



## Rulemaking Nears Completion for Rules To Be Effective July 1

The Commission adopted seven of the eight proposed rule changes at its March 16 meeting.

Proposed amendments to Rule 21 NCAC 58A .0116 relating to abandoned trust accounts were withdrawn from this rulemaking session for further consideration.

The seven adopted rule changes are subject to final approval at the Rules Review Commission (RRC) meeting on April 21. With the RRC's approval, which will be announced on the Commission's website, the seven adopted rule changes will be effective July 1.

The complete texts of the rules with changes are available on the Commission's website and are summarized below.

**21 NCAC 58A .0103** – To amend the rule in Paragraph (a) to require brokers to update phone numbers and email addresses within 10 days of change and in Paragraph (b) to clarify the use of assumed names by business entities or sole proprietorships.

**21 NCAC 58A .0108** – To amend  
(See **Rules**, page 3)

### In This Issue

[License Renewal](#) • Page 1

[No-Pet Policies](#) • Page 1

[Rule Changes](#) • Page 1

[Educators Conference](#) • Page 4

[Septic System Disclosure](#) • Page 6

[Due Diligence Period](#) Page • 7

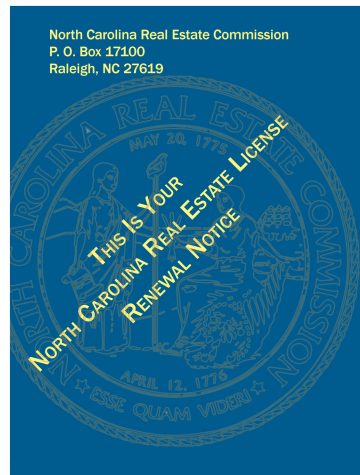
[Disciplinary Actions](#) Page • 12

## Renew Your Real Estate License Now; Online Renewal Required by Law

The annual period for renewal of your real estate license begins at midnight on May 15 and continues until June 30. The renewal fee is \$45.00. Per Commission Rule 58A.0503, you must renew online at [www.ncrec.gov](http://www.ncrec.gov). If you fail to renew on or before June 30, your license will EXPIRE.

To renew online, login to your record on the Commission's website, [www.ncrec.gov](http://www.ncrec.gov), on or after May 15. Your PIN (password) will be the last four digits of your Social Security number unless you have changed it. (A broker who does not have the ability to renew online may renew by calling the Commission's office between 8:30 a.m. and 5:00 p.m., Monday through Friday (919/875-3700)).

You may pay by Visa, MasterCard, Discover, or PayPal account (new this year). A printable confirmation of renewal will appear on your screen when the process is completed.



NC Real Estate Broker  
123 Any Street  
Any Town, NC 27282

cess is completed.

While logged in, be sure to verify and update all contact information. The Real Estate License Law allows you to designate your email address in one of two ways: (1) PRIVATE, meaning it will be  
(See **Renewals**, page 9)

## NO DOGS ALLOWED: The FHAA, the ADA, and exceptions to no-pet policies.

By Eric A. Mine, Associate Legal Counsel II

Imagine you are a broker for a real estate firm managing a building of privately owned condominiums. One sunny afternoon, a woman comes into your office. Walking beside her on a leash is a small brown cat. The woman strolls up to your desk and asks if you have any units for rent. You tell her that there are some units for rent, but, nodding toward the cat, you mention that no units permit pets. The woman laughs and tells you Jasper, apparently the cat's name, is not a pet. She says that she has a condition that Jasper helps her with

and asks that you make an exception to the no-pet policy. But as far as you can tell, the woman doesn't have any apparent disabilities.

Are you required to make an exception for Jasper? Can you ask the woman to take Jasper out of the rental office? And what questions can you ask the woman to determine if you must do so?

There is no shortage of confusion when it comes to answering these questions. And much of that confusion is due to differences in the two main laws  
(See **No-Pet Policies**, page 8)

## No-Pet Policies

(Continued from page 1)

that protect the rights of a person with a disability: the Fair Housing Amendments Act (FHAA) and the Americans with Disabilities Act (ADA). This article will provide guidance on how a broker should proceed when attempting to determine whether or not an exception to a no-pet policy must be made for a person with a disability.

### FHAA Applicable Law

When it comes to making an exemption to a no-pet policy for a rental unit, be it an apartment, condominium, or house, the FHAA will be the applicable law in almost every case. The FHAA makes it illegal to discriminate against a person with a disability by refusing to make reasonable accommodations in rules, policies, practices, or services when it may be necessary to afford an equal opportunity to use and enjoy a dwelling. Making an exception to a no-pets policy for an Assistance Animal as defined in the Act has been held to be a reasonable accommodation, and “dwelling” has been very broadly defined and includes most types of housing, with a few very limited exceptions.

So when Jasper’s owner makes her request, you must consider two threshold questions before deciding whether or not you are required under the FHAA to make an exception to the no-pets policy: 1) does the woman have a disability? and 2) does the woman have a need related to her disability for the animal? If the answer to either of those questions is no, then you are not required to make an exception to the no-pets policy. But if the answer to both of those questions is yes, then you and the landlord/owner are required to make an exception to the no-pets policy.

Much of the misunderstanding about the FHAA and the ADA arises from the fact that animals are considered differently under each. The FHAA requires reasonable accommodations for an “Assistance Animal.” An Assistance Animal is an animal that provides assistance, performs tasks, or provides emotional support that alleviates symp-

oms or effects of a person’s disability. To qualify as an Assistance Animal, there is no need for the animal to have any specialized training, which may come as a surprise to many brokers and landlords. It may also come as a surprise to some to learn that, under the FHAA, there is no restriction on the type of animal that



can be considered an Assistance Animal. A person could have an emotional support dog, cat, or in theory even a kangaroo.

### Ask Potential Renter

But what exactly can you ask the potential renter? If the person’s disability is readily apparent and it is clear what function the Assistance Animal is providing, you may not ask for any more details and you should accommodate the request as your no-pets policy doesn’t apply. For instance, if the person appears to be blind and the Assistance Animal is a seeing-eye dog, you must allow the dog, no questions asked.

If the person’s disability is not readily apparent and the need for the Assistance Animal is not clear, you may ask the person to submit reliable documentation showing that they have a disability and that they have a disability-related need for the assistance animal. So, back to Jasper and her owner, since the woman has no apparent disability and it is not clear what assistance Jasper is providing, it would be acceptable to ask her to provide a letter from a medical professional stating that she has a disability and Jasper alleviates one or more of the effects of the disability. But you may not ask for details about the

person’s disability, including what the disability is, nor require the person to provide detailed medical records. A note from a medical professional is all you should ask for. Likewise, if the disability is apparent, but the need for the Assistance Animal is not, you may ask for documentation showing the need for the Assistance Animal. But, again, you may not ask for details regarding the disability. You also may not ask how or if the Assistance Animal has been specially trained because no special training is needed for an animal to qualify as an Assistance Animal.

Therefore, if the woman provides you the requested letter, you will be required to make an exception to the no-pet policy, unless doing so somehow poses an undue financial or administrative burden (not likely), the animal poses a direct threat to the safety and health of others (possibly if it’s a kangaroo), or the animal would cause substantial physical damage to the property. And, because under the FHAA Assistance Animals are not considered pets, you may not charge the woman a pet fee or deposit. But keep in mind that you may still charge the woman at the end of the tenancy for any actual damage caused by Jasper.

### ADA Protection

So how does the ADA factor in? The ADA protects a person with a disability from discrimination in places of public accommodation. The office of a property management firm is a place of public accommodation, as are hotels, restaurants, stadiums, professional offices, gas stations, etc. An individual rental unit is not. Therefore, the ADA standards will apply to your decision whether or not to allow Jasper to be present in your rental office, but not when considering the woman’s request for reasonable accommodation for a rental unit.

When the woman brings Jasper into your office, you may only consider two questions: 1) is Jasper a Service Animal that is required because of a disability? and 2) what work tasks has Jasper been trained to do? If the answer to either of those questions is no, then Jasper may be excluded. But if the answer to both

of those questions is yes, then you are required to allow Jasper in the office.

Determining whether or not Jasper is a Service Animal is a little easier under the ADA. Unlike the expansive definition of an Assistance Animal in the FHAA, a “Service Animal” under the ADA may only be a dog and, in limited circumstances, a miniature horse, that is individually trained to perform specific tasks for the benefit of a person with a disability; the most common example being a seeing-eye dog. Many brokers are more familiar with the ADA’s more restrictive requirements and mistakenly believe that the FHAA has the same standard. That is not the case. Jasper, being a cat, will not qualify as a Service Animal under the ADA and you would be within your rights to ask the woman to take Jasper back outside.

But let’s assume for a minute that Jasper is a dog. If it is readily apparent that a dog is trained to do work or perform tasks for a person with an obvious disability, you may not ask about the person’s disability or the dog’s training. As in the FHAA example, if the person appears to be blind and the Service Animal is a seeing-eye dog, you must allow the dog to enter the office, no questions asked.

However, if it is not readily apparent that the dog is a Service Animal, the questions you may ask the person are much more limited than those allowed under the FHAA. You may ask if a dog is required because of the disability. A simple “yes” answer is sufficient; you may not ask for detailed informa-

tion, not even the nature of the disability. You may also ask what the dog has been trained to do. The person should provide you with a description of what service the dog provides; however, you may not require the person to prove to you that the dog is registered, certified, trained, or licensed to be a Service Animal. If the person tells you that they need the dog because of a disability, and explains what the dog is trained to do, the dog may not be denied access to the facility unless it is out of control, not housebroken, or poses a direct threat to the health and safety of others.

The FHAA and the ADA are both laws protecting the rights of persons with disabilities. But knowing when and where each law applies can be tricky. Keep in mind the FHAA – the Fair Housing Amendments Act – applies to housing units and the ADA applies to anywhere the public can go. To protect yourself and the owners of any properties that you manage, always limit yourself to asking the questions permitted by each law. The FHAA allows you to ask: 1) Does the person have a disability? and 2) Does the animal provide assistance or support related to the disability? The ADA allows you to ask: 1) Is the animal a Service Animal required because of a disability? and 2) What work or tasks has the animal been trained to perform? And, under either law, if the person is able to answer both of those questions you are required to make an exception and allow an animal, even if you have an established no-pets policy.

## Renewals

*(Continued from page 1)*

used exclusively for communication from the Commission to you; or (2) PUBLIC, meaning it will be provided upon request to the public, including CE course sponsors and others. You may provide both a private and/or public email address upon logging into your record.

All broker license records are updated on July 1 to reflect license status as of that date. The Commission’s website will be unavailable on July 1 and 2, due to the annual records maintenance process.

If your renewal fee has not been received by the Commission by June 30, your license will EXPIRE. To reinstate an expired license, you must pay a \$55 fee between July 1 and December 31. Failure to reinstate the former license by December 31 will result in your having to file a new application and fee, and obtain a criminal background report. You will also be required to take additional education and/or pass the state license examination. Refer to the “Reinstate your License” page on the Commission’s website ([www.ncrec.gov](http://www.ncrec.gov)) for detailed information regarding the reinstatement process.

Be sure to renew your license even if you do not complete your continuing education by June 10. By doing so, your license will only be changed to Inactive status on July 1, rather than Expired.

Brokers-in-charge and BIC-eligible brokers must take the *BICUP* course and one elective by June 10. Failure to take the correct CE or timely renew the license will result in loss of BIC status and/or eligibility. A broker-in-charge who loses BIC status/eligibility must (1) return the license to active status; (2) meet the experience requirements for designation; (3) take the 12-hour *Broker-in-Charge Course* before re-designation; and (4) send the Commission the BIC Declaration Form. Do NOT take the 12-hour BIC Course before your license is on active status!

Brokers-in-charge are also responsible for ensuring that licensees under their supervision have renewed their licenses and completed all necessary education to maintain active and current licenses.

## RENEW YOUR REAL ESTATE LICENSE ONLINE NOW!

License renewal period begins May 15 and ends June 30.