license. Therefore, under Commission rules in effect at that time, Ashley did not have to take any continuing education in North Carolina to keep her NC license on active status.

On May 17, 2024, she wants to certify that her license in Oklahoma is still on active status while renewing her NC license so that she does not have to take NC continuing education. Can she still do that? _____

Does it matter that Ashley is actively licensed in another state?

Does it matter what education she completed in Oklahoma?

Does it matter that she doesn't live in NC? _____

Rule 58A .1711: Continuing Education Required of Nonresident Brokers

Purpose of the Rule Change

The Commission repealed this Rule because nonresident brokers have the ability to easily take all of their North Carolina continuing education (CE) courses due to the variety of instructional methods now available to brokers.

Additionally, nonresident brokers will benefit from the education provided in the mandatory Update Course to ensure their continued compliance with License Law and Commission rule requirements in North Carolina.

Basically, all brokers with a North Carolina real estate license should:

- be subject to the same CE requirements;
- show competence regarding NC License Law and Commission rules;
- not rely on licensure or course completion in another state to indicate their competence in NC; and
- use the various instructional methods offered by NC certified education providers to meet the CE requirements in NC.

Rule 58A .1711 was repealed by the Commission on July 1, 2023. Prior to July 1, 2023, nonresident NC brokers could meet CE requirements for renewal, if they:

- certified during license renewal that they had an active license in another state; or
- completed the Commission-prescribed Update course and Commission-approved continuing education elective course; or
- completed two Commission-approved continuing education elective courses.

Effective July 1, 2023, nonresident brokers must now comply with North Carolina CE requirements as specified in Rule 58A .1702, ***Continuing Education Requirements***. Essentially, Rule 58A .1702 requires ***all*** brokers to take eight credit hours of NCREC-approved real estate continuing education courses within one year prior to the expiration of their license as follows:

- 1) *four credit hours of elective courses; and*
- 2) *four hours of either:*
 - A) *the “General Update Course,” or*
 - B) *for a broker with BIC Eligible status, “the Broker-in-Charge Update Course” in lieu of the “General Update Course.”*

Anticipated Impact to Brokers

Nonresident brokers will be slightly impacted due to this Rule being repealed. Beginning July 1, 2023, nonresident brokers who wish to renew their NC license on active status will have to complete a mandatory NCREC Update course (GENUP or BICUP based upon their license status) and a 4-hour NCREC-approved CE elective by June 10, 2024. Therefore, nonresident brokers will no longer be able to utilize the CE requirements from another state to certify they have met the CE requirements in North Carolina.

Best Practices for Compliance

The following best practices are instrumental for nonresident brokers:

- check your license status on the Commission’s website;
- complete the appropriate Update Course for your license status (e.g. General Update/GENUP or Broker-in-Charge/BICUP Update); and
- complete a 4-hour NCREC-approved CE elective.

NOTE: Nonresident brokers must complete their CE requirements by June 10 of each license year according to Rule 58A .1702.

RPOADS (Residential Property and Owners' Association Disclosure Statement)



Interactive News Reporting

1. When a listing broker reviews the Residential Property and Owners' Association Disclosure Statement (*RPOADS*) and knows a seller's statement is incorrect, what should the broker do?

- a) Change the *RPOADS* and make the necessary corrections.
- b) Listing brokers do not need to review the *RPOADS*.
- c) Discuss the discrepancy with the seller, encourage them to correct it, and make additional disclosure if necessary.
- d) The broker does not need to do anything since the *RPOADS* contains the seller's representations.

2. Which property transfer is exempt from providing an *RPOADS*?

- a) Transfers involving the first sale of a dwelling never inhabited
- b) Transfers of residential rental property when the owner has never occupied the property
- c) Out of state sellers who do not currently live in the property
- d) Transfers where the seller informs the buyer in writing that they are not providing the document and clearly states that the property is being transferred "as is"

Rule 58A .0114: Residential Property and Owners' Association Disclosure Statement

Purpose of the Rule Change

The purpose of the rule change by the Commission was two-fold. First, the Commission wanted to remove the actual *RPOADS* form from the actual rule language so rule changes would not be necessary to adjust *RPOADS* formatting and accessibility. Second, the Commission incorporated the requirement for property owners to answer additional questions and provide additional disclosures that reflect the condition of the property, such as:

- flood status,
- historic registration/designation,
- private well testing, and
- elevator systems relating to the property.

On July 1, 2023, the Commission amended Rule 58A .0114 and the *RPOADS*.

Rule 58A .0114(a) requires every owner of real property that is subject to a transfer of the type governed by Chapter 47E of the General Statute to complete the *RPOADS* and furnish a copy to the buyer in a timely manner.

The Residential Property Disclosure Act in Chapter 47E of the General Statutes requires that most residential property owners complete a disclosure form to give to prospective purchasers. However, the Act is considered a **voluntary** disclosure law. In NC, the seller has the option to sell a property without making any representations as to the condition of the property or whether a previous owner severed the mineral, oil, and gas rights. Basically, a seller has three options while completing the *RPOADS* and *Mineral and Oil and Gas Rights Mandatory Disclosure Statement (MOG)* disclosure statements. They can check “Yes,” “No,” or “No Representation.”

Further, N.C.G.S. §47E-8 indicates that brokers have a duty to inform clients of their rights and obligations under the Statute and ensure their statutory compliance.

Anticipated Impact to Brokers

Although the language in this Rule appears to be substantially different; the required content remains the same and in correlation with the disclosure requirements of N.C.G.S. §47E-4. The Commission expects brokers to provide guidance to their clients while they are completing the additional disclosures (e.g. flood status, historic registration/designation, private well testing, and elevator systems relating to the property) that are on the revised *RPOADS*.

Best Practices for Compliance

As a best practice, brokers should educate their owner-clients regarding their rights and obligations to provide specific disclosure statements under N.C.G.S. §47E-4. Also, a listing agent should:

- furnish the RPOADS form to a residential seller-client and inform the client of their duty to complete the form and deliver it to a prospective buyer,
- not advise a residential seller-client on how to answer questions, and
 - If the client has questions, they should consult with an attorney.
- educate the owner on the broker’s mandatory obligation to discover and disclose material facts.

In an effort to ensure that brokers comprehend their statutory obligation to furnish the RPOADS to their residential seller-client and inform their client of their statutory duty to deliver it to a prospective buyer, let’s review the amended *RPOADS* in detail.

NOTE: The *RPOADS* is created by the North Carolina Real Estate Commission and is available for download from the Commission’s website at www.ncrec.gov. It has also been reprinted at the end of this section for your review.



In 2018, the Commission wrote an article entitled, [“Sellers Required by Law to Provide Two Disclosure Statements to Buyers,”](#) to assist brokers with comprehending their duties/obligations under Real Estate License Law.



Questions to Consider

Where does a broker get the *RPOADS* and *MOG* disclosure statements? The *RPOADS* and *MOG* disclosure statements are created by the Commission. Therefore, brokers may retrieve the forms from the Commission’s website by clicking *Forms* and then *Consumer Forms*.

Does the Residential Property Disclosure Act only apply to owners of residential real property? Yes. The law applies to each owner having a recorded present or future interest in a residential property subject to the law. The Residential Property Disclosure Act applies to owners who are transferring real property consisting of one-to-four dwelling units:

- by sale or exchange, including transfers by installment land contract;
- by an option contract, and
- by lease with an option to purchase, except where the lessee occupies or intends to occupy the dwelling

whether the transaction is accomplished with or without the assistance of a broker. The law also applies to a “*For Sale By Owner*” (*FBSO*) whether a real estate broker represents the owner or not *unless* the transaction is listed as exempt in General Statutes §47E-2.

What are the general duties of a real estate broker? *The general duty of a real estate broker is to inform the owner of their rights and obligations to provide prospective buyers the RPOADS, MOG, and owners’ association and mandatory covenants statements under General Statutes §47E-2.* Additionally, the broker should not advise the seller-client on how to answer the questions. Further, the broker should inform their client of the broker’s mandatory duty to discover and disclose material facts to all parties in a transaction.

What are the basic statutory duties of a listing agent? *The Residential Property Disclosure Act specifically charges a listing broker with the duty to inform the owner of the owner’s rights and obligations under this law.* To fulfill this duty, the listing broker should:

- advise the seller whether the seller has an obligation to provide prospective buyers with the disclosure statements in that particular transaction and, if so, perform the listed acts,
- advise the seller of the seller’s statutory duties, and
- advise the seller that the buyer has a three-day right to terminate a sales contract when the seller or their agent fails to deliver the disclosure statements to the buyer or their agent prior to or at the time the buyer makes an offer.

The listing agent must also explain that the buyer does not have any recourse if the disclosure statements are timely delivered or the buyer agrees that the *RPOADS* are not necessary. Although a buyer may waive the receipt of the *RPOADS*, a *MOG* disclosure form must still be provided by the seller, if applicable.

Are the listing agents the only brokers with statutory duties under the Residential Property Disclosure Act? *No.* A buyer agent has the duty to inform a prospective buyer of their right to terminate a contract if the seller does not provide the disclosure statements prior to or at the time an offer is made. Also, a buyer agent should explain the disclosure law to prospective buyers prior to viewing any properties so they can anticipate receipt of the disclosure statements.

However, the buyer agent must also clarify that the prospective buyer has no special rights or recourse under the law if it is delivered in a timely manner.

Additional Duties for Brokers: Listing Agent

The Commission expects brokers to adhere to the Residential Property Disclosure Act to ensure that residential property sellers are providing disclosure statements to prospective buyers.

Therefore, listing agents have additional duties under the Act such as:

- providing the seller with copies of the *RPOADS* and *MOG* disclosure forms as required under the law,
- explaining to their seller the broker's duty to discover and disclose material facts that they know or reasonably should know regarding the property, even if the seller chooses not to disclose this information or makes no representation,
- reviewing the *RPOADS* and *MOG*, inquiring about unanswered questions and questions with "Yes" answers, and disclosing material facts to buyers and/or their agents,
- assisting the seller with assessing the property and properly completing the form,
 - the listing agent must not advise the seller-client on how to complete the *RPOADS*
- delivering a copy of the completed disclosure statements to prospective buyers and/or their brokers,
- monitoring the property to ensure continued accuracy of the information and assisting the seller with updating the form for accuracy, when/if needed,
- if working with a buyer, explaining the statements and instructional section to buyers, and
- obtaining from the buyer or selling agent, signed copies of the disclosure statements when the buyer submits an offer and retain the documents in the transaction records.

A listing agent will not be considered improperly engaging in the practice of law if they advise their seller-client of:

- the applicability of the law,
- their duty under the law,
- consequences of their failure to perform their duties, and
- the seller's options for completing the disclosure statements.

Additional Duties for Brokers: Seller’s Subagent Working with a Buyer

A seller’s subagent that is working with a prospective buyer also has additional duties to ensure adherence to the Residential Property Disclosures Act. The seller’s subagent should:

- obtain the completed disclosure statements from the listing agent/ brokerage and deliver the statements to the prospective buyer, and document the date and time of delivery,
- review the *RPOADS* and *MOG*, inquire about unanswered questions and questions with “Yes” answers, and share this information with buyer,
- review the instructional section and explain the disclosure statements to the prospective buyer, and
- obtain the buyer’s signature on the disclosure statement, retain a copy and provide it to the seller and/or their listing agent at the time a prospective buyer makes an offer.

Additional Duties for Brokers: Buyer Agent

A buyer agent has the duty to explain to a prospective buyer their rights under the Act. In addition, they should:

- obtain completed disclosure statements from the listing broker/brokerage and deliver it to the buyer with a note that specifies the date and time that it was delivered,
- review the *RPOADS* and *MOG*, inquire about unanswered questions and questions with “Yes” answers, and share this information with buyer,
- have the buyer sign the disclosure statements, retain copies in the broker’s transaction records, and return copies with the buyer’s signature to the listing broker at the time the offer is submitted, and
- assist the buyer in assessing the disclosure statements about the property, identify areas of concern, and recommend that the buyer obtain appropriate inspections of the property.

Delivery of Disclosure Statements



As mentioned previously, the seller must deliver the disclosure statements to the prospective buyer no later than the time the buyer makes an offer to purchase, exchange or option the property or exercises an option pursuant to a lease with an option to purchase. Additionally, the form must be signed by the buyer and not the

buyer’s agent. However, the disclosure statements can be delivered by the buyer agent.

The Statute is not specific regarding the permitted methods of delivery. However, delivering the disclosure statements in person, including them as an attachment to a property description in the Multiple Listing Services (“MLS”), or sending them via electronic correspondence is allowed.

The Residential Property Disclosure Act and Material Facts

The Residential Property Disclosure Act does not impact a broker’s duty under License Law and Commission rules to affirmatively discover and disclose material facts to all parties in the transaction, regardless of their brokerage role.



Therefore, if a seller makes “No Representation” regarding the existence of material facts on the property, or the seller is selling the property “As Is,” but the broker is aware or reasonably should be aware of the existence of material facts, the broker must disclose this information to prospective purchasers. A broker **must** disclose this information even if the seller indicates they do not want the information shared.



Does the Residential Property Disclosure Act apply to brokers who are also sellers? Yes. The Residential Property Disclosure Act applies to brokers as well if they are transferring personal real property consisting of one to four dwelling units unless an exception is met under the Act. Although brokers can check “Yes,” “No,” or “No Representation” on the *RPOADS* when selling their own property, they **must** still disclose material facts that they know or reasonably should know exists.



The Commission has written an article entitled, [“You Are A Broker and Selling Your Own Home”](#) that provides information on what brokers must do when selling their own residential property.

Seller Obligations

In conclusion, a seller's obligation to prospective buyers is very limited. Essentially, sellers cannot participate in fraud to induce a prospective buyer to purchase a property without potential legal repercussions. However, under the law, a seller must provide prospective buyers with the disclosure statements but are ***not*** mandated to disclose any problems with the property on the disclosure statements.

NOTE: A broker who fails to fulfill their duties, under the Residential Property Disclosure Act, may be in violation of the Real Estate License Law and Commission rules by engaging in unworthy, or incompetent behavior that may endanger the public.



Takin' it to the Streets:

Stan is in the armed forces and a licensed real estate broker. While on active duty in Miami, Stan went home to visit his family and friends. He failed to get authorization from his commanding officer to leave the base. Once Stan returned back to the base, he was arrested and later court martialed for taking unauthorized leave. He was sentenced to 30 days in the Brig and forfeiture of a month's pay.

Does Stan have to report the military court-martial to the Commission?

- a) No. Stan has not been convicted of a felony or misdemeanor.
- b) Yes. Stan must report the military court-martial conviction to the Commission in accordance with Rule 58A .0113.
- c) No. Stan was not disciplined by an occupational licensing agency.
- d) Yes. Stan must report the military court-martial because he had to spend 30 days in the Brig and forfeit a month's pay.



Technical Rule Changes

The following rules were amended by the Commission to either:

- add,
- delete, and/or
- revise verbiage for clarity.

Due to the minimal changes in the rule language, a brief overview of each rule that was impacted is referenced below for your review.

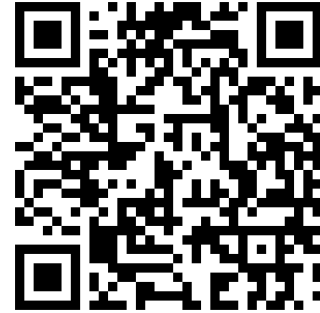
In addition to the brief overview, the Commission will discuss at the end of each substantial rule change, the following:

- the purpose of the rule change;
- the anticipated impact of the rule; and
- the recommended best practices to ensure brokers adhere to the rule requirements.

Rule 58A .0113: Reporting Criminal Convictions and Disciplinary Actions

Prior to July 1, 2023, this Rule did not require brokers to report military court-martial convictions on the Criminal Conviction Disciplinary Action Reporting Form. However, the Commission amended this Rule effective July 1, 2023, to clarify that military court-martial convictions are reportable offenses.

The new Rule states that brokers shall file with the Commission a [Criminal Conviction Disciplinary Action Reporting Form](#) within 60 days of:



- 1) a final judgment, order, or disposition of any felony or misdemeanor conviction;
- 2) a disciplinary action or entering into a conciliation agreement or consent order with a governmental agency or occupational licensing agency;
- 3) a final judgement, order, or disposition of a *military court-martial conviction*; or
- 4) a notarial commission sanction pursuant to G.S. 10B-60.

Rule 58A .0301: License Application

The Commission amended this Rule on July 1, 2023, to clarify that an individual is required to report military court-martial convictions in their license application when applying for a real estate license.

Rule 58A .0301(a) indicates *an individual seeking licensure as a real estate broker shall submit a license application that is available on the Commission's website and shall include the applicant's:*

- 1) *legal name;*
- 2) *mailing, physical, and email address;*
- 3) *telephone number;*
- 4) *social security number and date of birth;*
- 5) *qualification for license application;*
- 6) *real estate license history;*
- 7) *places of residence for the past seven years;*
- 8) *employment history for the past three years;*
- 9) *criminal offenses, military court-martial convictions, professional license disciplinary actions. Including the jurisdiction, file number, and explanation of each offense;*
- 10) *liens or unpaid judgments;*
- 11) *certifications the applicant has read the Real Estate Licensing in North Carolina brochure that is available on the Commission's website; and*
- 12) *declaration and signature.*

(b) In addition to Paragraph (a) of this Rule, the applicant shall submit:

- 1) *the license application fee pursuant to Rule .0302 of this Section; and*
- 2) *a criminal records report from a designated criminal reporting service obtained within six months prior to application submission.*

Rule 58A .0505: Reinstatement of a License

Rule 58A .0505 was amended on July 1, 2023. Subsection (b)(8) requires individuals to include a criminal record report from a designated criminal reporting service obtained within six months prior to application and subsection (c)(2) requires the *disclosure* of military court-martial convictions when they are seeking to reinstate their license.

Historically, Rule 58A .0505(e) required brokers who have been expired, revoked, or surrendered more than two years to submit an original license application, fee, and take the NC Real Estate License examination.

Rule 58A .0505(e) now requires brokers that have been expired, revoked, or surrendered for more than two years to reinstate their license by submitting a license application and application fee pursuant to N.C.G.S. §93A-4 and Rules .0301, .0302, and .0511.

Essentially, this Rule provides nonresident brokers the same option as brokers who reside within North Carolina when seeking to reinstate their license. Therefore, nonresident brokers now have the choice to reinstate their license by electing to either pass the “State” section of the NC Real Estate License examination or be issued a NC broker license on provisional status.

Rule 58A .1705: Attendance and Participation Requirements

Rule 58A .1705(a)(2) and (7) was amended by the Commission on July 1, 2023. The Commission replaced the term *course sponsor* with the term *education provider* to the Rule language. Therefore, this amendment clarified that education providers are individuals or entities that are certified to offer approved continuing education courses.

Rule 58B .0202: Public Offering Statement

The Commission amended this Rule to include **electronic mail** as a means of delivery for a timeshare cancellation notice pursuant to N.C.G.S. §93A-45(b).

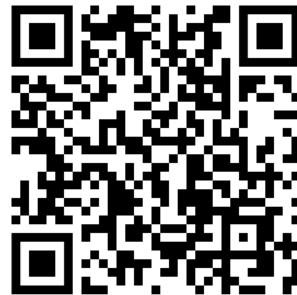
The **NOTICE** in the Public Offering Statement now states:

*Under North Carolina Law, you may cancel your timeshare purchase without a penalty within five days after signing your contract. To cancel your timeshare purchase, you must mail, **electronically mail**, or hand deliver written notice of your desire to cancel your purchase to (name and address of project). If you choose to mail your cancellation notice, the North Carolina Real Estate Commission recommends that you use registered or certified mail and that you retain your postal receipt as proof of the date your notice was mailed. Upon cancellation, all payments will be refunded to you.*

LICENSE LAW AND COMMISSION RULES

The Commission amended and repealed several rules on July 1, 2023. Although all of the rules were not discussed in this section, brokers may retrieve the most current License Law and Commission rules by accessing the Commission's website using the following instructions:

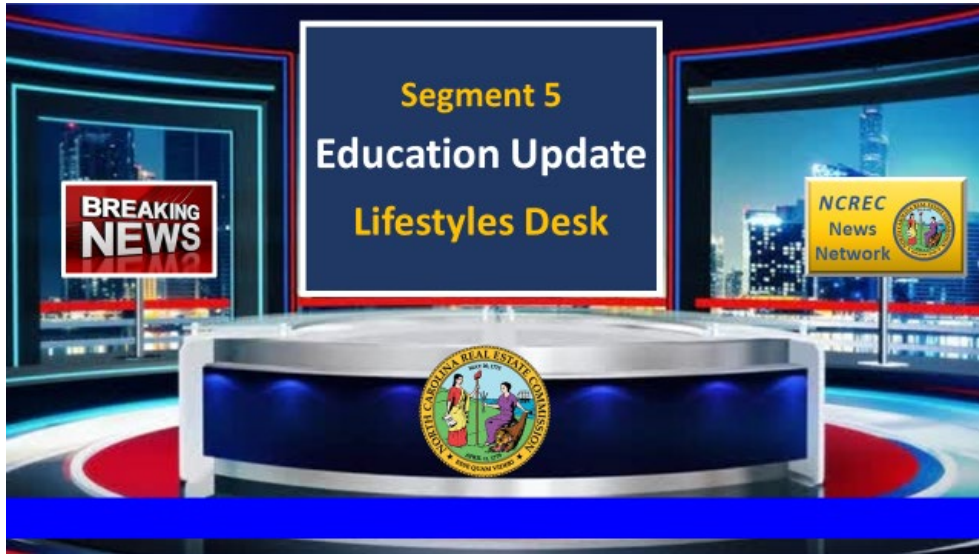
- 1) go to www.ncrec.gov;
- 2) click on *Resources*;
- 3) click *License Law/Rules*;
- 4) click *Chapter 58* under Rules; and
- 5) review Real Estate Commission rules in Chapter 58.



Segment 5

EDUCATION UPDATE

Lifestyles Desk



1. Do you need to complete CE prior to renewing your license?

2. How do you maintain a license on inactive status?

3. Why would a broker have to comply with license reinstatement requirements?

LEARNING OBJECTIVES

By the end of this section, you should be able to:

- describe when a broker, qualifying broker, and BIC must renew their license, and
- explain the differences between an expired and inactive license.

LICENSE RENEWALS



Brokers, firms, and Limited Nonresident Commercial (LNCL) licensees must renew their real estate license each year during the statutory 45-day renewal period of May 15-June 30. The annual renewal fee is \$45.00 and must be:

- paid online at the Commission's website, and
- received by the Commission by 11:59:59 pm on June 30.

The Commission consistently receives inquiries from brokers regarding the license renewal process. Therefore, let's discuss some of the most common misunderstandings.

License Renewal – The Basics

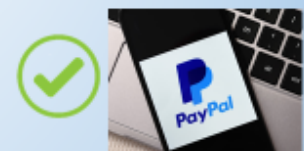
The renewal fee is \$45

- **How is this paid?**

On the Commission's website using a credit card, debit card, or PayPal Cash, checks & in-person payments are **not** accepted

- **When is the fee due?**

Must be received by the Commission by **11:59:59 p.m. on June 30**



NOTE: Don't wait until the last minute on June 30th to renew your license. If the Commission's website is down or your Internet or power is down, or anything else prevents you from renewing, then your license will expire and you will have to deal with the consequences that result from your failure to renew in a timely manner.

FACT OR MYTH?

1. *I can renew my broker license before I complete my continuing education courses.*

FACT. The annual license renewal period is May 15-June 30. There is not a License Law and Commission rule that requires a broker to complete continuing education courses prior to renewing their license. Therefore, a broker may choose to renew their license *prior* to completing continuing education courses.

License renewal is **not** contingent upon a broker completing their continuing education requirements. Theoretically, a broker wishing to maintain an active license could renew their license on May 15th and then complete their required continuing education no later than June 10th.

NOTE: The Commission strongly encourages brokers to complete their required continuing education courses earlier in the license year to maximize the benefit of the information and avoid a rush in May and early June.

2. *I can complete my continuing education courses prior to renewing my license.*

FACT. A broker may choose to complete their continuing education courses prior to renewing their real estate license. The Commission does not require a broker to renew their license prior to completing continuing education or mandating completion of continuing education courses prior to submitting a license renewal. It is up to the broker to decide when to take CE and renew their license. However, to maintain an active license status, a broker must complete continuing education courses by June 10 **and** renew their license online during the annual May 15-June 30 renewal period.

Takin' it to the Streets:



Weaklon, NC - Sam, the Qualifying Broker of See Homes, failed to complete his General Update Course and continuing education elective by June 10th. Upon realizing his mistake, Sam called Real Estate Schools R'Us to schedule the needed courses on June 11. He received a voicemail that the education provider was closed. Sam became furious because he knew that this would impact his brokerage, See Homes.

Sam immediately called the Commission and spoke with a License Specialist. The License Specialist indicated that Sam could not take courses during June 11-June 30 due to the CE blackout period. The License Specialist also noticed that Sam had not renewed his license. Therefore, she reminded Sam to renew his license by June 30th. Sam became irate and told the License Specialist that he knows he needs to renew his license; however, she was not empathetic regarding his need to immediately complete continuing education courses.

What will be the status of Sam's broker license on July 1st?

How will Sam's broker license status impact See Homes, if at all?

- 3. As the Broker-in-Charge and Qualifying Broker of my brokerage company, I only have to renew one license.***

MYTH. A broker who is both Broker-in-Charge (BIC) and Qualifying Broker (QB) is responsible for renewing **both** their individual broker license and the firm license during the annual May 15-June 30 renewal period.

- As designated BIC of the firm, if the broker fails to renew their individual broker license:
 - all affiliated full brokers under their supervision will be unaffiliated from the brokerage but maintain active status at their home address;
 - the licenses of all affiliated provisional brokers will go inactive;
 - the firm license will remain active but can have no affiliated brokers until a new BIC is designated; and
 - all broker affiliations and agency agreements will have to be reestablished under a new BIC.

- As QB of the firm, if the broker fails to renew their individual broker license:
 - the firm license will go to inactive status;
 - all affiliated full brokers will be unaffiliated from the brokerage but maintain active status at their home address;
 - the licenses of all affiliated provisional brokers will go inactive; and
 - all brokerage activity on behalf of the firm would cease until a new QB is named and all broker affiliations and agency agreements are reestablished.

- The QB broker renews their individual license, but fails to renew the firm license:
 - the firm license expires;
 - all affiliated brokers will be unaffiliated from the brokerage; and
 - all brokerage activity on behalf of the firm would cease until a new firm application is approved; and
 - all broker affiliations and agency agreements must be reestablished prior to performing any brokerage activity on behalf of the reinstated firm.

4. *I am a Qualifying Broker. I need to renew both my broker license and firm license.*

FACT. A Qualifying Broker (QB) must renew their individual broker license and firm license annually during the statutory period of May 15-June 30. The QB is the individual according to Rule 58A .0502(g)(2) that is required to renew the firm license.

- If the QB fails to renew their individual broker license, the broker's license will expire and the firm's license will go inactive with all the ramifications noted earlier.
- If the QB fails to renew the firm license during the annual May 15-June 30 renewal period, the firm's license will expire with all the ramifications noted earlier.
- In both cases, all broker affiliations and agency agreements will terminate and the ability to practice brokerage will cease until licenses are back on active status.

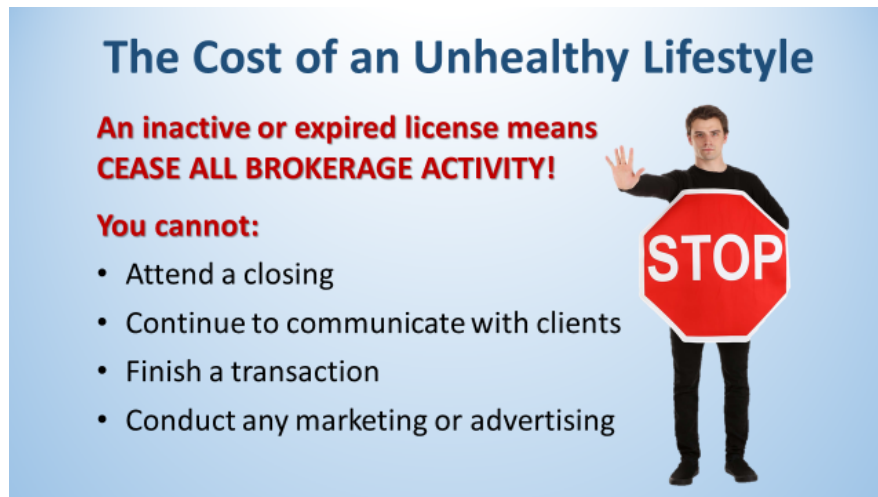
5. *I am inactive so I don't need to renew my license.*

MYTH. Although a broker may intentionally place their license on inactive status, the broker should still renew their license each year during the May 15-June 30 renewal period to ensure they still have a license in the event they would like to practice brokerage in the future. If a broker wants to activate their inactive license, the broker would need to meet the requirements under Rule 58A .0504(d) and .1702(a)-(b), respectively.

6. *I didn't renew my license, so now I can only wrap up the transactions I have pending.*

MYTH. If your license expires on June 30 due to non-renewal, you cannot engage in any brokerage activities beginning July 1. This includes attending a closing on behalf of a client; your brokerage company would have to send another affiliated broker to represent the firm's client. You may not resume brokerage practice until your license is reinstated, back on "active" status, and affiliated with a BIC.

NOTE: Brokers who serve in the military and are on active deployment during the renewal period may be granted special consideration under federal law.



The Cost of an Unhealthy Lifestyle

**An inactive or expired license means
CEASE ALL BROKERAGE ACTIVITY!**

You cannot:

- Attend a closing
- Continue to communicate with clients
- Finish a transaction
- Conduct any marketing or advertising

The infographic features a man in a black shirt and pants holding a large red octagonal stop sign with the word "STOP" in white. The background is a light blue gradient.

EXPIRED AND INACTIVE LICENSURE

To lawfully engage in brokerage activity, an individual or entity must have a CURRENT real estate broker license on ACTIVE STATUS at the time the broker provides the brokerage services.

7. *My license is inactive, so I can only receive referral fees.*

MYTH. A broker must have a current, active license at the time of the brokerage activity including at the time of making a referral in order to legally receive any income from brokerage activity, including referral fees. A broker who has an active license has timely renewed their broker license by June 30 and has completed the appropriate 8 hours of continuing education by June 10 each year.

8. *I was licensed in May 2023 as a provisional broker. I don't have to take CE until my second full year of brokerage, so I don't need CE until June 2025.*

MYTH. Rule 58A .1702(c) indicates that, to maintain eligibility for an active license, CE courses shall be completed upon the second renewal following the initial licensure and upon each subsequent annual renewal. In the scenario above, the broker who was licensed in May 2023 would renew their broker license for the first time by June 30, 2023, to remain on active status. The second renewal of their license would occur on or before June 30, 2024, and, therefore, the broker must complete CE prior to June 10, 2024, to maintain eligibility for an active license.

NOTE: Provisional Brokers must also timely complete Postlicensing Education based on date of initial licensure and be affiliated with a BIC to maintain active status.

Provisional Brokers and non-BIC Eligible Brokers	Brokers with BIC Eligible status/BIC Designation
GenUp (General Update) AND ONE Commission-approved Elective Between July 1 - June 10	BICUP (Broker-in-Charge Update) AND ONE Commission-approved Elective Between July 1 - June 10

9. *As a provisional broker, I have always been inactive and never affiliated with a firm, so the countdown for me to take Postlicensing and CE has not begun yet.*

MYTH. Per Rule 58A .1902(b), a provisional broker must complete their Postlicensing education within 18 months of initial licensure (not date of license activation) to remove the provisional status from their license record. To maintain active status, a provisional broker must be supervised by a BIC and timely complete all postlicensing courses. However, if a provisional broker chooses to remain on inactive status, they still need to complete their Postlicensing education courses to be eligible to activate their license. Although CE is not required to renew a license on inactive status, there are more stringent activation requirements, per Rule 58A .1703, of a broker's license with a CE delinquency.

10. *I can take CE while my license is inactive.*

FACT. Rule 58A .1702(e) indicates a broker is not required to take CE while their license is on inactive status. However, the broker may take CE while their license is on inactive status in preparation to achieve active status under Rule 58A .1703.

11. *I can get CE credit for Postlicensing courses.*

MYTH. Postlicensing courses do not provide CE credit, per Rule 58A .1704.

12. *Lots of people get waivers for completion of CE or Postlicensing courses.*

MYTH. According to Rule 58A .1708, the Commission awards CE equivalent waivers if certain requirements are met. A broker may receive CE equivalent credit for teaching a Commission Update Course, teaching a Commission approved CE elective for the first time, and developing a CE course that is approved by the Commission. Brokers must submit a complete application prior to June 17 specifying how they meet the requirements under this Rule with an application fee of \$50 for the new course approval option.

NOTE: Effective July 1, 2023, Rule 58A .1708 was amended to limit equivalent credit options to approved educators.

Also, Rule 58A .1905 provides the requirements for the Commission to issue a waiver for Postlicensing education. A broker may apply for a waiver of one or more of the three 30-hour Postlicensing courses in the following circumstances:

- *the broker has obtained equivalent education to the Commission's postlicensing courses pursuant to Rule 58A .1902;*
- *the broker has obtained experience equivalent to 40 hours per week as a licensed broker or salesperson in another state for a least 5 of the 7 years immediately prior to application; or*
- *the broker has worked 40 hours per week as a licensed North Carolina attorney practicing real estate matters for two years preceding application.*

The broker must meet the requirements set forth under this Rule and include this information in their application for a Postlicensing Education waiver.

13. *So long as the firm license is renewed, the status of the QB's license doesn't matter.*

MYTH. The firm must have a QB (Qualifying Broker) whose license is on active status. As long as the firm has an actively licensed QB, and the firm's license is timely renewed, the firm license will remain active. If the QB's license expires or is inactive on July 1, the firm's license will also be inactive, meaning no brokers may engage in brokerage under the firm. While losing a BIC only takes one office down, ***losing a QB takes the entire firm down.***

In such case, the firm license cannot be activated until either the QB's license has returned to active status or the firm appoints a new actively-licensed QB. Note that even if the firm license is active, the firm cannot legally perform brokerage at any office location without a designated BIC.

14. *If a broker is only acting as a QB and not actively engaged in brokerage activities, they do not have to complete CE?*

MYTH. For a broker to remain a QB for a firm, the broker must take CE to maintain an active license. Every broker who wishes to maintain active status must pay their license renewal fee during the annual May 15-June 30 renewal period each license year and complete the appropriate CE by June 10. If the QB failed to complete the appropriate CE course by June 10, the firm could appoint a new actively-licensed QB by June 30 to avoid having the firm license go inactive.

NOTE: Please review the Reinstatement Chart below for questions on how to reinstatement an inactive and/or expired broker license.

Broker License Reactivation / Reinstatement Guide

Many licensees contact the Commission, education providers, and instructors with questions about how to get their real estate license “up to date.” The correct answer requires properly determining 3 things:

- Is the license currently inactive or expired?
- What caused the inactivity or expiration?
- How long has the license been inactive or expired?

Distinguishing Between Inactive or Expired

NCREC strongly recommends that when licensees have questions about their license status that they contact a Commission License Service Specialist who can examine the licensee’s record and properly advise them of the process necessary to achieve their goals.

Whether a licensee is attempting to remove an expired status or inactive status, every single action requires the licensee to cure any CE deficiency that may exist in their license record.

When the Broker License is Expired

Cause of the Expiration	Length of Expiration	Process Required Per Rule 58A .0505
<p>The only cause of an expired status is failing to renew or failing to pay the \$45 renewal fee each year on or before June 30th.</p>	<p>Less than 6 months</p>	<ul style="list-style-type: none"> • Pay a \$90 reinstatement fee • Disclose any convictions or disciplinary actions • File a Form 2.08 - License Activation and Broker Affiliation
	<p>For 6 months but not more than 2 years</p>	<ul style="list-style-type: none"> • Within 6 months prior to reinstatement, complete one 30-hour Postlicensing course OR pass the National and State license exam sections* • File a License Reinstatement Application with \$90 fee * Individuals with an active license in another state may choose to pass the state portion of the license examination in lieu of completing the Postlicensing course
	<p>More than 2 years</p>	<ul style="list-style-type: none"> • Must be relicensed as if they never possessed a license: <ul style="list-style-type: none"> ➤ Complete a Prelicensing course ➤ Pass the National & State sections of the license exam ➤ Submit a new license application with fee

When the Broker License is Inactive

Cause of the Expiration	Length of Expiration	Process Required Per Rule
Provisional Broker inactive due ONLY to non-affiliation	Any length of time	<ul style="list-style-type: none"> File Form 2.08 – License Activation and Broker Affiliation <p>Per Rule 58A.0506</p>
Provisional Broker inactive due to failing to complete Post within 18 months	Any length of time	<ul style="list-style-type: none"> Complete all three 30-hour Postlicensing courses within 2 years of filing the License Activation and Broker Affiliation form File Form 2.08 – License Activation and Broker Affiliation <p>Per Rule 58A.1902</p>
Broker inactive due to a CE deficiency	2 years or less	<ul style="list-style-type: none"> Make up any deficiency in the previous year with CE electives Complete the required current year CE consisting of an Update course and an elective course File Form 2.08 – License Activation and Broker Affiliation <p>Per Rule 58A.1703</p>
	More than 2 years	<ul style="list-style-type: none"> Complete the current year CE consisting of an Update course and an elective course Complete 2 Postlicensing courses no more than 6 months prior to filing the License Activation and Broker Affiliation form File Form 2.08 – License Activation and Broker Affiliation <p>Per Rule 58A.1703</p>

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Segment 6

Business News

BIC Policies



1. Does your office have a written policies and procedures manual?

2. What types of things does your manual address?

LEARNING OBJECTIVES

After completing this section, you should be able to:

- identify the BIC's responsibilities for supervising affiliated brokers;
- determine whether BICs should have written office policies;
- identify recommended issues and topics to be addressed in brokerage office policies; and
- identify the questions that the Commission may ask a BIC regarding their office policies.

TERMINOLOGY

- **ALERT:** The BIC has to ensure affiliated brokers: comply with **agency agreements and disclosures**, have **current, active licenses**, comply with **advertising** laws and regulations, create, maintain, and **retain transaction files**, and properly handle **trust money**.
- **Broker:** This is the primary license status for a broker license and includes any licensee who is affiliated with a firm or sole proprietorship.
- **Broker-in-Charge (BIC):** The broker who has been designated as the primary person having responsibility for the supervision and management of a brokerage office.
- **Provisional Broker (PB):** This is the entry-level license status for an individual broker license who has not completed the 90-hour Postlicensing education program. A PB must be under the supervision of a BIC to be on active status and legally provide brokerage services.

BROKER-IN-CHARGE RESPONSIBILITIES



According to Rule 58A .0110(a), every real estate firm shall designate one BIC for the firm's principal office and a different broker to serve in the same capacity at each branch office.

Additionally, a BIC may not be the BIC of more than one office location at a time, and no office of a firm shall have more than one designated BIC.

Even a broker practicing alone (i.e. sole proprietor) must designate a BIC if the brokerage:

- engages in any transaction where the broker is required to deposit and maintain monies belonging to others in a trust account;
- engages in advertising or promoting their services as a broker in any manner; or
- has one or more other brokers affiliated with them in the real estate business per Rule 58A .0110(b).

BIC Duties & Responsibilities



The designated BIC is the primary individual the Commission will hold responsible for the supervision and management of the office. Therefore, the BIC has the **responsibility** to supervise affiliated brokers, employees, and others who perform duties on behalf of the brokerage.

Commission Rule 58A .0110(g) lists the specific responsibilities of a broker-in-charge as follows:

- (1) assure that each broker affiliated at the office has complied with Rules .0503, .0504, and .0506 of this Subchapter;*
- (2) notify the Commission of any change of firm's business address or trade name and the registration of any assumed business name adopted by the firm for its use;*
- (3) be responsible for the conduct of advertising by or in the name of the firm at such office;*
- (4) maintain the trust or escrow account of the firm and the record pertaining thereto;*
- (5) retain and maintain records relating to transactions conducted by or on behalf of the firm, including those required to be retained pursuant to Rule .0108 of this Section;*
- (6) supervise provisional brokers associated with or engaged on behalf of the firm at such office in accordance with the requirements of Rule .0506 of this Subchapter;*
- (7) supervise all brokers affiliated at the office with respect to adherence to agency agreement and disclosure requirements;*
- (8) notify the Commission in writing that he or she is no longer serving as a BIC of a particular office within 10 days following any such change;*
- (9) complete the Commission's Basic Trust Account Procedures Course within 120 days of assuming responsibility for a trust account in accordance with N.C.G.S. §93A-6(g), however, the BIC shall not be required to complete the course more than once in three years; and*
- (10) supervise all unlicensed individuals employed at the office and ensure that unlicensed individuals comply with N.C.G.S. §93A-2(c)(6).*

Therefore, Rule 58A .0110 is very specific regarding a BIC's responsibility for both provisional brokers and full brokers contrary to some beliefs in real estate. Essentially, a BIC has **five** supervisory responsibilities related to **all** affiliated brokers.

The responsibilities are remembered best by using the acronym ALERT.

A BIC Must Be ALERT To All of the Following for ALL Affiliated Brokers:

- **A**gency Disclosures & Agreements
- **L**icenses, current and active
- **E**very Advertisement
- **R**ecord Keeping
- **T**rust Accounts



Rule 58A
.0110(g)

For ALL affiliated brokers under the BIC's supervision

The BIC has to ensure affiliated brokers are:

- complying with **agency agreements and disclosures**;
- have **current, active licenses**;
- complying with **advertising laws and regulations**;
- creating, maintaining, and **retaining transaction files**; and
- properly handling **trust money**.

Takin' it to the Streets:



Red City, NC - On Wednesday, police were called to ABC Brokerage due to an argument between a BIC and their affiliated broker. The broker was irate because she could not affiliate with more than one brokerage at a time. The broker told the police that she wanted to practice property management at a different company because ABC Brokerage does not practice this type of real estate.

The BIC told us in a telephone interview that they did not know that an office policy could create so much aggression. The BIC was also shocked because the broker had acknowledged receipt of the office policies when they signed their employment agreement.

No arrests were made as of Wednesday afternoon. However, the broker filed a complaint with NCREC for them to review.

Can the brokerage prevent affiliated brokers from affiliating with more than one brokerage?

Does the Commission dictate the required office policies for brokerages?

WRITTEN OFFICE POLICIES

Written office policies are considered essential for all brokerages. Further, policies and procedures can assist BICs with standardizing operational tasks, establishing expectations, and providing guidance for all affiliated brokers, employees, and other individuals who perform duties on behalf of the brokerage. Also, when policies are developed, the BIC should uniformly apply and enforce them in the brokerage.

Although the Commission does not dictate the topics a BIC must include in their written office policies, the Commission recommends that a BIC's written office policies address:

- communication with the BIC or BIC delegate,
- training requirements,
- meeting schedules,
- transaction/document review process,
- client/consumer interaction,
- current regulatory information, and/or
- how to handle issues that may arise while practicing brokerage.



To assist BICs with developing written office policies, the Commission has created a [“Broker-in-Charge Best Practices Guide”](#) to provide BICs with guidance as they are developing their business practices and procedures for which rules and policies should be created. The *BIC Best Practices Guide* is intended only as a starting point for BICs.

The Guide is posted on the Commission's website (ncrec.gov) under *Resources*.

Lastly, brokerages differ in size and practice varying specializations of real estate. Therefore, there is not a one size fits all office policy that would meet the needs of each real estate office. BICs may want or need to create policies for many other topics or issues, depending upon the nature and complexity of their brokerage practice. Moreover, as real estate practices change, a firm's policies and procedures manual should be updated to provide guidance to affiliated brokers.

In regards to provisional brokers, the Rule is very specific regarding a BIC's supervisory obligations. A BIC must supervise all brokerage activities of PBs affiliated with the office. Generally, a PB may perform the same acts as a broker whose license is not on provisional status as long as they are supervised by a BIC. A PB may not operate *independently* in any way.

Commission Rule 58A .0506(d) states:

A broker-in-charge shall supervise the provisional broker in a manner that assures that the provisional broker performs all acts for which a real estate license is required in accordance with the Real Estate License Law and Commission rules. A supervising broker who fails to supervise a provisional broker as prescribed in this Rule may be subject to disciplinary action pursuant to Rule .0110 of this Subchapter.

According to Rule 58A .0506(c), the PB may engage in real estate brokerage activities immediately once the BIC has submitted the Commission's *License Activation and Broker Affiliation Form (REC 2.08)*. The [License Activation and Broker Affiliation Form \(Rec 2.08\)](#) sets forth the:



- (1) *provisional broker's:*
 - (A) *name;*
 - (B) *license number, type of license, and current license status;*
 - (C) *physical, mailing, and emailing addresses;*
 - (D) *public and private phone numbers;*
 - (E) *completed Postlicensing courses, if necessary;*
 - (F) *completed continuing education courses, if necessary; and*
 - (G) *signature.*
- (2) *broker-in-charge's:*
 - (A) *name;*
 - (B) *license number;*
 - (C) *firm's name and license number;*
 - (D) *physical, mailing, and emailing addresses;*
 - (E) *public and private phone numbers; and*
 - (F) *signature.*

If the PB and BIC do not receive written acknowledgement from the Commission confirming the PB's active status within 30 days of the date shown on the activation form, the BIC must immediately terminate the PB's real estate brokerage activities pending receipt of the written acknowledgement of license activation from the Commission.



Policies and Procedure Worksheet

Supervision of Provisional Brokers

1. Will the office policy allow for the affiliation of provisional brokers?

YES

NO

2. How many provisional brokers will the BIC supervise?

3. What initial orientation and training will be available for provisional brokers?

4. What consequences will be imposed if a provisional broker does not satisfactorily complete training?

Termination of Affiliation

Restriction of Activity

Warning Follow-Up

5. How will the BIC monitor completion of their Postlicensing courses?

6. Will the office policy require provisional brokers to complete Postlicensing sooner than 18 months?

7. What will be the office policy for reviewing and approving advertisements submitted by provisional brokers?

In Person with BIC

By a Mentor

Not Required

Prefilled Form

8. What is the office policy for using and/or advertising on social media?

9. What will be the office policy for reviewing agency agreements and contracts?

10. How will the BIC maintain contact and ensure provisional brokers are held accountable for their brokerage conduct?

Regular Staff Meetings

Regular One-on-One Meetings

11. Will provisional brokers be required to have mentors?

Policies and Procedure Worksheet

Compensation

1. Will the office policy allow affiliated brokers to communicate with closing attorneys regarding commission disbursements?

YES

NO

2. How often will brokers be paid their compensation from brokerage activity?

3. How will the broker be paid any outstanding compensation if they are no longer affiliated with the brokerage?

4. Will the office policy allow licensees within the brokerage to agree to split their compensation?

Yes

No

It Depends

Explain: _____

5. How will the BIC annually report income to the affiliated brokers?

6. Will the office policy address how to handle commission amongst cooperating brokers, customers, and clients? If so, how?

7. How will the BIC garnish wages if ordered by the court or a government agency?

8. Will the BIC withhold taxes?

Yes

No

Active and Current Licensure

A BIC should create office policies that outline the requirements under the Rule to maintain an active real estate license. An individual or entity must have a CURRENT real estate broker license on ACTIVE STATUS while conducting real estate brokerage pursuant to Rule 58A .0505.

In the office policies, a BIC may decide to require affiliated brokers to pay their license renewal fees and complete their required continuing education and/or postlicensing educational courses by an earlier specified date to ensure they maintain active license status. If a broker has an expired license or a license on inactive status, brokerage activity is prohibited.

NOTE: A BIC may choose to have more restrictive office policies as long as the policies are not in violation of License Law and Commission rules.

Competence of Brokers

In North Carolina, there is only one type of real estate license for individuals and that is the broker license. An individual who has successfully completed the NC's Broker Prelicensing Course and passed the NC Real Estate License Examination is stated to have minimal competency to engage in brokerage in North Carolina. Although brokers have minimal competency, they should still evaluate whether additional knowledge and/or skills are needed to ensure they provide their fiduciary duties of skill, care, and diligence to their clients.

The Commission discussed how brokers could determine their competency to practice various areas of brokerage in the 2019-2020 Update Course section entitled, [“Competence of Licensees.”](#) Although the section focused on, residential sales/ property management, vacation rental management, and commercial sales/ property management, the “*competence road map*” can be used for any area of brokerage.



The “*competence road map*” provided by the Commission is instrumental to assist brokers with evaluating their competency. Prior to engaging in any brokerage services, the broker should ask themselves the following questions:

1. Am I authorized to engage in this type of transaction? *In other words, do I have my BIC's/company's permission?*
2. Do I have the necessary education and training to competently engage in this type of transaction?

Written office policies would also assist brokers by providing clarity regarding how the BIC determines competency. Due to the BIC being responsible for the supervision of all affiliated brokers, a BIC may allow or prohibit brokerage activity based on specific criteria. For clarity, a BIC may prohibit the affiliated broker from engaging in certain types of transactions because:

- the company does not engage in that type of brokerage;
- the company has special policies for newly affiliated brokers;
- the affiliated broker may lack the skill, knowledge, and experience needed to practice that specialty brokerage; and/or
- the BIC may lack the skill, knowledge, and experience to supervise that type of brokerage activity.

It is also essential that BICs are honest with themselves regarding their competence and areas of expertise.

Therefore, BICs should perform a self-evaluation to ascertain their level of competence *prior* to allowing an affiliated broker to practice a specialty area of brokerage. A BIC can utilize the following questions to determine whether they possess the competence to supervise affiliated brokers in various brokerage practice areas:

1. Have I obtained specialized education?
2. Have I engaged in all types of brokerage transactions?
3. Will I allow mentors to assist my affiliated brokers?

If a BIC is going to allow various types of transactions to be practiced in their brokerage, the BIC must ensure that they have the knowledge to provide appropriate supervision to their affiliated brokers involved in the transaction. Moreover, a BIC should:

- take specialized classes/necessary education in all brokerage areas in which they allow affiliated brokers to practice;
- limit the types of brokerage activity the company allows if the BIC does not possess the education and skill; and
- delegate authority to experienced mentors to assist affiliated brokers with their transaction.



Although it is permissible for BICs to delegate authority to mentors, the Commission will still hold the BIC solely responsible because a BIC cannot delegate responsibility for their supervision of the affiliated brokers. So if a BIC fails to exercise their duty of supervision, they may be in violation of License Law and Commission rules.

NOTE: A reasonable BIC would not allow affiliated brokers to practice a specialty area of brokerage in which the BIC is not competent.

Policies and Procedure Worksheet

Competence

1. Will the office policy allow affiliated brokers to practice multiple specialties of brokerage?

YES

NO

2. How will the BIC determine whether or not the affiliated broker is competent to practice a specialty area of brokerage?
-

3. What ongoing training will the brokerage provide for specialty areas of brokerage, if any?
-

4. What consequences will be imposed if training is not satisfactorily completed?

Termination of Affiliation

Restriction of Activity

Warning Follow-Up

5. How will the BIC monitor the affiliated broker who practices in a specialty area of brokerage that is unfamiliar to the BIC?
-

6. Will the office policy require affiliated brokers to certify their completion of requisite training and/or experience *prior* to practice in a specialty area of brokerage? _____
-

7. What is the office policy for reviewing agency agreements and contracts when the BIC is unfamiliar with the specialty area of brokerage?
-

8. How will the BIC maintain contact and ensure affiliated brokers are held accountable for their conduct while practicing this specialty area of brokerage?

Regular Staff Meetings

Regular One-on-One Meetings

9. Will the affiliated broker be required to have a mentor?

Best Practices for Office Policies

A BIC should establish a checklist to assist them with ensuring that all affiliated brokers are in compliance with License Law and Commission rules while conducting brokerage activity.



Further, the written office policies must be applicable to all affiliated brokers and uniformly enforced. A BIC may consider including in their checklist:

- a reminder to check for active firm licenses for business entities;
- a reminder to check for active licensure for brokers;
- a policy regarding how compensation will be paid;
- a plan for reviewing all advertisements;
- policies for using social media for brokerage activity; and
- a policy regarding requirements brokers must meet to ensure continued competence while practicing brokerage.

NOTE: BICs may find checklists beneficial when creating their office policies. These questions are not all inclusive; however, they will provide BICs with some preliminary information regarding what should be included in their brokerage policies.

QUESTIONS FROM THE COMMISSION REGARDING COMPLIANCE



In an effort to determine whether the BIC was aware or reasonably should have known about the alleged brokerage misconduct. The Commission will ask BICs detailed questions regarding the brokerage's office policies and request specific documentation regarding the transaction.

The following information provides a general overview of the questions and/or documentation that may be requested by Commission staff during an investigation.

1. Does the brokerage have a written policies and procedures manual?
2. Does the brokerage enter into written employment/independent contractor agreements with affiliated brokers?
3. Does the brokerage have a written policy regarding the issue/conduct in question in the policies and procedures manual or in the broker's employment agreement? If so, provide a copy of it.
4. Did the BIC provide training on the policy to the affiliated broker involved in the transaction? If so, describe that training and provide records confirming broker's attendance/participation in the training.
5. Did the BIC enforce the firm's policy? If so, how?
6. Describe your role in the transaction that is the subject of the complaint.
7. Describe your supervision of the affiliated broker in the transaction that is the subject of the complaint.
8. Provide copies of all written communications (e.g. emails, text messages, etc.) that the BIC exchanged with the affiliated broker involved in the transaction regarding the issue in the complaint.
9. Provide copies of all additional documentation necessary to support your position.
10. Provide any additional information you believe will help us better understand this matter.



Often times during an investigation, the Commission is made aware that a brokerage may not have written office policies, although they are highly encouraged.



The Commission will take into consideration whether a brokerage has an office policy manual (preferably written).

BICs should keep in mind that having an office policy manual and providing regular need-based training about the correct way to handle/address various issues may shift more of the responsibility and liability

for inappropriate brokerage activity directly to the individual broker-respondent.

However, merely having written office policies may not be adequate if the policies are not enforced at all or consistently. The Commission expects BICs to be aware of what is going on in their offices and the brokerage activities of their affiliated brokers.

Therefore, there are some factors that the Commission evaluates when determining whether the BIC is providing appropriate supervision for their affiliated brokers. The factors are as follows:

- the type of transaction conducted (e.g. agency representation or broker personal transaction);
- the extent/nature of harm to the consumer;
- the timeline in which the BIC reviewed the transaction file for compliance;
- the geographic location of the BIC and the affiliated broker (i.e. including the method of supervision to account for the distance);
- the cooperativeness of the BIC during the investigation;
- whether an agreeable resolution was achieved;
- whether the BIC provided corrective/remedial action against the affiliated broker;
- the extent of cooperation of the BIC;
- whether the BIC acknowledged the wrongful conduct of the broker; and
- the attitude/remorse of the BIC.



The above factors are not all inclusive; therefore, the Commission will take into consideration all factual findings derived from a review of the evidence, interviews of the parties, and written documentation/correspondence to determine the liability of the BIC.

Therefore, it is imperative for BICs to supervise affiliated brokers, create office policies, enforce office policies objectively/consistently, timely intervene to resolve any issues during a transaction, and cooperate with any Commission investigation upon notice of a complaint.

Further, BICs are likely to face disciplinary action when:

- an issue exists for an extended period of time without their knowledge, and/or
- they attempt to conceal an issue rather than intervene and correct it.

Consider this, a BIC who attempts to intervene and resolve an issue and even voluntarily inform the Commission of the situation will be in a better position with the Commission than a BIC who refuses to accept responsibility for the actions of themselves and their affiliated brokers.

NOTE: In conclusion, during an investigation, the Commission may review the written office policies of the brokerage. If a BIC has written office policies, it may reduce the brokerage's liability and risk if a complaint is filed with the Commission. It would be wise for the BIC to have all affiliated brokers sign a dated statement acknowledging receipt of an agreement to abide by the company's policies.



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