

**North Carolina  
Postlicensing Course Syllabus**

**POST 303  
*NC LAW, RULES, and LEGAL CONCEPTS***

**(Student Version)**

**August 2021 Edition**



**North Carolina Real Estate Commission**

P.O. Box 17100

Raleigh, NC 27619

(919) 875-3700

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

© August 2021 North Carolina Real Estate Commission.  
All rights reserved.

## INTRODUCTION

**Course Description:** The *Post 303 -- NC Law, Rules, and Legal Concepts* 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:

- general North Carolina licensing requirements,
- brokerage compensation issues,
- the disciplinary process,
- specialized types of real estate,
- property management in NC, and
- miscellaneous NC laws and legal concepts.

**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 303 – NC Law, Rules, and Legal Concepts* course must be taught as prescribed by this syllabus.

**Course Hours and 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. Pre-approval is required for each type of delivery.

**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.

**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)*, and
- *North Carolina Real Estate License Law and Commission Rules (hereinafter called LLCR)*, and
- [Real Estate Licensing in North Carolina Application Booklet](#) (hereinafter called RELINC).

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 2020 edition of the *LLCR* and the 2020 edition of the *Manual*. For your benefit, all *Manual* chapters referenced in this course syllabus are

consolidated within *Chapter 26. POST 303, NC Law, Rules, and Legal Concepts* in the digital version of the *Manual*. Italicized [*Digital REM search words*] 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.

**Required Activities:** EPs and instructors are REQUIRED to conduct "Required Activities" when teaching this course.

**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 recommends 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 course 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 instructors may make adjustments in the order of presentation.

**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 the 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 303  
 NC LAW, RULES, AND LEGAL CONCEPTS  
 POSTLICENSING COURSE**

**Instructional Hours per Section**

<b>Section #</b>	<b>Section Title</b>	<b>Hours</b>
1	General North Carolina Licensing Requirements .....	4.5
2	Brokerage Compensation Issues .....	4
3	Disciplinary Process .....	3
4	Specialized Types of Real Estate .....	4.5
5	Property Management .....	6
6	Miscellaneous NC Laws and Legal Concepts .....	7
	<b>Subtotal</b>	<b>29</b>
	End-of-Course Examination	1
	<b>Total</b>	<b>30</b>

**Post 303**  
**NC Law, Rules, and Legal Concepts**  
**Postlicensing Course Syllabus**

**Section 1: General North Carolina Licensing Requirements (4.5 Hours)**

[Various Commission Rules] (*Manual*, Appendix A, pp. 785-791; *RELINC*; *LLCR*, pp. 82-83)

I. Basic NC License Information [93A-1 & 2]

**Required Activity:** Provide transactional scenarios where students identify whether a license is required; and, if not required, have students determine which license exemption applies.

A. Activities Requiring a License [NCGS 93A-2a] (*LLCR*, p. 83)

1. Definition of *Broker*: Persons or business entities who

- a. perform brokerage activities
- b. for compensation or valuable consideration or the promise thereof
- c. as an agent for others

**Note:** If any of the three parts of the above definition is missing, it is **not** brokerage

2. Brokerage Activities

- a. Listing (or offering to list) real estate for sale or rent
  - i. Any act in connection with obtaining or servicing a listing agreement
  - ii. Includes, but is not limited to, soliciting listings and providing information to a property owner
- b. Selling or Buying (or offering to sell or buy) real estate
  - i. Any act in connection with assisting others in the selling or buying of real estate
  - ii. Includes, but is not limited to, “showing” listed property to prospective buyers and communicating offers and offer acceptance

- c. Leasing or Renting (or offering to lease or rent) real estate
  - i. Any act in connection with assisting others in the leasing or renting of real estate
  - ii. Includes, but is not limited to, negotiating lease terms
- d. Auctioning (or offering to auction) real estate
  - i. Excludes the mere “crier” of sales
  - ii. An active auctioneer’s license is also required to auction real estate
- e. Negotiating the purchase, sale or exchange of real estate
- f. Selling, Buying, Leasing, Assigning or Exchanging any interest in real estate, including a leasehold interest, in connection with the sale or purchase of a business
- g. Referring a party to a real estate licensee for compensation
  - i. Prohibits any arrangement for a licensee to compensate an unlicensed person for finding, introducing, or referring a party to the licensee
  - ii. Prohibits payment of *finder’s fee*, *“bird dog” fee*, *referral fee*, etc. to an unlicensed person

B. Licensing Exemptions [NCGS 93A-2c] (LLCR, p. 84)

**Note:** No exemption exists for a limited number of transactions or for receiving only a nominal amount of compensation

1. Business Entity selling or leasing entity-owned real property extends to
  - a. Officers and W-2 employees of corporations
  - b. Partners and W-2 employees of partnerships
  - c. Managers and W-2 employees of limited liability companies (LLCs)

2. Attorney-in-fact for contract performance (aka power of attorney)

3. Attorney-at-law performing practice of law

**Note:** Attorneys may **not** practice real estate brokerage without a real estate license

4. Court-appointed Receiver, Trustee in Bankruptcy, Guardian, Administrator, Executor, etc.

5. Trustee
    - a. Acting under a written trust agreement, deed of trust, or will
    - b. Extends to trustee's regular salaried employees
  6. W-2 Employees of Broker working in Property Management [NCGS 93A-2(c)(6)]
    - a. Allowed activities on behalf of employing broker include
      - i. Showing rental units that are managed by employing broker to prospective tenants
      - ii. Providing lease information to prospective tenants
      - iii. Accepting lease applications
      - iv. Completing and executing preprinted form leases with predetermined terms
      - v. Accepting security deposits and rental payments made payable to landlord or employing broker
    - b. Prohibited from negotiating
      - i. Amount of security deposit or rental payments
      - ii. Leases or terms of any rental agreement on behalf of landlord or employing broker
      - iii. Property management agreements with landlords
  7. Individual Property Owner who leases or sells personally owned property
  8. Housing Authority organized under Chapter 157 selling or leasing Authority-owned or leased real property via regular salaried employees of the Authority
- C. License Categories and Statuses [NCGS 93A-2] (*RELINC*, pp. 3-4; *LLCR*, p. 82-83)
- Note:** There is only one type of license, a **broker** license; there are several license status categories as described in this section
1. Individual Broker License
    - a. Provisional Status (PB) (*RELINC*, pp. 25-27)
      - i. "Entry level" license status
        - Issued on inactive status since a PB may not operate independently
        - May generally perform same acts as a "full" broker (as permitted by BIC)

- Active license-holders may not retain this status indefinitely; postlicensing education required to graduate to “full” broker level

ii. Postlicensing Education Requirement [NCGS 93A-4(a1); Rule 58A .1902]

**Note:** A major rule change, effective July 1, 2020, shortened the compliance deadline. Licensees are always subject to current law and rules; there was no grandfathering period

- Complete three 30-hour Postlicensing courses within 18 months following initial licensure date to retain eligibility for active license status
- Non-compliant PB’s license will be placed on inactive status until educational deficiency cured

**Note:** Once on inactive status, the PB must cease all brokerage activities immediately

iii. Requirements for Active Status [Rule 58A .0506]

- Supervised by Broker-in-Charge (BIC)
- Annual license renewal by June 30
- Completion of required CE by June 10 each license year **after** first license renewal
- Timely completion of Postlicensing education

b. Non-provisional Status (“Full” Broker)

i. Requirements for Active Status

- Annual license renewal by June 30
- Completion of required CE by June 10 each license year **after** first license renewal

ii. Options for Brokerage Practice

- Affiliation with a BIC of a real estate brokerage company (firm or sole proprietorship)
- Independent broker operating as a BIC of a sole proprietorship or a licensed entity

iii. Active Status without BIC Affiliation or Designation [Rule 58A .0110(b)]

- Must be a “full” broker eligible for active status
- Cannot meet any of the criteria that require a BIC per Rule 58A .0110

c. BIC Eligible Status / BIC Designation [NCGS 93A-2(a1) & 93A-4.2; Rule 58A .0110] (LLCR, pp. 96-98)

i. BIC Eligible Status

- Status Requirements [Rule 58A .0110(e)]
  - “Full” broker license on active status
  - Experience
    - At least 2 years of full-time (or 4 years part-time) brokerage experience within previous 5 years
    - NC licensed real estate attorney with a practice that consisted primarily of handling real estate closings and related matters for 3 years immediately prior to application
  - Submission of *Request for BIC Eligible Status and/or BIC Designation* form (REC 2.25)
  - Completion of *12-Hour Broker-in-Charge Course*
    - No earlier than 1 year prior to submission of Form 2.25
    - No later than 120 days after submission of Form 2.25
- Broker with BIC eligible status
  - Is ready to serve as designated BIC whenever needed
  - BIC designation is not required to achieve or maintain BIC Eligible status
- Maintenance of BIC Eligible Status [Rule 58A .0110(h) & (i)]
  - Timely annual renewal of Broker license on active status
  - Timely completion of annual BICUP
  - Timely annual completion of an NCREC-approved Elective

**Note:** If BIC Eligible status is lost for any reason, broker must complete the 12-hour BIC course and must meet criteria set forth in subsections (a) and (b) of Rule 58A .0110(e)(6).

ii. BIC Designation [Rule 58A .0110]

- Designation as BIC of an Office for a New or Existing Firm

**Note:** No broker can be BIC of more than one office location at a time except in the rare situation where 2 or more firms share the exact same office address.

- Designation as BIC of a New or Existing Sole Proprietorship
  - Definition of *Sole Proprietorship*: Non-entity business owned by one person who is liable for all debts & obligations of the company
  - Sole proprietorship reports all company income on their owner’s individual tax return
  - Does not require a firm license as long as no entity is created
  - May have affiliated brokers
  - Registration of Assumed Name with NC Secretary of State (SOS) (*Manual*, Appendix A, Real Estate Companies, Sole Proprietorship, pp. 786-787)
  - BIC is required when a sole proprietorship:
    - Has a trust account or engages in any transaction that

- requires broker to deposit trust monies in a trust account, **or**
- Advertises/promotes services as a broker in **any** way, **or**
- Has any affiliated brokers
- iii. BIC Statutory Responsibilities [Rule 58A .0110(g)]
  - Ensuring that affiliated brokers maintain active licensure
  - Notifying Commission of changes in company name or business address [Rule 58A .0103] (*LLCR*, p. 94)
  - Advertising by or in the name of the company (*LLCR*, pg. 94)
  - Maintaining the trust or escrow account per Commission rules [Rule 58A .0117] (*LLCR*, pp.99-102)

**Note:** No trust account is required if the broker does not collect or handle the funds of others as a fiduciary

**Required Activity:** View the "[Do I Need a Trust Account](#)" video on the Commission's website.

- Basic trust account requirements [NCGS 93A-6(g)]
  - In federally insured (FDIC) depository institution lawfully doing business in NC
  - Account records available for inspection by NCREC
  - Separate account containing only trust monies
    - ❖ "Trust account" or "escrow account" must appear on all account paperwork
    - ❖ Commingling of trust monies with broker's personal or business funds is prohibited [NCGS 93A-6(a)(12)]
  - Custodial account: no one with funds in the account has access
  - Monies available on demand
- Deposits
  - Generally within 3 banking days of receipt
  - Exception for earnest money deposit (EMD) and tenant security deposit (TSD)
    - ❖ Must be deposited within 3 banking days of contract formation
    - ❖ Cash must always be deposited within 3 banking days of receipt

**Note:** Buyer should be aware that broker/escrow agent is not required to wait until contract formation to deposit EMD or TSD funds unless so directed by the buyer or tenant

- Disbursements [Rule 58A .0116(e)]
  - EMD may be transferred to settlement agent no more than 10 days prior to anticipated settlement date
  - Any other disbursement of EMD must be with written consent

of the parties

- Disputed funds [Rule 58A .0116(d); NCGS 93A-12]
  - Both brokers and attorneys serving as escrow agents may use the disputed funds rule
  - 90-day written notification to all parties claiming ownership of the monies of Escrow Agent's intent to deposit monies with clerk of court
  - Deposited with clerk of court in county where contract property is located
  - Parties have 1 year to file special proceedings with clerk of court or funds will escheat to the state
  - Does not apply to residential tenant security deposits
- Retaining and maintaining records relating to transactions conducted by or on behalf of the firm [Rule 58A .0108] (*LLCR*, pp. 94-95)
- Supervising affiliated PBs [Rule 58A .0506]
- Ensuring compliance with agency agreement and disclosure rules [Rule 58A .0104] (*LLCR*, pp.90-93)
- Notifying the Commission in writing within 10 days if no longer serving as BIC of a particular office (*LLCR*, p.97)
- Completing the [Commission's Basic Trust Account Procedures Course](#) within 120 days of assuming responsibility for or opening a trust account if the BIC has not taken the course within the previous 3 years

**Note:** Anyone that will touch trust account funds or records (e.g., bookkeeper or accountant) is strongly encouraged to take the course to ensure compliance with NCREC rules

- Supervising all unlicensed individuals employed at the office and ensuring that unlicensed individuals do not engage in brokerage activities

2. Firm License [NCGS 93A-1 & 2; Rule 58A .0502] (*Manual*, Appendix A, Business Entities, pp. 787-791)

<p><b>Required Activity:</b> Play the "<a href="#">Firm Licensing</a>" video on the Commission's website as an introduction to this section.</p>
--

a. Business Entities

- i. Definition of *Entity*. An organization created by an individual or individuals to conduct business; includes corporations, limited liability companies (LLC), partnerships, associations, joint business ventures
- ii. Legally create an entity and register with NC Secretary of State (NC SOS)
- iii. Permissible names of entities and business purpose (*Manual*, pp.789-790)

- Name restrictions [Rule 58A .0103(d)]
- Registering assumed names [Rule 58A .0103(c)]
- NCREC cannot license a “Professional Services” entity [NCGS 55B-2]

b. Firm License Requirements

**Note:** No entity may engage in or receive compensation from brokerage activities until it has been issued a real estate firm license

- i. Firm License Application (*Form REC 1.72*)
- ii. Firm name on application must be identical to entity’s legal or trade name registered with NC SOS
- iii. All entity principals must satisfy character requirement
- iv. Qualifying Broker (QB) required [Rule 58A .0502(e)]

**Required Activity:** At the end of this section, have students compare and contrast roles of BIC and QB. Be sure to clarify that the 2 positions can be held by the same or different brokers that meet the necessary requirements.

- Qualifications
  - Active “full” broker license in good standing
  - Principal of the entity
    - Owns 10% or more of entity, OR
    - Holds a decision-making position in entity, such as
      - ❖ General partner of a partnership
      - ❖ Manager of an LLC
      - ❖ Officer of a corporation
- Responsibilities
  - Designate BIC for each office of the firm
  - Renew firm license
  - Retain firm’s current pocket card at the firm and a photocopy of firm license certificate and current pocket card at each branch office of the firm
  - Notify NCREC of change in firm’s address and trade or assumed name
  - Notify NCREC in writing of change in QB status within 10 days
  - Secure and preserve transactional and trust account records of the firm when
    - the BIC of the firm or an office changes
    - the QB changes
    - the firm license is terminated
  - Inspect trust account records upon change in BIC
  - Notify NCREC of inability to maintain records or of any out of balance or unreconciled trust account
  - Notify NCREC of firm’s change in status with NC SOS within 10 days of status change

- If QB's license expires or goes inactive:
        - Firm license placed on inactive status
        - All firm offices close
        - BIC(s) lose designation (but do not lose BIC Eligible status)
        - Firm's agency agreements terminate
        - Formerly affiliated full brokers remain on active license status at their home addresses
        - Formerly affiliated PBs become Inactive due to lack of BIC
  - v. Broker-in-Charge (BIC) appointed for each physical office (*LLCR*, p. 96)
    - Definition of *Office* [Rule 58G .0103]
      - Any place of business where acts are performed for which a real estate license is required **or**
      - Where monies received by a broker acting in a fiduciary capacity are handled **or**
      - Where records for trust monies are maintained
    - No office of a firm shall have more than 1 designated BIC
  - vi. Firm licensure does not extend to any individual within or working for the entity
  - vii. Firm license must be renewed annually between May 15-June 30
  - viii. Licensed real estate firm taxed as a pass-through business by the IRS does not need a BIC **if** [Rule 58A .0110(c)]
    - Created for sole purpose of receiving compensation for brokerage services furnished by QB through another firm or broker;
    - Has no principal or branch office; **and**
    - Has no licensed person associated with it other than the QB
3. Limited Nonresident Commercial Broker License (LNCL) [NCGS 93A-9(b); Rule Section 58A .1800] (*Manual*, Chapter 19, Limited Nonresident Commercial License, Commercial Real Estate Brokerage, p. 675 & Chapter 21, Brokerage Compensation Issues, Limited Non-resident Commercial License, pp. 772-773; *LLCR*, p.83) **Level 2**
- a. Requirements for Licensure
- i. Definitions [Rule 58A .1802]
    - *Commercial real estate*: primarily used for sales, office, research, institutional, warehouse, manufacturing, industrial, mining or for multi-family residential of 5 or more dwelling units; freehold or non-freehold interest

**Note:** Definition does **not** include bulk land purchases for the development of residential lots

    - *Qualifying state*: any state or territory of the US other than NC where applicant for or holder of LNCL is licensed in good standing and maintains as their primary place of real estate business

- ii. Eligibility [Rule 58A .1803]
    - An individual person
      - Resides in any state or territory of the US other than NC
      - Holds active real estate license in good standing in *qualifying state*
      - Possesses requisite moral character for licensure in NC
    - Business entities and firms are not eligible
  - iii. License maintenance [Rules 58A .1804 & .1805]
    - Must be renewed annually between May 15-June 30
    - Must certify at renewal that license in *qualifying state* is still active and in good standing
  - iv. Limitations on NC brokerage activities [Rule 58A .1806]
    - LNCL license holder:
      - may **not** reside in NC
      - may only broker *commercial real estate* transactions
      - must enter into a brokerage cooperation agreement with a resident NC broker
  - v. Advertising must conspicuously identify broker as “Limited Nonresident Commercial Real Estate Broker” [Rule 58A .1809]
  - vi. Payment of fees earned as LNCL must be paid to employing broker in qualifying state [Rule 58A .1810]
- b. NC Resident Broker(s) [Rules 58A .1807 & .1808]

- i. LNCL broker may enter into cooperation agreements with multiple resident NC brokers at any time but only one resident NC broker in a single transaction

**Note:** The North Carolina Resident Broker does not have to be BIC Eligible or a designated BIC. Some BICs or firm policies may restrict the ability of affiliated brokers to serve as the NC resident broker for an LNCL transaction. Be aware that any trust monies from the transaction would have to be deposited in the NC resident company’s trust account.

- ii. Declaration of Affiliation

**Required Activity:** Provide and quickly review the NCREC *Declaration of Affiliation between a Limited Nonresident Commercial Real Estate Licensee and a Resident Broker* (Form REC 1.79).

- Must use NCREC form
- Must contain
  - Identities of NC resident broker and LNCL broker
  - Descriptions of duties and obligations of parties
- Can be part of a broker cooperation agreement or a separate agreement
- Must be retained for at least 3 years after expiration

iii. Brokerage Cooperation Agreement

**Required Activity:** Provide and quickly review the NCAR *Limited Nonresident Commercial Licensee Brokerage Cooperation Agreement* (Form 523).

- Must be in writing signed by NC resident broker and LNCL broker prior to entry into NC to perform brokerage activities
  - Must meet criteria for agency agreements including a definite expiration date
  - Must be retained for at least 3 years after expiration
- iv. Duties of NC Resident Broker
- Verification of active LNCL status
  - Active and direct supervision to reasonably assure compliance with NC law and rules
  - Prompt notification of LNCL non-compliance to NCREC
  - Maintenance of transactional records
  - Handling of transactional trust monies
  - Maintaining their license on active status continually during the term of the broker cooperation agreement and the declaration of affiliation

D. Broker License Maintenance [NCGS 93A-4(c); Rules 58A .0503, .0504, .0505]

1. Annual Renewal [Rule 58A .0503]

a. Annual Renewal Fee

- i. \$45 at this time
- ii. If paid between May 15 and June 30 = Current license
- iii. If unpaid by midnight June 30 = Expired license

b. Annual Continuing Education (CE)

- i. 4 hour CE Update course + 4 hour approved Elective course required by June 10 for active status
- ii. Incomplete CE credits by June 10 = Inactive status

c. Individual broker shall provide an email address for Commission use

d. Designated BICs must disclose where trust accounts are held, if any, and any criminal convictions or occupational license disciplinary action, if any, within previous year

2. Proof of Licensure (Digital Pocket Card) [Rule 58A .0101]

3. Written Notification Requirements
  - a. Name/Address Changes within 10 days [Rule 58A .0103(b)]
  - b. Upon affiliation with broker or brokerage firm [Rules 58A .0504 & .0506]
  - c. Convictions/Disciplinary Actions within 60 days [Rule 58A .0113]
4. Activation Procedures [Rule 58A .0504]
5. Reinstatement Procedures [Rule 58A .0505]
  - a. Reinstatement Fee = 2 times Annual Renewal Fee
  - b. Expired Less than 6 Months
    - i. Submit reinstatement fee
    - ii. Disclose any criminal convictions or disciplinary action incurred while license was expired
    - iii. Comply with CE requirements for reactivation, if any
  - c. Expired 6 months - 2 years or Surrendered/Revoked for no more than 2 years
    - i. Submit a complete reinstatement application
    - ii. Submit reinstatement fee
    - iii. Pass
      - 1 Postlicensing Course within 6 months prior to application **or**
      - Both the National and State sections of the license examination within 180 days of submitting application **or**
      - The State section of the license examination within 180 days of submitting application if applicant holds an active broker license in another state
  - d. Expired, surrendered or revoked for more than 2 years
    - i. Submit a complete original license application
    - ii. Subject to Rules A .0301 & .0302
    - iii. Broker prelicensing course is valid for license qualification for 3 years from date of course completion

- E. Teams (*Provisional Brokers on a Team* section of the 2020-2021 BICUP course; *Teaming Up* section of the 2016-2017 Update course)

**Note:** There are currently no laws or Commission rules that specifically address real estate teams. However, many current rules may impact teams including, but not limited to, 58A .0103, .0104, .0109, .0110, .0120, and .0502.

1. Voluntary Team Cooperation; no entity created for team
  - a. Team name may be advertised with firm name
  - b. PBs may be part of the team since there is only 1 BIC
  - c. Agency agreements are only in the name of the brokerage company
2. Licensed Team Entity; All Team Members Dually Affiliated
  - a. Must have a BIC for team firm
  - b. Dually affiliated team members must advertise both firm names
  - c. Agency agreements must list both firm names
  - d. PBs can be part of the team **only if** team is housed at the exact same location as the primary firm [Rule 58A .0506]

## Section 2: Brokerage Compensation Issues (4 Hours)

[NCGS 93A-6(a)(9); Rule 58A .0109] (*Manual*, Chapter 21, Brokerage Compensation Issues, pp. 751-783; *LLCR*, pp. 95-96; *Compensation Issues* section of 2009-2010 BICAR course)

**Required Activity:** After each of the first four subsections, provide multiple transactional scenarios involving various compensation issues. Have students determine proper compensation practice and reference which rule(s) guided their decision. This should be an in-class small group assignment with a “town hall” discussion (with the entire class) at the end.

- I. Compensation for Brokerage Services Requires an Active Real Estate License
  - A. General Prohibition of Compensating Unlicensed Persons for Brokerage Activities [NCGS 93A-6(a)(9) & 93A-8; Rule 58A .0109]

**Note:** It is illegal for anyone, even an unlicensed person or entity, to compensate an unlicensed person or entity for brokerage activity

## B. Exceptions

### 1. Sharing Compensation with Parties to the Transaction

- a. Subject to lender approval if buyer is being paid
- b. Must appear on settlement statement

### 2. Payments to Travel Agents for Vacation Rentals [Rule 58A .0109(h)] **Level 1**

## II. Compensating Affiliated Licensees [Rule 58A .0504(a)]

### A. Broker Eligibility for Compensation

1. Current and active license status at the time the brokerage activity was performed
2. Applies to firm and individual broker licenses

### B. Provisional Brokers Must be Compensated by Supervising BIC [NCGS 93A-6(a)(5)]

### C. Affiliated "Full" Brokers must be Compensated by Supervising BIC [Commission rule 58A .0120(b), effective July 1, 2021]

### D. Paying Brokers No Longer Affiliated with Brokerage Company

**Note:** If the licenses of the firm and the individual broker were on active status **throughout** the period during which brokerage services were rendered, then the firm may be paid and the firm may in turn pay the individual broker, even if their license is not active at the time of payment. Payment is forfeited if either of the licenses were not active at any time that services were being performed

### E. Miscellaneous Situations

#### 1. Broker Working on a Pending Transaction After Leaving a Company

- a. PB should not be allowed to continue work once they have left the company
- b. Full broker could work as dually affiliated until old transaction is complete with consent of all BICs

#### 2. Expired or Inactive Individual Broker's License

- a. Broker must cease all brokerage work until their license is reactivated

- b. A BIC that allows an affiliated agent to continue performing brokerage activities without an active license jeopardizes the company's compensation and may be subject to disciplinary action
  - 3. Expired or Inactive Firm, QB, or BIC License
    - a. Brokerage activity, even by actively licensed broker-affiliates, cannot be allowed to continue until the firm license is back on active status
    - b. Frequently happens around July 1 but may take months for firm to become aware
- F. Paying Business Entities Created by Broker Associates only for Compensation Purposes [Rule 58A .0110(c)]

**Note:** BICs should require proof of active licensure and annual license renewal before paying compensation to an entity

### III. Sharing Compensation with Non-Affiliated Brokers or Firms

- A. Current and Active License Required at time Brokerage Services Performed
- B. Sharing Brokerage Fees through Cooperative Listing Services (e.g., MLS)
- C. Sharing Brokerage Fees Outside of Cooperative Listing Services

**Note:** Non-member brokers are not entitled to compensation offered via the listing service and should determine what compensation, if any, the listing company will pay, prior to extending an offer on behalf of a buyer/lessee

- D. Compensation Agreements "Should" be Written

**Note:** There is no Commission rule requirement for compensation agreements between licensees to be in writing, but hard to enforce without written agreement

- E. Listing Company Limitations on Sharing Compensation

**Note:** At the time of agency creation, a listing company must clearly disclose to its client if and how it plans to vary compensation with different brokers that bring a buyer

- F. Sharing Compensation with Foreign (Out-of-State) Brokers

- 1. Foreign broker must hold an active real estate license in the state from which they are conducting the brokerage activity, such as placing a referral, **and**
- 2. Foreign broker does not enter NC any time during the transaction to engage in any activity related to the transaction

#### IV. Third Party Payments to Brokers

##### A. Restrictions on Kickbacks, Rebates, Referral Fees, etc. [Rule 58A .0109 (a)]

**Note:** RESPA basically prohibits payment of any referral fees between or among “settlement service providers” other than between real estate brokers. Settlement service provider is fairly broadly defined to include virtually anyone providing a service related to the transaction, e.g., home inspectors, appraisers, attorneys, lenders mortgage brokers, surveyors, pest inspectors, etc.

##### B. Compensation, Incentives, Bonuses, etc. to Broker from Anyone Other than Broker’s Principal [Rule 58A .0109 (c, d, & e)]

###### 1. Applies to All Residential and Commercial Sales Transactions

###### 2. Full and Timely Disclosure to Principal

###### a. Description of compensation

###### b. Identity of source

###### c. Written confirmation prior to offer

###### 3. Definitions

###### a. *Nominal Value:* of insignificant, token, or merely symbolic worth

###### b. *Timely:* in sufficient time to aid a reasonable person’s decision making, definitely prior to an offer

#### V. Assistants (*LLCR*, pp. 83-84; *Property Management: Permitted vs. Unlawful Activities of Unlicensed Employees* section of 2018-19 Update course)

##### A. Who can hire an Assistant may be dictated by Company Policy

##### B. Permitted vs Prohibited Duties

###### 1. Licensed vs Unlicensed

###### a. Unlicensed assistants are restricted to clerical and administrative functions

###### b. Actively licensed assistants can legally perform any brokerage activity as long as they are affiliated with and supervised by the BIC

**Note:** A licensed assistant whose license status is anything other than “active” must be treated as if unlicensed

## 2. Sales vs Lease Transactions

### C. Compensation

1. Actively licensed assistants must be directly paid for brokerage activities by their supervising BIC
2. Assistants performing clerical/administrative functions
  - a. Can be paid directly by any broker or PB
  - b. Are usually seen as W-2 employees by the IRS; appropriate payroll taxes should be withheld and paid

**Note:** Regardless of who pays a W-2 assistant, the company may be viewed as the employer by the IRS and, therefore, responsible for payroll taxes; how payroll taxes are handled should be addressed in a company policy manual

## VI. Commercial Real Estate Broker Lien Act [NCGS 44A-24.1-14] (*Manual*, Chapter 19, Commercial Real Estate Broker Lien, pp.675-677) **Level 1**

- A. Purpose: to grant a listing agent in a commercial transaction a right to file a low priority lien against the parcel of commercial real estate being sold or leased to protect the broker's right to recover a brokerage fee

**Note:** Brokers are strongly advised to consult with an attorney regarding the filing of a commercial real estate broker lien

### B. Major Features

1. Entitlement applies to Real Estate Brokers licensed in NC, including out-of-state brokers who hold a NC Limited Non-resident Commercial License
2. Only Commercial Property that is Subject to the Transaction is Subject to Lien
3. Prerequisites for Filing
  - a. Broker must have performed to terms of the written brokerage services agreement
  - b. The written agreement must clearly state the broker's duties to the owner
  - c. The written agreement for broker services must state the conditions upon which the compensation shall be earned and the amount of the compensation

#### 4. Filing & Enforcement Requirements

- a. For sales transactions, lien must be filed after broker has performed the terms of the written brokerage services agreement but before conveyance of the property, but no sooner than 30 days prior to closing
- b. For lease transactions, lien must be filed after broker has performed the terms of the written brokerage services agreement but within 90 days of tenant's possession of the property
- c. Broker should consult an attorney to verify timing for filing
- d. Lien must be enforced within 18 months of filing
- e. Cost of enforcement proceedings will be paid by non-prevailing party

### Section 3: Disciplinary Process (3 Hours)

[NCGS 93A-6; Rule Section 58A .0600] (*Manual*, Chapter 20, License Law Cases, pp. 741-750; *Handling Complaints* section of 2015-2016 BICUP; *Disciplinary Procedures* section of 2010-2011 BICAR)

**Required Activity:** Review the case studies in the *Manual*, Chapter 20, License Law Cases, pp. 741-750 as a small group in-class assignment. Have students determine which of the prohibited acts and/or Commission rules were violated.

- I. NC Prohibited Acts (*LLCR*, pp. 85-90, 94-96, 98-99)
  - A. Misrepresentation and Omission of Material Facts [NCGS 93A-6(a)(1)]
  - B. Making False Promises [NCGS 93A-6(a)(2)]
  - C. Other Misrepresentations [NCGS 93A-6(a)(3)]
  - D. Conflict of Interest [NCGS 93A-6(a)(4) & (6)]
    1. Undisclosed Dual Agency
    2. Self-dealing
    3. Representing Another Broker Without Consent
  - E. Improper Brokerage Commission [NCGS 93A-6(a)(5) & (9)]
  - F. Failing to Account for Trust Funds [NCGS 93A-6(a)(7)]

- G. Unworthiness and Incompetence [NCGS 93A-6(a)(8)]
- H. Improper Dealing [NCGS 93A-6(a)(10)]
- I. Discriminatory Practices [NCGS 93A-6(a)(10); Rule 58A .1601]
- J. Practice of Law [NCGS 93A-4(e); 93A-6(a)(11); Rule 58A .0111]
- K. Commingling of Funds [NCGS 93A-6(a)(12)]
- L. Failure to Timely Deliver Completed Offers and Sales Contracts [NCGS 93A-6(a)(13); Rule 58A .0106 & .0108]
- M. Failure of Responsibility for Closing Statement Accuracy and Delivery [NCGS 93A-6(a)(14)]
  - 1. Confirm the accuracy of all entries about which the broker has direct knowledge
  - 2. Broker may assume amounts paid by third parties are correct unless there is cause for a reasonable broker to suspect an amount is incorrect
  - 3. As to all debits and credits related to the transaction, whether paid before or at closing, the broker must
    - a. Review and confirm that all charges and credits have been property debited or credited to the seller or buyer and are entered in the correct column
    - b. Review and confirm accuracy of the calculations for all prorated items, escrow reserves, interim interest, excise tax and “bottom line figures”
  - 4. Broker must notify both the settlement agent and the lender of any expenses related to the transaction that were not included on the settlement statement
  - 5. Broker must notify the settlement agent if broker believes there are errors or omissions on the settlement statement
- N. Violating any Commission Rule [NCGS 93A-6(a)(15)]
- O. Other Prohibited Acts [NCGS 93A-6(b)]
  - 1. Obtaining a License by False or Fraudulent Representation
  - 2. Conviction in the United States of an Offense involving Moral Turpitude
  - 3. Violation of NCGS 93A-6(a) in Transactions involving Broker’s Own Property

4. Violation of NCGS 93A-6(a) by Broker's Unlicensed Employee in Property Management
5. Disciplinary Action as a Licensee of another Profession or Occupation involving Fraud, Theft, Misrepresentation, Breach of Trust or Fiduciary Responsibility, or Willful or Negligent Malpractice

## II. Complaint Process **Level 1**

**Required Activity:** Play the "[Complaints](#)" Video on the Commission's website.

### A. Commission's Authority [93A-4(d); 93A-6]

1. Take Disciplinary Action
2. Investigate Licensees and Unlicensed Brokerage Activity
3. Issue Subpoenas
4. Impose Sanctions for Licensee Misconduct
  - a. License Revocation
  - b. License Suspension
  - c. Reprimand
  - d. Conditions, Restrictions, Limitations on the License (e.g., ability to serve as BIC)

### B. Broker's Obligations & Duties

1. Report to Commission within 60 days of Final Judgement, Order or Disposition of the Case [Rule 58A .0113]
  - a. Any felony or misdemeanor conviction
  - b. Disciplinary action by a government agency in connection with any occupational license
  - c. Restriction, suspension, or revocation of a notarial commission
2. File a Written Response to a Letter of Inquiry from the Commission within 14 days of Receipt [Rule 58A .0601(e)]

3. Make Records Available for Inspection and Reproduction by the Commission's Representative upon Request without Prior Notice [Rules 58A .0108(c) & 58A .0117(h)]
4. BIC Liability/Responsibility for Associated Brokers [Rule 58A .0110(g)]
  - a. Provisional Brokers [Rule 58A .0506(d)]
    - i. BIC is fully accountable for actions of affiliated PBs
    - ii. Supervision should be in a manner that assures that the PBs perform all acts for which a real estate license is required in accordance with License Law and Commission rules
    - iii. If a complaint is filed against a PB, the BIC will also be named in the complaint
  - b. "Full" Brokers
    - i. BIC is accountable for 5 brokerage activities for all affiliated brokers (Agency, Active & Current Licensure, Advertising, Trust Accounts, and Record Retention)
    - ii. If a complaint is filed against a "full" broker, the BIC will also be named in the complaint if the issue(s) addressed within the complaint include any of the 5 named areas or there is indication of BIC knowledge / involvement
    - iii. BIC may avoid disciplinary action for "rogue" affiliated broker
      - Provide evidence of enforced written office policies
      - Show that adequate training was provided

**Note:** Since some complaints may not name the BIC, an office policy requiring any affiliated broker to immediately report consumer complaints of any kind to the BIC is encouraged; such notice could prompt timely notification of Errors & Omissions insurers, as needed

## Section 4: Specialized Types of Real Estate (4.5 Hours)

### I. Condominiums & Townhouses (*Manual*, Chapter 1, Common Interest Community Ownership, pp. 14-17; NCREC Brochure, *Questions & Answers on: Condos & Townhouses*)

#### A. Defining Differences

##### 1. Land Ownership

- a. A condo owner holds title to airspace within a particular unit but not the exterior walls; it may include additional space such as a balcony or storage unit, but no land
- b. Individual townhome ownership includes ownership of the exterior of the unit and a deed to at least the land upon which the unit sits; it may include additional land or space such as a balcony, enclosed back yard, or storage unit

##### 2. Ownership of Common Areas

- a. Individual condo unit owner owns an undivided interest in the common elements (e.g., land, building exterior, amenities) as tenants in common with all unit owners without the right to partition
- b. Individual townhome unit owner has use of common elements (e.g., amenities) that are owned by the homeowners' association

##### 3. Found in All Use Types (e.g., Residential, Commercial, Industrial, Business)

#### B. Transactional Issues

**Required Activities:** (1) Complete a thorough review of NCAR Standard Form 2A12-T *Owners' Association Disclosure and Condominium Resale Statement Addendum*. (2) At the end of this section, have students discuss concerns that are potentially unique to condo or townhouse purchase transactions and how to proactively address them. This could be a small group activity that reports back to the entire class.

##### 1. Proper Hazard Insurance Coverage

- a. Condo insurance (HO6) is a policy that covers the individual unit ("walls-in coverage") and should also cover personal property plus fixtures, such as cabinets, that are attached to the common area walls
- b. The Condominium Owners' Association master insurance policy will usually cover only the common areas or elements

2. Owners' Association Dues
  - a. Regular Assessments ("Dues")
    - i. May be due monthly, quarterly, or yearly
    - ii. Should specify what is covered by the assessment
    - iii. May include Reserved Funds for major repairs/capital improvements
  - b. Separate Special Assessments, as needed
3. Possible Transfer Fees and/or Capital Contributions
4. Use Restrictions dictated by Protective Covenants

C. Relevant Laws **Level 1**

1. North Carolina Condominium Act [NCGS 47C; or if created prior to 10/1/1986, NCGS 47A]
  - a. Developer must provide a public offering statement to buyer before a purchase contract for a new condo is signed
  - b. Buyer has a 7-day right to cancel a purchase contract for a new condo and receive a refund of all deposited monies
  - c. A condo owner that resells a unit must provide the buyer with a resale certificate that describes expenses and fees payable by unit owners (e.g., NCAR 2A12-T); there is no right to cancel a resale contract
2. Townhouses may be subject to Planned Community Act [NCGS 47F]

II. Time Shares [NCGS 93A, Article 4; Rule Subchapter 58B] **Level 1**

A. Definitions

1. *Developer*: any person or entity which creates a time share or a time share project or program; purchases a time share for the purpose of resale, or is engaged in the business of selling its own time shares [NCGS 93A-41(2)]
2. *Project Broker*: a natural person actively licensed as a real estate broker and designated by the developer to supervise brokers at the time share project [NCGS 93A-41(7a)]
3. *Time Share*: a right to occupy a unit or any of several units during 5 or more separated time periods for a period of at least 5 years [NCGS 93A-41(9)]

4. *Time Share Instrument*: an instrument transferring a time share or any interest, legal or beneficial, in a time share to a purchaser [NCGS 93A-41(9a)]
5. *Time Share Salesperson*: a person who on behalf of a developer sells or offers to sell a time share to a purchaser [NCGS 93A-41(12)]
6. *Time Share Unit*: the real property or real property improvement in a project which is divided into time shares and designate for separate occupancy and use [NCGS 93A-41(13)]

B. Project Registration [NCGS. 93A-40]

1. A Certificate of Registration must be obtained from the NC Real Estate Commission by the time share developer before offering a time share for sale in NC
2. Not registering a time share project is a Class I felony

C. Time share salespersons must be actively licensed real estate brokers [NCGS 93A-40]

D. Developer's Obligation to Record Time Share Instruments [NCGS 93A-42]

E. Escrow Requirements [NCGS 93A-42(c) and (d); NCGS 93A-45(c)]

F. Developer's Public Offering Statement [NCGS 93A-44; NCGS 93A-45(d)]

1. Must contain the information dictated by the Act
2. Must contain a 1-page cover containing a summary of the Statement
3. Must be provided to a purchaser prior to the date of the contract of sale
4. A purchaser is entitled to receive an amount equal to 10% of the time share sales price if the developer did not properly provide a Public Offering Statement

G. Purchaser's Right to Cancel [NCGS 93A-45]

1. Contract of sale is voidable without penalty by the purchaser for any reason for 5 days after contract execution
2. Right of rescission cannot be waived
3. Cancellation can be hand delivered or mailed to the time share developer or the time share salesperson

4. Upon delivery of cancellation notice, all previously made payments by the buyer must be refunded immediately, but no later than 30 days from contract date [Rule 58B .0501(c)]

H. Commission's Disciplinary Authority [NCGS 93A-54]

1. Power to suspend or revoke a real estate license issued to a time share salesperson or project broker
2. Power to suspend or revoke a certificate of registration of a time share project
3. Power to reprimand or censure a time share salesperson, developer, or project broker
4. Power to fine a developer in the amount to \$500 for each violation of this Article

**Note:** A time share developer is the only person/entity that the Commission has the authority to fine

I. Penalties [NCGS 93A-56]

1. Violation of most of this Act is a Class 1 misdemeanor
2. Not registering a time share project is a Class I felony for the developer
3. Not recording a time share instrument as required is a Class I felony for the time share registrar

J. Requirements for Registrar and Project Broker [NCGS 93A-58]

K. Time Share Sales Operations [Rules Section B .0400]

1. Time share developer and time share salesperson are both responsible for the retention of all time share records for 3 years
2. Time share transactions are subject to Agency Agreement and Disclosure requirements

L. Handling and Accounting of Funds [Rules Section 58B .0500]

M. Project Broker [Rules Section 58B .0600]

III. Manufactured and Modular Homes [NCGS 143-143.9] (*Manual*, Chapter 1, Manufactured Homes, p. 8-9)

A. Characteristics of Factory Built Homes

1. Manufactured Housing (previously called mobile homes)

a. Description

- i. Built to HUD standards; HUD red certification label affixed to the rear exterior corner
- ii. Titled and regulated by Dept. of Motor Vehicles (DMV)
- iii. Permanent non-removable steel chassis

b. Personal property until converted to real property by [NCGS 47-20.6(b)]

- i. Attaching home to a permanent foundation on land owned by owner of home;
- ii. Removing wheels, axle and moving hitch; **and**
- iii. Filing affidavit of conversion to cancel DMV title

2. Modular Housing

a. Description

- i. Built to state building code
- ii. State inspection label with serial number, frequently located under the kitchen sink
- iii. Assembled by builder on-site

b. Becomes real property as soon as assembled on building site

B. Financing Issues

IV. Commercial Property (*Manual*, Chapter 19, Commercial Real Estate Brokerage, pp. 667-704, Chapter 19, Like-Kind Exchanges, pp. 708-710) **Level 2**

A. Classifications

1. Office

a. Classification as Class A, Class B or Class C

b. Factors affecting value and desirability of space

- i. Size of the space
  - Floor plate
  - Core factor
  - Rentable vs Usable area
- ii. Determination of square footage
- iii. Property features and amenities
  - Floor shape
  - Bay depth
  - Floor load
  - Ceiling height
  - Elevators
  - Parking
- iv. Rent
- v. Location
- vi. Level of landlord service

c. Common office lease provisions

- i. Rent escalation provisions
- ii. Pass through provisions

2. Retail

a. Classifications

- i. Shopping centers
- ii. Stand-alone retail facilities
- iii. Strip or cluster retail facilities

b. Factors affecting value and desirability of space

- i. Location
- ii. Accessibility
- iii. Signage
- iv. Property features and amenities
  - Bay width and depth
  - Frontage
  - Storage area
  - Loading area
- v. Retail or tenant mix
- vi. Zoning
- vii. Utilities
- viii. Parking

- c. Common retail lease provisions
  - i. Percentage rent provision
  - ii. Common area maintenance (CAM) charge provision
  - iii. Tenant exclusivity provision
- 3. Industrial
  - a. Classifications
    - i. Bulk warehouse
    - ii. Office warehouse
    - iii. Large or small manufacturing
    - iv. Multi-tenant industrial
    - v. Research and development
    - vi. Industrial park
  - b. Factors affecting value and desirability of space
    - i. Property features and amenities
      - Free span
      - Ceiling height
      - Power supply and other utilities
      - Fire protection system
    - ii. Location
    - iii. Environmental considerations
    - iv. Business incentives
  - c. Industrial gross vs industrial net leases
- 4. Land/Specialty
  - a. Highest & Best Use
  - b. Land Use Restrictions
  - c. Acreage and Encumbrances
  - d. Physical Features
  - e. Location
  - f. Site Access

**Note:** Land is the most complex type of commercial property since the land can be put to any permissible use

## B. Special Considerations

### 1. Commercial Contract Forms

- a. NC REALTORS® maintains commercial sales and lease forms for use by their members
- b. Many commercial contracts and associated documentation are drafted by attorneys specifically for a particular transaction
- c. Many commercial transactions begin with a non-binding letter of intent

### 2. Transaction Cycle

### 3. Zoning & Other Land Use Restrictions

### 4. Financing

### 5. Market Factor Concepts

- a. Linkages
- b. Demographics
- c. Absorption Rate

### 6. Like-Kind Exchanges [IRS Code 1031]

**Note:** Brokers are strongly cautioned against giving advice about the eligibility of a property for a Section 1031 exchange or how to conduct such an exchange; consumer should consult a tax advisor or attorney experienced with such transactions

- a. Definition of *Like-Kind Exchange*: a method of transferring property that defers the tax impact of the transaction until sometime in the future; also called “tax-deferred exchange” or “1031 exchange”
- b. Both the “relinquished property” and the “replacement property” must be held for productive use in trade, business or for investment (e.g., “like-kind”)
- c. Delayed deferred exchanges are more common than a direct property swap
- d. Deadlines are absolute with no grace period

## C. Commercial Real Estate Broker Lien [NCGS 44A-24.1-14] **Level 1**

## Section 5: Property Management (6 Hours)

**Note:** NC REALTORS® publishes the *NCAR Residential Property Management Legal Handbook*, a useful resource that is available to both NCAR members and non-members.

- I. Residential Tenant Laws (*Manual*, Chapter 16, Laws Protecting Residential Tenants, pp. 549-569; *Selected Property Management Issues* section of the 2011-2012 Update; 2 NCREC Brochures: *Questions & Answers on: Renting Residential Real Estate*, and *Tenant Security Deposits*)

**Required Activity:** Provide forms and identify provisions in both the NCAR Standard Form #401 *Exclusive Property Management Agreement (Long-term Rental Property)* and NCAR Standard Form #410-T *Residential Rental Contract* that reference or uphold these residential tenant laws.

- A. Residential Rental Agreement Act [NCGS 42-38, Article 5] (*Manual*, pp. 550-557)
  1. Waiver of Act is Prohibited
  2. “Mutuality of Obligations”
  3. Tenant’s Statutory Duties
    - a. Keep premises clean and safe and cause no unsafe or unsanitary conditions in the common area
    - b. Properly dispose of all waste
    - c. Keep plumbing fixtures clean
    - d. Not destroy, deface, damage, or remove any part of the premises
    - e. Comply with current building and housing codes
    - f. Be responsible for damage to the unit including acts of invitees of the tenant
    - g. Share duties with landlord about operation of smoke detectors and carbon monoxide alarms
  4. Landlord’s Statutory Duties
    - a. Comply with current building and housing codes
    - b. Make repairs and keep the property in a fit and habitable condition
    - c. Keep common areas in a safe condition

- d. Maintain utility systems of the property in good and safe working order
  - e. Provide and maintain operable smoke detectors and carbon monoxide alarms
  - f. Notify tenant if landlord is notified of contaminated water system
  - g. Repair an “imminently dangerous condition” within a reasonable time based on severity of condition
5. Broker’s Duties under Act
- Note:** Broker that is managing the rental property for the landlord is defined as “the landlord” under the Act
6. Allocation of Public Utility Costs
- Note:** There are many detailed regulations if the landlord retains the public utilities in the landlord’s name
7. Tenant Remedies for Breach by Landlord
- a. Tenant can bring an action against the landlord for damages, including the recovery of all or part of past rents paid while the unit was uninhabitable
  - b. Common Law Doctrine of Constructive Eviction is possible if premises are uninhabitable and landlord is unable or unwilling to correct the problem
8. Landlord's Liability under the Law of Negligence
- B. Residential Eviction Procedures (*Manual*, pp. 557-558, 563-567)
1. Act Prohibiting Retaliatory Eviction [NCGS 42-37, Article 4A]
- a. Definition of *Retaliatory Eviction*: the **illegal** eviction of a tenant in response to the tenant’s use of a “protected activity”
  - b. Protected Activities of Tenants
    - i. Complaining to a government agency
    - ii. Requesting repairs by the landlord
    - iii. Exercising legal rights under the lease
    - iv. Exercising rights under federal or state law
    - v. Becoming involved in a tenants’ rights organization

## 2. Residential Summary Ejectment (Eviction Procedure)

- a. Definition of *Summary Ejectment*: a small claims action in district court to evict a residential tenant
- b. Possible if tenant breaches lease terms or holds over after lease expiration
- c. Broker managing the property for the landlord generally has the authority per the property management agreement to initiate legal proceedings, such as eviction, on behalf of the landlord
- d. Self-help Eviction Prohibited (e.g., padlocking or changing the locks on the unit, disconnecting utilities, posting a false notice of eviction on the door)
- e. Seizure of Tenant's Personal Property is prohibited
- f. Expedited Eviction for Criminal Activity possible, but legal advice is recommended first

## C. Tenant Security Deposit Act [NCGS 42-50, Article 6] (*Manual*, pp. 558-563)

1. **Any** owner of residential rental property located in NC must comply with this Act, even if not a licensed broker
2. Basic Requirements
  - a. TSDs must be held either
    - i. In a properly designated escrow/trust account in a federally insured depository or trust institution authorized to do business in NC
    - ii. By owner-landlord who has furnished a bond in the amount of the deposit from a licensed insurance company authorized to do business in NC

**Note:** Broker working as property manager for others does not have the option of providing a bond
  - b. Tenant must be notified where TSD is being held within 30 days of lease execution and when/if the funds are moved to a different institution
3. Permitted Uses of TSDs
  - a. Nonpayment of rent and cost of utilities provided by landlord
  - b. Damage to the premises, including smoke or carbon monoxide alarms and excluding "ordinary wear and tear"

- c. Unpaid future rent due per lease terms while landlord makes diligent effort to re-rent unit
  - d. Any unpaid bills that become a lien against the property due to the tenant's occupancy (e.g., unpaid utilities)
  - e. Costs of re-renting the premises after breach by the tenant
  - f. Costs of removal and storage of tenants' property after summary eviction
  - g. Court costs
  - h. Late fees for any rental payments more than 5 days late
  - i. Complaint filing fees or court appearance fees only as permitted by NCGS 42-46.42
4. Accounting to the Tenant
- a. TSD must remain in the escrow account until the end of the tenancy
  - b. Written accounting to tenant at last known address
    - i. Mailed or delivered to tenant within 30 days of termination of tenancy
    - ii. If final accounting cannot be determined within 30 days, landlord must provide interim accounting at 30 days with final accounting within 60 days
    - iii. Must itemize any deduction for damage
    - iv. Detail any deduction for unpaid rent or other permissible deductions
    - v. Specify the balance of the TSD, if any, to be refunded to the tenant
  - c. Failure of the landlord to comply with accounting requirements voids the landlord's right to retain any portion of the TSD
5. Security Deposit Limits
- a. Week-to-week tenancy: two weeks' rent maximum
  - b. Month-to-month tenancy: one and one-half months' rent maximum
  - c. Terms greater than month-to-month: two months' rent maximum
6. Reasonable and Nonrefundable Pet Fees Permitted

7. Limits on Late Payment Fees for payments that are 5 or more days late
  - a. Rent due in monthly installments: fee not to exceed \$15 or 5% of monthly rent
  - b. Rent due in weekly installments: fee not to exceed \$4 or 5% of weekly rent
  - c. Late fees can only be imposed once for each late rental payment
  - d. Late fees cannot be deducted from a tenant's next rental payment if it causes that payment to be in default
- II. NC Vacation Rental Act [NCGS 42A] (*Manual*, Chapter 16, NC Vacation Rental Act, pp. 575-578; *Sales of Vacation Rentals* section of the 2015-2016 Update; NCREC Brochure, *Owning Vacation Rental Property*) **Level 2**
  - A. Definition of *Vacation Rental*: the rental of residential property for vacation, leisure, or recreation purposes for fewer than 90 days by a person who has a place of permanent residence to which they intend to return
  - B. Applicability of Act
    1. Applies to any person or business entity acting as a landlord or real estate broker engaged in the rental or management of "vacation rental property"
    2. Does **not** apply to hotels, motels, and other businesses regulated under the innkeeper-guest laws
  - C. Requirements for Valid Vacation Rental Agreement
    1. Must be in writing
    2. Mandatory special "notice" language
    3. Must contain information dictated by Act
    4. REALTOR® Form 411-T *Vacation Rental Agreement* for use by NC REALTOR® members and private vacation rental owners
  - D. Handling & Accounting for Funds
    1. Must be deposited into a trust/escrow account in a federally insured depository or trust institution authorized to do business in NC within 3 banking days of receipt

2. Posting a bond is not an option, even for an unlicensed landlord
3. The following monies can be disbursed prior to tenancy
  - a. Any administrative fee for the cost of processing the tenant's reservation
  - b. Fees owed third parties to pay for goods, service, or benefits for the tenant
  - c. Up to 50% of the rents received

#### E. Transfer of Property Subject to Act

1. New owner must honor all vacation rental agreements that end within 180 days of acquiring the property
2. New owner may choose to honor vacation rental agreements that end more than 180 days after transfer of the property; tenants of denied agreements are entitled to a full refund of monies previously paid
3. Seller must transfer to the new owner within 30 days of closing all advance payments for tenancies occurring after transfer of the property

#### F. Expedited Eviction

1. Four (4) hours oral or written notice must be given to the vacation renter to leave the property; notice may be posted on the front door of the property if first method of notice failed
2. If tenant fails to leave voluntarily, a summons and complaint may be filed to initiate legal proceedings
3. Within 12-48 hours after service on the tenant, a hearing may be held before a magistrate in small claims court
4. If magistrate finds in favor of landlord, tenant has 2-8 hours to vacate

#### G. Landlord & Tenant Duties

1. Landlord and tenant duties are similar to those under Residential Rental Agreement Act
2. Landlord must provide the property in "fit and habitable condition" or substitute a reasonably comparable property in such condition or the tenant is owed a full refund of all payments made by the tenant

3. Any language in the vacation rental agreement about an automatic forfeiture of any of the TSD due to a breach by the tenant is prohibited

#### H. Mandatory Evacuation

1. Tenant must comply with a mandatory evacuation order of an area that includes the vacation property
2. Tenant is entitled to a prorated refund from the landlord for each night the tenant is unable to occupy the property due to the mandatory order unless
  - a. Prior to occupancy, tenant refused vacation insurance offered by landlord or broker **OR**
  - b. Tenant purchased insurance offered by the landlord or broker

### III. Commercial Leases (*Manual*, pp. 718-732) **Level 2**

#### A. Lease Types

1. Fixed Rental (Flat) Lease
  - a. A fixed amount of rent paid at regular intervals during the lease term
  - b. Most common in residential leases but also some smaller commercial leases
2. Percentage Lease
  - a. All or part of the rent is calculated based on a stated percentage of business receipts from the lessee; usually based on gross sales
  - b. Occasionally, a percentage of gross sales may be additional rent for income over a stated minimum amount plus a fixed base rental amount
3. Net Lease
  - a. In addition to paying rent, lessee is responsible for some or all of the expenses and costs related to the property
  - b. Expenses/costs frequently include repairs and maintenance, property taxes, property insurance, etc.
  - c. Frequently used for long term rentals of commercial or industrial buildings

#### 4. Graduated Lease

- a. Calls for systematic increases in rental rate at regular intervals over the lease term
- b. Advantage to tenant may be lower rates at the beginning, especially for a new company
- c. Advantage to landlord may be ability to anticipate inflation on rental rates

#### 5. Index Lease

- a. Calls for periodic increases or decreases in the rent based on some reliable government or private index, such as the US Consumer Price Index
- b. Intent is to let rent fluctuate with the economy

#### 6. Full Service Lease

- a. Landlord provides all utilities, cleaning services, ground maintenance services, and other services related to the tenancy
- b. Rent is higher because it is all inclusive

#### 7. Leases for Special Circumstances

##### a. Ground Lease

- i. Tenant leases a vacant parcel of land for an extended period of time, e.g., 99 years
- ii. Lessee will build on the property; clearly noting how those improvements will be handled at the end of the lease is critical

##### b. Mineral Lease

- i. Entitles lessee to explore for minerals and mine them if they are discovered
- ii. Mineral leases of any length must be in writing

##### c. Oil and Gas Lease

- i. This lease transfers to the lessee the right to extract oil or gas from the landlord's property
- ii. There is an extensive separate body of law that address oil and gas leases; consult an expert before proceeding

## B. Common Lease Provisions

1. Tenant's Proposed Use of the Property
  - a. Lessee may make any legal use of the property unless there are use restrictions in the lease
  - b. Lessor might wish to restrict uses that use or create environmental hazards or competing uses for existing businesses in the area
  - c. Lessee might wish to make lease contingent on ability to obtain necessary license to conduct intended business practice
2. Environmental Matters
  - a. Lessor can be held legally responsible for environmental cleanup costs even if the problem was caused by the tenant
  - b. Lessee might consider performing an environmental site assessment prior to signing lease to avoid possible liability for previous environmental contamination cleanup
3. Lessee's Trade Fixtures
  - a. Definition of *Trade Fixture*: personal property of the tenant installed on the leased premises by the lessee for use in the lessee's trade or business
  - b. Removable by lessee at the end of the lease term if no material damage to the lease premises results and the lease does not stipulate otherwise
4. Repairs and Upfitting
  - a. There is no implied promise that the premises are fit or suitable for occupancy, or for the particular use intended, or that the premises are safe for use
  - b. Absent a lease provision, such as in a net lease, the lessee is not obligated to make ordinary repairs to the leased premises
  - c. If leased property is part of a larger area owned by the lessor, the lessor retains control and responsibility for maintaining the common areas
  - d. Definition of *Upfitting*: providing and paying for improvements to the property by the lessor in preparation for tenant's use

## 5. Assignments and Subleases

- a. Definition of *Assignment*: a transfer of the lessee's entire remaining interest in the lease; the new tenant (*assignee*) replaces the former tenant (*assignor*) for the remainder of the lease term
- b. Original tenant can still be held liable for lease terms unless a *novation* is granted by the lessor that relieves the original lessee of future lease obligation

## 6. Lease Renewal

- a. Lessee has no implied right to renew the lease
- b. An automatic renewal clause can be included in the lease terms

## 7. Options for Purchase and Preemptive Rights

- a. Lease provision may give lessee the right to purchase the property via a *right of first refusal* or a *first opportunity to purchase*
- b. The purchase price or a reliable way to determine the price should be included in the lease

## 8. Lessor has **no** Right to Enter Premises during Lease Term unless granted in the Lease

## 9. Lessee's Implied Covenant of Quiet Enjoyment is a Warranty of Lessee's Right to Possess and Use per the terms of the Lease

## 10. Breach of Lease by Lessor or Lessee

- a. Lessee's failure to pay rent
- b. Lessee's liability for "waste"
- c. Lessee's remedies for Lessor's breach

## Section 6: Miscellaneous NC Laws and Legal Concepts (7 Hours)

- I. Unique NC Real Property Ownership (*Manual*, Chapter 1, Concurrent Ownership, pp. 11-14)

**Note:** Brokers are reminded of the prohibition against the unlawful practice of law [NCGS 93A-6(a)(11)] which would include advising a consumer on how to take title to real property. This section is intended to raise broker awareness of situations when a consumer needs legal advice on how to take title. The broker should **only** advise the consumer to consult a real estate attorney to determine the best ownership type for their goals.

**Required Activity:** Have students discuss why it is important for brokers to be aware of different types of ownership since brokers are prohibited from the unlawful practice of law. Have the class create a list of questions to ask seller and/or buyer clients to uncover ownership issues.

### A. Tenancy by the Entirety [NCGS 39.7]

1. Concurrent Ownership Reserved for Legally Married Spouses
  - a. Each spouse owns an equal undivided interest in the property
  - b. Each spouse holds an equal right to the control, use, possession and income of the property
2. NC Default Conveyance to Buyers married to each other at time of purchase unless otherwise requested
3. Previously Owned Property not automatically converted at marriage to tenancy by the entirety
4. Mutual Agreement Required to convey or transfer any interest
  - a. Neither spouse can individually transfer their interest or eliminate the other spouse's right of survivorship
  - b. Neither spouse can seek partition of the property as long as the tenancy by entirety exists
5. Termination
  - a. Mutual Agreement
  - b. Valid Divorce Decree which automatically converts the property ownership to tenancy in common

c. Death of One or Both Spouses

B. Joint Tenancy in North Carolina [NCGS 41.2]

- a. Specific Language Required to create Right of Survivorship in NC; not automatic like most states
- b. Unequal Ownership Interests are Possible in NC

II. Disclosure & *Caveat Emptor*

**Required Activity:** At the end of this section, have students discuss the pros and cons of the seller providing full disclosure of property conditions vs. using the “No Representation” options when available.

A. Doctrine of *Caveat Emptor* (*Manual*, Chapter 8, Responsibilities of Sellers and Purchasers, Doctrine of *Caveat Emptor*, pp. 176-178)

1. Doctrine of *Caveat Emptor*: seller has no affirmative obligation to disclose information about the property being sold to the buyer and places the burden on the buyer to investigate the property before contracting to purchase the property
2. Literally means “Let the Buyer Beware”
3. North Carolina seller has **no** affirmative duty to disclose property information to buyer, but should not engage in any fraudulent acts to induce buyer to forego property inspection

B. Residential Property Disclosure Act [NCGS 47E] (*Manual*, Chapter 8, The Residential Property Disclosure Act, pp. 178-185)

1. Applicability

- a. Sellers of most Residential 1-4 unit Properties must provide disclosure forms to prospective buyers
- b. Buyer must receive Disclosure Forms prior to making an offer; buyer must sign to acknowledge receipt
- c. Buyer’s Right to cancel contract
  - i. Only possible if seller does **not** provide completed disclosure forms prior to or at time of offer
  - ii. Buyer may cancel in writing by the occurrence of the 1<sup>st</sup> of the following

- End of the 3<sup>rd</sup> calendar day following buyer's late receipt of forms
- End of the 3<sup>rd</sup> calendar day following contract formation
- Settlement or occupancy by buyer in the case of a sale or exchange
- Settlement in the case of a purchase pursuant to a lease with an option to purchase

d. Exempt Transfers

- i. Involving the first sale of a dwelling never inhabited
- ii. By lease with option to purchase contracts where the lessee occupies or intends to occupy the dwelling
- iii. To or from the State, County or City
- iv. Between co-owners
- v. Made solely to a spouse, grandparent, parent, or child
- vi. Between spouses in a divorce
- vii. Made pursuant to court order
- viii. Made in connection with a mortgage default or foreclosure
- ix. By a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust
- x. In connection with the owner's failure to pay federal, state, or local taxes
- xi. Between parties that have agreed to not complete a RPOADS

**Note:** Remember that RPOADS is not required for transfers of vacant lots or land since there is no dwelling involved

e. Broker's General Duty

- i. Inform parties of rights and obligations under Act
- ii. Listing agent shall provide seller with form copies to complete
- iii. Assist in delivering completed forms to prospective buyers
- iv. Retain signed forms in transactional files
- v. Broker's duty to disclose material facts unaffected by Act

2. Mandatory Forms to be Completed by Property Owner

**Required Activity:** Provide and review RPOADS and MOG line-by-line. Discuss how agent can observe fiduciary obligations while de-escalating buyer emotions when seller's use of "No Representation" is perceived to be withholding/hiding information.

- a. Residential Property & Owners' Association Disclosure Statement (RPOADS) [Rule 58A .0114]
- b. Mineral and Oil and Gas Disclosure (MOG) [Rule 58A .0119]
  - i. Seller must answer "yes" or "no" to items about their intent to sever rights

- ii. Exempt transfers are same as for RPOADS **minus** the following
  - Lease transfers involving the first sale of a dwelling never inhabited
  - With option to purchase contracts where the lessee occupies or intends to occupy the dwelling
  - Transfers between parties that have agreed to not complete a RPOADS

C. Materiality Laws [NCGS 93A-6(a)(1)] (*Manual*, Chapter 8, Legal Duties of Real Estate Agents and Principals, pp. 151-155, and Agent's Duties under Real Estate License Law, pp. 163-176; *LLCR*, pp. 85-88; *Material Facts* section of the 2008-2009 Update course)

1. Broker's Duty to Discover & Disclose

- a. Affirmative duty to discover and disclose material facts relating to the transaction to all parties to the transaction regardless of whom the broker represents in the transaction
- b. Misrepresentation and omission of material facts prohibited

2. Material Fact Categories & Examples

a. Facts about Property Itself

- i. Manufactured Homes vs. Manufactured (Modular) Buildings [NCGS 20-286(11)(b)(6)] (*Manual*, Chapter 1, Improvements, p.8; <https://bulletins.ncrec.gov/manufactured-homes-real-or-personal-property>, Bulletin article, June 2002)
- ii. Polybutylene Pipes that have ever leaked (even if repaired)
- iii. Synthetic Stucco / Exterior Insulating & Finishing System (EIFS)
  - Broker must disclose if the property was ever clad in EIFS, even if completely replaced
  - Concern surrounds possibility on undiscovered wood rot within the walls
- iv. Methamphetamine Lab (Bulletin article, "[Meth](https://bulletins.ncrec.gov/meth-houses)" Houses, May 2005, <https://bulletins.ncrec.gov/meth-houses>)
- vi. Radon
  - Radon level of 4.0 pico curies per liter of air or higher is a material fact
  - Radon Testing
  - Radon Mitigation
- vii. Unpermitted Additions/Improvements
- viii. Partial Destruction of Property
- ix. Gravesites located on the Property

- b. Matters Relating Directly to the Property
  - i. Zoning
  - ii. Permitting Regulations
  - iii. Flood Zones and Need for Flood Insurance
  - iv. Insurability of the Property
- c. Matters Relating Directly to the Ability of Agent's Principal's to Complete the Transaction
  - i. Foreclosure
  - ii. Short Sale
  - iii. Inability to Obtain Financing
- d. Matters of Special Importance to a Party

**Note:** Once a consumer states that something is critical to their buying or selling decision, that item/issue becomes material

### 3. Non-Material Fact Considerations

- a. Death or Serious Illness of Previous Property Occupant [NCGS 39-50 and NCGS 42-14.2]
  - i. Brokers do **not** have to volunteer this information
  - ii. If buyer asks for this information, a listing agent can either decline to answer or answer honestly
  - iii. Questions about whether the owner or tenant had AIDS cannot be answered since AIDS is a protected "Handicapping Condition" under Fair Housing laws
- b. Presence of Convicted Sexual Offender [NCGS 27A-14]
  - i. Brokers do **not** have to volunteer this information
  - ii. If buyer asks for this information, an agent must answer honestly to the best of their knowledge
  - iii. Brokers are advised to direct consumers to the statewide on-line sex offender registry at <https://www.nc.gov/sex-offender-registry>
- c. Square Footage
  - i. Measurement using NCREC'S *Residential Square Footage Guidelines*
  - ii. While **not** a material fact, if broker will advertise heated living square footage, the broker must personally measure or hire an expert to do so

III. NC Planned Community Act [NCGS 47F] (*Manual*, Chapter 7, NC Planned Community Act, pp.130-131) **Level 1**

- A. Expands Owner Associations' Authority and Covenant Enforcement Power
- B. Requires Explanation to Prospective Buyers of owner association powers, assessments, and enforcement remedies

IV. Subdivision Regulations (*Manual*, Chapter 7, Subdivision Approval, pp.117-119) **Level 2**

A. Definition of *Subdivision* [NCGS 153A-335]:

- 1. Division of Land into 2 or more Lots, Building Sites or other divisions for the Purpose of Sale or Building Development (now or in future) **or**
- 2. Any Division of Land involving Dedication of a New Street or Change in Existing Streets

B. Exclusions

- 1. Division of Land into Parcels more than 10 acres each with no street right-of-way dedication **or**
- 2. Division of a tract in single ownership of no greater than 2 acres into no more than 3 lots with no street right-of-way dedication

C. Recording Requirement

- 1. Owner must Record Final Plat with Register of Deeds prior to Conveying Any Portion of the Parcel
- 2. Streets must be Designated as Private or Public (discussed in next subsection)

D. Criminal Penalty for Selling Lots in Unapproved Subdivision

- 1. In Counties or Municipalities that have a Subdivision Ordinance
- 2. Survey of Proposed Lots **not** equal to Subdivision Approval
- 3. Lots cannot be offered for sale or lease or be put under contract until the preliminary subdivision plat approval has been obtained

#### 4. Contract Conditions

- a. Must include a copy of the preliminary plat
- b. Cannot close before delivery of the final recorded plat
- c. Buyer/lessee may terminate the contract without breach if there is any material difference between the preliminary and final plats
- d. Allows buyer/lessee 5 days to close after delivery of final plat without material differences **or** 15 days to terminate the contract with full refund after delivery of final plat with material differences

#### E. Broker Responsibilities

1. Verify Approval Status on Plat Map
2. Offer and Contract Possible after Preliminary Plat Approval

#### V. Streets Disclosure Law [NCGS 136-102.6] (*Manual*, Chapter 7, Subdivision Streets Disclosure Laws, pp.118-119; *Subdivision Street Disclosure* section of the 2014-2015 Update course; *The 4 S's" Septic, Streets, Underground Storage Tanks & Square Footage* section of the 2016-2017 Update course)

##### A. Application

1. If developer plans to dedicate the subdivision streets to public use, street construction must comply with Department of Transportation standards
2. Developer is required to provide prospective buyer with a disclosure statement that clearly states whether streets will be public or private
3. Maintenance responsibility is a material fact

##### B. Public designation does **not** always equate to governmental acceptance of maintenance and repair responsibility

##### C. Broker's Responsibility

1. Reasonable Inquiry
2. Responsibility for Adjacent Street Maintenance is Material Fact
3. Disclosure of Street Status on Resale Property

VI. Environmental Laws (*Manual*, Chapter 7, Environmental Laws and Regulations, pp. 121-125 **Level 1**)

- A. NC Coastal Area Management Act (CAMA) [NCGS 133A-100]: requires a permit prior to engaging in any “development” of an “area of environmental concern”
- B. NC Mountain Ridge Protection Act [NCGS 113A-14]: first state in country to enact comprehensive legislation regulating construction on protected mountain ridges
- C. Waterway Vegetation Buffer Zones: to minimize adverse effects of pollution, a buffer zone of undisturbed vegetation is required along some river basins and coastal waterways, e.g., 30-50 feet buffer from water’s edge
- D. Scenic Corridor Zones: limits land use within “scenic corridor zones”
- E. NC Leaking Petroleum Underground and Storage Tank Cleanup Act [NCGS 143-215.94A] (*The 4 S’s” Septic, Streets, Underground Storage Tanks & Square Footage* section of the 2016-2017 Update course): regulates unauthorized discharge of oil and other hazardous chemical substances from underground petroleum storage tanks (USTs)
- F. NC Sediment Pollution Control Act [NCGS 113A-50]: regulates land-disturbing acts that alter natural vegetation or topography in a way that creates sediment
- G. Clean Water Acts [NCGS 143A-214.1 & 113-229]: requires a permit to do dredging and filling in wetland areas
- H. Wastewater Systems: all wastewater must be treated through a septic system or sewage treatment plant; a straight-pipe system is illegal and a material fact

VII. NC State Fair Housing Act [NCGS 41A] (*Manual*, Chapter 18, Fair Housing, pp. 627-628; Chapter 18, State Fair Housing Act, p. 646; *Fair Housing Review* section of the 2013-2014 BICAR course)

- A. Compared to Federal Fair Housing Act
  - 1. Identical to Federal Fair Housing Act except for Exemptions
  - 2. Exemption Differences from Federal Act
    - a. No exemption for private owners that sell without a broker
    - b. Exemption for rental of 1-4 residential unit if owner or owner’s family member lives in one of the units
    - c. Exemption for rental of rooms in a single-sex dormitory

B. Enforced by NC Human Relations Commission

C. The More Restrictive Federal or State or Local Act Applies

## **End of Course Syllabus**