

**North Carolina  
Postlicensing Course Syllabus**

**POST 301  
*BROKER RELATIONSHIPS and  
RESPONSIBILITIES***

**(Student Version)**

**September 2023 Edition**



**North Carolina Real Estate Commission**

P.O. Box 17100

Raleigh, NC 27619

(919) 875-3700

Email: [educ@ncrec.gov](mailto:educ@ncrec.gov)

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## INTRODUCTION

**Course Description:** The *Post 301 – Broker Relationships & Responsibilities* course is one of the three 30-instructional hour courses in the North Carolina mandatory Postlicensing (PL) education program. The primary objective of the courses is to provide instruction at a level beyond that provided in prelicensing courses on topics deemed to be of special importance in the active practice of real estate brokerage. Topics addressed in this course include:

- a review of agency relationships in real estate residential and commercial sales and commercial property management transactions,
- a real estate broker's legal duties to clients and customers,
- a step-by-step review and discussion of the functions and responsibilities of a real estate broker when working with property owners and buyers/tenants,
- a review of issues associated with transactions in progress when a broker leaves a brokerage company, and
- a review of selected license status and education issues.

**Step Up Notices:** At the direction of the Commission, enforcement notices are inserted to alert students to areas of brokerage practice that represent a significant number of law and rule violations that appear in consumer complaints and subsequent disciplinary actions against licensees. It is hoped that the *Step Up* notices will encourage understanding of the issues and better adherence to laws and rules surrounding these volatile topics.

**Requirements for Offering the Course:** This course may only be offered by Commission-certified Education Providers (EPs) that have received course approval for each specific course delivery method. EPs may only use instructors approved by the North Carolina Real Estate Commission to teach Prelicensing and Postlicensing courses. Rules governing the conduct of the course, including scheduling, course delivery, course completion standards, course completion reporting and other related matters may be obtained on the Commission website ([www.ncrec.gov](http://www.ncrec.gov)). The *Post 301 – Broker Relationships & Responsibilities* course must be taught as prescribed by this syllabus.

**Course Hours & Delivery Method:** Each Postlicensing course must consist of a minimum of 30 instructional hours. The course may be offered via in-person, synchronous distance, self-paced distance, or blended delivery. Separate course pre-approval is required for each delivery type.

**Prerequisite:** Per [Commission Rule 58A .1902\(b\)](#), *a provisional broker as described in NCGS 93A-4(a1) shall complete all Postlicensing courses pursuant to Paragraph (a) of this Rule within 18 months following the date of initial licensure.*

An EP should require an individual enrolling in a Postlicensing course for Postlicensing educational credit to verify their identity and to provide their NC real estate license number to assure compliance with the above Rule. Any Postlicensing coursework performed by an unlicensed person cannot be used for Postlicensing educational credit. License candidates who have passed the license exam but have not yet received their NC broker license should not be allowed to register for the course.

**Course Materials:** Per [Commission Rule 58H .0205\(c\)](#), the EP shall verify that each enrolled student possesses course materials by the first class session. Mandatory materials for this course include the current editions of:

- *North Carolina Real Estate Manual (hereinafter called Manual),*
- *North Carolina Real Estate License Law and Commission Rules (hereinafter called LLCR), and*

- the Commission's *Residential Square Footage Guidelines* booklet.

These publications in print or digital format can be ordered through the [Commission's website](#) or the EP.

Text references throughout the syllabus are for the July 2023 edition of the *LLCR* and the 2023 edition of the *Manual*. For your benefit, in the digital version of the *Manual*, all *Manual* chapters referenced in this course syllabus are consolidated within *Chapter 24. POST 301, Broker Relationships and Responsibilities*. Italicized [*Digital REM search words*] in braces after a subheading will help you narrow your digital search for a *Manual* reference.

**Course Scheduling:** Refer to [Commission Rule 58H .0404](#) for course scheduling parameters.

### **Commission Rule 21 NCAC 58H .0304: Instructor Conduct and Performance**

(a) All instructors shall ensure that class sessions are conducted at the scheduled time and for the full amount of time that is scheduled or required. Instructors shall conduct courses in accordance with the Commission's rules, and any applicable course syllabi, instructor guide, or course plan. Instructors shall conduct classes demonstrating the ability to:

- (1) state student learning objectives at the beginning of the course and present accurate and relevant information;
- (2) communicate correct grammar and vocabulary;
- (3) utilize a variety of instructional techniques that require students to analyze and apply course content, including teacher-centered approaches, such as lecture and demonstration, and student-centered approaches, such as lecture discussion, reading, group problem solving, case studies, and scenarios;
- (4) utilize instructional aids, such as:
  - (A) whiteboards;
  - (B) sample forms and contracts;
  - (C) pictures;
  - (D) charts; and
  - (E) videos;
- (5) utilize assessment tools, such as:
  - (A) in-class or homework assignments, and
  - (B) quizzes and midterm examinations for Prelicensing and Postlicensing courses;
- (6) avoid criticism of any other person, agency, or organization;
- (7) identify key concepts and correct student misconceptions; and
- (8) maintain control of the class.

(b) Instructors shall not obtain, use, or attempt to obtain or use, in any manner or form, North Carolina real estate license examination questions.

**End-of-Course Examinations and Completion Standards:** For successful completion of the course, students must:

1. satisfactorily complete any required activities and homework exercises;
2. meet attendance requirements; and
3. pass the end-of-course examination.

Instructional time should only be used for the introduction, and review upon completion, of the homework assignment(s).

EPs are required to utilize end-of-course examinations in accordance with [Commission Rule 58H .0207](#). End-of-course exams must be closed-book and proctored. The minimum passing grade is 75%. The Commission requires that certified EPs and approved instructors use end-of-course

examinations that are comprehensive in scope. EPs and instructors shall safeguard the integrity and confidentiality of examinations at all times.

**Syllabus Copies:**

- The student syllabus is posted on the Commission’s website, under Education.
- EPs and instructors may reproduce all or part of the syllabus for student use at their own expense, and may charge students for the cost of reproduction.

**Order of Subject Area Presentation:** The order in which subject areas are presented in the Syllabus is the recommended order, but adjustments may be made in the order of presentation as long as it is logical.

**Instructional Levels:** The Commission utilizes *Instructional Levels* to prescribe the scope and depth of coverage of topics and subtopics throughout the course. There are three levels, with Level 1 being the lowest and Level 3 being the highest level of instruction. Instructional Levels are based on Bloom’s Taxonomy.

Below are the definitions of the three Instructional Levels, including the prescribed competency and instruction for each. Competency means what students will be able to do by the end of topic/subtopic coverage. Instruction means the prescribed depth of coverage and instructional methods.

**Level 1 – Recall**

*NOTE: Level 1 is based on Bloom’s Taxonomy Level 1-Understand and Level 2-Remember.*

**Competency:** Students should be able *to recall facts and basic concepts and to explain ideas or concepts*. Learning objectives may include terms such as define, duplicate, classify, explain, and describe.

**Instruction:** Instructor should review and discuss basic definitions, facts, concepts, procedures, etc. In-depth instruction is not required.

**Level 2 – Application**

*NOTE: Level 2 is based on Bloom’s Taxonomy Level 3-Apply and Level 4-Analyze.*

**Competency:** Students should be able *to use information in new situations and to draw connections among ideas*. Learning objectives may include terms such as implement, solve, demonstrate, interpret, differentiate, relate, compare, and contrast.

**Instruction:** Instructor should review and discuss the topic in moderate depth sufficient to illustrate and enhance understanding of facts, principles, procedures, etc. and their relevance to brokerage practice.

### Level 3 – Analysis

*NOTE: Level 3 is based on Bloom's Taxonomy Level 5-Evaluate and Level 6-Create.*

**Competency:** Students should be able *to justify a stand or decision* and *to produce new or original work* based on the information. Learning objectives may include terms such as defend, judge, critique, weigh, design, assemble, develop, or formulate.

**Instruction:** Instructor should review and discuss the topic in substantial depth, using examples to reinforce understanding of ideas, principles and practices, and requiring students to complete practical work assignments to demonstrate both their understanding of the topic and their ability to apply their knowledge to common fact situations that will be encountered in real estate practice.

Each *major topic* (i.e., preceded by a capital letter) in this syllabus has been assigned an Instructional Level. In some instances where a subtopic should be afforded significantly greater or lesser emphasis than the major topic under which it is listed, that subtopic has been assigned a different Instructional Level that applies to that subtopic only.

**Education Providers and instructors are REQUIRED to comply with the assigned Instructional Levels when teaching this course. The majority of Postlicensing topics should be taught at a Level 3; therefore, assume the Instructional Level is 3 if no level is noted in the syllabus.**

**POST 301**  
***BROKER RELATIONSHIPS and RESPONSIBILITIES***  
**POSTLICENSING COURSE**

**Instructional Hours per Section**

<b>Section #</b>	<b>Section Title</b>	<b>Hours</b>
1	Agency Relationships & Duties: A Practical Review .....	5
2	Working With Residential & Commercial Sellers .....	16.25
3	Working With Residential & Commercial Buyers.....	5
4	Working as a Dual Agent .....	1
5	Working in Residential & Commercial Property Management ...	1
6	Other Topics .....	.75
	<b>Subtotal</b>	<b>29</b>
	End-of-Course Examination	1
	<b>Total</b>	<b>30</b>

**Post 301**  
***Broker Relationships and Responsibilities***  
**Postlicensing Course Syllabus**

**Section 1: Agency Relationships & Duties: A Practical Review (5 hours)**

(*Manual*, Chapter 8, Relationships in Brokerage Practice, pp.141-203; Chapter 17, Property Management, pp. 605-606; Chapter 19, Commercial Real Estate Brokerage, pp. 669-670)


- I. Duties of Real Estate Agents (*Manual*, Chapter 8, Relationships in Brokerage Practice, pp. 138-175) [Digital REM search for: *common law of agency*]
  - A. Duties to Principal under the Common Law of Agency [search for *common law of agency*]
    1. Definition of *Fiduciary*: A relationship of trust and confidence wherein one person is usually entrusted to hold or manage property or money for another. A fiduciary (e.g., agent) is bound to act primarily for the benefit of the principal (e.g., client) before any self-interest.
    2. Basic Agency Duties [[NCGS 93A-6](#)] [Digital REM search for: *agency law*]
      - a. **O**bedience to all client's lawful instructions pertaining to the transaction
      - b. **L**oyalty to client's best interests over and above interests of others including those of agent [[NCGS 93A-6\(a\)\(4\)](#)]
        - i. Avoidance of *self-dealing* by agent
        - ii. Written client consent to represent adverse interests (e.g., dual agency) [[Rule 58A .0104\(d\),\(i\),\(o\),\(p\)](#)]
      - c. **D**isclosure of Information to include agent's affirmative duty to discover and disclose **all** transactional information including, but not limited to, *material facts* [[NCGS 93A-6\(a\)\(1\)](#)]

**Note:** Personal information known to an agent about a third party that might influence the agent's principal in the transaction must be disclosed to the principal.
      - d. **C**onfidentiality of client's personal information that would hurt the client's bargaining position, unless disclosure is required by law or rule [[Rule 58A .0104\(k\) & \(n\)](#)]
      - e. **A**ccounting for safeguarding goods & funds handled plus retention of transactional records [[NCGS 93A-6\(a\)\(7\), \(13\) & \(14\)](#); [Rules 58A .0106, .0108, .0116, .0117, .0118](#)]

- f. Reasonable Skill, Care and Diligence in delivery of brokerage services to the standard of other competent brokers [[NCGS 93A-6\(a\)\(8\)](#)]
    - i. Examples of services expected from an agent
      - Reliable info relevant to transaction
      - Competent advice on property's probable selling price
      - Discover pertinent facts related to property
      - Effectively advertise listed property
      - Advise about offers
      - Assist with contract preparation
    - ii. Property value has no effect on agency duties
3. Agent's Duty to Principal after Termination of Agency Relationship [Digital REM search for: *termination of agency*]
- a. Duty generally ends when agency ends, with the following exceptions
    - i. Express promise or implied obligation
    - ii. Pending transaction at termination date of agency agreement
    - iii. Self-dealing [[NCGS 93A-6\(a\)\(4\)](#)]
  - b. Duty of confidentiality may be expected to continue as long as the agent has no duty to disclose to a new client

B. Duties to Third Persons under the Common Law of Agency [Digital REM search for: *duties to third persons*]

- 1. Honesty
- 2. Fairness



*Approximately half of Commission disciplinary actions involve failure to discover & disclose material facts. Some of the most common issues include the failure of brokers to discover and adequately disclose past structural issues, sewer/septic problems, and the lack of required permits. For in-depth discussion & examples: "Material Facts" sections of [2022-2023 Update](#) and [2019-2020 Update](#) materials.*

C. Duties to Principals and Third Parties under the Real Estate License Law and Commission Rules [[NCGS 93A-6\(a\)](#)] (*Manual*, Chapter 8, Agent's Duties Under Real Estate License Law, pp. 160-173; Chapter 17, Preparing a Management Plan, pp. 608-609) [Digital REM search for: *material facts*]

**Required Activity:** Have students compare & contrast duties owed to clients vs. third parties. To improve broker compliance with these duties in actual practice, it is critical that licensees understand the difference in the standard for determining what information must be disclosed to a principal/client versus what must be disclosed to a third party/customer (such as a lender).



1. Duty to avoid any willful or negligent misrepresentation or omission of material facts [[NCGS 93A-6\(a\)\(1\) & \(3\)](#)]
  - a. Misrepresentation: words are used to communicate false or incorrect information
  - b. Omission: no words are used; failure to disclose information
  - c. Definition: any fact that is important or relevant to the issue at hand, including anything that may affect a party's decision to move forward in a transaction
  - d. Categories of Material Facts
    - i. Facts about the property itself
    - ii. Facts relating directly to the property
    - iii. Facts relating directly to the ability of the parties to complete the transaction regardless of agency relationships
    - iv. Facts known to be of specific importance to a party
  - e. Affirmative duty to discover & volunteer material facts to all parties to the transaction, regardless of whom the broker represents (including lender, if used)
  - f. Material fact does not have to have negative impact
  - g. Items declared "material" in North Carolina
    - i. EIFS/synthetic stucco, even if fully replaced
    - ii. Polybutylene pipes that have leaked, even if repaired or fully replaced
    - iii. Current or former "Meth" house

**Required Activity:** Introduce Case Study #13 in *Manual, Chapter 20, pp. 750-751; Selected License Law Cases* and have students analyze the stated case facts and predict the disciplinary case outcome.

2. Stigmatized/Psychologically Impacted Properties are **not** material facts in NC (*Manual, Chapter 8, State Law and Disclosure of Certain "Material" Facts, p. 151*)
  - a. Previous occupant died or had a serious illness while occupying the property (including AIDS/HIV) [[NCGS 39-50](#)]
  - b. Convicted sex offender resides near a property [[NCGS 42-14.2](#)]
  - c. Reputation as a haunted property

3. Miscellaneous Disclosure Concepts
  - a. *Puffing*: opinion that does not constitute misrepresentation [Digital REM search for: *puffing*]
  - b. Representation made without regard for the truth
  - c. Reasonable expectation that a prudent broker would discover
  - d. Disclaimers are seldom a defense
  - e. Standards for listing agents vs. selling agents

D. Other Issues Affecting a Real Estate Broker's Duties [Level 2]

1. Unfair and Deceptive Practices Act [[NCGS 75-1.1](#)] (*Manual*, Chapter 8, Unfair and Deceptive Practices Act, pp. 173-175; Chapter 10, Unfair & Deceptive Practices in Commerce, pp. 305-306; Chapter 16, Violation of Unfair & Deceptive Practices Act, p. 559) [Digital REM search for: *unfair and deceptive*]
  - a. Consumer legislation that applies to real estate brokers (& some property owners)
  - b. Applies to actions including postings on internet and social media
  - c. Creates separate legal cause of action with the possibility of treble damages
  - d. Could invalidate sales contract for transfer of real property
2. Equity Issues

<b>Required Activity:</b> Use <a href="#">Racial Equity section</a> of the 2021-2022 General Update course materials as basis for this topic.
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- a. Definitions
  - i. *Disparate Impact*: occurs when a doctrine, policy or practice that seems neutral on its face, disproportionately harms people of a certain protected class as identified in the Fair Housing Act
  - ii. *Implicit Bias*: a bias or prejudice that is present but not consciously held or recognized
  - iii. *Racial Equity*: There are various definitions of racial equity, such as:
    - [Aspen Institute](#) defines racial equity as a society in which people are no more or less likely to experience society's benefits or burdens because of the color of their skin.

- The [Center for Assessment and Policy Development](#) defines racial equity as the condition that would be achieved if one's racial identity no longer predicted, in a statistical sense, how one fares.
- The [City of Durham](#) defines racial equity as the condition when racial identity cannot be used to predict individual or group outcomes (e.g., wealth, income, employment, criminal justice, housing, health care, education) and outcomes for all groups are improved.
- According to [Merriam-Webster](#), equity is a freedom from bias or favoritism.

b. NCREC Commitment to Racial Equity

**Required Activity:** Provide NCREC's public statement on [Diversity, Equity, and Inclusion](#) on website and in [2021-2022 Update](#) materials

- i. Rule changes to address discriminatory practice
- ii. Complaint process

c. Relevant Commission Rules

- i. [Rule 58A .1601](#): regarding State Fair Housing Act violations
- ii. [Rule 58A .0104\(b\)](#): mandatory insertion of non-discriminatory language in agency agreements
- iii. [Rule 58A .0120\(d\)](#): prohibits discriminatory brokerage activities or promotion of broker
- iv. Interaction of rules
  - Address language vs conduct
  - Inclusive advertising

**Note:** HUD has provided guidance on advertising in "[Part 109-Fair Housing Advertising](#)" to help individuals ensure compliance with the Fair Housing Act.

d. Implicit Bias

- i. Causation
- ii. Importance to Brokers
- iii. Reducing Implicit Bias

**Note:** To evaluate your implicit biases and their impacts on your attitudes and behaviors, consider taking an "Implicit Association Test." Google to find a test

- e. Housing Choice Voucher Program
    - i. Purpose of program
    - ii. Voluntary participation for voucher recipients and landlords
    - iii. Quick review of NC statistics regarding program participation
  - f. Disparate Impact
    - i. Examples
      - Source of Income Discrimination
      - People with Disabilities
      - Families with Children
      - Race and National Origin
    - ii. How brokers can raise awareness
  - g. Resources
3. Doctrine of *Caveat Emptor* (*Manual*, Chapter 8, Doctrine of *Caveat Emptor*, pp. 174-175; Chapter 10, Fraud & Misrepresentation, pp. 304-305) [Digital REM search for: *doctrine of caveat emptor*]
    - a. Burden of discovery is on the buyer to investigate the property
    - b. NC seller is not required to disclose property condition information (other than known presence of lead-based paint), but may not commit fraud; this is the reason for the “No Representation” option on RPOADS
    - c. Difficult to bring action against the seller, but the seller could be held liable if
      - i. Engages in fraud
      - ii. Induces the buyer to forego an inspection
      - iii. Does not provide RPOADS & MOG (if required) prior to presentation of 1<sup>st</sup> offer
  4. Sale of Property “As Is” (*Manual*, Chapter 8, Sale of Property “As Is”, pg. 175)

**Note:** Broker’s disclosure responsibilities under Real Estate License Law are not affected by doctrine of *caveat emptor* or “as is” status; brokers must still volunteer material facts to all clients and customers.

Under the Buyer’s Due Diligence Process provision in the NC REALTORS® Standard Form 2-T sales contract, Buyer acknowledges that “the property is being sold in its current condition” (as is) unless the contract terms state otherwise.

## II. Agency Relationships in Residential & Commercial Sales Transactions (*Manual*, Chapter 8, Agency Relationships in Real Estate Sales, pp. 141-147)

**Required Activity:** Have students compare & contrast each agency option and the advantages and disadvantages of each for both the principal and the agent.

A. Agency Options for a Real Estate Company [Digital REM search for: *agency options*]

1. Single Agency -- Seller Agency Only
  - a. The company only represents property owners
  - b. All affiliated brokers represent all seller-clients of the company as seller subagents
  - c. All potential buyers are shown any of the company's listed properties by any affiliated brokers as unrepresented third parties (customers)
  - d. Beware of undisclosed dual agency through careless actions of brokers
2. Single Agency -- Buyer Agency Only
  - a. The company has no listings since it does not represent sellers
  - b. All affiliated brokers represent all buyer-clients of the company as buyer subagents
  - c. Affiliated brokers will only show properties listed with cooperating companies or unrepresented sellers (FSBOs)
  - d. Conflict of interest prohibits buyer representation by broker with ownership interest in the property the buyer wants [[Rule 58A .0104\(o\)](#)]
    - i. Applies to all residential sales regardless of percentage of broker's ownership
    - ii. Representation allowed for commercial property purchase if:
      - Broker has less than 25% ownership of property, **and**
      - Buyer consents to representation after full written disclosure of broker's ownership interest
3. Both Seller Agency and Buyer Agency with Dual Agency for "In-House" Sales [[NCGS 93A-6\(a\)\(4\) & \(6\)](#); [Rule 58A .0104\(d\) and \(i\) - \(n\)](#)] [Digital REM search for: *dual agency*]
  - a. The company represents both sellers and buyers
    - i. Exclusive representation for a co-brokered transaction
    - ii. Dual or designated dual agency for in-house transactions
  - b. Unintentional, undisclosed dual agency versus intentional, disclosed dual agency

B. Agency Relationships When **Two** Companies Cooperate in a Cross Sale or Co-brokered Transaction [Digital REM search for: *co-brokered*]

1. Exclusive Agency

- a. Both companies exclusively represent their client's side of the transaction
- b. Listing company may split commission with buyer agent company
  - i. Addressed in listing agreement
  - ii. Should be indicated in multiple listing service (MLS) entry
  - iii. Buyer agent should resolve all compensation issues prior to presentation of the buyer's offer, preferably before showing property

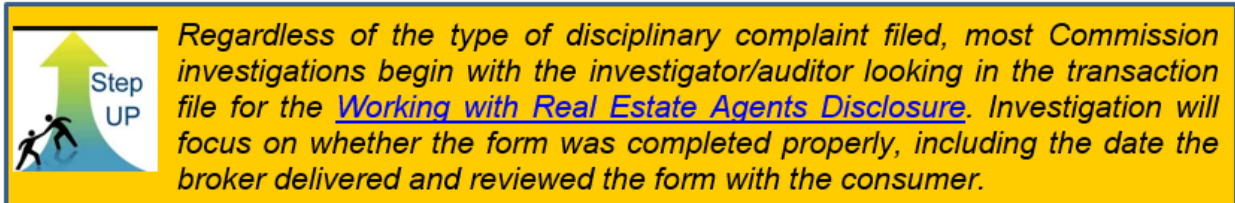
**Required Activity:** Tie this discussion to a search for the relevant provisions in the Agency Agreements and the Sales Contract.

2. Seller Subagency [Digital REM search for: *seller subagency*]

- a. Company working with the buyer is not hired to represent the buyer but the buyer still wants the company to provide services, such as showing property and facilitating negotiations with seller
- b. Listing company may split commission with other company acting as seller subagent
  - i. Addressed in listing agreement
  - ii. Should be indicated in MLS entry
  - iii. Broker working with the buyer as a seller subagent should resolve all compensation issues prior to showing the property to the buyer
- c. Listing company can refuse to offer subagency to the other company
  - i. Seller subagency may be requested if the potential buyer refuses representation from other company
  - ii. Potential *vicarious liability* of listing company, and possibly the seller, for actions of agents from other company
  - iii. Seller-client's permission must be obtained to restrict cooperation
    - Addressed in listing agreement
    - Should be indicated on MLS entry

**Required Activity:** Tie this discussion to a search for the relevant provisions in the Listing Agreement.

- d. Switching from seller subagent to buyer agent
  - i. Strongly discouraged
  - ii. Should not be done if broker possesses confidential info about the seller, unless seller expressly approves the switch



- III. Disclosure of Agency Relationships in Residential & Commercial Sales [[Rule 58A .0104](#)] (*Manual*, Chapter 8, Agency Disclosure-The Commission Rule, pp. 188-195)
  - A. Primary purposes of agency disclosure are to ensure that the consumer understands as soon as possible that there is no confidentiality between the broker and the consumer until an agency relationship is established and to introduce the consumer to available agency options
  - B. **All** brokers must give and review *Working with Real Estate Agents Disclosure* with **all** sellers and buyers at *first substantial contact* [[Rule 58A .0104\(c\)](#)]
  - C. Rule applies to **all** residential and commercial sales transactions; not required for property management/lease transactions
  - D. *Working with Real Estate Agents* Publication [[Rule 58A .0104\(c\)](#)]
    - 1. [Working with Real Estate Agents Disclosure \(WWREA\)](#)
      - a. 1-page, 2-sided disclosure form, one side for sellers and one side for buyers
        - i. Broker checks all agency relationship types offered by their company that may apply to potential client
        - ii. Must include broker's name and license number
        - iii. Form is not a contract, so consumer signature does not create an agency relationship with the broker
        - iv. Consumer must not be forced to sign; broker can note on the form if consumer signature is withheld
        - v. Consumer is referred to companion Q&A brochure for more detail
        - vi. Broker must give a completed copy to consumer and retain a copy for 3 years (even if agency is not reached) [[Rule 58A .0108](#)]
        - vii. Inclusion in broker's email signature or sending by an electronic signature program alone does not comply with disclosure requirements

- b. Required Disclosure Steps
  - i. Provide the *WWREA* publication to the potential buyer or seller at first substantial contact
  - ii. Discuss the agency relationship options in the publication with consumer
  - iii. Determine whether the broker will act as agent of the buyer or the seller in the transaction

2. [Questions & Answers on Working with Real Estate Agents](#)

- a. Companion brochure for *WWREA Disclosure* to provide more written detail about agency options
- b. Brokers are encouraged to provide a copy with the *WWREA Disclosure*

E. "First Substantial Contact" [\[Rule 58A .0104\(c\)\]](#) [Digital REM search for: *first substantial*]

**Required Activity:** Have students identify when *first substantial contact* occurs in various situations, including, but not limited to, contact in-person, by phone, by electronic means such as email or social media, and at open houses.

- 1. Definition: Point in time when EITHER
  - a. A broker begins to speak or act as if an agency relationship exists  
**OR**
  - b. A consumer begins to
    - i. Act as if an agency relationship exists; **or**
    - ii. Disclose their particular needs, desires, or wants about property to be sold or purchased; **or**
    - iii. Disclose any confidential information that could be used against them in contract negotiation, such as motivation, financial or family circumstances, or acceptable price or terms
- 2. Disclosure must always occur before consumer, either voluntarily or in response to questions from the broker, discloses any confidential information
 

**Note:** A broker should immediately stop a consumer from volunteering confidential information if agency disclosure has not yet occurred
- 3. Required timeframe for disclosure when first substantial contact occurs
  - a. In-person: provide & review *WWREA* immediately at first substantial contact



- b. Phone or electronic means (email, social media, etc.): at earliest opportunity after first substantial contact (no later than 3 days after)
  - i. Transmit copy of *WWREA* to consumer
  - ii. Review agency options at earliest practicable opportunity after receipt by consumer
  - iii. Determine whether broker will act as an agent of the buyer or the seller in the transaction

## F. Disclosure in Various Situations

**Required Activity:** Extensive class discussion should be utilized to assure a full understanding of when disclosure is required in these various situations.

1. Working with a Prospective Seller
  - a. First substantial contact usually occurs when prospective seller calls to schedule a listing appointment or at the listing appointment
  - b. Broker should not delay agency disclosure; probability of seller sharing confidential information is high
  - c. None of the information shared by seller is confidential until the seller hires the broker's company in writing
2. Working with a Prospective Buyer
  - a. Broker may work with a buyer as a buyer agent, a seller subagent, or a dual agent
  - b. Agency disclosure and determination of how buyer will work with broker must occur **before** broker
    - i. Asks for any information about the buyer's wants, needs, or personal info
    - ii. Shows property to the buyer because the broker **must** have either
      - An express oral or written buyer agency agreement with the prospective buyer, **OR**
      - Written disclosure to the buyer that the broker is working as a seller agent or subagent
  - c. All brokers working with a buyer as a seller subagent must disclose agency status, including broker's license number, in writing to the buyer at *first substantial contact* [[Rule 58A .0104\(e\)](#)]
3. Disclosure by Buyer Agent to Seller or Seller Agent [[Rule 58A .0104\(f\)](#)]
  - a. All buyer agents (including oral buyer agents) must disclose agency status, at least orally, to seller or seller agent upon *initial contact*

- b. Written disclosure of buyer agency status must be made no later than presentation of offer to seller or seller agent; the Standard 2-T Offer to Purchase and Contract provides a place for agency disclosure and license numbers in the signature area
- 4. Disclosure of and Consent to Dual Agency [[Rule 58A .0104\(i-n\)](#)] [Digital REM search for: *consent to dual agency*]
  - a. Must be discussed if offered by broker's company
  - b. All authorization for dual agency must be in writing from both represented parties
    - i. Generally prior to acting as a dual agent
    - ii. When broker is working with a buyer under nonexclusive oral buyer agency with authority for dual agency, dual agency authorization (for both parties) must be in writing as soon as the buyer agency agreement is reduced to writing, but no later than prior to presentation of first offer
    - iii. If seller did not authorize dual agency in the listing agreement, written authorization or revision of the listing agreement is needed prior to showing the property to a buyer under oral dual agency.

## **Section 2: Working With Residential & Commercial Sellers (16.25 hours)**

(*Manual*, Chapter 9, Working with Sellers, pp. 228-247 and Chapter 19, Client and Customer Perspectives, pp. 686-689)

- I. Solicitation of Listings [Digital REM search for: *solicitation of listing*]
  - A. Soliciting Listings of Other Firms/Brokers
    - 1. May constitute *tortious interference with contractual relations* which may be a basis for a civil lawsuit against soliciting broker and company
    - 2. Violates the Code of Ethics ([Article 16](#)) of the National Association of REALTORS®
    - 3. If a seller whose property is currently listed with another company initiates a conversation with a broker about the possibility the broker becoming their new listing agent, the broker
      - a. May discuss the terms of the possible listing agreement that would begin after the current listing expires
      - b. Should not suggest that the seller terminate the current listing agreement early

B. “Do Not Call” Laws and Rules ([National Do Not Call Registry](#); [FCC Stop Unwanted Robocalls and Texts](#); & [NCGS 75-100 through 75-105](#); *Manual*, pp. 229-230) [*Level 2*] [Digital REM search for: *do not call*]

1. *Do Not Call Registry* managed by [Federal Trade Commission](#)

- a. Check the national *Registry* at least once every 31 days
- b. Maintain an internal company “Do Not Call” list for any additional consumers who asked to not be called
- c. Keep complete records, especially of any unpermitted calls that are made inadvertently

2. Brokers may not make telephone calls or send robotexts to anyone whose name appears on the *Do Not Call Registry* (with limited exceptions), even for the purpose of soliciting a listing (e.g., cold calling)

a. Prohibition includes calls

- i. To solicit listings made to *for sale by owner* (FSBO) on the registry; however, brokers may call a registered FSBO owner on behalf of a prospective buyer-client who is interested in the FSBO property
- ii. To homeowners with expired listings with another broker/ company; the “established business relationship” exemption only applies to expired listing broker, not to entire MLS membership

b. Exemptions, unless consumer asked to not be called

- i. Express permission or invitation
- ii. Established business relationship (Note: 18-month limit after last purchase, delivery or payment)
- iii. Consumer inquiry or application (Note: 3-month limit)
- iv. Personal relationship

c. Penalties

- i. Federal: As of August 2020, up to \$ 50,120 per call with possibility for treble fines for willful violations
- ii. NC: Up to \$500 for 1<sup>st</sup> violation, \$1000 for the 2<sup>nd</sup>, and \$5000 for subsequent ones within 2 years of 1<sup>st</sup> violation

C. Telephone Consumer Protection Act (TCPA) [*Level 2*]

1. Primary federal telemarketing law passed in 1991
2. Governed by Federal Communications Commission
3. Targets unsolicited text messages and phone calls

4. Prior written consumer consent required prior to telemarketing via text or auto-dialer system
5. All text communication must allow consumers to opt-out

#### D. CAN-SPAM Act [*Level 2*]

1. National standards for the sending of commercial email regulated by [Federal Trade Commission](https://consumer.ftc.gov) [https://consumer.ftc.gov]
2. Restricts the sending of the same message indiscriminately to a large number of recipients (spam) by email
3. Prominent *Opt out* option required on all mass marketing by email

**Note:** Brokers should stay up-to-date on any restrictions on electronic communication (e.g., email, texts, social media) that might affect their solicitation of business in that manner. Mass electronic newsletters or “just listed/sold” emails would be subject to such restrictions

## II. Preparing for Prelisting Meeting with Prospective Seller (*Manual*, Chapter 9, Preparing for Prelisting Meeting with Prospective Seller, pp. 231-233)

### A. Documents to be Provided by Listing Agent

1. Well-drafted listing agreement form (such as NC REALTORS® Standard Forms 101 & 103 (residential) or 570 & 571 (commercial))
2. The Commission’s *Working with Real Estate Agents Disclosure* and the *Q&A on: Working with Real Estate Agents* brochure
3. [Residential Property and Owners’ Association Disclosure Statement \(RPOADS\)](#) (Form REC 4.22 or NC REALTORS® Standard Form 140), if applicable to the property
4. [Mineral and Oil and Gas Rights Disclosure \(MOG\)](#) (Form REC 4.25 or NC REALTORS® Standard Form 141), if applicable to the property
5. *Lead-Based Paint or Lead-Based Paint Hazard Addendum* (NC REALTORS® Standard Form A29-T), if applicable to the property
6. Property listing data sheet to gather property information needed to market the property and/or enter the listing into a listing databank
7. Copy of sample sales contract, for review purposes

B. Advise Seller to Gather the Following Documents/Information

1. Copy of seller's deed
2. Copy of survey
3. Copy of restrictive (protective) covenants, if applicable
4. Copy of HOA bylaws, rules and regulations, dues and assessment Info, if applicable
5. Balance due on Seller's mortgage(s) and status of mortgage(s)

III. Prelisting/Listing Meeting with Prospective Seller (*Manual*, Chapter 9, Prelisting Meeting with Prospective Seller, pp. 233-246; Chapter 8, Other State Disclosure Laws, pp.175-185) [Digital REM search for: *listing meeting*]

A. Explain Agency Relationship and Company Policies/Services

1. Identify & validate identity of seller/owner
2. Make required agency disclosure

<p><b>Required Activity:</b> Have students role-play agency disclosure in a variety of residential and commercial scenarios. A possible role-playing technique would be having different students explain various parts of the Disclosure or different approaches they use so that all students may gain more comfort with and understanding of the disclosure process.</p>
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3. Caution seller against providing confidential information to any potential listing agent prior to signing a listing contract
4. Determine if and how the broker/company will represent the seller (e.g., exclusive seller agent or possibly as a dual agent)
5. Explain listing agent's obligation to disclose material facts to all prospective buyers
6. Advise seller of company's proposed brokerage fee for listing, marketing, and selling the seller's property and negotiate within parameters established by company policy
  - a. Avoid violations of the federal Sherman Antitrust Act
  - b. Never imply the quoted fee is "customary" or "the going rate" for the industry or a local area
  - c. Only discuss the listing company's fee and do not answer questions about how this fee compares to other companies

7. Discuss marketing options, such as MLS, social media, websites, mailings, etc.
8. Explain briefly how MLS works and its benefits for both sellers and buyers  
*[Level 2]*

B. Review Documents/Information Obtained from Seller

C. Inspect Property and Verify Questionable Information

1. Inspect the property, with the seller if possible, noting all features that will be needed for the listing data sheet
2. Identify personal property to be conveyed and fixtures **not** to be conveyed with the property; make sure seller understands what stays and what goes unless there is written agreement to the contrary in the sales contract
3. Note all significant defects and any signs that may indicate defects (e.g., *red flags*); remind seller of broker's duty to disclose all material facts about the seller's property to all prospective buyers
4. Suggest needed repairs and improvements to make the property more marketable; unresolved repair issues must be disclosed as a material fact to all prospective buyers



*As noted previously, material facts are a major piece of most disciplinary cases. The lack of required permits is one of the most common issues. A broker should always ask for proof of permitting for room additions/alterations or major system replacements. Advertising of the number of bedrooms should be based on septic permits when service is not provided by municipality. For in-depth discussion & examples: "Material Facts" sections of 2022-2023 Update and 2019-2020 Update materials.*

5. Inquire as to whether any construction/alterations/repairs have been done
  - a. Determine if required permits were obtained for
    - i. Construction, alteration, repair, removal or demolition of a building (e.g., room addition, deck addition, outbuilding construction)
    - ii. Installation, extension, alteration or general repair of a plumbing system, HVAC system, electrical wiring, devices, appliances or equipment
    - iii. Some work is exempt in a single-family residence; and permit requirements may vary between municipalities
  - b. Broker should verify that a permit was obtained by checking county or municipality records, and, if not, what remediation is needed

- c. If seller does not resolve permitting issues prior to listing, then broker must disclose as a material fact to all prospective buyers
6. If property is served by a septic system, verify the system's capacity with the county health department; obtain a copy of the septic permit, if available ([The 4S's: Septic, Streets, Underground Storage Tanks and Square Footage section](#) of the 2016-2017 General Update course located in ShareFile) [Digital REM search for: *septic system*]
- a. Marketing should only indicate the number of bedrooms approved on the septic permit
  - b. Occupancy is presumed to be 2 persons per bedroom
  - c. Resolve any septic system issues prior to listing or disclose as a material fact to all prospective buyers
- D. Advise seller of their rights and obligations under the *Residential Property Disclosure Act* and assist the seller in fulfilling the statutory obligations [[NCGS 47E](#), Rules [58A .0114](#) & [.0019](#)] (*Manual*, Chapter 8, Other State Disclosure Laws, pp. 175-185) J [Digital REM search for: *RPOADS*]

**Required Activity:** Provide students with current *RPOADS* & *MOG* disclosure forms. Discuss the purpose of each form and the correct way to advise property owners about completion and delivery of the forms. Discuss pros and cons of seller using "No Representation" when allowed.

- 1. Basic requirements of the Act
  - a. Requirement for most sellers of 1-4 residential units
    - i. For transfers by
      - Sale or exchange, including installment land contracts
      - An option contract
      - Lease with option to purchase, except where lessee occupies or plans to occupy the property
    - ii. Whether or not a broker is involved
    - iii. Applies to relocation company "owners"
    - iv. See relevant exemptions under each form covered below
  - b. Major points of the Law
    - i. *Caveat emptor* still active in NC
    - ii. Seller required to provide completed disclosure forms to prospective buyers prior to presentation of first offer
    - iii. Seller not required to disclose anything about property condition or if previous owners have severed mineral, oil or gas rights; seller has the right to choose *No Representation*

- iv. Seller may be held liable for misrepresentation by the courts if they choose “No” rather than “No Representation” [if the seller knows a problem exists].
  - v. Voluntary disclosure; mandatory form completion/delivery
- c. Must use the two prescribed forms issued by NCREC that must not be altered (e.g., [Residential Property and Owners' Association Disclosure Statement \(RPOADS\)](#) and [Mineral and Oil and Gas Rights Disclosure Statement \(MOG\)](#))
- d. Delivery of disclosure statements
- i. No later than time Buyer makes an offer to purchase, exchange or option a property
  - ii. Delivery to buyer agent is acceptable but Buyer must personally sign form
  - iii. Method of delivery is not prescribed; frequently attached to MLS entry
- e. Buyer's right to cancel contract due to untimely delivery of disclosure
- i. Cancellation rights are waived if not exercised prior to the 1<sup>st</sup> occurrence of the following
    - End of 3<sup>rd</sup> calendar day following Buyer's late receipt of disclosure
    - End of 3<sup>rd</sup> calendar day following contract date
    - Settlement or occupancy date in sale or exchange
    - Settlement in purchase by lease with option to purchase
  - ii. Written cancellation notice must be hand delivered or sent by US Postal Service to Seller or the seller agent
  - iii. Timely cancellation entitles Buyer to refund of any paid deposit
  - iv. No right to cancel under this Act if there was timely delivery of disclosure; does not affect any cancellation rights in sales contract
- f. Broker's responsibilities
- i. To advise client of disclosure requirement, their rights & obligation under the Act, the need for continued accuracy and timely delivery of disclosure forms to prospective buyers
  - ii. Provide seller with copies of required disclosure forms
  - iii. Disclosure responsibilities under Real Estate License Law are not affected by sellers' disclosure under this Act; broker must disclose to any prospective buyer any material fact regarding a listed property about which the broker knows or should reasonably be expected to be aware, even if the seller legally chooses not to disclose such material fact or marks *No Representation* regarding the matter
  - iv. If the seller demands that the listing agent agree to not disclose a material defect (or other material fact) as a condition of granting the listing, the listing should be refused!



- v. Assist with timely delivery of completed forms

**Note:** Agent must **not** complete the form(s) for the seller

2. Advise the seller as to whether the *Residential Property and Owners' Association Disclosure Statement (RPOADS)* is required
  - a. Common exemptions for the following transfer types
    - i. Never inhabited new construction
    - ii. Between co-owners, spouses, or parents/children
    - iii. Bank-owned foreclosure
    - iv. Pursuant to a court order
    - v. To or from the State
    - vi. Where parties agree to waive disclosure statement
  - b. Assist seller in assessing the property for accurate completion of the *RPOADS*
    - i. Determine possible material facts
    - ii. Remind seller of broker's duty to volunteer material facts to all parties whether or not seller discloses info on form
    - iii. Assist in maintaining accurate disclosure info on form
  - c. Advise Seller of Buyer's right to rescind a sales contract if Seller (or the seller agent) fails to timely deliver a completed disclosure statement to Buyer
  - d. Procure Buyer's signature on form; retain executed disclosure statement in the transactional file
3. Advise the seller as to whether the *Mineral and Oil and Gas Rights Disclosure Statement (MOG)* is required [Digital REM search for: *mineral and oil*]
  - a. Same points as above for *RPOADS* with the following differences
  - b. Seller must disclose if they have severed or will sever MOG rights; *No Representation* is not an option on this point
  - c. Common exemptions match those for *RPOADS* **excluding the following transfers where MOG is still mandated**
    - i. Never inhabited new construction
    - ii. Lease with option to purchase where lessee occupies or plans to occupy the property
    - iii. When parties agreed to waive *RPOADS* disclosure statement

**Required Activity:** Facilitate a discussion or activity regarding how a broker should handle a situation in which the seller balks at completing the disclosure forms or wants to misrepresent a fact about the property with or without the broker's cooperation.

E. Comply with Federal *Residential Lead-Based Paint Hazard Reduction Act of 1992* (Title X) and updated HUD & EPA Rules (if applicable) (*Manual*, Chapter 8, Residential Lead-Based Paint Disclosures, pp. 183-185; [www.epa.gov/lead](http://www.epa.gov/lead)) [Level 2] [Digital REM search for: *lead-based*]

1. Basic disclosure requirement

- a. Prior to offer to purchase or lease, the seller or landlord of *target housing* must
  - i. Provide a copy of EPA pamphlet, *Protect your Family from Lead in your Home* to the buyer or tenant
  - ii. Disclose presence of any known lead-based paint or lead-based paint hazard plus any reports or records available to the owner pertaining to the hazards
  - iii. If not provided prior to offer, owner must still complete required disclosures and allow the buyer or tenant to amend offer after review of the completed form
- b. What is “*target housing*?”
  - i. Most residential housing built prior to 1978
  - ii. Includes common areas of multi-family housing
  - iii. Includes subleases
  - iv. Exempted transactions
    - Foreclosure sales
    - Housing previously officially certified as *lead-based paint free*
    - Non-renewable short-term (less than 100 days) leases
    - Renewal of compliant existing leases
- c. Seller must permit Buyer a 10-day risk assessment period before a sales contract becomes binding on Buyer
  - i. Buyer can waive this right
  - ii. Buyer may agree to a longer or shorter assessment period
  - iii. Includes a “Lead Warning Statement”
  - iv. Signed statements of compliance from all parties and agent of property owner

**Required Activity:** Have students locate the following mandatory parts of the addendum.


2. Agents' responsibilities (under federal rules and NC Real Estate License Law
  - a. Each agent of target housing has liability for ensuring compliance with lead paint disclosure requirements
    - i. Inform seller or lessor of their obligations under the rules
    - ii. Either ensure that owner has performed all required activities or personally ensure compliance
  - b. "Agent" under these rules includes all brokers in the transaction that were paid by the property owner or through a cooperative brokerage agreement with the listing agent; only a buyer agent totally paid by the buyer is exempt
  - c. Possible consequences of agent's breach of duties
    - i. Disciplinary action by NCREC for failure to comply with federal obligations to the parties for breach of legal duties to client and/or 3<sup>rd</sup> parties
    - ii. Penalties noted below
3. Enforcement and penalties for non-compliant sellers, lessors, and their agents
  - a. Warnings (for 1<sup>st</sup>-time unintentional offenders)
  - b. Injunctive relief to force compliance
  - c. Civil monetary penalties up to \$ 10,000 per violation
  - d. Civil suits for actual damage
  - e. Criminal prosecution with maximum penalty of 1-year imprisonment and \$10,000 fine
4. N.C. Lead-Based Paint Hazard Management Program (40 CFR Part 745, Subparts E & L; <https://epi.dph.ncdhhs.gov/lead/rrp.html> )
  - a. Since January 1, 2010, inspectors and firms/individuals performing renovation, repair and painting projects for compensation that disturb lead-based paint in homes and child-occupied facilities, such as pre-schools or day-care facilities, built before 1978 must
    - i. Take required training for certification
    - ii. Follow specific work practices
    - iii. Provide *The Lead-Safe Certified Guide to Renovate Right* pamphlet to owners and occupants before starting renovation work

- b. Fines for violations up to \$750 per day under NC law and up to \$32,500 per day under EPA sanctions
- c. Owner-occupied do-it-yourself renovations are exempt from certification requirement; but following lead-safe work practices and proper disposal of renovation waste is recommended

**Note:** An owner who personally performs repairs/renovations on properties that are tenant-occupied IS subject to the certification requirement

F. Verify the acreage of the lot or tract from seller's deed and/or a current survey

- 1. Brokers are **not** expected to measure lots or tracts of land and calculate the acreage
  - a. Brokers should attempt to verify acreage via the deed or a recent survey; tax records are not a reliable resource for acreage
  - b. Beware of advertising unconfirmed acreage
  - c. Brokers should be able to convert acreage to square footage, and vice-versa
- 2. Walk the lot or tract with the seller and locate corners and property lines, if possible, in order to avoid misrepresentation to a prospective buyer about such matters



*Despite repeated instruction for licensees on how to properly determine square footage in NC, a sizable number of complaints filed with the Commission involve this topic. The issue usually centers around either lack of verification by brokers or use of inappropriate/unreliable information sources, such as tax records, blueprints, or previous listings and appraisals.*

IV. Verify and Report Building Square Footage in Accordance with NC Real Estate Commission's *Residential Square Footage Guidelines* (*Manual*, Chapter 9, Verify and Properly Report Building Square Footage, pp. 236-238; entire *Guidelines* booklet) [Digital REM search for: *square footage*]

**Required Activity:** Review thoroughly the Commission's [Residential Square Footage Guidelines](#), including the illustrations, at this point in the course.

A. General Notes

- 1. Square footage is **not** a material fact, but must be accurate if reported
- 2. Brokers are expected to possess the expertise necessary to accurately measure, calculate, and report the square footage of most buildings

3. It is strongly recommended that listing agents personally measure any listed dwelling that is not particularly unusual or complex; brokers may rely on professionals with more expertise in determining square footage, such as an appraiser or veteran broker
4. Broker should **not** rely on
  - a. Property owner's personal statement
  - b. Blueprints
  - c. Tax records
  - d. Information from an earlier transaction
5. A broker working with a buyer can reasonably rely on the listing agent's reported square footage unless there is an error that would be obvious to a prudent agent

B. Residential Square Footage (per *Guidelines* booklet)

1. In North Carolina, the square footage of residential living area is calculated on exterior measurements
2. For condos, townhomes and basements, adjusted interior measurements are necessary
3. Criteria for "heated living area"
  - a. Intended for human occupancy
  - b. Heated by permanently installed heating system(s) sufficient for year-round occupancy
  - c. Finished walls, ceilings and floors
    - i. Constructed of generally accepted interior materials
    - ii. Ceiling height of at least 7 feet; sloped ceilings at least  $\frac{1}{2}$  of area at 7 feet and no area lower than 5 feet
  - d. Directly accessible from other "heated living area"
  - e. Interior stairwell area counts on all levels accessed

C. Commercial Buildings

- a. NCREC's *Residential Square Footage Guidelines* is not appropriate for commercial buildings

- b. Before sharing square footage numbers, a broker should take reasonable steps to ensure accuracy of information; broker should at least understand how the square footage was determined

**Mandatory Student Homework Assignment:** Students must independently complete an exercise in determining square footage in order to satisfactorily complete the course. The exercise in the *Guidelines* booklet may be utilized as part of in-class instruction but should NOT be used for the homework assignment since the booklet also includes the solution to this problem.

Suggested Approaches: (1) Provide students with diagrams and measurements for one or two houses and have students submit the detailed calculations as a homework assignment. Reserve a portion of the allotted instructional time in a later class (not necessarily the next class) to review students' results and to discuss common mistakes. Students should be provided the correct solution. (2) If feasible for in-person courses, have students measure and calculate the square footage of the classroom. (3) Have students personally measure and submit diagrams with measurement calculations of their personal home; then, have students exchange homework and double-check each other's calculations. (This approach will usually provide class with examples of many types of residential units [e.g., condo, townhouse, single family] and the measurement challenges of each. Have students that live in apartments treat their unit as a condo for measurement purposes.)

- V. Perform a Comparative Market Analysis (CMA) for the Residential & Commercial Seller [[NCGS 93A-82](#) & [83](#); [NCGS 93E-1-3\(c\)](#); [Rules 58A .0108](#); [.2201](#) & [.2202](#)] (*Manual*, Chapter 9, Prepare a Comparative Market Analysis (CMA) for the Seller, pp. 238-240; Chapter 15, Approaches to Value, pp. 515-551)
  - A. Broker's Duty with Regard to Providing a CMA or Broker Price Opinion (BPO) [Digital REM search for: *cma*]
    1. As estimated *probable selling price*
      - a. Under law of agency, an agent has an affirmative duty to provide a client with competent advice on an appropriate listing or selling price
      - b. Performance of a CMA on every listing is not mandated by rule
        - i. It is highly recommended despite the experience level of broker
        - ii. Any broker that "shortcuts" the valuation process and harms the client by significantly missing the mark will be subject to disciplinary action by NCREC and possible liability for monetary damages in a civil lawsuit
        - iii. If broker is not confident in their CMA skills, seller should be advised to have property appraised before setting a listing price

2. As a BPO/CMA for a fee [[NCGS 93A-83](#); [Rule Section .2200](#)] (*Manual*, Chapter 15, Real Estate Broker's Duty Regarding a CMA/BPO, pp. 541-548)
    - a. May be performed by a "full" broker whose license is active and in good standing; prohibited for provisional brokers
    - b. Must include all content required by law [[NCGS 93A-83\(c\)](#)] including broker's name, license number, signature, and the name of the firm for which the broker is acting
    - c. May not under any circumstances be referred to a "valuation" or an "appraisal" or produce estimates of "value" or "worth"
    - d. May not be performed for a lienholder or others as basis for establishing "value" for origination of any type of mortgage
    - e. May not be knowingly prepared in lieu of an appraisal that is required by federal or state law [[NCGS 93A-83\(f\)](#)]
    - f. Must be in writing and meet standards set by [Rule 58A .2202](#)
      - i. Compliant with [NCGS 93A-83](#)
      - ii. The broker must
        - Have direct access to real estate market data & brokerage or appraisal experience in subject property's geographic location
        - Be free of influence of any interested party
        - Personally inspect the exterior and interior of the subject property unless waived in writing by recipient of the BPO
        - Use appropriate methodology for subject property type
        - Use at least 3 sold or leased properties similar to subject property and make credible adjustments for differences
    - g. Broker who performs a CMA/BPO incompetently may be subject to disciplinary action by the Commission [[NCGS 93A-6\(a\)\(8\)](#)]
- B. Performing a CMA/BPO (*Manual*, pp. 536-548)
1. Steps in the CMA/BPO Process
    - a. Based on the same valuation concepts and principles as standards for appraisers performing an appraisal
    - b. Identifying the subject property and the scope, purpose, and legality of the assignment
    - c. Collecting data on subject property and local real estate market

d. Analysis

- i. Using the Sales Comparison Approach [Digital REM search for: *sales comparison*]
  - Best for residential property and any property that has sufficient recent comparable property type sales
  - Select three to four comparable properties (comps)
    - Closed recently (0-6 months preferably) are usually sufficient
    - Similar in most respects, such as property type, age, location, condition, physical characteristics, date of sale, etc.
    - Distressed sales (e.g., short sales & foreclosures) are typically not used as comps unless indicative of the market
  - Adjustments for differences between the subject property and comps should always be made to the sales prices of the comps, never to the subject property
  - Findings of the CMA can be expressed as a range of the “adjusted sales prices” for the comps or as a single estimated sales price based on the weighted average of the adjusted comps
- ii. Using the Gross Rent Multiplier Approach [Digital REM search for: *rent multiplier*]
  - Best for 1-4 unit residential rental properties and commercial property that has insufficient property information to use the Income Capitalization Approach
  - $\text{Sales Price of Comp} \div \text{Annual (or Monthly) Gross Rental Income of Comp} = \text{Gross Rent Multiplier (GRM)}$
  - If GRM for several comps is fairly consistent, the GRM can be used to indicate a probable selling price for the subject property
- iii. Using the Income Capitalization Approach [Digital REM search for: *income cap*]
  - Best for income-producing property other than 1-4 unit residential rental properties
  - $\text{Net Operating Income of Comp} \div \text{Capitalization Rate} = \text{Probable Selling Price}$
  - Cap rates for a property type in a geographic location may be obtained from local commercial property experts or extracted from the market
- iv. Estimating a Probable Leasing Price (Lease Rate) (*Manual*, Chapter 15, Analysis Relating to Estimating a Probable Leasing Price, pg. 546)
- e. Report Probable Selling/Leasing Price as a “Range” (*Manual*, Chapter 15, Reporting Probable Selling/Leasing Price as a “Range”, pg. 546)
- f. The BPO/CMA Report (*Manual*, Chapter 15, The BPO/CMA Report, pp. 546-548)



**Important Note:** The Commission expects every CMA/BPO to be performed in a competent manner, **even if no fee is received for the CMA/BPO.**

**Mandatory Student Homework Assignment:** Students must independently complete at least one CMA of a single-family property as a mandatory homework assignment in order to satisfactorily complete the course. Because some students may not have access to MLS data, Instructor shall develop at least one CMA exercise with data on a subject property and a substantial number (e.g., 8-10) of potential comps. Have the students prepare a CMA (showing the adjustments made) as a homework assignment which will be critiqued and discussed during a subsequent class session (not necessarily the next class). Instructor should have a *best* solution to provide to the students following the class discussion.

VI. Assist the Seller in Setting an Appropriate Listing Price [Digital REM search for: *listing price*]

A. Advise the Seller on Factors to Consider to set Appropriate Listing Price

1. Estimated Probable Selling Price (or range) of Property (per CMA)
2. Current Market Conditions
3. Pros and Cons of setting listing price at “high” vs. “low” end of range of estimated price
4. Seller’s Needs and Desires
5. Estimating net to seller and possibility of “Short Sale” (*Manual*, Chapter 9, Likelihood of Sale Proceeds Being Insufficient, pp. 240-241; Chapter 13, Short Sales, pp. 450-453) [Digital REM search for: *short sale*]

B. Review How to Estimate Seller’s Net Proceeds and Seller’s Net Profit (*Manual*, pg. 241-242)

**Required Activity:** After review of these calculations, students should complete practice problems to assure mastery.



**NC brokers cannot act on a property owner’s behalf without a fully executed written agency agreement. Brokers in a number of complaints filed with the Commission failed to meet this basic criteria; a handshake or verbal agreement do not create any legal form of agency relationship with a property owner. Although there is no mandated listing form, a form used by a broker must meet the requirements set forth by [Rule 58A .0104](#)**

VII. Review and Complete the Listing Contract (*Manual*, Chapter 9, General Requirements for Agency Contracts, pp. 206-208; Chapter 9, Major Listing Contract Provisions, pp. 219-226) [Digital REM search for: *listing agreement*]

A. General Requirements for All Agency Agreements [[NCGS 93A-13](#); [Rule 58A .0104\(a\) and \(b\)](#)] (*Manual*, pp. 206-208) [Digital REM search for: *agency agreement*]

**Note:** Prior to entering an agency agreement with a prospective client, the broker should ask if they already have an exclusive agency agreement with another broker. If “yes,” the broker should wait for that existing agency agreement be terminated or expire.

1. Agency contracts with property owners must be in writing from the outset of the relationship; oral listing agreements are unlawful in NC
2. Listing contracts must
  - a. Have a definite expiration date:
    - i. That will terminate without prior notice
    - ii. Should not automatically renew
    - iii. Stating a time period (e.g., 6 months or 90 days) vs. a date is inappropriate
  - b. Contain the anti-discriminatory language prescribed by rule in a clear conspicuous manner;
  - c. Be signed by all parties; and
  - d. Include the listing broker’s individual license number.

B. Major Listing Contract Provisions - Standard “Full-Service” Listing Contract [Digital REM search for: *listing contract provisions*]

**Required Activity:** Perform a detailed **line-by-line** review of current version of NC REALTORS® Standard Form 101 – *Exclusive Right to Sell Listing Agreement* and the Guidelines 101G. Pay particular attention to Notes and Warnings in the document.

**Required Activity:** Provide students with current NC REALTORS® commercial listing agreements (570 and 571) and any available Guidelines for completion. Have students compare and contrast provisions in residential and commercial listing agreements. Discuss the purpose of provisions that are different from the residential forms.

### C. Selected Points about Listing Contract Completion

1. Executed listing contract required prior to providing any brokerage services, such as marketing
2. All contract provision blanks should be filled in prior to having the seller(s) sign

**Note:** Seller should never be asked to sign an incomplete listing contract, e.g., one without the listing price filled in

3. Names and signatures of parties
  - a. All co-owners should be named in the agreement and sign
  - b. If only one spouse is the titled property owner, best practice is to have the non-titled spouse also sign
  - c. For property owned by an entity, broker should determine who has authority to sign a listing agreement (and eventual sales contract)
  - d. Listing agent signs on behalf of their brokerage company and includes their individual license number
4. Term of agreement
  - a. Parties do not have a right to terminate early unless specifically written into agreement
  - b. If the property goes under contract during the term of the listing agreement, the broker is entitled to the commission even if closing occurs after the end of listing period
  - c. Any broker who continues to actively represent a seller after the listing expires and prior to seller accepting an offer on the property will not be eligible for compensation [[NCGS 93A-13](#)]
  - d. Any agreement to amend or extend the listing period must be in writing to be enforceable
  - e. Per the [Unfair Real Estate Agreements Act](#),
    - i. A real estate service agreement cannot
      - Be in effect for more than 1 year
      - Bind future owners of the property
      - Allow for assignment of right to provide
      - Create a lien, encumbrance or other real property security interest
    - ii. An unfair agreement is unenforceable and may not be recorded
    - iii. A violation is a violation of NC's consumer protection laws

iv. Allows Attorney General or damaged homeowner to sue violating party  
v. Scope is limited to not affect legitimate real estate agreements and liens

5. Provide seller with a copy of the standard Offer to Purchase and Contract form at time of listing and familiarize seller with major provisions so seller knows what to expect before an offer is received
6. Provide seller(s) a copy of the signed listing agreement within 3 days of receipt by broker [[Rule 58A .0106\(a\)](#)]

VIII. Working as a Limited Services Broker (*Manual*, Chapter 9, Limited Service Listing Contract, pp. 216-218) [*Level 2*] [Digital REM search for: *limited services broker*]

A. Limited Services Listing Contract

1. No standard limited services listing agreement form is currently provided by NC REALTORS®; consultation with a real estate attorney is recommended prior to drafting such an agreement for use
2. Brokerage compensation is frequently a fixed or flat fee vs. a percentage of sales price
3. May limit services, but generally should not limit legal duties per statute or NCREC rules
  - a. Clearly specify in writing what services will be provided
  - b. Clearly indicate services are limited to those described in the contract

B. Duties of Broker under the Real Estate License Law, Commission Rules and the Common Law of Agency [[NCGS 93A-6\(a\)\(1-4, 7-8, 12-14\)](#); [Rules 58A .0104, .0106, .0114, .0116, .0117](#)]

1. Broker owes client skill, care and diligence
2. Broker owes fiduciary duties to client under common law of agency
3. Broker may **not** waive the duties to
  - a. Discover and disclose material facts to all parties [[NCGS 93A-6\(a\)\(1\)](#)]
    - i. Not limited to only material facts about the limited services being performed
    - ii. Applies to any fact related to the property or a principal's ability to perform
    - iii. Limited service agent should take reasonable steps to
      - assure accuracy of all advertised information (e.g., MLS entry)
      - discover and disclose material facts that would have been found by a reasonably prudent listing agent

**Note:** Broker should not rely solely on property information received from the seller

- b. Avoid making false promises [[NCGS 93A-6\(a\)\(2 & 3\)](#)]
- c. Avoid undisclosed conflict of interest [[NCGS 93A-6\(a\)\(4\)](#); [Rule 58A .0104](#)]
- d. Properly account for trust funds held for client [[NCGS 93A-6\(a\)\(7, 12 & 14\)](#); [Rules 58A .0116, .0117](#)]
- e. Act competently in performance of services [[NCGS 93A-6\(a\)\(8\)](#)]
  - i. Includes providing accurate information in the MLS (e.g., square footage)
  - ii. Servicing the listing per MLS rules
- f. Promptly deliver all offers and contracts to parties to the transaction [[NCGS 93A-6\(a\)\(13\)](#); [Rule 58A .0106](#)]

**Note:** If an offer is sent directly to the limited listing agent (despite listing agreement terms to the contrary), they must deliver the offer to the appropriate party as soon as possible but in no case later than 3 days

- g. Comply with the Residential Property Disclosure Act [[Rule 58A .0114](#)]
- h. Comply with the federal *Residential Lead-Based Paint Hazard Reduction Act of 1992*

C. Protection Agreement (*Manual*, pp. 218-219)

- 1. Purpose – compensation agreement between a buyer agent and a seller for a single transaction, usually when dealing with a FSBO situation
- 2. Agent should provide and review the *Working with Real Estate Agents Disclosure*
- 3. Review NC REALTORS® *Unrepresented Seller Disclosure and Fee Arrangement* Standard Form #150

IX. Submitting Property Data to a Listing Service (*Manual*, Chapter 9, Multiple Listing Service, pp. 226-227; Chapter 9, Prepare Property Data Sheet and Place Listing in Multiple Listing Service, pg. 244) [Digital REM search for: *property data*]

A. Brief Overview and Discussion of Typical MLS Operational Rules [*Level 2*]

**Note:** Mandatory training on MLS use is standard among the various MLS organizations.

1. A voluntary association of local brokers who agree to share information on listings, to cooperate in the sale of such properties, and to share compensation
  2. A major advantage is the broad marketing of all listings through member brokers to potential buyers
- B. Listing Agent Responsible for Accuracy of Property Data Reported in Listing Service
1. This responsibility should not be delegated; a mistake made by an assistant or information supplied by a seller will not excuse the listing agent from responsibility
  2. Disclaimers published in the MLS will not protect a listing agent who misrepresents a material fact
- C. Antitrust Laws Prohibit Anti-competitive Practices (*Manual*, p. 228) [Digital REM search for: *antitrust*]
1. *Price fixing*: any collaboration between 2 or more brokers to set brokerage fees
  2. *Boycotting*: any collaboration between 2 or more brokers to not cooperate equally with specified groups in such a way as to make them less competitive (e.g., joining to boycott certain service providers, such as certain appraisers, attorneys, home inspectors, etc.; excluding certain categories of brokers, such as limited service listing brokers, from MLS membership)
- X. Marketing Listed Property (*Manual*, Chapter 9, Marketing Listed Property - Legal Compliance, pp. 244-246; Chapter 13, Disclosures in Credit Advertising, pp. 422-424). [Digital REM search for: *marketing properties* and *credit advertising*]
- A. Legal Compliance in Marketing/Advertising
1. Owner's written permission required to advertise or place signage [[Rule 58A .0105\(a\)\(2\)](#)]
    - a. Usually included in listing agreement
    - b. Signage should be promptly removed after closing or termination of the listing agreement
  2. Comply with laws/rules on signage placement
    - a. State law prohibits placement of private signs on state-owned property such as right-of-ways or road medians

- b. Subdivision covenants and city/county ordinances frequently address signage restrictions
  - c. Usually apply to “for sale” and directional signs
- 3. Prohibition of “blind” ads [[Rule 58A .0105\(b\)](#)]
- 4. Comply with Truth-in-Lending advertising requirements [Digital REM search for: *trigger terms*]
  - a. Applies to ads about possible financing of real property that contain *Trigger Terms*
  - b. *Trigger Terms*
    - i. Down payment, whether as a dollar amount or percentage
    - ii. Amount of any payment, whether as a dollar amount or percentage
    - iii. Number of payments or period of repayment
    - iv. Dollar amount of any finance charge
  - c. Required disclosures if any trigger term appears in an ad
    - i. Amount or percentage of down payment
    - ii. Terms of loan repayment over the full term
    - iii. Annual percentage rate (APR) and if it can be increased
  - d. How to avoid violating Regulation Z [Digital REM search for: *regulation z*]
    - i. If **any** specific credit term is advertised, **all** required credit terms should be included
    - ii. Advertise only a list or lease price and avoid all numbers related to financing
- 5. Fair Housing Considerations in Advertising (*Manual*, Chapter 18, Discrimination in Advertising, pp.637-638) [Digital REM search for: *advertising guidelines*]
  - a. Fair Housing Act prohibits anyone from making, printing or publishing any notice, statement or advertisement with respect to sale or rental of a residential dwelling
    - i. Which indicates any preference, limitation, or discrimination because of a person’s race, color, religion, sex, handicap, familial status or national origin

**Note:** HUD’s definition of sex expanded in 2021 to include *sexual orientation* and *gender identity*

- ii. Not limited to print media; applies to webpages, social media, emails, texts, and oral statements
    - b. Advertising Guidelines
      - i. Describe the property, not the person
      - ii. Mention amenities, not participants
      - iii. State geographic location, not landmarks
  - 6. Retain all advertising in any format for at least 3 years [[Rule 58A .0108](#)]
- B. Duties Relating to Marketing a Property [Digital REM search for: *marketing practices*]
- 1. Provide customary marketing practices for the area, such as
    - a. Place a “for sale” sign on the property
    - b. Place listing in the local MLS
    - c. Provide a reasonable means for showing by other brokers
    - d. Use media commonly used to advertise properties for sale
    - e. Prepare a promotional flyer available to prospective buyers
    - f. Advertise the property on the Internet
    - g. Conduct an open house, if appropriate
    - h. Be available to show the property in a timely manner
    - i. Fully cooperate with other agents as authorized by seller
  - 2. Other Points to Consider with Caution
    - a. For security reasons, a listing agent should obtain permission from their seller-client prior to using photographs (or videos) of the inside of a seller’s home in advertising (e.g., in flyers, on websites, etc.)
    - b. Advise sellers that the [NC Electronic Surveillance Act](#) makes it illegal for a party to intercept, disclose, or use any oral, wire or electronic communication without the consent of at least one party in the conversation. (See September 2023 [Tech Corner](#) eBulletin article.)
    - c. Providing a copy of Seller’s survey is not objectionable, but brokers working with buyers should make certain this does not discourage the buyers from obtaining a new or updated survey



3. Educating Sellers on their Role in Selling their Property
  - a. Increasing marketability: enhance “curb appeal,” make repairs, de-clutter, paint
  - b. Safeguarding personal valuables
  - c. Making property available for showings
  - d. Being absent during showings
  - e. Removing or securing pets for showings
  - f. Handling unscheduled showings
  - g. Responding to inquiries without damaging negotiating position
  - h. Handling offers
  - i. Complying with Fair Housing requirements

XI. Working Directly with a Seller as a Buyer Agent (*Manual*, Chapter 9, pp. 246-247)

**Note:** Broker is required to provide and explain *Working with Real Estate Agents Disclosure* and fully disclose status as buyer agent [[Rule 58A .0104\(c\) and \(f\)](#)]

A. Acting as Buyer Agent Only with an Unrepresented Seller (FSBO)

1. Obtain a written agreement signed by the seller
2. Refrain from actions that might be interpreted as the broker is representing the seller

B. Acting as Disclosed Dual Agent

1. If allowed by Buyer Agency Agreement, obtain a written listing agreement with dual agency authorization signed by the seller
2. Listing agreement can be limited to a transaction with a named buyer

C. Buyer Agent Working with a Seller who Listed with a Limited Services Broker

**Note:** There is nothing improper about a buyer agent working directly with a seller so long as the broker fully discloses status as buyer agent and is fair and honest in their dealings with the seller

### Section 3: Working with Residential & Commercial Buyers (5 hours)

(Manual, Chapter 9, Working with Buyers, pp. 247-257) [Digital REM search for: *working with buyers*]

#### I. Agency Disclosure to Buyers – Basic Requirements [[Rule 58A .0104\(c\)](#)]



*There continues to be significant confusion about how a broker may continue to assist a buyer-consumer who refuses to hire a broker as a buyer agent, even by verbal agreement. There is no such thing as automatic seller subagency. All forms of agency require consent of the parties. In most cases, neither the seller nor the listing company have authorized anyone outside of the listing company to represent them.*

#### II. Working with Buyers as Seller Agent or Subagent (Manual, pp. 247-249) [Digital REM search for: *seller subagent*]

##### A. Disclose Agency Options & Document Possible Agency Relationship in writing using the *Working with Real Estate Agents Disclosure* [[Rule 58A .0104\(e\)](#)]

1. Co-brokerage Subagency Situations; listing firm may not offer or allow seller subagency
2. In-house Situations; may remain exclusive seller agent or act as a dual or designated dual agent with written authorization of both parties

##### B. Switching from seller subagent to buyer agent requires seller's written consent

#### III. Working with Buyers as a Buyer Agent (Manual, pp. 250-257) [Digital REM search for: *buyer agency*]

##### A. Basic Requirement for Express Agreement from the Start of the Relationship [[Rule 58A .0104\(a\)](#)]

##### B. Temporary Oral Buyer Agency Agreement Option [Digital REM search for: *oral buyer agency*]

1. Requirements for temporary oral buyer agency agreement
  - a. Must be non-exclusive; a buyer may work with multiple brokers at the same time
  - b. May **not** bind the buyer for any specific period of time
  - c. **All** terms of the written agency agreement must be addressed in the oral agreement
  - d. If the buyer is asked to limit the oral agreement to a specific brokerage company or for a specific time period, agency must be reduced to a written agreement immediately

2. Must be reduced to writing no later than the time an offer to purchase is made by any party
  3. Switching from buyer agent to seller subagent requires the buyer's written consent as well as written consent of the seller and listing company
  4. Brokerage companies are not required to allow the practice of oral agency
- C. Review of Essential Elements of a Written Buyer Agency Agreement [[Rule 58A .0104\(a & b\)](#)]
1. Same requirements as a Listing Agreement
  2. Have a definite expiration date;
    - a. Agreement will terminate on expiration date without prior notice
    - b. Must **not** automatically renew
    - c. Stating a time period (e.g., 6 months or 90 days) vs. a date is inappropriate
  3. Contain the anti-discriminatory language prescribed by rule in a clear conspicuous manner;
  4. Be signed by all parties; and
  5. Include the listing broker's individual license number.
- D. Types of Buyer Agency Agreements [*Level 2*] [Digital REM search for: *types of buyer agency*]
1. *Exclusive Buyer Agency Agreement* (e.g., NC REALTORS® Standard Form 201 and 201-G – *Guidelines for Completing the Form*)
  2. *Non-Exclusive Buyer Agency Agreement* (e.g., NC REALTORS® Standard Form 203)
  3. *Agency Agreement Renewal and/or Amendment* (e.g., NC REALTORS® Standard Form 710)
- Required Activity:** Perform a detailed line-by-line review of these NC REALTORS® forms and completion guidelines, discussing appropriate completion of each provision in various circumstances.
4. Alternate options for working with hesitant buyers
    - a. Limit duration of agreement
    - b. Limit agreement to specific properties

**Required Activity:** Engage students in a discussion of their experiences with buyers who are reluctant to sign a written agency agreement and how they were able to successfully deal with the situations, such as limiting the agreement to a short time period or to a particular property.

- E. Duties to Buyer: Buyer Agent versus Seller Subagent Working with a Buyer
- IV. Practices of Brokers Working With Buyers (*Manual*, pp. 255-257)
- A. Comply with Agency Disclosure and Buyer Agency Contract Requirements
  - B. Educate Buyer and Solicit Information on Buyer's Needs and Desires
  - C. Qualify the Buyer (*Manual*, Chapter 13, Buyer Loan Prequalification, pp. 429-436; Chapter 13, Major Types of Residential Mortgage Loans, pp. 437-443) [Digital REM search for: *qualify the buyer*]

**Required Activity:** Have students work sample loan prequalification problems sufficient to assure the students' competence in prequalifying buyers in common situations.

1. Loan to Value (LTV) ratio is the comparison of the loan amount to the **lesser** of
  - a. The appraised value of the property **OR**
  - b. The purchase price of the property
2. Higher LTV ratios and more permissive underwriting practices are allowed for owner-occupied primary residences
3. Expense to Income Ratios
  - a. Ratios for most conventional-conforming loans are 28%/36%; ratios for most FHA loans are 31%/43%
  - b. Housing Expense to Income Ratio
    - i. Usually 28-32% range, depending on loan type
    - ii. Housing expense includes monthly minimum required loan payment of principal and interest, property taxes, insurances, assessments and HOA dues, if applicable
  - c. Debt to Income Ratio
    - i. Usually 36-43% range, depending on loan type
    - ii. Debt includes total long-term monthly recurring debts plus housing expense



A recent trend has agents hiring licensees or showing companies not affiliated with their brokerage company to show a property to a potential buyer. There are several serious concerns with this practice, involving agency disclosure, agency duties, discovery & disclosure of material facts, and compensation of the showing licensee. Read the June 2023 eBulletin article, [Concerns When "Showing Agents" are not Affiliated with Your Brokerage](#).

#### D. Select Properties for Showing

1. Obtain cooperation agreement with listing company, if needed

**Note:** In the Buyer Agency Agreement, the firm promises to first seek compensation from the listing firm or the seller before looking to the buyer client for payment

2. Schedule and show selected properties
  - a. Should not limit to only properties listed with broker's company if properties listed with other companies meet the client's criteria
  - b. Should not automatically exclude listings that offer lower commission splits

#### E. Discover and Disclose Material Facts

#### F. Perform a Comparative Market Analysis (CMA) for Buyer

#### G. (*Manual*, Chapter 7, Public Land Use Controls, pp. 104-113; Chapter 7, Flood Hazard Area Regulations and Insurance, pp. 121-122; Chapter 7, Private Land Use Controls, pp. 122-126; Chapter 14, Property Insurance, pp. 462-463) [Digital REM search for: *land use restriction* and *flood insurance*]

1. Protective (Restrictive) covenants
2. Zoning
3. Flood hazard area
4. Check septic system's authorized capacity (if applicable)
5. Inquire about permits for renovations, additions, major repairs

#### H. Additional Buyer Agent Responsibilities and Practices

**Section 4: Working as a Dual Agent (1 hour)** (*Manual*, Chapter 9, Working as a Dual Agent, pp. 257-266) [Digital REM search for: *dual agent*]

- I. Review of Dual Agency Basics [[NCGS 93A-6\(a\)\(4\)](#)]
  - A. Requirements for Brokers in Dual Agency Situations
    1. Disclosure to and consent of both parties
    2. Requirement for written agreement (with oral agreement permitted in certain situations) [[Rule 58A .0104\(d\)](#)]
    3. Authorization of dual agency in listing and buyer agency agreements
      - a. Advance consent by both seller and buyer
      - b. Advance consent by one party only
      - c. No advance consent by either party
  - B. The Conflicting Duties of a Dual Agent
- II. Dual Agency Solutions
  - A. Limiting the Dual Agent's Duties by Contract
    1. Limiting disclosure of certain information to principals
    2. Limiting the duties of loyalty and skill, care and diligence
    3. Effect of this approach

**Required Activity:** Review appropriate dual agency provisions in the NC REALTORS® standard listing and buyer agency agreement forms.
  - B. Designated Dual Agency [[Rule 58A .0104\(i\)-\(n\)](#)] [Digital REM search for: *designated dual*]
    1. Basic concept
      - a. An optional approach when brokerage company is dual agent
      - b. One or more agents of the company are designated to represent only the interests of the seller
      - c. One or more agents of the company are designated to represent only the interests of the buyer
      - d. The company and all non-designated agents of the company remain as dual agents

2. Major rule provisions
  - a. Prior express approval of both buyer and seller clients required
  - b. Confidential information of designated client may not be shared with the designated agent of the other party
    - i. Price, terms or conditions of sale
    - ii. Motivation
    - iii. Information identified as confidential by client
  - c. Identity of all designated agents must disclosed to the buyer and the seller no later than presentation of first offer
3. Special features of designated dual agency
  - a. Dual agency is not eliminated; merely a form of dual agency
  - b. Only possible for in-house dual agency sales situations
  - c. Prior approval of both seller and buyer is mandatory and must commence no later than presentation of the first offer
  - d. Individual designated dual agents will act only as agent for principal for whom designated, similar to an exclusive listing agent or buyer agent
  - e. A broker may not be appointed as a designated dual agent for one party if that broker has already received confidential information about the other party
  - f. A comprehensive written company policy on the practice of designated dual agency is strongly recommended
    - i. Should address confidentiality in record keeping, file access, and internal communications
    - ii. Should specify how designated dual agents are appointed
  - g. Multiple agents can be designated to represent a principal, such as including the licensed personal assistant of a designated dual agent
  - h. A broker-in-charge (BIC) must not serve as a designated dual agent in a transaction opposite an affiliated provisional broker [[Rule 58A .0104\(j\)](#)]

<p><b>Required Activity:</b> Discuss how office policies would differ if the company practices dual and/or designate dual agency.</p>
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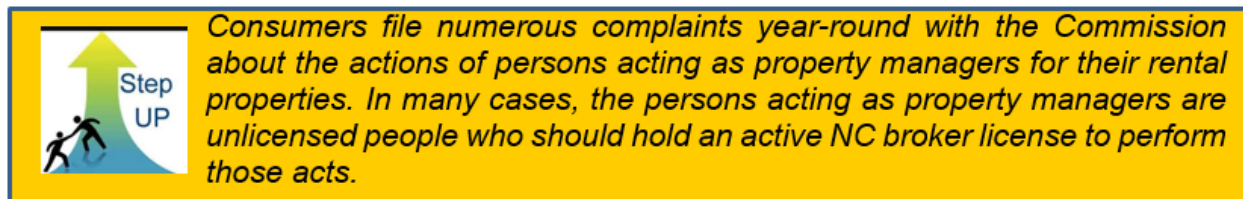
## Section 5: Working in Residential or Commercial Property

**Management** (1 hour) (*Manual*, Chapter 17, Property Management, pp. 603- 620; Chapter 19, The Typical Cycle-Lease Transaction, pp. 719-720) [Digital REM search for: *property management*]

### I. Introduction to Property Management

#### A. What Constitutes “Property Management”

1. No separate license in NC for property management nor is the term “property manager” defined by statute or rule
2. Any type of real estate with income-producing potential can be managed for property owners by brokers



#### B. Licensing Requirement for Brokers Practicing Property Management

1. **Any** individual or entity that undertakes to manage real property belonging to others for compensation or consideration must be an actively licensed real estate broker
2. Management of homeowner or property owner associations does not currently require any license

**Note:** Any real estate broker who engages in association management for a fee must comply with all real estate license laws and Commission rules, including having a written agency agreement and handling all monies per Commission trust account rules [[Rule 58A .0118\(b\)](#)]

3. Exemption for Certain W-2 Employees of Brokers Practicing Property Management [[NCGS 93A-2\(c\)\(6\)](#)]
  - a. Salaried (W-2) employee of broker practicing property management
  - b. Limited list of allowed activities; negotiation is **not** allowed
  - c. Broker is responsible for and may be disciplined for actions of unlicensed salaried employees [[NCGS 93A-6\(b\)\(4\)](#)]



C. Property Management Relationships Governed by Agency Law and Real Estate License Law

**Note:** Most property management agreements are with the property owner or landlord. Agency with the tenant is more likely in commercial lease scenarios, but many tenants remain unrepresented third parties.

II. Property Management Agreements [Digital REM search for: *property management agreement*]

A. Must meet Requirements of all Agency Agreements as noted in Section 2, VII.A, including agency contracts with property owners must be in writing from the outset of the relationship

B. Property management agreements may automatically renew so long as the landlord may terminate with notice prior to end of any contract period [[Rule 58A .0104](#)]

III. Principal Functions of Brokers Practicing Property Management [*Level 2*]

A. Preparing a Management Plan

B. Establishing a Rental Schedule

C. Preparing an Operating Budget

D. Marketing and Renting the Property

E. Collecting Rents and Security Deposits

F. Maintaining and Protecting the Property

G. Preparing and Enforcing Rules and Regulations

H. Performing Landlord's Duties under Leases

I. Instituting Legal Actions

J. Maintaining Property Insurance

K. Maintaining Records and Accounting to Owner

## Section 6: Other Topics (.75 hour) [Level 2]

- I. When Brokers Leave/Change Companies (*Manual*, Chapter 21, Paying Brokers No Longer with Firm, Inactive Brokers or Former Brokers, pp. 765-768) [Digital REM search for: *paying brokers*]
  - A. Required Notice to Commission within 10 Days [[Rules 58A .0103\(b\)](#) & [.0506\(e\)](#)]
  - B. If broker's license was on active status throughout the period that brokerage services were rendered, broker can be paid even if their license is expired or inactive at time of payment
  - C. Handling of Transactions in Progress when Brokers Leave/Change Companies

**Note:** Remember that principals under an agency agreement are clients of the brokerage company, not the individual licensee

1. If broker's license was on active status throughout the period that brokerage services were rendered, broker can be paid even if they are no longer with the company at time of payment
2. Payment to an individual broker is dictated by terms of the employment agreement with the brokerage company, not Commission rules
3. If a provisional broker (PB) who earned compensation is now working for a different company, the former supervising broker-in-charge (BIC) can pay
  - a. The PB directly **OR**
  - b. The PB's current BIC to pass through to the PB
4. Broker working on a pending transaction after leaving a company
  - a. Not possible if a provisional broker
  - b. "Full" broker can lawfully affiliate with 2 companies simultaneously with full knowledge and consent of both BICs



*If a license status is inactive, expired, suspended, or revoked, that means that the broker must cease ALL brokerage activity IMMEDIATELY. Only an active license status allows a broker to actively practice and earn compensation, even placing a referral. Refer to the Licensing & Education Review section of the most recent Update course for more detail about each status and the procedures to activate or reinstate a license.*

- II. License Status and Education Issues [[NCGS 93A-4](#); [Rules 58A .0503](#), [.0504](#), [.0505](#), & [.0506](#)]
  - A. License Status: Meaning of provisional, active, inactive, expired, suspended, and revoked statuses
  - B. Postlicensing Education Requirement (and consequences of failure to satisfy) [[Rule 58A .1902](#)]
  - C. Continuing Education Requirement (and consequences of failure to satisfy) [[Rules 58A .0504\(b\)](#), [.1702](#)]
  - D. Requirements and procedures to activate an Inactive license [[Rules 58A .0504\(c\) & \(d\)](#), [.1703](#)]
  - E. Requirements and procedures to reinstate an Expired license (Same process for a Revoked or Surrendered license)
    - 1. License expired for less than 6 months [[Rule 58A .0505\(c\) & \(h\)](#)]
    - 2. License expired between 6 months and up to 2 years [[Rule 58A .0505\(d\) & \(h\)](#)]
    - 3. License expired more than 2 years [[Rule 58A .0505\(e\), \(f\) & \(h\)](#)]

**--End of Course Syllabus--**