

2021-2022

Broker-in-Charge Update (BICUP) Course

Student Manual



June 2021

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INTRODUCTION

The *2021-2022 Broker-in-Charge Update (BICUP) Course* is a four (4) hour* course that must be completed by all brokers-in-charge and brokers who have BIC-Eligible status and who wish to renew their licenses on active status on July 1, 2022, for the 2022-2023 license year.

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

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

Development and Delivery

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

Per Commission Rule 58H .0402(d): Education providers shall use the Commission-developed course materials to conduct Update courses. Education providers shall provide a copy of the course materials to each broker taking an Update course.

Per Commission Rule 58H .0402: (d) For each continuing education course taught, an education provider shall provide a course completion certificate signed by the education director to each student that meets the requirements of 21 NCAC 58A .1705. (e) The course completion certificate shall identify the course, date of completion, student, and instructor.

Commission Rule 58A .1705: Attendance & Participation Requirements

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

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

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

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

Comments and Complaints

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

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

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NORTH CAROLINA REAL ESTATE COMMISSION COMMITMENT TO RACIAL EQUITY

The recent deaths of numerous persons of color in our nation have awakened many of us to racial inequities which have always been present but not widely considered or discussed. The North Carolina Real Estate Commission members and staff remain deeply troubled by these senseless losses and the many inequities faced by persons of color. These ongoing events, and the resulting protests, have affected all of us, have made us think and question our own actions and reactions, and have shown the importance of compassionate and open discussion about issues of racial equity. The Commission welcomes the resulting discussions and changes that have begun and will continue in our community and nation.

Those involved in real estate brokerage are a diverse community. The Commission is committed to the principles of excellence, fairness, and respect for all people. It is our goal to ensure that brokerage activities are conducted in fairness to all, to ensure equal housing opportunities, and to end discrimination in the sale or rental of all real estate. Everyone should feel safe in their communities and should feel and be free from discrimination.

We stand with those who seek equal justice for all and will do our part to encourage and support our community in making necessary changes to make sure racism and disregard for the dignity of people of color become a part of our history and not our present. We vow to listen, learn, and work with others to promote equality, inclusion, and acceptance.

The Commission is committed to examining its rules to ensure that they address discriminatory conduct by licensees in the real estate profession and to being a leader in moving the profession forward. To that end, in the past year, the Commission has

- embarked on a rulemaking to directly address broker misconduct on the basis of race and other protected classes;
- participated in racial equity training for all members and staff to better understand unconscious bias, inequality, and institutional and structural forms of racism;
- revised its Investment Policy to require that a larger portion of Commission funds are deposited in minority-owned depository institutions (MDIs);
- received and considered comments and complaints on its website about racism and discrimination faced by consumers and licensees in real estate transactions; and
- included in the next Update courses substantial material addressing racial equity in real estate transactions, including Fair Housing, Commission rules, and related topics and scenarios.

Please continue to help us better understand the experiences you have faced as a real estate broker or consumer around racism or other discrimination in any real estate related activities by contacting us and/or filing a complaint. We cannot stress enough the importance of providing us with this information.

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Section 1

The New WWREA Disclosure Form



1. Chris sees an ad for a property listed by ABC Realty in Asheville that he is interested in purchasing. He calls the firm and inquires whether the property is still available. Stan, the listing agent, indicates the property is still on the market and is listed at \$675,000. Chris tells Stan that he is preapproved for \$713,000, and would like to submit an offer on the property.⁴

Has first substantial contact occurred? Yes/No Why or why not?

What mandatory disclosure must Stan review with Chris?

2. Alicia attends an open house in Fuquay-Varina. She is not represented by a real estate agent. Alicia enters the house and is immediately impressed by the floorplan. She asks Don, the listing agent, if the house is available for a quick move-in. Don says, “Yes,” and Alicia is enthused. She tells Don she needs to purchase a home within 30 days to start a new job and will send an offer to him by the end of the day.

Has first substantial contact occurred? Yes / No

What must Don do at this point to comply with License Law and Commission rules? _____

3. Felicia has reviewed and explained the WWREA disclosure and her fiduciary duties to Corey, a prospective buyer, but he still has additional questions regarding compensation and the specific duties of a buyer agent.

What additional resource can Felicia provide to Corey?

LEARNING OBJECTIVES

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

- describe the key sections of the new WWREA Disclosure Form;
- explain the requirements set forth in Rule 58A .0104(c);
- differentiate between the WWREA Disclosure and the “Questions & Answers on: Working With Real Estate Agents” brochure; and
- identify when licensees were required to begin using the WWREA Disclosure.

OVERVIEW: WHY CHANGE THE WWREA PUBLICATION?

In January 2020, the Consumer Federation of America (“CFA”) published a report entitled, “Why Required Real Estate Agent Disclosures about Representation Fail and How They Can Be Improved.” The report contains a list of recommendations for improving agency disclosure forms. The Commission’s *Working With Real Estate Agents* (WWREA) brochure ranked in the middle as compared to other states’ publications. The report can be viewed here: <https://consumerfed.org/wp-content/uploads/2020/01/Real-Estate-Disclosures-Report-1-13-20.pdf>.

In response to the report, the Commission decided to reevaluate the WWREA brochure, which had been in use for approximately 25 years. The Commission decided that, although the brochure contained good information, changes in technology, communication methods, and the faster pace of real estate transactions had made its format less user friendly.

Consequently, the Commission has replaced the former brochure with a new WWREA publication to be used by licensees, called the *Working With Real Estate Agents Disclosure* (hereafter known as *WWREA Disclosure*).

Like its predecessor, the WWREA Disclosure:

- explains the various agency relationships that are available to consumers in a real estate sales transaction; and
- warns the consumer not to share any confidential information with the licensee until an agency agreement is created.

The format and design of the WWREA Disclosure is vastly different from the former brochure. When printed, it is a one-page, double-sided form with one side for sellers and one side for buyers. In zip forms, it will be two pages.

Each side/page of the new form is reprinted on the following pages, along with descriptions of each section.

THE NEW WWREA DISCLOSURE FORM

SIDE 1 - FOR SELLERS

Let's start with side 1, which is the seller side. There are 5 primary sections of this side of the form:

- residential and commercial sales,
- notes and notices,
- agency options and explanations,
- reference to the Q&A brochure, and
- signatures.

A description of each section is provided below.

Seller Side - Overview

This form is required for use in all sales transactions, including residential and commercial.

1 → Applies to residential and commercial sales

2 → Notes and notices

3 → Agency options & explanations (to be checked by broker)

4 → Reference to Q&A brochure

5 → Signatures

Working With Real Estate Agents Disclosure (For Sellers)

IMPORTANT
This form is a contract. Signing this disclosure only means you have received it.
• In a real estate sales transaction, it is important that you understand whether an agent represents you.
• Real estate agents are required to (1) review this form with you at first substantial contact - before they begin receiving your confidential information and (2) give you a copy of the form after you sign it. This is for your own protection.
• Do not share any confidential information with a real estate agent or assume that the agent is acting in your behalf until you have entered into a written agreement with the agent to represent you. Otherwise, the agent can share your confidential information with others.

Note to Agent: Check all relationship types below that may apply to this offer.

Seller's Agency (listing agent): The agent who gave you this form (and the agent's firm) must enter into a written listing agreement with you before they begin to market your property for sale. If you sign the listing agreement, the listing firm and its agents would then represent you. The buyer would either be represented by an agent affiliated with a different real estate firm or be unrepresented.

Dual Agency: Dual agency will occur if your listing firm has a buyer-client who wants to purchase your property. If you agree in a written agency agreement, the real estate firm, and any agent with the same firm (company), would be permitted to represent you and the buyer at the same time. A dual agent's loyalty would be divided between you and the buyer, but the firm and its agents must treat you and the buyer fairly and equally and cannot only represent an advantage over the other party.

Designated Dual Agency: If you agree in a written agency agreement, the real estate firm would represent both you and the buyer, but the firm would designate one agent to represent you and a different agent to represent the buyer. Each designated agent would be loyal only to their client.

Buyer Agent Working with an Unrepresented Seller (For Sale By Owner, "FSBO"): The agent who gave you this form will not be representing you and has no loyalty to you. The agent will represent only the buyer who you share any confidential information with this agent.

Note to Seller: For more information on an agent's duties and services, refer to the NC Real Estate Commission's "Questions and Answers on Working With Real Estate Agents" brochure at www.ncrre.com/Publications_Q&A_Brochures or ask your agent for a copy of it.

Seller's Signature _____ Seller's Signature _____ Date _____
Agent's Name _____ Agent's License No. _____ Firm Name _____

REC. 4.27 • 6/6/2021

1. Residential and Commercial Sales

This statement appears at the top of the form: “This form is required for use in all sales transactions, including residential and commercial.” The statement is a reminder that Commission rule 58A .0104(c) requires the use of this form in ALL sales transactions, as follows:

Rule 58A .0104(c) specifies:

In every real estate transaction, a broker shall at first substantial contact with a prospective buyer or seller, provide the prospective buyer or seller with a copy of the publication “Working With Real Estate Agents”... review the publication with the buyer or seller...



Must I provide and review the WWREA Disclosure with prospective commercial sellers?

Yes. Rule 58A .0104(c) indicates that the Working With Real Estate Agents publication is provided and reviewed with every prospective buyer or seller in every real estate **sales** transaction. This includes residential and commercial transactions.



Are brokers required to provide the WWREA Disclosure in property management/lease transactions?

No. The WWREA Disclosure is not required to be reviewed in property management/lease transactions per Rule 58A .0104(c).

IMPORTANT NOTE: Even though use of the WWREA Disclosure is not required in property management/lease transactions, brokers are still required to disclose their agency status to prospective clients in those types of transactions. Brokers may choose to use the WWREA form to assist in the explanation. Also, NC REALTORS® provides a landlord/tenant version of the WWREA Disclosure form for its members.

2. Notes and Notices

A series of notes and notices provide the prospective seller important information, as follows:

- **This form is not a contract.**

When a licensee is providing and reviewing the WWREA Disclosure with prospective sellers it is instrumental that the licensee makes them aware that they are not entering into a contract for brokerage services. Signing this disclosure does not create a binding contract between the licensee and consumer.

- **Signing this disclosure only means you have received it.**

Under License Law and Commission rules, a licensee is obligated to provide and review this disclosure with a prospective seller. This note informs the prospective seller that their signature on this disclosure form only acknowledges their receipt of the form.

- **In a real estate sales transaction, it is important that you understand whether an agent represents you.**

This note highlights the importance of the seller understanding whether or not the licensee who is providing the form will represent their interests in the transaction. Remember that the licensee cannot represent the interests of the seller without a written agency agreement.

- **Real estate agents are required to (1) review this form with you at first substantial contact before asking or receiving your confidential information and (2) give you a copy of the form after you sign it.**

This notice informs the seller that the licensee is supposed to give them the form at first substantial contact. It further defines first substantial contact for the seller.

- **Do not share confidential information with a real estate agent or assume that the agent is acting on your behalf until you have entered into a written agreement with the agent to represent you. Otherwise, the agent can share your confidential information.**

This notice cautions the seller not to provide confidential information to the licensee or assume that the licensee works for the seller until they have agreed upon representation in a written agency agreement.

If the seller does share confidential information, the licensee may share this confidential information with others.

3. Agency Options

In the Agency Options section of the WWREA Disclosure form, licensees will identify the agency services their firms and/or companies offers for sellers. The Note to Agent instructs the licensee to check all of the agency relationship types that *may* apply to the seller.

It is imperative for licensees to realize that the seller is NOT agreeing to a specific agency representation type at this time. The licensee is simply identifying and explaining the type of agency services their firm and/or company offers to sellers.

Seller's Agency

This subsection will be checked by the licensee if the firm/company offers seller agency. The form explains*:

The agent who gave you this form (and the agent's firm) must enter into a written listing agreement with you before they begin to market your property for sale. If you sign the listing agreement, the listing firm and its agents would then represent you. The buyer would either be represented by an agent affiliated with a different real estate firm or be unrepresented.

*The licensee must explain the basics of seller agency and answer the consumer's questions about it versus just relying on the form's explanation.

Dual Agency

This subsection will be checked by the licensee if their firm/company offers dual agency. The form explains*:

Dual agency will occur if your listing firm has a buyer-client who wants to purchase your property. If you agree in a written agency agreement, the real estate firm, and any agent with the same firm (company), would be permitted to represent you and the buyer at the same time. A dual agent's loyalty would be divided between you and the buyer, but the firm and its agents must treat you and the buyer fairly and equally and cannot help you gain an advantage over the other party.

*The licensee must explain the basics of dual agency and answer the consumer's questions about it versus just relying on the form's explanation.

Designated Dual Agency

This subsection will be checked by the licensee if their firm/company offers designated dual agency. The form explains*:

If you agree in a written agency agreement, the real estate firm would represent both you and the buyer, but the firm would designate one agent to represent you and a different agent to represent the buyer. Each designated agent would be loyal only to their client.

*This type of agency is designed to overcome a seller's concern about a dual agent's undivided loyalty with the buyer.

*The licensee must explain the basics of designated dual agency and answer the consumer's questions about it versus just relying on the form's explanation.

Buyer Agent Working With an Unrepresented Seller (For Sale By Owner, "FSBO")

This subsection will be checked by the licensee if they are working with a buyer as a buyer's agent under a buyer agency agreement and the seller is unrepresented in the transaction (e.g. For Sale By Owner, "FSBO"). The form explains*:

The agent who gave you this form will not be representing you and has no loyalty to you. The agent will represent only the buyer. Do not share any confidential information with this agent.

*The licensee must explain this relationship and answer the consumer's questions about it versus just relying on the form's explanation.

*Although the agent is a buyer agent, there is value in the agent reviewing dual and designated dual agency options with the "FSBO" if the firm/company offers these types of agency relationships. The FSBO may determine that they want/need the assistance of the agent later during the transaction.



Does the seller check the applicable Agency Options on the WWREA Disclosure?

No. The seller does not check the applicable agency options on the WWREA Disclosure. The licensee checks all of the Agency Options that are offered by the licensee’s firm/company. Additionally, the licensee provides an explanation of these Agency Options to the seller so they can make an informed decision regarding the agency option that is best for them when and if they enter into an agency agreement.



Which relationship type(s) should I check under Agency Options?

The licensee should check all of the Agency Options that are offered by their firm and/or company. Moreover, the licensee should review all of the agency options on the WWREA Disclosure that are checked.



Do I review the Designated Dual Agency option with the prospective seller?

It depends. If your firm and/or company offers designated dual agency, then this agency option should be checked and explained to the seller.



FOR DISCUSSION

Sonya is a broker with XYZ Realty. Fran, a seller, asks Sonya to list her home. During the listing meeting, Sonya takes out the WWREA Disclosure and shows the Seller Side to Fran. Sonya says, “I have to provide this form to you so you can choose which agency option you want. Our company has a lot of buyers that may be interested in your house, so your best options are dual and designated agency. I’ll explain how it all works when we get an offer.” Sonya checks the dual and designated agency options, signs the form, and passes it to Fran to sign. When she returns to the office later that day, Sonya scans the signed WWREA disclosure and emails a copy to Fran per the firm policy.

Did Sonya comply with the requirements in Commission Rule 58A .0104(c)? Why or why not? _____

4. Reference to the Q&A brochure

After the Agency Option descriptions, a Note to Seller states:

For more information on an agent's duties and services, refer to the NC Real Estate Commission's "Questions and Answers on: Working With Real Estate Agents" brochure at www.ncrec.gov (Publications, Q&A Brochures) or ask an agent for a copy of it.

The Commission has a published a brochure entitled, "Questions and Answers on: Working With Real Estate Agents." This brochure provides detailed information about a broker's duties, obligations, compensation, and information regarding the expiration and termination of agency agreements.

The Q&A brochure is a supplemental resource that the Commission strongly encourages licensees to review with prospective buyers and sellers to help explain and answer questions about agency relationships.



Is the Q&A brochure a mandatory disclosure per Rule 58A .0104(c)?

No. The Q&A brochure is not the mandatory publication referenced in Rule 58A .0104(c). The Q&A brochure is a supplemental resource that the Commission strongly encourages licensees to review with prospective buyers and sellers to help explain and answer questions about agency relationships.

5. Signatures

Once the licensee has reviewed the WWREA Disclosure with the seller, the licensee should request the seller's signature and date. The seller's signature acknowledges that the licensee has reviewed the disclosure with them; it does not create a contract. Once all of the signatures have been affixed, the licensee should provide the seller with a copy of the disclosure and retain a copy for their records. The licensee may provide the disclosure in a hard copy or electronic format to the seller.

If a prospective seller refuses to sign the WWREA Disclosure, the licensee should still sign their own name and enter their license number and firm/company name on the form, note that the seller refused to sign, and provide a copy to the prospective seller. The licensee should also retain a copy for their records.



Is the seller entering into an agency agreement when they sign the WWREA Disclosure?

No. The seller is not entering into an agency agreement with the licensee by signing the disclosure. Also, the seller is NOT selecting the type of agency relationship they would like to enter into with the licensee at this time. The licensee is simply disclosing and explaining the agency options that are offered by the firm and/or company.



What if the seller refuses to sign the WWREA Disclosure?

If the seller refuses to sign the disclosure, the licensee should note on the WWREA Disclosure the seller's refusal to sign and provide their signature. Additionally, the licensee must provide the seller a copy of the disclosure and retain a copy for their records.



Do I provide the seller with a copy of the WWREA Disclosure?

Yes. The licensee must provide the seller with a copy of the WWREA Disclosure per License Law and Commission Rule 58A .0104(c). The Commission does not dictate the format (e.g., hard copy or electronic version) of the WWREA disclosure the licensee provides to the seller.



Do I need to review the "For Buyers" side with the seller?

It depends. If the seller is only listing their property, the licensee is only required to review the seller side of the WWREA Disclosure. However, if the seller is interested in listing their property and purchasing a property, the licensee will need to also review the buyer side with the seller.

SIDE 2 - FOR BUYERS

Side 2 is the buyer side of the WWREA Disclosure. Like the seller side, it has 5 primary sections. Due to the similarities between the form's sides, only a brief description of each of the sections on the buyer side is below. More detail will be given to the differences in the two sides.

Buyer Side - Overview

This form is required for use in all sales transactions, including residential and commercial.

1 → Applies to residential and commercial sales

2 → Notes and notices

3 → Agency options & explanations (to be checked by broker)

4 → Reference to Q&A brochure

5 → Signatures

1. Residential and Commercial Sales

Like the seller side, the buyer side has a statement to inform consumers that the form is required in all residential and commercial transactions.



Must I provide and review the WWREA Disclosure with prospective commercial buyers?

Yes. Rule 58A .0104(c) indicates that the WWREA publication is provided and reviewed with every prospective buyer or seller in every real estate sales transaction. This includes residential and commercial transactions.

2. Notes and Notices

A series of notes and notices appear at the top of the disclosure that are identical to the seller side.

3. Agency Options and Explanations

Like the seller side, the buyer side includes a list of agency options available for buyers, and the licensee should check and explain all options offered by their firm/company.

Buyer Agency

This subsection will be checked by the licensee if the firm/company offers buyer agency. The form explains*:

If you agree, the agent who gave you this form (and the agent's firm) would represent you as a buyer agent and be loyal to you. You may begin with an oral agreement, but your agent must enter into a written buyer agency agreement with you before preparing a written offer to purchase or communicating an oral offer for you. The seller would either be represented by an agent affiliated with a different real estate firm or be unrepresented.

*The licensee must explain this relationship and answer the consumer's questions about it versus just relying on the form's explanation.

Dual Agency

This subsection will be checked by the licensee if their firm/company offers dual agency. The form explains*:

Dual agency will occur if you purchase a property listed by the firm that represents you. If you agree, the real estate firm and any agent with the same firm (company), would be permitted to represent you and the seller at the same time. A dual agent's loyalty would be divided between you and the seller, but the firm and its agents must treat you and the seller fairly and equally and cannot help you gain an advantage over the other party.*

*The licensee must explain this relationship and answer the consumer's questions about it versus just relying on the form's explanation.

Designated Dual Agency

This subsection will be checked by the licensee if the firm/company offers designated dual agency. The form explains*:

If you agree, the real estate firm would represent both you and the seller, but the firm would designate one agent to represent you and a different agent to represent the seller. Each designated agent would be loyal only to their client.*

*The licensee must explain this relationship and answer the consumer's questions about it versus just relying on the form's explanation.

Unrepresented Buyer (Seller subagent)

This subsection will be checked by the licensee if the licensee is representing a seller and an unrepresented buyer contacts them about the seller's property. The licensee would need to explain to the unrepresented buyer that they represent only the interests of the seller in the transaction. The form explains:

The agent who gave you this form may assist you in your purchase, but will not be representing you and has no loyalty to you. The agent will represent the seller. Do not share any confidential information with this agent.

*The licensee must explain this relationship and answer the consumer's questions about it versus just relying on the form's explanation.



Does the prospective buyer check the applicable Agency Options on the WWREA Disclosure?

No. The buyer does not check the applicable agency options on the WWREA Disclosure. The licensee checks all of the Agency Options that are offered by the licensee's firm/company. Additionally, the licensee provides an explanation of these Agency Options to the buyer so they can make an informed decision regarding the agency option that is best for them when and if they enter into an agency agreement.



Which relationship type(s) should I check under Agency Options?

The licensee should check all of the Agency Options that are offered by their firm and/or company. Moreover, the licensee should review all of the agency options on the WWREA Disclosure that are checked.



Do I review the Designated Dual Agency option with the prospective buyer?

It depends. If your firm and/or company offers designated dual agency then this agency option should be checked and explained to the buyer.



Where does the Unrepresented Buyer (Seller subagent) initial to indicate that they understand the licensee is working as a seller subagent?

Unlike the former WWREA brochure, there is no box for an unrepresented buyer to initial. The licensee checks Unrepresented Buyer (Seller subagent). The unrepresented buyer is put on notice that the licensee represents the interest of the seller once the Unrepresented Buyer (Seller subagent) option is explained to them by the licensee.

*The unrepresented buyer is informed that the agent is working as a seller subagent during the review of the disclosure. The agent may communicate with the unrepresented buyer further in writing if they so choose to explain their duties as a seller subagent. Also, the contract between the seller and unrepresented buyer will further specify that the agent is working as a seller subagent.

4. Reference to Q&A brochure

Like the seller side, a Note to Buyer appears after the agency options section, as follows:

For more information on an agent's duties and services, refer to the NC Real Estate Commission's "Questions and Answers on: Working With Real Estate Agents" brochure at www.ncrec.gov (Publications, Q&A Brochures) or ask an agent for a copy of it.

5. Signature

This section is for the buyer's and licensee's signatures.



Is the buyer entering into an agency agreement when they sign the WWREA Disclosure?

No. The buyer is not entering into an agency agreement with the licensee by signing the Disclosure. Also, the buyer is NOT selecting the type of agency relationship they would like to enter into with the licensee at this time. The licensee is simply disclosing and explaining the agency options that are offered by the firm and/or company.



What if the buyer refuses to sign the WWREA Disclosure?

If the buyer refuses to sign the disclosure, the licensee should note on the WWREA Disclosure the buyer's refusal to sign and provide their signature. Additionally, the licensee must provide the buyer a copy of the disclosure and retain a copy for their records.



Do I provide the buyer with a copy of the WWREA Disclosure?

Yes. The licensee must provide the buyer with a copy of the WWREA Disclosure per License Law and Commission Rule 58A .0104(c). The Commission does not dictate the format (e.g. hard copy or electronic version) of the WWREA disclosure the licensee provides to the buyer.



Do I need to review the "For Sellers" side with the prospective buyer?

It depends. If the buyer is only purchasing property, the licensee is only required to review the buyer side of the WWREA Disclosure. However, if the buyer is also interested in listing a property, then the licensee will need to also review the seller side with the buyer.

RULE 58A .0104(C) HAS NOT CHANGED

The requirements for licensees as specified in Rule 58A .0104(c) have not changed.

Specifically, Rule 58A .0104(c) still requires licensees to provide and review the “Working With Real Estate Agents” publication with ALL prospective buyers and sellers at first substantial contact. The publication referenced in the rule is now the *WWREA Disclosure*.



What does “provide and review” mean?

This rule still requires the licensee to do more than just give the disclosure to the prospective buyer or seller to read, attach the disclosure to an email, or insert a link in the signature line of their email.

The licensee is required to provide and review the WWREA disclosure in all real estate sales transactions. The licensee must explain the following to the prospective buyer or seller:

- the notes/notices section,
- the agency options section,
- the note to seller and/or note to buyer sections, and
- the request for signature(s) of every prospective buyer or seller.

Once the disclosure has been provided and reviewed, the licensee needs to reach an agreement with the prospective buyer or seller regarding whether the licensee will work with them as their agent or the agent of another party.



What is “First Substantial Contact?”

First substantial contact is defined in Rule 58A .0104(c) as:

- contact between a licensee and consumer where the consumer or licensee begins to act as though an agency relationship exists; and
- the consumer begins to disclose personal/confidential information to the licensee.

Put simply, first substantial contact occurs at the point in time when a prospective buyer or seller begins to share information that could harm their negotiating position. Examples of personal/confidential information include:

- financial circumstances, such as buyer loan preapproval amount;
- family situations, such as divorce; or
- employment situations, such as starting a new job.



What if First Substantial Contact does not happen face-to-face?

Under Rule 58A .0104(c), if first substantial contact with a prospective buyer or seller occurs by telephone or other electronic means, the licensee is required “at the earliest opportunity thereafter, but in no event later than three days from the date of first substantial contact, mail or otherwise transmit a copy of the publication [disclosure] to the prospective buyer or seller and review it with him or her at the earliest practicable opportunity thereafter.”

In other words, the licensee must get a copy to the consumer within 3 calendar days and find a way to review the publication. Simply forwarding a copy of the publication is not enough.

BEST PRACTICES: The agent should develop a plan on how to discuss the WWREA Disclosure with the prospective buyer or prospective seller when first substantial contact occurs during a conversation.

WWREA Disclosure: Record Retention

Pursuant to Rule 58A .0108(a), licensees shall retain records of all sales, rental, and other transactions conducted in such capacity, whether the transaction is pending, completed or terminated. Also, 58A .0108(b)(8) specifies that disclosure documents must be retained. Thus, the WWREA Disclosure must be retained by the licensee and by the firm/company.

The WWREA Disclosure must be retained for three years after:

- all funds held by the licensee in connection with the transaction have been disbursed to the proper party or parties, or
- conclusion of the transaction,

whichever occurs later.

If a licensee’s agency agreement expires or is terminated without a sale, the licensee shall retain a copy of the disclosure form for three years after:

- the expiration or termination of the agency agreement, or
- the buyer agent stops working with the buyer, or
- the disbursement of all funds held by or paid to the licensee in connection with the transaction

whichever occurs later.



Roy calls ABC Realty to inquire about hiring a buyer agent because he found property in Selma that he would like to purchase. Julie, a real estate broker with ABC Realty, is on desk duty. Julie advises Roy that she can meet him at the property. Once Roy and Julie arrive at the property, Roy begins to share his budget and preapproval amount with Julie. Julie immediately stops Roy and provides and reviews the WWREA Disclosure. Julie writes her name, license number, and firm name on the disclosure form. Roy also signs and dates the form.

Do Commission rules require Julie to provide a hard copy to Roy?

THE NEW BROCHURE: “QUESTIONS AND ANSWERS ON: WORKING WITH REAL ESTATE AGENTS”

The Commission transformed the old WWREA brochure into a new Q&A brochure titled “Questions & Answers on: Working With Real Estate Agents.” The brochure includes expanded content and is an additional resource for licensees and consumers.

The Commission recommends licensees familiarize themselves with the content and share the Q&A brochure with prospective buyers and sellers as an additional resource when providing and reviewing the WWREA Disclosure.

Expanded Content

The Q&A brochure includes all information that was part of the former brochure such as:

- the types of agency relationships;
- the duties to the seller;
- the duties to the buyer; and
- compensation of licensees.

Newly-added content includes:

- a statement highlighting the Commission’s commitment to Racial Equity and Fair Housing,

The Commission is committed to the principles of excellence, fairness, and respect for all people. It is our goal to ensure that brokerage activities are conducted in fairness to all and to end discrimination in the sale or rental of all real estate. In residential sales and rental transactions, agents must comply with the Fair Housing Act which prohibits discrimination on the basis of the race, color, religion, sex, national origin, handicap, or familial status of any party or prospective party. For more information on the NC Fair Housing Act, you may visit <https://www.oah.nc.gov/civil-rights-division/housing-discrimination>.

- an explanation of broker compensation,

Q: How is a buyer agent compensated?

A: A buyer agent can be compensated in different ways. For example, you can pay the agent out of your own pocket. Or the agent may seek compensation from the seller or listing firm first, but require you to pay if the listing firm refuses. Whatever the case, be sure your compensation arrangement with your buyer agent is clearly indicated in a buyer agency agreement before you make an offer to purchase property and that you carefully read and understand the compensation provision.

- information regarding the expiration of agency agreements for buyers,

Q: What happens if the buyer agency agreement expires?

A: If the buyer agency agreement expires after you entered into a contract to purchase a property, then your agent may continue to represent you through the date of the closing and you may be responsible for compensating the firm in accordance with the provisions of the buyer agency agreement. If you are not under contract to buy a property when your buyer agency agreement expires, then your agent must immediately stop representing you unless you first enter into a new buyer agency agreement with the agent.

- information regarding the expiration of agency agreements for sellers,

Q: What happens if the listing agreement expires?

A: If the listing agreement expires after you enter into a contract to sell your property, then the listing agent and firm may continue representing you through the date of the closing and you may be responsible for compensating the listing firm in accordance with the provisions of the listing agreement. If the listing agreement expires without your property going under contract, then the listing agent/firm must immediately stop marketing your property unless you first enter into a new listing agreement with the firm.

- information regarding whether or not an agency agreement may be terminated, and

Q: If I hire a real estate agent or firm to represent me, can I terminate the agency agreement before it expires?

A: Maybe. An agency agreement is a contract between a buyer or seller and a real estate firm. Most agency agreements do not contain a provision allowing a buyer or seller to terminate the agreement before it expires without the consent of the other party. Generally, one party cannot terminate the agreement without the consent of the other party. If you and the firm both agree to terminate the agreement, then you both should sign a written agency termination agreement. If the agent asks for compensation in exchange for terminating the agreement, then you can agree or disagree or try to negotiate the amount of compensation. If an agency agreement contains a penalty or fee for early termination, the provision specifying the penalty or fee must be set forth in a clear and conspicuous manner. If you are not able to reach an agreement on the termination of the agency agreement, then you may consult your own attorney or simply wait until the agency agreement expires. The Real Estate Commission does not have the authority to terminate agency agreements or to force a real estate agent to terminate an agreement.

- agency diagrams (e.g. buyer agency and seller agency, dual agency, and designated dual agency) for consumers who prefer a visual format.

Agency Diagrams

The agency diagrams are provided to assist prospective buyers and sellers with understanding the various agency relationships that may be offered by a firm and/or company.

Buyer Agency and Seller Agency



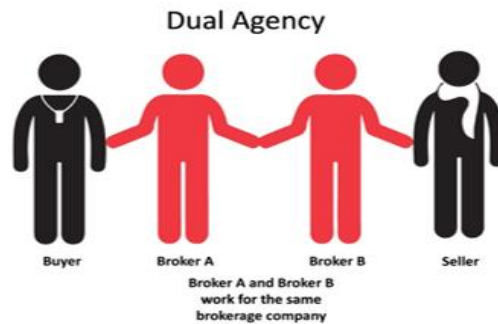
This diagram is an example of two brokers working for two different firms. Broker A and their firm represents the buyer. Broker B and their firm represent the seller. This agency diagram is a typical example of a co-brokerage transaction.

Dual Agency



This diagram shows one broker and/or sole practitioner who works for both the buyer and seller in the same transaction. Both the prospective buyer and prospective seller must consent and provide written authority to the broker and/or sole practitioner to engage in dual agency.

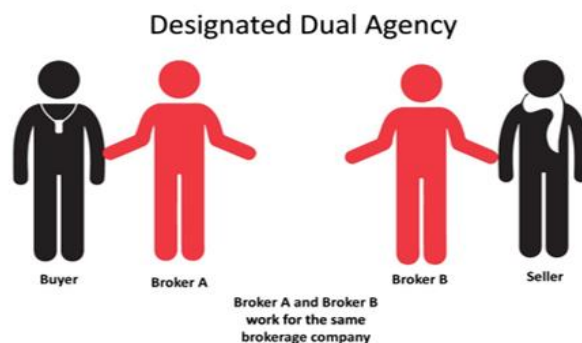
Dual Agency



This diagram is an example of the most common form of dual agency. This example displays two brokers who are both affiliated with the same firm and/or company. Broker A is working directly with the buyer and Broker B is working directly with the seller. The firm and/or company and all of its brokers represent both the buyer and the seller. The brokers have divided loyalty between the buyer and seller. Both the prospective buyer and seller must consent and provide written authority for the firm and/or company to engage in dual agency.

***IMPORTANT NOTE:** If there are two agents affiliated with the same firm representing the buyer and seller in the transaction, this is considered dual agency. Although Broker A and Broker B work for the same firm, they have not been designated to represent only the interest of the buyer and/or seller. Designated dual agency does not exist automatically *unless* it is stated in the written office policies.

Designated Dual Agency



This diagram displays a space between Broker A and Broker B. Broker A and Broker B work for the same firm and/or company and the firm/company represents both the

buyer and seller in the same transaction. However, Broker A has loyalty only to the Buyer and Broker B has loyalty only to the seller.

Although the buyer and seller are both clients of the firm/company, the buyer has a designated agent and the seller has a designated agent. The designated agents represent only the interests of their respective clients. Also, both the prospective buyer and seller must consent and provide their written authority to the firm/company to practice designated dual agency.

In order for a firm/company and its affiliated brokers to legally engage in designated agency, the designated brokers must NOT have/know confidential information about the opposing parties prior to designation. In other words, the agent designated for the buyer must not have/know confidential information about the seller, and vice versa.

WHEN MUST LICENSEES BEGIN USING THE NEW FORM?

Licensees were required to begin using the WWREA Disclosure form with all prospective buyers and sellers in all real estate sales transaction effective July 1, 2021.

The WWREA Disclosure can be viewed and downloaded online. To access it:

1. go to www.ncrec.gov;
2. click on the *Publications* menu;
3. click on *Publications* in the dropdown list;
4. click on *Disclosure Forms*; and
5. scroll down to the “Working with Real Estate Agents Disclosure Form (required effective July 1, 2021)” and click on either *English* and/or *Spanish PDF*.

As stated previously, the Commission strongly encourages each licensee to provide prospective buyers and sellers with a copy of the “Questions and Answers on: Working with Real Estate Agents” brochure as a supplemental resource to the WWREA Disclosure when explaining the agency options and brokerage services, etc. To access the Q&A brochure:

1. go to www.ncrec.gov;
2. click on the *Publications* menu;
3. click on *Publications* in the dropdown list;
4. click on *Q&A Brochures*;
5. scroll down to “Working with Real Estate Agents (Required Effective July 1, 2021)”; and
6. select one of the links to either purchase or download the brochure.

Questions regarding the WWREA Disclosure and/or the Q&A brochure should be sent to the Commission’s Regulatory Affairs Division at regulatoryaffairs@ncrec.gov.

ANSWER TO DISCUSSION QUESTIONS

For Discussion on Page 1

1. Chris saw a property listed by ABC Realty in Asheville that he is interested in purchasing. He calls the firm and inquires whether the property is still available. Stan, the listing agent, indicates the property is still on the market and is listed at \$675,000. Chris tells Stan that he is preapproved for \$713,000, and would like to submit an offer on the property.

Has first substantial contact occurred? Why or why not?

Answer: Yes, first substantial contact occurred when Chris told Stan the amount of his mortgage approval.

What mandatory disclosure must Stan review with Chris?

Answer: Stan must review the WWREA Disclosure with Chris.

2. Alicia attends an open house in Fuquay-Varina. She is not represented by a real estate agent. Alicia enters the house and is immediately impressed by the floorplan. She asks Don, the listing agent, if the house is available for a quick move-in. Don says, "Yes," and Alicia is enthused. She tells Don she needs to purchase a home within 30 days to start a new job and will send an offer to him by the end of the day.

Has first substantial contact occurred?

Answer: Yes, first substantial contact occurred when Alicia told Don she needs to purchase a home within 30 days.

What must Don do at this point to comply with License Law and Commission rules?

Answer: Don must review the WWREA Disclosure with Alicia.

3. Felicia has reviewed and explained the WWREA disclosure and her fiduciary duties to Corey, a prospective buyer, but he still has additional questions regarding compensation and the specific duties of a buyer agent.

What additional resource can Felicia provide to Corey?

Answer: Felicia can provide the "Questions & Answers on: Working With Real Estate Agents" brochure to Corey.

For Discussion on Page 8

Sonya is a broker with XYZ Realty. Fran, a seller, asks Sonya to list her home. During the listing meeting, Sonya takes out the WWREA Disclosure and shows the Seller Side to Fran. Sonya says, "I have to provide this form to you so you can choose which agency option you want. Our company has a lot of buyers that may be interested in your house, so your best options are dual and

designated agency. That way, you won't miss out on those buyers. I'll explain how it all works when we get an offer." Sonya checks the dual and designated agency options, signs the form, and passes it to Fran to sign. When she returns to the office later that day, Sonya scans the signed WWREA disclosure and emails a copy to Fran per the firm policy.

Did Sonya comply with the requirements in Commission Rule 58A .0104(c)? Why or why not?

Answer: No. Commission Rule 58A .0104(c) dictates that brokers must provide and review the WWREA publication. Even though Sonya showed the form to Fran and asked her to sign it, Sonya did not take time to explain it. Sonya should have taken time to review each section of the form and to permit Fran to ask questions.

Further, Sonya told Fran that the form was used to choose an agency option, which is inaccurate. The WWREA Disclosure form is a disclosure form, NOT an election form. The WWREA Disclosure form is used to explain ALL options that will be available to prospective buyers and sellers. Consequently, Fran should have taken time to read and explain each of the options that her firm offers to sellers, checked all of those options, and then asked Fran to sign.

After reviewing and signing the WWREA disclosure, Sonya and Fran can discuss a listing agreement, at which time Fran will select types of representation.

For Discussion on Page 18

Roy calls ABC Realty to inquire about hiring a buyer agent because he found a property in Selma that he would like to purchase. Julie, a real estate broker with ABC Realty, was on desk duty. Julie advises Roy that she can meet him at the property. Once Roy and Julie arrive at the property, Roy immediately begins to inform Julie of his budget and preapproval amount. Julie immediately stops Roy and provides and review the WWREA Disclosure. Julie provides her name, license number, and firm name on the disclosure form. Roy also signs and dates the form. Julie must provide a copy to Roy.

Do Commission rules require Julie to provide a hard copy to Roy?

Answer: No. The Commission does not require Julie to provide a hard copy to Roy. The Commission does require the licensee to provide a copy of the WWREA Disclosure to the prospective buyer or seller per Rule 58A .0104(c). The type of copy (e.g., hard copy or electronic version) that is provided to the consumer may be dictated by the firm's/company's policies.

NOTE: Safety Tip # 1 in the Commission's [Safety Brochure](#) is "KNOW WHO YOU ARE DEALING WITH WHEN YOU HAVE NEW CLIENTS OR CUSTOMERS." Refer to the Brochure for a full discussion of recommended safety protocols.

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Working With Real Estate Agents Disclosure (For Buyers)

IMPORTANT

This form is not a contract. Signing this disclosure only means you have received it.

- In a real estate sales transaction, it is important that you understand whether an agent represents you.
- Real estate agents are required to (1) review this form with you at first substantial contact - before asking for or receiving your confidential information and (2) give you a copy of it after you sign it. This is for your own protection.
- Do not share any confidential information with a real estate agent or assume that the agent is acting on your behalf until you have entered into an agreement with the agent to represent you. Otherwise, the agent can share your confidential information with others.

Note to Agent: Check all relationship types below that may apply to this buyer.

_____ **Buyer Agency:** If you agree, the agent who gave you this form (and the agent's firm) would represent you as a buyer agent and be loyal to you. You may begin with an oral agreement, but your agent must enter into a written buyer agency agreement with you before preparing a written offer to purchase or communicating an oral offer for you. The seller would either be represented by an agent affiliated with a different real estate firm or be unrepresented.

_____ **Dual Agency:** Dual agency will occur if you purchase a property listed by the firm that represents you. If you agree, the real estate firm and any agent with the same firm (company), would be permitted to represent you and the seller at the same time. A dual agent's loyalty would be divided between you and the seller, but the firm and its agents must treat you and the seller fairly and equally and cannot help you gain an advantage over the other party.*

_____ **Designated Dual Agency:** If you agree, the real estate firm would represent both you and the seller, but the firm would designate one agent to represent you and a different agent to represent the seller. Each designated agent would be loyal only to their client.*

**Any agreement between you and an agent that permits dual agency must be put in writing no later than the time you make an offer to purchase.*

_____ **Unrepresented Buyer (Seller subagent):** The agent who gave you this form may assist you in your purchase, but will not be representing you and has no loyalty to you. The agent will represent the seller. Do not share any confidential information with this agent.

Note to Buyer: For more information on an agent's duties and services, refer to the NC Real Estate Commission's "Questions and Answers on: Working With Real Estate Agents" brochure at ncrec.gov (Publications, Q&A Brochures) or ask an agent for a copy of it.

Buyer's Signature

Buyer's Signature

Date

Agent's Name

Agent's License No.

Firm Name

Questions and Answers on: WORKING WITH REAL ESTATE AGENTS

When buying or selling real estate, you may find it helpful to have a real estate agent assist you. Real estate agents can provide many useful services and work with you in different ways. In some real estate transactions, the agents work only for the seller. In other transactions, the seller and buyer may each have their own agents. And sometimes the same agent or firm works for both the buyer and the seller in the same transaction. It is important for you to know whether an agent is representing you as your agent or simply assisting you while acting as an agent of the other party.

Do not share any confidential information with a real estate agent or assume that the agent is acting on your behalf until you have entered into a written agreement with the agent to represent you. Otherwise, the agent can share your confidential information with others and this could hurt your ability to negotiate the best deal for yourself.

To assist buyers and sellers in understanding the roles of real estate agents, the Real Estate Commission requires agents in sales transactions to (1) review a “Working With Real Estate Agents Disclosure” with you at first substantial contact - before asking for or receiving your confidential information and (2) give you a copy of the Disclosure form after you sign it. The Disclosure form is for your education and protection and is not a contract.

This Q&A brochure assumes that you are a prospective buyer or seller and answers common questions about the various types of agency relationships that may be available to you. It should help you:

- decide which relationship you want to have with a real estate agent
- give you useful information about the various services real estate agents can provide buyers and sellers
- explain how real estate agents are paid

IMPORTANT NOTE ABOUT RACIAL EQUALITY AND FAIR HOUSING: The Commission is committed to the principles of excellence, fairness, and respect for all people. It is our goal to ensure that brokerage activities are conducted in fairness to all and to end discrimination in the sale or rental of all real estate. In residential sales and rental transactions, agents must comply with the Fair Housing Act which prohibits discrimination on the basis of the race, color, religion, sex, national origin, handicap, or familial status of any party or prospective party. For more information on the NC Fair Housing Act, you may visit <https://www.oah.nc.gov/civil-rights-division/housing-discrimination>.

Q: What does the word, "agency," mean?

A: The relationship between a real estate agent and the buyer or seller who hires the agent is referred to as an agency relationship, because the real estate agent acts on behalf of (i.e. as an

agent for) the buyer or seller (the “client”). In an agency relationship, the agent has certain duties and responsibilities to their client.

Q: What is an agency agreement?

A: An agency agreement is a contract between you and a real estate firm that authorizes the firm and its agents to represent you. The agency agreement between buyers and agents is typically called a “Buyer Agency Agreement”; between sellers and agents, a “Listing Agreement.” Be sure to read and understand the agency agreement before you sign it. If you do not understand it, ask the agent to explain it. If you still do not understand, you may want to consult an attorney before signing the agreement. Your agent must give you a copy of the agreement after you sign it.

Q: Is there a "standard" length of time for agency agreements?

A: No. The term or length of an agency agreement is negotiable. Real estate agents are allowed to determine their own policies for the lengths of their agency agreements. However, a prospective buyer or seller may request a different length of time than proposed by an agent. If an agreement cannot be reached with the agent, the buyer or seller may seek another real estate agent willing to agree to a different length of time. Every agency agreement must have a definite expiration date.

Q: Is there a "standard" fee for real estate agents?

A: No. The amount or percentage of an agent's compensation is negotiable. Real estate agents are allowed to determine their own compensation policies. However, a prospective buyer or seller may request a different fee. If an agreement cannot be reached with the agent, the buyer or seller may seek another real estate agent willing to agree to a different fee.

Q&As for SELLERS

Q: I want to sell my property. What do I need to know about working with real estate agents?

A: If you own real estate and want to sell it, you may want to “list” your property for sale with a real estate firm. If so, you will sign a written “listing agreement” authorizing the firm and its agents to represent you as your “listing” agent in your dealings with buyers. The real estate firm must enter into a written listing agreement with you before it is allowed to begin marketing or showing your property to prospective buyers or taking any other steps to help you sell your property. The listing firm may ask you to allow agents from other firms to show your property to their buyer-clients.

Q: What are a listing agent's duties to a seller?

A: The listing firm and its agents must • promote your best interests • be loyal to you • follow your lawful instructions • provide you with all material facts that could influence your decisions • use reasonable skill, care and diligence, and • account for all monies they handle for you. Once you have signed the listing agreement, the firm and its agents may not give any confidential information about you to prospective buyers or their agents during the agency relationship without your permission. But until you sign the listing agreement, you should avoid telling the listing agent anything you would not want a buyer to know.

Q: What services might a listing agent provide?

A: To help you sell your property, a listing firm and its agents will offer to perform a number of services for you. These may include • helping you price your property • advertising and marketing your property • giving you all required property disclosure forms for you to complete • negotiating for you the best possible price and terms • reviewing all written offers with you and • otherwise promoting your interests.

Q: How is the listing firm compensated?

A: For representing you and helping you sell your property, you will pay the listing firm a sales commission or fee. The listing agreement must state the amount or method for determining the sales commission or fee and whether you will allow the firm to share its sales commission with agents representing the buyer.

Q: If I list my property with a real estate firm that also represents a buyer who wants to buy my property, what happens then?

A: You may permit the listing firm **and** its agents to represent you and a buyer at the same time. This would mean that the real estate firm and all of its agents would represent you and the buyer equally. This “dual agency relationship” will happen if an agent with your listing firm is working as a buyer’s agent with someone who wants to purchase your property. If you have not already agreed to a dual agency relationship in your listing agreement and this is acceptable to you, your listing agent will ask you to amend your listing agreement to permit the firm to act as agent for both you and the buyer. Any agreement between you and a firm that permits dual agency must be put in writing no later than the time the buyer makes an offer to purchase.

Q: What is the risk if I agree to dual agency?

A: Dual agency creates a potential conflict of interest for the firm that represents you, since its loyalty is divided between you and the buyer. It is especially important that you have a clear understanding of what your relationship is with the firm and with the firm’s individual agents, since all of them are dual agents. A dual agent must treat buyers and sellers fairly and equally and cannot help one party gain an advantage over the other party. Although each dual agent owes both their buyer and seller client the same duties, buyers and sellers can prohibit dual agents from divulging certain confidential information about them to the other party.

Q: How can I reduce the risk if dual agency occurs?

A: To minimize conflicts of interest, some firms also offer a form of dual agency called “designated dual agency” where one agent in the firm represents only the seller and another agent represents only the buyer. The firm and the firm’s other agents remain in dual agency. This option (when offered by a firm) may allow each “designated agent” to more fully represent each party. Under designated dual agency, each agent designated to represent the seller is prohibited from disclosing (1) that the seller may agree to any price or terms other than those established by the seller, (2) the seller's motivation for selling, or and (3) any information the seller has identified as confidential, unless otherwise required by statute or rule.

Q: Can I sell my property without hiring a real estate agent?

A: Yes. In that case, you would be an unrepresented seller often referred to as For Sale By Owner or "FSBO." If you are selling your property without hiring an agent, then any agent involved in your transaction would be representing only the buyer. Do not share any confidential information with the buyer’s agent. If the agent for the buyer asks you for

compensation and you are willing to pay that agent, then you should enter into a written agreement that clearly expresses the terms and conditions of your obligation to pay the agent.

Q: What happens if the listing agreement expires?

A: If the listing agreement expires after you enter into a contract to sell your property, then the listing agent and firm may continue representing you through the date of the closing and you may be responsible for compensating the listing firm in accordance with the provisions of the listing agreement. If the listing agreement expires without your property going under contract, then the listing agent/firm must immediately stop marketing your property unless you first enter into a new listing agreement with the firm.

Q&As for BUYERS

Q: I want to buy real estate. What do I need to know about working with real estate agents?

A: When buying real estate, you may have several choices as to how you want a real estate firm and its agents to work with you. For example, you may want them to represent only you (as a buyer agent). You may be willing for them to represent both you and the seller at the same time (as a dual agent). Or you may agree to let them represent only the seller (seller's agent or subagent). Some agents will offer you a choice of these services. Others may not.

Q: What are a buyer agent's duties to a buyer?

A: If the real estate firm and its agents represent you, they must

- promote your best interests
- be loyal to you
- follow your lawful instructions
- provide you with all material facts that could influence your decisions
- use reasonable skill, care and diligence, and
- account for all monies they handle for you.

Once you have agreed (either orally or in writing) for the firm and its agents to be your buyer agent, they may not give any confidential information about you to sellers or their agents during the agency relationship without your permission. But until you make this agreement with your buyer agent, you should avoid telling the agent anything you would not want a seller to know.

Q: Must a buyer have a written agency agreement with the agent who represents the buyer?

A: To make sure that you and the real estate firm have a clear understanding of what your relationship will be and what the firm will do for you, you may want to have a written agreement when you first begin working with an agent. However, some firms may be willing to represent and assist you initially as a buyer agent without a written agreement. But if you decide to make an offer to purchase a particular property, the agent must enter into a written agency agreement with you before preparing a written offer or communicating an oral offer. If you do not sign the agency agreement, then the agent can no longer represent and assist you and is no longer required to keep information about you confidential.

Q: What services might a buyer agent provide?

A: Whether you have a written or unwritten agreement, a buyer agent will perform a number of services for you. These may include helping you • find a suitable property • arrange financing • learn more about the property and • otherwise promote your best interests. If you have a written agency agreement, the agent can also help you prepare and submit a written offer to the seller.

Q: How is a buyer agent compensated?

A: A buyer agent can be compensated in different ways. For example, you can pay the agent out of your own pocket. Or the agent may seek compensation from the seller or listing firm first, but require you to pay if the listing firm refuses. Whatever the case, be sure your compensation arrangement with your buyer agent is clearly indicated in a buyer agency agreement before you make an offer to purchase property and that you carefully read and understand the compensation provision.

Q: What happens if I want to buy a property listed by the same agent or firm that represents me?

A: You may permit an agent or firm to represent you **and** the seller at the same time. This would mean that the real estate firm and all of its agents would represent you and the seller equally. This “dual agency relationship” will happen if you become interested in buying a property listed with your agent’s firm. If you have not already agreed to a dual agency relationship in your (written or oral) buyer agency agreement and this is acceptable to you, then your buyer agent will ask you to amend the buyer agency agreement or sign a separate agreement or document permitting his or her firm to act as agent for both you and the seller. Any agreement between you and an agent that permits dual agency must be put in writing no later than the time you make an offer to purchase.

Q: What is the risk if I agree to dual agency?

A: Dual agency creates a potential conflict of interest for the firm that represents you since its loyalty is divided between you and the seller. It is especially important that you have a clear understanding of what your relationship is with the firm and all of its individual agents, since all of them are dual agents. This can best be accomplished by putting the agreement in writing at the earliest possible time and asking any questions that you may have. A dual agent must treat buyers and sellers fairly and equally and cannot help one party gain an advantage over the other party. Although each dual agent owes both their clients the same duties, buyers and sellers can prohibit dual agents from divulging certain confidential information about them to the other party.

Q: How can I reduce the risk if dual agency occurs?

A: To minimize conflicts of interest, some firms also offer a form of dual agency called “designated dual agency” where one agent in the firm represents only the seller and another agent represents only the buyer. The firm and the firm’s other agents remain in dual agency. This option (when offered by a firm) may allow each “designated agent” to more fully represent each party. Under designated dual agency, each agent designated to represent the buyer is prohibited from disclosing (1) that the buyer may agree to any price or terms other than those established by the buyer, (2) the buyer's motivation for buying, or and (3) any information the buyer has identified as confidential, unless otherwise required by statute or rule.

Q: What happens if the buyer agency agreement expires?

A: If the buyer agency agreement expires after you entered into a contract to purchase a property, then your agent may continue to represent you through the date of the closing and you may be responsible for compensating the firm in accordance with the provisions of the buyer agency agreement. If you are not under contract to buy a property when your buyer agency agreement expires, then your agent must immediately stop representing you unless you first enter into a new buyer agency agreement with the agent.

Q: Can I buy real estate without hiring a real estate agent?

A: Yes. If the real estate agent or firm that you contact does not offer buyer agency or you do not want them to act as your buyer agent, you can still work with the firm and its agents. However, they will be acting as the seller’s agent (or “subagent”). The agent can still help you find and purchase property and provide many of the same services as a buyer’s agent. The agent must be fair with you and report any “material facts” (defects such as a leaky roof) about properties.

But remember, the agent represents the seller—not you—and therefore must try to obtain for the seller the best possible price and terms for the seller’s property and cannot give you advice on buying the property if it will conflict with the seller’s interests. Furthermore, a seller’s agent is required to give the seller any information about you (even personal, financial or confidential information) that would help the seller in the sale of his or her property. Agents must tell you in writing if they are sellers’ agents before they ask you about anything that can help the seller. But until you are sure that an agent represents you and is not a seller’s agent, you should avoid saying anything you do not want a seller to know.

Q: If I am an unrepresented buyer, who pays the real estate agent?

A: Unless you agree otherwise, seller’s agents are compensated by the sellers.

Q: Can the real estate agent who represents the seller require me to hire an agent to represent me?

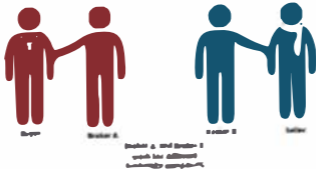
A: No. While it may benefit you to hire an agent, there is no law requiring a buyer to hire a real estate agent to buy real estate.

TERMINATION OF AGENCY AGREEMENTS

Q: If I hire a real estate agent or firm to represent me, can I terminate the agency agreement before it expires?

A: Maybe. An agency agreement is a contract between a buyer or seller and a real estate firm. Most agency agreements do not contain a provision allowing a buyer or seller to terminate the agreement before it expires without the consent of the other party. Generally, one party cannot terminate the agreement without the consent of the other party. If you and the firm both agree to terminate the agreement, then you both should sign a written agency termination agreement. If the agent asks for compensation in exchange for terminating the agreement, then you can agree or disagree or try to negotiate the amount of compensation. If an agency agreement contains a penalty or fee for early termination, the provision specifying the penalty or fee must be set forth in a clear and conspicuous manner. If you are not able to reach an agreement on the termination of the agency agreement, then you may consult your own attorney or simply wait until the agency agreement expires. The Real Estate Commission does not have the authority to terminate agency agreements or to force a real estate agent to terminate an agreement.

Buyer Agency and Seller Agency



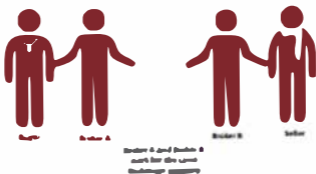
Dual Agency



Dual Agency



Designated Dual Agency



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Section 2

Racial Equity



1. Define disparate impact. _____
2. What is the Housing Choice Voucher Program?

3. Sara is an affiliated broker with 123 Realty. She is working with two buyer-clients. Sara provides Casey, a Caucasian buyer-client, with information about school performance in the Greenleaf neighborhood and advises her to purchase a property in that area. Casey also asks about the Brownstone community, and Sara advises against purchasing there due to underperforming schools and a declining neighborhood. When Samuel, a Hispanic buyer-client, asks about the Brownstone and Greenleaf neighborhoods, Sara tells him she thinks Brownstone would be perfect for his family but that Greenleaf would not.

Could Sara be in violation of state and/or federal fair housing laws?

LEARNING OBJECTIVES

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

- identify the Commission rule that was created to include racial equity language;
- define disparate impact and implicit bias; and
- describe the Housing Choice Voucher Program.

TERMINOLOGY

- **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.
- **Implicit Bias:** A bias or prejudice that is present but not consciously held or recognized.
- **Racial Equity:** There are various definitions of racial equity. Here are some of those definitions:
 - *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. [Read more here.](#)
 - 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. [Read more here.](#)
 - 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. [Read more here.](#)
 - According to [Merriam-Webster](#), equity is a freedom from bias or favoritism.

Fair Housing Act: A group of laws that forbid discrimination in housing based on race, color, national origin, religion, sex, familial status, and disability. There is a federal Fair Housing Act and a North Carolina ("State") Fair Housing Act.

The NCREC's Commitment to Racial Equity

In July of 2020, the Commission published the following statement on the website:

The North Carolina Real Estate Commission members and its staff are deeply saddened by the senseless death of George Floyd, and far too many people of color. We grieve with our fellow Americans and with people across the world over the senseless losses. These deaths, and the resulting protests, have affected all of us in some way and have shown the importance of compassionate and open discussion about issues of racial inequities.

Those involved in real estate brokerage are a diverse community. The Commission is committed to the principles of excellence, fairness, and respect for all people. It is our goal to ensure that brokerage activities are conducted in fairness to all, ensure equal housing opportunities, and to end discrimination in the sale or rental of all real

estate. Everyone should feel safe in their communities and should feel and be free from discrimination.

We stand with those who seek equal justice for all and will do our part to encourage and support our community in making necessary changes to make sure racism and disregard for the dignity of people of color become a part of our history and not our present. We vow to listen, learn, and work with others to promote equality, inclusion, and acceptance.

The Commission is committed to examining its rules to ensure that they address discriminatory conduct and to being a leader in moving the industry forward. Please help us better understand the experiences you have faced as a real estate broker or consumer around racism or other discrimination in your real estate transactions by contacting us and/or filing a complaint. We cannot stress enough the importance of providing us with this information.

NOTE: The Commission revised its Racial Equity statement in May of 2021. The revised statement is referenced at the beginning of this student manual and includes a review of some of the actions the Commission has taken to carry out the goals of its statement.

Suggest a Rule Change/File a Complaint

The Commission is committed to ensuring that brokers are not engaging in discriminatory conduct while practicing brokerage. If a broker and/or consumer wants to suggest a rule change or has experienced racism and/or discrimination in connection with their brokerage activities, the Commission encourages them to click on the link: “Suggest a Rule Change/File a Complaint.”

Brokers and/or consumers who click on the link to Suggest a Rule Change are directed to a web form on which they are prompted to enter their name, phone number, and email address, and then to type their message to the Commission.

Brokers and/or consumers who click on the link to File a Complaint are directed to the Commission’s Complaint Form, on which they are prompted to enter their name, the name of the broker and/or firm they are complaining about, the date that the event occurred, and a description of the event/situation.

According to Rule 58A .0601, any individual may file a complaint against a broker at any time. A complaint shall:

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

Once a complaint is received, the Commission will investigate the complaint if on its face it provides sufficient information and allegations of a violation. For a full explanation of the complaint process, refer to the 2019-2020 *Law and Rules* section of the Update Course materials.

Requests for rule changes and complaints about brokers are initially handled by the Commission's regulatory staff. The ultimate decision to adopt or change a rule, or to discipline a broker for a violation, rests with the Commission members as a body.

RULE CHANGES

In keeping with the *Commitment to Racial Equity*, the Commission analyzed its rules in 2020 "to ensure that they address discriminatory conduct."

At that time, two key existing rules addressed discriminatory practice: 58A .1601 and 58A .0104.

- Rule 58A .1601, Fair Housing, provides:

Conduct by a broker which violates the provisions of the State Fair Housing Act constitutes improper conduct in violation of G.S. 93A-6(a)(10).

Basically, if a broker violates the State Fair Housing Act, the broker is also in violation of Commission rules and can, in turn, be disciplined by the Commission.

- Rule 58A .0104, Agency Agreements and Disclosures, dictates, in relevant part:

(b) Every listing agreement, written buyer agency agreement, or other written agreement for brokerage services in a real estate transaction shall contain the following provision: "The broker shall conduct all brokerage activities in regard to this agreement without respect to the race, color, religion, sex, national origin, handicap, or familial status of any party or prospective party." The provision shall be set forth in a clear and conspicuous manner that shall distinguish it from other provisions of this

agreement. For the purposes of this Rule, the term, “familial status” shall be defined as it is in G.S. 41A-3(1b).

In other words, this rule requires language to be inserted in every agency agreement. It becomes a contractual provision in every agency agreement between a broker and a buyer or seller.

New Rule: Rule 58A .0120 - Prohibited Acts

After reviewing existing rules, the Commission decided to add another rule to expand the focus on equity. Rule 58A .0120 was adopted on July 1, 2021, and is reprinted at the end of this section.

NOTE: Subsections (a)-(c) of this new rule are unrelated to racial equity and are discussed in the Law and Rules Update section.

Subsection (d) dictates:

A broker shall not conduct brokerage activities or otherwise promote their status as a real estate broker in any manner that discriminates on the basis of race, color, religion, national origin, sex, familial status, or disability.

The rule is intentionally broad, so that it may be applied to any of the duties or conduct of a broker. Under the rule, a broker may not use a person’s race, color, religion, national origin, sex, familial status, or disability to determine the type of representation, fees, and/or services the broker will provide.

Let’s consider a few examples of how subsection (d) of Rule 58A .0120 interacts with and expands expectations in other rules.

Agency Agreements and Disclosure

As mentioned earlier, Rule 58A .0104(b) requires the inclusion of a specific anti-discriminatory statement in brokers’ agency agreements.

Although Rule 58A .0104 does not directly prohibit discriminatory conduct by a broker, Rule 58A .0120 does.

Consequently, a broker may not use race, color, religion, national origin, sex, familial status, or disability to determine the type of representation to provide clients or how to interact with consumers. A broker who does so is in violation of the new Rule.



John, a buyer agent with ABC Realty, represented Tom with the purchase of his first home. Tom was pleased with John's representation so he referred his co-worker, Hong, to John. John met with Hong to review the WWREA disclosure and agency agreements. During the exclusive buyer agency agreement explanation, John informed Hong that he must pay a retainer fee for his representation. Hong asked Tom if he had to pay a retainer fee; Tom told Hong that he did not. Once Hong received this information he asked John why he had to pay the retainer. John indicated that it was in the discretion of the broker and /or firm to charge a retainer fee to clients. Hong was confused as to why he had to pay a retainer fee and Tom did not.

Could John be in violation of Commission Rule 58A .0104 &/or 58A. 0120? Why or why not? _____

Advertising

Brokers must ensure their advertisements are not discriminatory or prejudicial to members of a protected class, in order to be in compliance with State and Federal Fair Housing laws. For example, advertisements should be inclusive and representative of all individuals, including people of all racial or ethnic backgrounds, persons with disabilities, and families with children.

Brokers who advertise using discriminatory language and/or images may violate fair housing laws, and, in turn, Commission Rule 58A .1601. As noted previously, Commission Rule 58A .1601 makes a violation of the State Fair Housing law also a violation of Commission rules.

Now, in addition, they may be in violation of Rule 58A .0120.

Brokers should be aware that the making, printing or publishing of any notice, statement, or advertisement that indicates any preference, limitation, or discrimination towards a member of a protected class is prohibited. HUD has provided guidance on advertising in the document, "*Part-109-Fair Housing Advertising*" to help individuals ensure that when they make, publish, or print advertisements, they are doing so in compliance with the Fair Housing Act. The Commission encourages brokers to use *Part 109-Fair Housing Advertising* as an educational resource to assist them with developing discriminatory-free advertisements.

The document can be accessed by clicking the following link: <https://www.hud.gov/sites/dfiles/FHEO/documents/BBE%20Part%20109%20Fair%20Housing%20Advertising.pdf>



1. Marcus, an African-American man, meets with Saul, a broker, to discuss purchasing a house. Marcus tells Saul he wants to purchase a house in Green Creek. Saul asks Marcus, “Will you be comfortable there?” Marcus says, “Yes.” Saul tells Marcus he wants to show him a listing in a neighborhood that has more people like him. Saul takes Marcus to view the property and Marcus notices that many of the residents are African-American.

Has Saul violated Commission Rule 58A .1601? _____

2. Amina is Muslim and wears a hijab. As she is driving, she notices a new apartment complex with a sign that says, “Immediate occupancy available for 1, 2, and 3-bedroom apartments.” Amina calls the broker listed on the sign and asks if there are available units. The broker states, “Yes, we have several.” Amina makes an appointment for later in the afternoon to view an apartment. While at her appointment, she notices Tom, a broker, seems reluctant to answer her questions. At one point he asks her if she was born in the United States. Amina indicates that she is not a U.S. citizen but she does have a “green card” and is a permanent resident. She also informs Tom that she works full-time at the local university. Shortly thereafter, Tom tells her there are no available units. Amina asks to be placed on a waiting list, and Tom replies that they do not have a waiting list.

Has Tom violated Commission Rule 58A .1601? _____

3. Jason, a broker, has drafted the following advertisement for a property that he just listed:

Spectacular three bedroom, 2½ bath cottage in downtown Wake Forest. This cottage is perfect for a single man or woman due to its proximity to local shops and restaurants. The cottage is also two blocks away from Strawberry Baptist Church. This cottage is perfect.

If Jason publishes this advertisement, could he be in violation of Commission rules? Explain your answer.

IMPLICIT BIAS: WHAT IS IT?

According to the Merriam-Webster Dictionary (www.merriam-webster.com), implicit bias is defined as, “a bias or prejudice that is present but not consciously held or recognized.” An individual may have a bias if they have a preference or apprehension toward a person or specific group of people. Research conducted by the *Perception Institute* in Washington, D.C. (www.perception.org) indicates that our thoughts and feelings are implicit if we are unaware of them or mistaken about their nature.

What is the Cause of Implicit Bias?

Implicit bias is our unconscious attitude and/or stereotyping belief about another or others with respect to race, ethnicity, nationality, gender, and other distinctions. Implicit bias is a part of being human. Everyone possesses bias, even individuals with heightened commitments to being impartial.

Implicit bias is derived from cultural interactions, historical interpretations, and our own personal experiences. It begins as early as childhood. An individual’s environment, such as how they were raised, the neighborhood they grew up in, the school system and/or college they attended, and their personal relationships, may create biases.

For instance, were you raised in an environment that educated you on the importance of following rules? If so, do you gravitate more toward individuals who follow the rules? How might this environment affect your attitudes about work? Questions like those are meant to provoke your thoughts regarding how you were raised and the beliefs and/or attitudes that you may have regarding certain individuals.

Let’s analyze an example of how a broker’s implicit bias could cause her to violate the Fair Housing Act.

Example:

Alicia, a Caucasian woman, grew up in a Caucasian neighborhood. During her teenage years, an African-American family purchased a house in the neighborhood. Alicia’s Caucasian parents and neighbors were unhappy because they were convinced that the African-American family would bring down their property values, and several of those families moved away immediately.

Now Alicia is a broker for Loft Homes, a new home development. Loft Homes has an open house and is offering incentives to prospective buyers. During the open house, Alicia tells visitors how great the community is and she executes a sales contract for one of her listed homes with a Caucasian couple. She does not ask the buyers to furnish a preapproval letter.

Later that day, an African-American couple attends the open house. They inform Alicia that they are interested in purchasing in the community.

Alicia is less enthusiastic about the neighborhood with this couple. She tells them they must furnish a preapproval letter before she can show any properties or explain the current incentive package.

Do you think Alicia's implicit bias may have caused her to treat the African-American couple differently? _____

Are Alicia's actions in violation of Commission rules? Why or why not?

Implicit Bias: Why does it Matter to Real Estate Brokers?

All individuals possess implicit biases which shape their perception of people. It is important for brokers to consciously recognize how their perceptions may influence their brokerage related activities.

What if a client tells you they want to live in a *nice* neighborhood and/or a neighborhood with a *good* school district? How would you respond? If your response to the client uses race and/or religion as predictors to determine which neighborhood is *nice* and/or has a *good* school district, you may be unconsciously steering the client to a specific neighborhood.

A broker may be unconsciously participating in steering because the broker is choosing the location *they* think is best for the client.

According to the *North Carolina Real Estate Manual*, racial steering is defined as:

...a practice by real estate brokers... to preserve and encourage patterns of racial segregation by steering members of racial and ethnic groups to buildings occupied by their own racial or ethnic group and away from neighborhoods inhabited by others.

Steering members of a protected class towards or away from particular neighborhoods is prohibited under the Fair Housing Acts. Brokers can refrain from participating in steering by using objective criteria such as purchase price and property features when providing listings to clients.

How Can I Reduce Implicit Bias As A Broker?

Reducing implicit bias requires conscious awareness of its existence and implementing strategies to control it.

The following strategies may assist a broker in reducing implicit bias and treating clients/consumers fairly.

- Pursue education on the history of racial bias in housing and the challenges people of color have endured such as blockbusting, redlining, steering, and inequitable lending practices.
- Be knowledgeable about fair housing laws.
- Participate in educational programs and/or training opportunities that focus on racial bias, diversity, and equality.
- Adopt policies and procedures that include racial equity.

A broker has a responsibility to provide brokerage and real estate related services to all individuals equally. Remember, implicit bias can adversely affect a broker’s business and could possibly cause the broker to participate in activities and/or behaviors that violate fair housing laws.

Implicit Bias: The National Association of REALTORS® Perspective

Fair housing, equality, and inclusion are among the National Association of REALTORS® (hereafter known as “NAR®”) most cherished values according to the former NAR® President, Vince Malta. Brokers who are members of NAR® must follow a strict code of ethics that explicitly prohibits discrimination on the basis of race, gender, national origin, or sexual identity.

NAR® states that it is committed to implementing policies that address racial injustice and build communities where people of every color feel safe to pursue their own American Dream. In furtherance of this commitment, NAR® created a Fair Housing Action Plan in January of 2020. The plan was created to ensure that brokers are continuously protecting the housing rights of individuals in America. Additionally, it provides REALTORS® resources and the ability to participate in educational opportunities including one they call the “*Fairhaven Simulation*” to help their members identify and control implicit bias. NAR® also amended its *Code of Ethics* to make it a violation to use harassing or hate speech toward any protected class.

NAR® has also created a challenge entitled, *Stand Up for Racial Equity*. This challenge helps REALTORS® to become more knowledgeable about preexisting bias in an effort to strengthen their commitment to fair housing.

Want to Test Yourself for Implicit Bias?

To evaluate your implicit biases and their impacts on your attitudes and behaviors, consider taking an “Implicit Association Test.” Where to find a test? Just Google it!

Housing Choice Voucher Program

The United States Housing Act of 1937 (hereafter known as “USHA”), was the country’s first major piece of legislation related to public housing. It was a part of President Roosevelt’s New Deal legislation and was passed with the intent to increase economic stability in America. Under USHA, state and local public housing agencies were created with the goal of remedying:

- unsafe conditions, and
- an acute shortage of decent and safe dwellings for low-income families.

USHA was amended in 1974 by the Housing and Community Development Act. This act authorized Housing and Urban Development (hereafter known as “HUD”) to enter into payment contracts for housing to assist eligible families. This authorization created the Housing Choice Voucher program (hereafter known as “HCV”). This program is also known as *Section 8* housing.

HCV is the federal government’s largest housing subsidy program serving low-income households. Currently, over five million people or 2.2 million low-income households use the HCV program. This program is funded by HUD and implemented by over 2100 state and local public housing agencies (“hereafter known as “PHA”) that receive federal funds to administer rental subsidies to low-income families so they can afford housing that is:

- decent,
- safe, and
- sanitary.

Low income families apply for vouchers at their local PHA. The PHA evaluates the families’ income and other eligibility requirements. If income and eligibility requirements are met, the PHA issues the family a voucher or puts them on a waiting list. A family with a voucher pays generally no more than 30% of its income for rent, with the PHA paying the remainder to the landlord with HUD funds.

Is Participation in the Housing Choice Voucher Program Mandatory?

No. Landlords who participate in the HCV program do so voluntarily. A landlord who wants to become a HCV provider must be approved by their local PHA.

HUD has published the document, *Interested in Becoming a Housing Choice Voucher (HCV) Landlord and Housing Choice Voucher Program Guidebook*, to assist landlords with obtaining approval for the program. The steps are as follows:

1. Contact your local PHA to receive information about the local process for approval and posting housing vacancies.

2. Select a tenant based on your rental criteria and complete the voucher holder's *Request for Tenancy Approval* form.
3. Ensure the dwelling meets the following thirteen (13) housing quality standards at the beginning of occupancy and throughout the tenancy:
 - a. sanitary facilities
The unit must have facilities that are in proper operating condition, adequate for personal cleanliness, and disposal of waste.
 - b. food preparation and refuse disposal
The unit must have suitable space and equipment to store, prepare, and serve food in a sanitary manner.
 - c. space and security
The unit must provide adequate space and security for the family and include a living room, kitchen, and a bathroom.
 - d. thermal environment
The dwelling unit must be able to provide a thermal environment that is healthy for the human body. There must be a safe system for heating the dwelling unit, such as electric baseboard, radiator, or forced air systems.
 - e. illumination and electricity
The unit must have adequate natural or artificial illumination to permit normal indoor activities and to support the health and safety of occupants. Occupants must also have sufficient electrical sources so they can use essential electrical appliances.
 - f. structure and materials
The dwelling unit must be structurally sound and not present any threat to the health and safety of the occupants and must protect the occupants from the environment.
 - g. interior air quality
The dwelling unit must be free of air pollutant levels that threaten the occupants' health.
 - h. water supply
The water supply must be free of contamination.
 - i. lead-based paint
The dwelling unit must be free of deteriorated paint.
 - j. access
The use and maintenance of the unit must be possible without unauthorized use of other private properties. The building must provide an alternate means of exit in case of fire.
 - k. site and neighborhood

The site and neighborhood must be reasonably free from disturbing noises and reverberations or other dangers to the health, safety, and general welfare of the occupants.

l. sanitary conditions

The dwelling unit and its equipment must be in sanitary condition that is free of vermin and rodent infestation.

m. smoke detectors

On each level of the dwelling unit including the basement, there must be at least one battery-operated or hard-wired smoke detector in proper operating condition.

4. Sign the lease and housing assistance payment contract and start receiving monthly housing assistance payments from your local PHA and the remainder of the rent payment from the tenant.

HUD's Pilot Study of Landlord Acceptance of Housing Choice Vouchers

HUD's Office of Policy Development and Research sponsored a study in September 2018 entitled, "*A Pilot Study of Landlord Acceptance of Housing Choice Vouchers.*" The study determined whether or not landlords treated people who received vouchers differently in the following jurisdictions:

- Fort Worth, Texas,
- Los Angeles, California,
- Newark, New Jersey,
- Philadelphia, Pennsylvania, and
- Washington, DC.

The goals of the study were to:

1. identify testing methods for measuring differential treatment of renters who use vouchers authorized under the United State Housing Act of 1937,
2. identify the types and patterns of rental housing discrimination against voucher holders, and
3. measure the prevalence and extent of voucher-related discrimination against racial and ethnic minorities and differences between low-and high-poverty neighborhoods.

The voucher acceptance test showed evidence that landlords were more likely to deny voucher holders in low-poverty areas compared with high-poverty areas.

Data also revealed that voucher holders who were attempting to choose an area with high-quality schools and transportation faced even more rejection and they were charged higher rates and fees than non-voucher holders.

The study concluded that landlords play a critical role in narrowing or widening the choices available to voucher holders in their search for safe, affordable quality housing.

DISPARATE IMPACT

Under the Fair Housing Act (hereafter known as “*FHA*”), disparate impact occurs when:

- a doctrine, policy, or practice
- that is neutral on its face
- disproportionately harms people of a protected class.

FHA prohibits discriminatory acts and policies that may seem neutral on their face but have the effect of limiting housing opportunities based on race, color, national origin, religion, sex, familial status, or disability.

Brokers should avoid policies that have a disparate impact on protected classes and create barriers to providing equitable housing. It may be helpful to keep in mind that although a majority of individuals insist they do not possess the intent to discriminate, disparate impact may still occur unintentionally as a result of implicit biases or stereotypes. Although the underlying conduct is unintentional, it may still result in a Fair Housing violation.

Source of Income Discrimination

Source of income discrimination is defined as the practice of refusing to rent to a housing applicant because of that person’s lawful form of income according to the American Bar Association. Source of income is not a protected class under the Fair Housing Act.

However, landlords who analyze the **source** of prospective tenants’ income and then use the information to deny housing may be disparately impacting people of a protected class, specifically minorities. Disparate impact is prohibited under the Fair Housing Act. Housing providers who analyze the source of prospective tenants’ income as a reason to deny housing are at risk of violating the Fair Housing Act.

North Carolina and Source of Income Discrimination

At this time, North Carolina has not enacted legislation that provides protections against source of income discrimination to recipients of housing vouchers. However, one locality, the City of Durham, has instituted a program entitled “***Unlocking Doors Initiative***” to make the housing choice voucher program more attractive to landlords and property managers.

This initiative is a collaboration between the City of Durham, the Durham Housing Authority, landlords, and several nonprofit agencies. The program provides risk mitigation for landlords who accept qualifying residents who later incur damages to their properties. If the landlord suffers damages, they can make a claim for reimbursement for all or a portion of the damages from the program.

Although North Carolina does not prohibit source of income discrimination, municipalities are beginning to adopt resolutions and/or conduct research to prohibit this type of discrimination in housing. Brokers should be aware of these preliminary conversations and/or policy changes. Here are two examples:

City of Raleigh

The City of Raleigh adopted *Resolution 236* on March 16, 2021. The resolution requires recipients who receive financial assistance from the City of Raleigh, when developing affordable housing, to consider all lawful sources of income. Recipients must include federal housing vouchers when they are determining the eligibility of an individual to participate in the program. If you would like more information regarding *Resolution 236*, you can access it here:

<https://go.boarddocs.com/nc/raleigh/Board.nsf/goto?open&id=A4EMF95B00BF>

City of Charlotte

The City of Charlotte created a Source of Income Ad Hoc Advisory Committee in April of 2021. The committee is charged with developing recommendations, program enhancements, and process improvements that will increase the acceptance of all forms of rental subsidies including the HCV program. The goal of the committee's work is to increase safe and affordable housing opportunities for low-to-moderate income households.

The first Ad Hoc Committee meeting was held on May 20, 2021. During this meeting the committee established ground rules and created action items. The committee is expected to meet monthly and share its final report with City Council by December 2021. You can access additional information here:

<https://charlottenc.gov/Mayor/Pages/Source-of-Income-Ad-Hoc-Advisory.aspx>

Housing Choice Voucher Tenant Statistics

As of July 1, 2019, the United States Census Bureau indicated the population in NC was 10,488,084. Approximately 62.6% of the population identified as Caucasian, 22.2% identified as African-American, and 9.8% identified as Hispanic and/or Latino. In other words, 6,565,540 residents were Caucasian, 2,328,354 were African-American, and 1,027,832 were Hispanic and/or Latino.

The *Center on Budget and Policy Priorities*, in Washington, D.C. (www.cbpp.org), released a **Federal Rental Assistance Fact Sheet** in December of 2019. This fact sheet indicated that 263,000 people in NC participated in the housing choice voucher program.

Statistical data reflects that African-Americans do not make up a large percentage of the population in NC; however, they do make up a large percentage of the recipients

for the housing choice voucher program. According to HUD's Resident Characteristic Report, approximately 72% of HCV recipient households in NC identify as African-American (44,352), 3% as Hispanic (1848), and 26% as Caucasian (16,016).

The United States Census Bureau indicated that 9.4 percent (985,879) of the population in NC suffers from a disability. According to the *Center on Budget and Policy Priorities*, 20% (53,900) of the recipients of the HCV program who use rental assistance have a disability.

These statistics indicate that recipients of housing vouchers are more likely to consist of households with people of color and households in which at least one person is disabled. Based upon these statistics, when a landlord refuses to accept HCVs, disabled individuals, Hispanics, and African-American people are disproportionately affected and this poses a significant challenge to ensuring everyone has access to affordable housing.

If you would like more information about HUD's Low Income Housing Tenant Characteristics, use the following link:

<https://www.huduser.gov/portal/Datasets/lihtc/LIHTC-TenantDataDocumentation-Tables.pdf>

What Can I Do As A Broker?

Brokers can provide information about the HCV program to housing providers to help educate them on the myths versus the realities of accepting housing voucher tenants.

To this end, HUD has created a *Housing Choice Voucher (HCV) Myth-Busting and Benefits Fact Sheet*, to help eliminate some of the inaccurate information about housing voucher tenants.

<u>MYTH</u>	<u>FACT</u>
Landlords can't charge HCV participants the same rent as their non-HCV tenants.	Landlords can charge the full rent no matter who the tenant is. The housing authority must determine that the proposed rent is reasonable and is not higher than units in that area with similar amenities.
HCV voucher tenants are problem tenants.	HCV tenants are typically long-term tenants, living in a unit for 7-8 years on average. There are no documented statistics showing that HCV participants are any more likely to damage units or not pay rent than are non-HCV tenants. Landlords use their own screening criteria and should screen HCV tenants as they would screen any other tenant to avoid problem tenants.
It is impossible to evict a HCV tenant when they violate the lease.	HCV tenants are bound by the terms of their rental agreements and are subject to eviction as is any non-HCV tenant.
If you accept one HCV program tenant, then all of your units must be rented to HCV program tenants.	Renting unit(s) to HCV tenants does not in itself further obligate you to rent to other HCV tenants. For each vacancy, you should follow your established policies for screening prospective tenants.

The *Housing Choice Voucher (HCV) Myth-Busting and Benefits Fact Sheet* is one of many resources offered by HUD to assist housing providers with evaluating the benefits of the HCV program.

If you would like more access to educational resources about the HCV program, you can access it here:

https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/landlord

NOTE: If a broker represents a client who violates the Fair Housing Act, the broker may be in violation of N.C. Gen. Stat §93A-6(a)(10) and (15) and Commission rule 58A.1601. If a client will not relent and continues to engage in fair housing violations, the broker should terminate the agency agreement immediately in writing and explain the reasons for the termination.

Additional Examples of Disparate Impact

The following cases were filed in court by fair housing organizations and the Department of Justice. They were later discussed in literature prepared by the *National Fair Housing Alliance*, a non-profit organization located in Washington, D.C. (www.nationalfairhousing.org). These cases highlight policies that had the intent of being neutral but actually disproportionately affected people with disabilities, families with children, and individuals of a specific race and/or national origin.

People with Disabilities

Sally Wiesman was a woman from Fitchburg, Massachusetts, living in a housing authority apartment. She suffered from multiple sclerosis, major depression, and a panic disorder—all of which substantially limited her ability to sleep, work, and carry on other important daily activities. Ms. Wiesman’s condition worsened after her downstairs neighbor initiated and repeated confrontational behavior towards her. Ms. Wiesman asked to be transferred to a different apartment to help with her condition. The housing authority denied her request, citing a policy that only allowed tenants with mobility impairments to transfer apartments.



Did the housing authority implement a policy that disproportionately affected individuals with disabilities?

Answer: Yes. The housing authority developed a policy that allowed tenants with mobility impairments to transfer dwellings. However, when drafting this policy, the housing authority did not consider individuals with other types of disabilities. This oversight in the creation of the policy disproportionately impacted persons with a disability that was non-mobility related.

Therefore, the Department of Justice filed a complaint on Ms. Wiesman’s behalf in 2009 and obtained a consent decree. The Court enjoined the housing authority from:

- discriminating on the basis of a disability as prohibited by FHA, 42 U.S.C. §§ 3601-3619;

- discriminating in the rental of, or otherwise making unavailable or denying a dwelling to any renter on the basis of disability, in violation of 42 U.S.C. § 3604(f)(1);
- discriminating against any person in terms, conditions, or privileges of the rental of a dwelling, or in a provision of services or facilities in connection with the rental of such dwelling on the basis of disability, in violation of 42 U.S.C. § 3604(f)(2); and
- refusing to make a reasonable accommodation in rules, policies, practices or services when such accommodations may be necessary to afford a resident with a disability an equal opportunity to use and enjoy a dwelling, in violation of 42 U.S.C. § 3604 (f)(3).

Further, the housing authority had to revise its transfer policy so people with non-mobility related disabilities were not disparately impacted. *United States of America v. Fitchburg Housing Authority, et al.*

Families with Children

Drita and Florim Gashi lived in a one-bedroom condo they owned in Stamford, CT. After they had their first child, they got a notice from the condo association informing them that they were in violation of a two-person per bedroom occupancy limit. They could either pay a \$500 monthly fine to stay, or vacate their home. Not being able to afford the additional fee, the Gashi's had to sell their condo at a loss.



How did the condominium association violate the Fair Housing Act?

Answer: The condominium association violated the Fair Housing Act by developing an occupancy policy that only permitted two individuals per bedroom which disparately impacted families with children.

The Connecticut Fair Housing Center filed a fair housing complaint on behalf of the Gashi's. In June 2011, a District Court granted the Gashi's motion for summary judgement noting that the condo association could not provide a legitimate rationale for the creation of the policy. The association dropped its restrictive occupancy standards which opened 150 units of housing to families with children. *Gashi, et al. v. Grubb & Ellis, et al.*

Race and National Origin

From 2004 to 2008, Countrywide Financial Corporation had a business practice that allowed its loan officers and brokers discretion in varying a borrower's interest rate and other fees after the price was set based on objective credit-related factors. This practice resulted in more than 200,000 African-American and Hispanic borrowers paying more for loans.



Did the policy created by Countrywide disparately impact people of color?

Answer: Yes. Countrywide Financial Corporation provided its loan officers and/or mortgage brokers discretion in varying the interest rates. As a result of this practice, thousands of borrowers who were people of color were steered to higher-cost subprime loans as compared to similarly qualified white borrowers who got prime loans.

In December 2011, the Department of Justice reached a \$335 million settlement with Countrywide and they were required to revise their discretionary policies. *United States of America v. Countrywide Financial Corporation*.

Newsday Investigation: Long Island, New York

The *FHA* requires brokers to engage in brokerage practices that allow equal access to housing for all individuals. Newsday conducted a three year investigation to measure how often, if at all, real estate brokers provided unequal brokerage services to Caucasian and minority house hunters. The investigation consisted of:

- 25 individuals hired as paired testers;
- 93 real estate agents;
- 86 matched tests;
- 240 hours of recorded meetings; and
- 5,763 houses analyzed by testers posing as prospective house hunters.

Newsday hired paired testers for the investigation. Paired testing is regularly endorsed by federal and state courts as a practicable method for detecting housing discrimination.

Paired testing consists of using two testers of the same gender and age bracket - but of different races and/or ethnicities - to test whether discrimination exists. These paired testers are given matching profiles based upon their:

- family status,

- education level,
- type of job,
- level of income, and
- credit score.

After individuals are matched in a pair, the testers separately inform the real estate broker that they are searching for houses with identical qualities, prices, and locations.

The evidence collected from April of 2016 to August 2017, indicated that 19% of Asians, 39% of Hispanics, and 49% of African-Americans were treated differently during this investigation: 34 of the 86 matched tests showed evidence suggesting fair housing violations by steering and the denial of equal service.

Moreover, African-American testers were directed toward different, more integrated neighborhoods than their Caucasian counterparts, were given fewer listings, and their financial ability to purchase a property was scrutinized more heavily. The conditions imposed on the minority buyers (e.g., preapproval, prequalification, and identification requirements) were harsher compared to those imposed on the Caucasian buyers. Thus, minority buyers appeared to be disparately impacted as a result.

The investigation conducted by Newsday yielded data indicating that some of the brokers affiliated with Long Island’s dominant residential brokerage firms contributed to racial segregation in housing.

If you would like more information regarding the investigation conducted by Newsday, you can access it here: <https://projects.newsday.com/long-island/real-estate-agents-investigation/>.

Additional Resources

The Commission has published on its website a resource entitled, “*Fair Housing*”. This information can be found under *Resources* and accessed here:

<https://www.ncrec.gov/Resources/FairHousing>

Brokers should familiarize themselves with the fair housing resources on the Commission’s website and reference them while providing brokerage services. Let’s review each of these resources.

State Fair Housing Resources

- Questions and Answers on: Fair Housing
This publication by the Commission is available in a PDF or brochure format. The purpose of this resource is to inform

brokers/consumers about the fair housing laws and how they are applied primarily in North Carolina.

- **North Carolina Human Relations Commission: Housing Discrimination**
The North Carolina Human Relations Commission provides services and programs aimed at improving relationships among all citizens of the state, while seeking to ensure equal opportunities in the areas of employment, housing, public accommodations, recreation, education, justice and governmental services. The North Carolina Human Relations Commission also enforces the North Carolina State Fair Housing Act.
- **Filing a Housing Discrimination Complaint in North Carolina**
If an individual believes they have experienced discrimination in housing, they may file a complaint. If the residential real estate is located in North Carolina, the Housing Discrimination Section of the Civil Rights Division will investigate to determine whether unlawful discrimination has occurred.
- **North Carolina Department of Justice**
The North Carolina Department of Justice works to prevent crime and support law enforcement, to safeguard consumers, and to defend the State, its people, and their constitutional rights. Consumers can file a complaint with the North Carolina Department of Justice if they have been treated unfairly while receiving service(s), and/or have been a victim of fraud.
- **North Carolina Fair Housing Act**
The State Fair Housing Act makes it illegal to discriminate in housing in North Carolina because of race, color, religion, sex, national origin, physical or mental handicaps, or family status.

Federal Fair Housing Resources

- **United States Department of Justice Civil Rights Division**
The Civil Rights Division enforces federal laws that protect an individual from discrimination based on race, color, national origin, disability status, sex, religion, familial status, or loss of other constitutional rights.
- **United States Department of Housing and Urban Development (HUD)**
The Department of Housing and Urban Development is the federal agency responsible for national policy and programs that address

America's housing needs, improve and develop the Nation's communities, and enforce fair housing laws.

- **Federal Fair Housing Act**
The Fair Housing Act protects people from discrimination when they are renting or buying a home, getting a mortgage, seeking housing assistance, or engaging in other housing related activities. It prohibits this discrimination because of race, color, national origin, religion, sex, familial status, and/or disability.
- **Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation**
This Executive Order directs all federal agencies that enforce federal laws prohibiting sex discrimination to also prohibit discrimination based on *sexual orientation* and *gender identity* in areas including but not limited to employment, housing, healthcare, education, and credit.

Other Fair Housing Resources

- Implicit Bias Training (NAR)

NOTE: If you are a REALTOR®, you may have access to additional resources from NAR®.

ANSWERS TO DISCUSSION QUESTIONS

For Discussion on page 39

1. Define disparate impact.

Answer: 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.

2. What is the Housing Choice Voucher Program?

Answer: According to HUD, the housing choice voucher program is the federal government's major program for assisting very low-income families, the elderly, and the disabled to afford decent, safe, and sanitary housing in the private market.

3. Sara is an affiliated broker with 123 Realty. She is working with two buyer-clients. Sara provides Casey, a Caucasian buyer-client, with information about school performance in the Greenleaf neighborhood and advises her to purchase a property in that area. Casey also asks about the Brownstone community, and Sara advises against purchasing there due to underperforming schools and a declining neighborhood. When Samuel, a Hispanic buyer-client, asks about the Brownstone and Greenleaf neighborhoods, Sara tells him she thinks Brownstone would be perfect for his family; however, Greenleaf would not be a good fit. Samuel asks Sara to still provide listings for the Greenleaf area. Sara refuses his request.

Is Sara in violation of state and/or federal fair housing laws?

Answer: Sara's conduct may be a violation of state and/or federal fair housing laws if she steered her buyer-clients to specific communities based upon their race if everything else about the client is the same like income, education, family size, etc. If Sara is found to be in violation of state and/or federal fair housing laws, she may also be in violation of Commission Rule 58A .1601. However, if Sara is providing the client information solely based on their budget and/or preferences, she may not be engaging in steering. There may be several reasons as to why a broker may provide specific listings to a client; however, the broker must ensure they are not making the choice for the client. The information the broker provides should be based on the client's needs/wants.

For Discussion on page 44

John, a buyer agent with ABC Realty, represented Tom with the purchase of his first home. Tom was pleased with John's representation so he referred his co-

worker, Hong, to John. John met with Hong to review the WWREA disclosure and agency agreements. During the exclusive buyer agency agreement explanation, John informed Hong that he must pay a retainer fee for his representation. Hong asked Tom if he had to pay a retainer fee; Tom told Hong that he did not. Once Hong received this information he asked John why he had to pay the retainer. John indicated that it was in the discretion of the broker and /or firm to charge a retainer fee to clients. Hong was confused as to why he had to pay a retainer fee and Tom did not.

Could John be in violation of Commission Rule 58A .0104 and/or 58A .0120? Why or why not?

Answer: Possibly.

First, note that the discussion question did not identify the race, color or other protected classes for Tom, John, or Hong. No assumptions should be made based simply upon the names or roles of the people involved.

As to Rule 58A .0104, if John did not include “The broker shall conduct all brokerage activities in regard to this agreement without respect to the race, color, religion, sex, national origin, handicap, or familial status of any party or perspective party...” in his written buyer agency agreement, then John has violated Rule 58A .0104.

As to Rule 58A .0120, if John charged Hong a retainer fee based on his race, or if he waived his usual retainer fee for Tom because of his race, then John likely violated Commission Rule 58A .0120. If John wants to charge a retainer fee, he should charge it to all clients or have a set list of objective criteria having nothing to do with any protected class on which he bases that decision.

For Discussion on page 45

1. Marcus, an African-American man, meets with Saul, a broker, to discuss purchasing a house. Marcus tells Saul he wants to purchase a house in Green Creek. Saul asks Marcus, “Will you be comfortable there?” Marcus says, “Yes.” Saul tells Marcus he wants to show him a listing in a neighborhood that has more people like him. Saul takes Marcus to view the property and Marcus notices that many of the residents are African-American.

Has Saul violated Commission Rule 58A .1601?

Answer: Saul may have violated state and federal fair housing laws, and thereby, Commission Rule 58A .1601, by steering Marcus to a particular neighborhood. Of course, Saul may show houses in multiple neighborhoods, but his choices must not be influenced by the makeup of the neighborhood or his clients’ race, color, or other protected class.

2. Amina is Muslim and wears a hijab. As she is driving, she notices a new apartment complex with a sign that says, "Immediate occupancy available for 1, 2, and 3-bedroom apartments." Amina calls the broker listed on the sign and asks if there are available units. The broker states, "Yes, we have several." Amina makes an appointment for later in the afternoon to view an apartment. While at her appointment, she notices Tom, a broker, seems reluctant to answer her questions. At one point he asks her if she was born in the United States. Amina indicates that she is not a U.S. citizen but she does have a "green card" and is a permanent resident. She also informs Tom that she works full-time at the local university. Shortly thereafter, Tom tells her there are no available units. Amina asks to be placed on a waiting list, and Tom replies that they do not have a waiting list.

Has Tom violated Commission Rule 58A .1601?

Answer: Tom may have violated state and federal fair housing laws, and thereby, and Commission Rule 58A .1601, for refusing to rent to Amina based upon her religion.

3. Jason, a broker, has drafted the following advertisement for a property that he just listed:

Spectacular three bedroom, 2½ bath cottage in downtown Wake Forest. This cottage is perfect for a single man or woman due to its proximity to local shops and restaurants. The cottage is also two blocks away from Strawberry Baptist Church. This cottage is perfect.

If Jason publishes this advertisement could he be in violation of Commission rules? Explain your answer.

Answer: If Jason is found in violation of federal and/or state fair housing laws, he may be in violation of Rule 58A. 1601. Jason is using unacceptable words under the Fair Housing Act such as, "single", and "Baptist" to describe the cottage. His advertisement expresses a discriminatory preference against families with children, in favor of a particular religion, and possibly based upon race. Part 109-Fair Housing Advertising, published by HUD, provides examples of unacceptable words that should not be used in advertisements.

Example on page 46

Alicia, a Caucasian woman, grew up in a Caucasian neighborhood. During her teenage years, an African-American family purchased a house in the neighborhood. Alicia's Caucasian parents and neighbors were unhappy because they were convinced that the African-American family would bring down their property values, and several of those families moved away immediately.

Now Alicia is a broker for Loft Homes, a new home development. Loft Homes has an open house and is offering incentives to prospective buyers. During the open house, Alicia tells visitors how great the community is and she executes a sales contract for one of her listed homes with a Caucasian couple. She does not ask the buyers to furnish a preapproval letter.

Later that day, an African-American couple attends the open house. They inform Alicia that they are interested in purchasing in the community. Alicia is less enthusiastic about the neighborhood with this couple. She tells them they must furnish a preapproval letter before she can show any properties or explain the current incentive package.

Do you think Alicia's implicit bias may have caused her to treat the African-American couple differently?

Answer: Yes, it is possible. Alicia's upbringing could have made her think that the African-American couple purchasing in the community might decrease the property value of the houses.

Are Alicia's actions in violation of Commission rules?

Answer: Yes, Alicia's actions likely violate state and federal fair housing laws. If so, her actions violate Commission Rule 58A .1601.

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1 21 NCAC 58A .0120 is adopted with changes as published in 35:12 NCAC 1397 as follows:

2

3 **21 NCAC 58A .0120 PROHIBITED ACTS**

4 (a) A broker shall not require or demand of any escrow agent or attorney that a broker's commission be split with or
5 paid to another person or entity.

6 (b) An affiliated broker shall not be paid a commission or referral fee directly by anyone other than their current BIC
7 or the person who served as their BIC at the time of the transaction.

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

11 (d) A broker shall not conduct brokerage activities or otherwise promote their status as a real estate broker in any
12 manner that discriminates on the basis of race, color, religion, national origin, sex, familial status, or disability.

13

14 *History Note: Authority G.S. 93A-3(c); 93A-6;*
15 *Eff. July 1, 2021.*

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Section 3

Broker Fiduciary Duties



Lisa, a broker with ABC Realty, represents Alicia. Lisa enters into a listing agreement with Alicia to sell her multi-family unit. Lisa lists the dwelling for \$786,000. Lisa and her husband, Sean, own an investment firm. Sean informs Lisa that he is interested in purchasing Alicia's multi-family unit and submits an offer for \$736,000 to Lisa on behalf of their investment firm.

Must Lisa disclose to Alicia that the offer was submitted by her husband, Sean, on behalf of the investment firm they own together?

LEARNING OBJECTIVES

After completing this section, you should be able to:

- define key terms related to agency and fiduciary duties;
- explain the broker's fiduciary responsibilities to clients;
- identify current examples of brokers who may be at risk of violating their fiduciary duties; and
- describe the concept of skill, care, and diligence.

TERMINOLOGY

Agency Concepts

- **Agency:** The relationship that exists when one person is authorized to act for and on behalf of another.
- **Principal / Client:** The person who authorizes another (the agent) to act on the principal's behalf within specified parameters and to whom the agent owes certain legal duties.
- **Agent:** The person acting for and on behalf of the principal within the bounds of the authority granted and who owes fiduciary (legal) duties to the principal.

AGENT'S FIDUCIARY DUTIES

Brokers must act as fiduciaries for their principals while conducting real estate transactions. A “fiduciary” is a person who acts for another in a relationship of trust and who is obligated to act in the other’s best interests, placing the other’s interests before any self-interest.

A fiduciary must:

- be **loyal** to the principal and preserve personal, confidential information about the principal;
- operate in **good faith** to promote the principal’s interests; and
- **disclose** all facts to the principal that may influence the principal’s decision.



Take a look at the following examples, and answer this question: What questions might the Commission ask if a complaint is filed?

1. A listing broker encourages a seller to delay showings by cooperating brokers / firms so that the property can be shown first to clients of the listing firm.
2. Due to the hot market, a listing broker encourages a seller to set short deadlines for the submission of offers.

Loyalty and Obedience

When a principal employs a real estate broker as an agent, that principal is entitled to receive absolute loyalty and obedience from the agent. This means that the broker cannot advance their own personal, business, or family interests above their principal’s interests because the principal’s interests are the agent’s top priority. Also, the agent may not participate in conduct that will compromise or divide the loyalty they owe to the principal. Basically, the agent cannot participate in activities that will be adverse to the interests of the principal.

Also, the agent must comply with all lawful instructions of the principal that are consistent with the terms of the agency agreement. However, the Commission does not permit an agent to obey a principal’s instructions to perform an unlawful act.



A licensed broker and his unlicensed brother have started a renovation company called We Flip ‘Em, LLC. The broker asks a seller, whose home is listed with We Flip ‘Em, if the seller would like a quick cash sale. He tells the seller that We Flip ‘Em is interested in buying the home.

What are the broker’s obligations to the seller?

Self-Dealing

The agent’s duty to represent the principal’s best interests is paramount to the interests of all others, including the agents own interests. The appearance of and/or participation in “self-dealing” which is the agent putting their business interests above the principal, must be avoided.

If an agent has a personal interest in a transaction and such interest might affect the agent’s loyalty or obedience to the principal, the agent must either:

- withdraw as an agent in the transaction, or
- disclose the personal interests to the principal and proceed with the transaction only with the principals informed consent

The agent must avoid all conflicts of interest with their principals. If the agent has an interest in the transaction, it is imperative that they disclose this information immediately to allow the principal to make an informed decision regarding how to proceed with the transaction.

An example of self-dealing is also the utilization of a “straw-man” by an agent. This straw man participates in the real estate transaction by purchasing the property from the principal on behalf of the agent. After the sale is consummated, the property is sold at higher price and the agent realizes a profit. The realization of a profit without your principals’ knowledge is a violation of agency law and a breach of fiduciary duty.

Agent Representing Adverse Interests

As mentioned previously, an agent must not place their interests above their principal by participating in self-dealing and they must not represent any interest that is adverse to the principal without the full knowledge and informed consent of the principal.

If an agent represents an adverse interest without full disclosure, the agent will:

- breach the agency duties owed to the principal and may be liable for damages;
- likely make the contract negotiated by the agent voidable;

- not be entitled to a commission or any form of compensation for the transaction; and
- have violated G.S. §93A-6(a)(4) that prohibits brokers from acting for more than one party in a transaction without the knowledge of all parties for whom he or she acts.



Joe, a listing agent, is trying to help his brother find a home. He writes an offer for his brother and submits it to the seller who he is also representing.

May Joe's actions be considered a conflict of interest? _____

Can Joe help his brother write an offer? _____

Does Joe need a written buyer agency agreement for his brother? _____

Did Joe comply with Commission Rule 58A .0104(d) regarding dual agency? _____

Is it a good idea for Joe to assist his brother with purchasing this property from the seller? _____

Skill, Care, and Diligence

Agency law requires that a real estate broker, like any other agent, exercise a high degree of skill, care, and diligence in the conduct of the agent's duties.

The level of skill, care, and diligence required of a real estate broker is determined by:

- North Carolina General Statutes,
- North Carolina Real Estate Commission Rules,
- court decisions, and
- professional standards within the community.

An agent must exert reasonable diligence on the principal's behalf and strive to obtain the most advantageous bargain possible under the circumstances. Agents who do not perform with the required degree of skill, care, and diligence are:

- guilty of negligence or misconduct,

- liable to the principal for any damages the principal may sustain,
- may forfeit any claim to compensation, and/or
- may also violate License Law and Commission rules.

The broker-agent will be liable to the principal for all damages that are a direct or “proximate” consequence of the negligence.

Further, an agent utilizes skill, care, and diligence in their representation of the principal when they:

- Provide reliable information on matters relevant to the transaction
 - A broker should be knowledgeable about the real estate industry based on the licensing and continuing education courses they have taken. In addition, a broker should conduct research regarding matters that affect buyers and sellers in the real estate industry so they can provide valuable information to their principal.
- Provide competent advice on a property’s probable selling price
 - In an effort to provide competent advice on the probable selling price of a property, a broker should possess the requisite skill and knowledge of the industry to complete a comparative market analysis for their principal. A broker should never try to estimate the probable selling price of a property without completing a thorough analysis and researching the subject property.

Additionally, the broker should be able to answer general questions for the principal regarding the probable selling price of the property; however, if a broker receives inquiries regarding:

- sale leasebacks;
- tax consequences;
- evictions issues; and/or
- capital gains tax

they should refrain from giving tax and/or legal advice. The principal should be encouraged to consult with a CPA or attorney.

- Discover pertinent facts related to a property
 - Brokers should utilize their due diligence skills to research property-specific information to give to their principals.
- Effectively advertise a listed property
 - A broker should be knowledgeable about the area in which the property is located in an effort to advertise it effectively and not violate state and federal fair housing laws.

- Advise about offers
 - A broker who has knowledge of the market and effectively analyzes the probable selling prices of homes can efficiently assist their principals in determining the best offer to accept or submit for a transaction.
- Assist with contract preparation
 - A broker should be proficient in understanding the terms, clauses, and language in contract forms to adequately assist their buyers and sellers in completing and reviewing forms in a transaction.

A broker who fails to exercise skill, care, and diligence while representing a principal is in breach of their fiduciary duties under agency law and License Law and Commission rules.

For more information regarding the competency of licensees, review the 2019-2020 Update Course section, Competence of Licensees here:

<https://www.ncrec.gov/Pdfs/bicupdate/2019-2020%20Section%201%20Competence.pdf>



In the following examples, state whether or not the brokers are displaying the fiduciary duties of skill, care, and diligence. Explain your answers.

1. Stan, a buyer agent, wants to show Mary a property that is 100 miles outside of the geographic area he normally services. Also, Stan does not have access to the area's MLS. _____
2. Kim, a buyer agent, posts in the "The Brokers of NC" private Facebook group that she has a buyer interested in vacant land. However, this is her first transaction assisting someone with vacant land. Therefore, she is requesting brokers to provide her with a list of vacant lots she can show her client. _____

Disclosure of Information

An agent is obligated to act in good faith and fully disclose to the principal any and all information that might influence the principal's decision while also protecting the principal's personal information. An agent has an affirmative duty to discover and disclose to the principal "material facts" and all facts that may affect the principal's:

- rights or interests, or
- influence the principal's decision in the transaction.

An agent has an affirmative duty to disclose all material facts and relevant information in the transaction to the principal. Further, an agent also has a fiduciary duty of loyalty and obedience that imposes an obligation on the agent NOT to disclose certain personal information about the client-principal to third parties without the principal's consent. Also, a real estate broker must divulge information about other parties to the transaction to their principal to assist the principal in their decision-making process.

It is important for brokers to distinguish the difference between protecting a principal's interest and not disclosing their confidential information and the mandatory requirement to disclose material facts regarding a property to all parties in the transaction. A material fact is any fact that could affect a reasonable person's decision to buy, sell, or lease.

A broker has a duty to treat all persons in a real estate transaction with honesty and fairness and disclose material facts to parties and interested third parties in the transaction. Therefore, the disclosure of material facts is not contingent upon whether or not an agency relationship exists with a party to the transaction.



Sara, a listing agent, is performing a listing presentation for Mark. During Sara's walk through of the property, she notices a stain on the ceiling. She asks Mark about the stain and he mentions that the roof has a leak and has been repaired three times, but now needs to be replaced. Mark further stated that this was one of the reasons he wanted to sell the property. He directs Sara not to mention this information to prospective buyers because he will repaint the ceiling before the open house.

Must Sara disclose the leaking roof? Why or why not?

Accounting

A real estate broker in an agency relationship is obligated to account for all money and/or property that belongs to his principal. The real estate broker must also safeguard the property (e.g. money, deeds, documents, etc.) that relates to the clients transaction.

Furthermore, under the common law of agency, an agent is obligated to maintain accurate records of any transactions or dealings involving the principal.

An Agent Selling Their Own Home

Every real estate broker has to complete the Residential Property and Owners' Association Disclosure Statement if they are selling their home and it is a residential dwelling of four or fewer units. The real estate broker may check "Yes", "No", or "No Representation" to any or all of the questions on the disclosure. However, the broker must still discover and disclose all material facts regarding the property to all parties even if they checked "No Representation."

A broker selling his or her own home should not represent or offer to represent a buyer due to creating an obvious conflict of interest. If a buyer desires to be represented, then the seller/broker should advise the buyer to seek representation from another broker. Also, if the seller/broker listed their property with their own firm and the firm offers designated dual agency, another broker within the firm may represent the buyer. However, the best way to avoid a conflict of interest is to always encourage the buyer to seek representation from another firm.

A broker must follow all License Law and Commission rules, even when advertising their own property for sale. For example, a broker cannot advertise their property for sale as being listed by their firm without having a written listing agreement. It is important for brokers to know that the Commission has the authority to discipline a broker who fails to adhere to any License Law and Commission rule, even when selling their own property.

Best Practices for Brokers

As mentioned previously, brokers who act as agents for principals are considered fiduciaries. As a fiduciary, the broker owes specific duties, known as fiduciary duties, to the principal.

Below are best practices for brokers to implement to ensure they are providing fiduciary duties to their principal per agency law:

- the principal's interests are paramount;
- inform the principal of conflicts of interest as soon as they arise;
- timely provide the principal with relevant and material information so they can have time to make an educated, informed decision regarding the transaction;
- follow the lawful instructions of the principal;
- educate yourself on the geographic area and/or types of real estate transactions in which you will practice to obtain knowledge;
- and safeguard all money and/or property that belongs to the principal.

Brokers who ensure they are adhering to their fiduciary responsibilities have the greatest probability of compliance with License Law and Commission rules and meeting the needs of their principals.

CASE STUDIES

This section will utilize case studies to illustrate Commission rules regarding fiduciary duties and agency representation. The cases presented are actual Commission disciplinary cases, many of which resulted in disciplinary action being imposed against brokers and/or firms.

*To view NC License Law and Commission Rules, go to ncrec.gov, click on **Resources**, and select **License Law/Rules**.

When evaluating the case studies, it's important to differentiate between the "complaining witness" "complainants" and "respondents."

- **Complaining Witness:** The person(s) who submits a complaint to the Commission.
- **Complainant = Plaintiff:** Upon review of a submitted complaint, if the Commission opens an investigation against a respondent, the Commission (NOT the Complaining Witness) is the Complainant.
- **Respondent = Defendant:** The person against whom the complaint is made and who must reply to the complaint.

The outcomes of the cases, including Commission sanctions, are revealed at the end of the section. Possible sanctions include:

- **License Revocation** for a definite or indefinite period of time.
A broker whose license is revoked has no license.
- **License Suspension** for a stated period of time.
A broker whose license is suspended still has a license but is prohibited from using it for a specified period of time.
- **Reprimand**
This is a public statement of disapproval by the Commission. A broker who has been reprimanded continues to have an active license and may engage in real estate brokerage activities.
- **Close and Warn**
No disciplinary action is levied against the broker's license; however, the broker (respondent) is sent a letter of warning explaining a misstep or violation that was identified during the investigation.
- **Close**
No disciplinary action is levied against the broker's license.



The Commission's sanctions don't seem harsh enough in some cases. Why aren't the sanctions tougher?

Answer (as noted in the Commission's 2016-17 *Update* course materials):

The Commission frequently will impose a harsher sanction in a case, but allow the broker to reduce it to a lesser sanction or dismissal by completing some specified education by a certain date. This approach seeks to fulfill the Commission's purpose of protecting the public interest while educating brokers in hopes of improving their knowledge, competency, and skills.

CASE: WHAT ABOUT THE REPAIRS I REQUESTED?

Read the following case summary.

Determine what, if any, errors were made by the broker(s) and which License Laws or Commission Rules were violated.

PARTIES:

Complaining Witness (CW): Buyer.

Respondents: Listing Agent (RLA - Respondent Listing Agent) and Buyer Agent (RBA - Respondent Buyer Agent) in the subject transaction.

COMPLAINT FACTS:

In March 2018, RLA listed a residential property in MLS as being constructed of brick veneer. Later that month, the CW went under contract on the property and ordered a home inspection. The home inspection revealed potential moisture-related issues with the synthetic stucco on the home, among other things. RBA submitted the Due Diligence Request and Addendum (DDRA) to the RLA for the sellers' approval. CW requested a few repairs along with moisture readings of the stucco and roof certification.

The sellers signed the DDRA, but only after scratching through the moisture reading and roof certification language. RLA emailed RBA that day, that the sellers were "making all repairs, but moisture testing and roof certificate is a buyer inspection. If [the buyer] wants to get further inspections, seller will look at any additional repairs that are requested ..." RBA never provided this information to the CW or gave her a copy of the DDRA. Instead, when she texted RBA for an update on the repair request, RBA responded, "They agreed to all repairs and moving forward."

During the final walkthrough, CW says she asked RBA about the roof to which he replied that the roof had been inspected but he was still waiting on the certification from the company. The next day, the transaction closed. CW reached out to both RBA and RLA for the roof certification. RLA provided Buyer with the DDRA and advised that her seller

clients had rejected the offer to provide a roof certification or moisture testing. RBA obtained a roof certification for the property after the complaint was filed.

RLA admitted that she failed to disclose the synthetic stucco. She did not disclose on the MLS since the home was predominately comprised of brick and that there is not an option in MLS to list both brick and stucco. The CW home inspection revealed the presence of synthetic stucco.

Main Points - What About The Repairs I Requested?

- In 2018, RLA listed a residential property in MLS as being constructed of brick veneer
- CW went under contract and ordered a home inspection
- Home inspection report revealed moisture-related issues with the synthetic stucco and other things
- RBA submitted a DDRA which requested a few repairs, moisture readings of the stucco, and roof certification to RLA for sellers approval
- Sellers scratched out moisture reading and roof certification and then signed it
- RLA emailed RBA stating the seller was making all repairs except moisture testing and roof certification
- RLA stated if CW wants to get further inspections, seller will review additional repairs that CW requests
- RBA did not provide information to CW or a copy of the DDRA
- RBA told CW seller agreed to all repairs via text message
- RBA stated roof was inspected but they were waiting on the roof certification and would provide it to CW at the final walkthrough
- Transaction closed without CW receiving roof certification
- RBA obtained roof certification after complaint was filed
- RLA admitted to failing to disclose synthetic stucco
- CW home inspection report did reveal presence of synthetic stucco

Evaluation and Discussion - What About The Repairs I Requested?

Errors made by RLA-Respondent Listing Agent:

Errors made by RBA-Respondent Buyer Agent:

Related law and Rule Considerations - What About the Repairs I Requested?

Competency

N.C.G.S. § 93A-6(a)(1) states:

The Commission has the power to suspend, revoke, reprimand, or censure any licensee for making any willful or negligent misrepresentation or any willful or negligent omission of material fact.

N.C.G.S. § 93A-6(a)(2) states:

The Commission has the power to suspend, revoke, reprimand, or censure any licensee if they make false promises of character likely to influence, persuade, or induce.

N.C.G.S. § 93A-6(a)(10) states:

The Commission has the power to suspend, revoke, reprimand, or censure any licensee if they engage in conduct which constitutes improper, fraudulent, or dishonest dealing.

N.C.G.S. § 93A-6(a)(15) states:

The Commission has power to suspend, revoke, reprimand, or censure any licensee if they violate any rule adopted by the Commission.

Delivery of Instruments

Commission Rule 58A .0106(a) dictates:

Every broker shall deliver a copy of any written agency agreement, contract, offer, lease, rental agreement, option, or other related transaction document to their customer or client within three days of the broker's receipt of the executed document.

CASE: THE BROKER WHO DISCLOSED MY OFFER

Read the following case summary.

Determine what, if any, errors were made by the broker(s) and which License Laws or Commission Rules were violated.

PARTIES:

Complaining Witness (CW): BIC of a Firm representing a Buyer.

Respondents: Listing Agent (RLA- Respondent Listing Agent) and Listing Firm (RLF- Respondent Listing Firm) for which the Listing Agent was QB/BIC.

COMPLAINT FACTS:

The BIC's complaint stated that an agent with his Firm, acting as a BA for a prospective Buyer, submitted a written offer to the RLA for the listed property. The property received multiple offers, according to the complaint, the RLA disclosed the amount of his Firm's Buyer's offer to competing BA's. The complaining Firm's BA stated that after she emailed to the RLA a copy of her Buyer's signed offer for \$176K, she received a VM from the RLA stating that there were multiple offers and per his Seller's request, he would inform all prospective buyers that the highest offer was \$176K and ask for H&B. CW supplied an audio copy of the VM.

RLA claimed that per his Seller, he asked for H&B from all prospective Buyers which resulted in a \$181K offer from a different Buyer that was accepted by the Seller. The RLA provided a copy of the accepted contract and copies of all four offers received. The RLA denied disclosing the price or terms of any offer to any other BA.

The BA whose Buyer-Client 2nd offer of \$181K was accepted by the Seller stated she had no written communications with the RLA regarding terms of other offers and that she could not recall the RLA disclosing the amount of any particular offer, only that the transaction was a multiple offer situation and the RLA had requested H&B. Another competing BA stated that shortly after he submitted an offer to the RLA, the RLA left a VM and sent an email to him giving notice of multiple offers and disclosing that the current highest offer was \$176K. This BA stated he no longer had a copy of the VM; however, he provided a copy of an email in which the RLA stated: "Did you get my message about the other offer that was \$176k in the initial offers before we called for highest and best?" The fourth and final BA responded similarly, and provided a copy of a text message from the RLA which stated: "Ok, did you hear my VM that we had at least a \$176k net to seller from initial offer? Just want to make sure".

Main Points - The Broker Who Disclosed My Offer

- The CW is a BIC of a firm representing a buyer
- Respondents are a listing agent (RLA) and a listing firm (RLF); the listing agent is also the QB/BIC
- BA with BIC's firm submitted offer to RLA for listed property for \$176K
- The property received multiple offers
- The RLA disclosed buyer's offer to a competing BA
- RLA left a VM stating that he is informing all prospective buyers that the highest offer the seller received was \$176K and to submit their H&B
- RLA received an offer for \$181K from a different buyer and seller accepted
- BA whose buyer-clients second offer of \$181K was accepted stated the RLA did not disclose the offer amount, only the existence of multiple offers and to submit your H&B offer
- A competing BA received a VM from the RLA disclosing the \$176,K and to submit your H&B offer
- Competing buyer provided NCREC with a copy of an email from the RLA asking if the BA received their voicemail message regarding the \$176K offer and the request for all buyers to submit their H&B offer
- A fourth BA provided NCREC with a copy of a text message from the RLA stating, "OK, did you hear my VM that we had at least a \$176K net to the seller from the initial offer? Just wanted to make sure."

Evaluation and Discussion - The Broker Who Disclosed My Offer

Errors made by RLA - Respondent Listing Agent:

Errors made by RLF- Respondent Listing Firm:

Related law and Rule Considerations - The Broker Who Disclosed My Offer

Competency

N.C.G.S. § 93A-6(a)(10) states:

The Commission has the power to suspend, revoke, reprimand, or censure any licensee if they engage in conduct which constitutes improper, fraudulent, or dishonest dealing.

N.C.G.S. § 93A-6(a)(15) states:

The Commission has the power to suspend, revoke, reprimand, or censure any licensee if they violate any rule adopted by the Commission.

Disclosure of Offers Prohibited

Commission Rule 58A .0115 dictates:

A broker shall not disclose the price or other material terms contained in a party's offer to purchase, sell, lease, rent, or to option real property to a competing party without the express authority of the offering party.

CASE: WHOSE LOT IS IT?

Read the following case summary.

Determine what, if any, errors were made by the broker(s) and which License Laws or Commission Rules were violated.

PARTIES:

Complaining Witness (CW): Owner of an unimproved residential lot.

Respondents: former Listing Agent (RLA - Respondent Listing Agent) for the lot and the listing firm (RLF- Respondent Listing Firm) for which she was QB.

COMPLAINT FACTS:

The RLA had 3 lots listed for sale that were owned by the CW's family members and were adjacent to the CW's lot. RLA solicited the CW to list her lot for sale, which she did for \$30K. The listing expired without an offer. The RLA later contacted the CW and told her that she had someone interested in the lot. The details of their discussion are disputed, but shortly thereafter, the CW received by mail a written offer for \$20K prepared by the RLA and disclosing her status as a dual agent. The mailing included an Agency Agreement Renewal signed by the RLA proposing to renew and extend the listing approximately three months. The CW signed neither of the agreements and the offer was withdrawn.

A month later, the CW received a notice of a lien filed against the lot. The lien was filed on behalf of a grading and landscaping company for \$7706 for clearing the CW's lot and applying for well & septic permits. The lien named the CW as the party who contracted for the services through the parties that were the proposed buyers on the rejected offer. The CW contacted the law office that filed the lien and received a copy of a form which purported to give the Buyers the authority to obtain well & septic permits for the CW's lot. The CW's name was listed on the form; however, it was not the CW's signature.

The CW contacted the RLA and thereafter, RLA sent the CW a written agreement signed by the RLA with a place for the CW to sign. The agreement stipulated that the RLA agreed to satisfy the subject lien in exchange for the CW waving any claims against the RLA and agreeing not to discuss or report the matter to the NCREC. The CW did not sign the agreement and retained an attorney who sent the RLA a demand letter for \$20K. RLA paid the lien Claimant \$7K in exchange for releasing and canceling the lien. The CW filed the NCREC complaint shortly thereafter.

In her response, the RLA alleged that upon discussing the \$20K offer with the CW in early Sept., the CW verbally accepted the offer and verbally authorized the RLA to sign the well & septic permit form on the CW's behalf because the CW lived out of the area, did not use email and it would take several days for the CW to receive the offer, review & sign it and return it to the RLA by mail. The RLA stated that the buyers were aware that the CW had not yet signed the offer and alleged that she had meant to sign the subject form as POA for the CW, but in haste signed the CW's name instead.

The owner of the grading & landscaping company who was both the lien claimant and the father of the proposed Buyer and her husband confirmed that the RLA told them that the CW had not yet signed the offer but had verbally accepted it. CW denied that she verbally accepted the \$20K offer or gave authorization to the RLA to sign anything on her behalf.

Main Points - Whose Lot Is It?

- In July, RLA listed 3 lots owned by CW family member
- The 3 lots were adjacent to the CW's lot
- CW listed her lot with RLA to sell for 30K
- The listing agreement expired
- In September, RLA sent CW an offer for 20K in the mail, and an Agency Agreement Renewal which extended the listing for 3 months, and a disclosure indicating she was acting as a dual agent
- CW did not sign any agreements and the offer was withdrawn
- A month later, CW received a notice that a lien had been filed on her property for \$7706
- The lien was filed by the grading and landscaping company for clearing the lot and applying for the well and septic permits
- The lien indicated that the CW contracted services through the party who

- proposed the offer
- CW contacted the law office who filed the lien to receive a copy of the form which gave the buyer authorization to obtain the well and septic permits for the CW's lot
- The CW was listed on the form but it was not her signature that provided the authorization
- RLA sent the CW the written agreement for the CW to sign indicating that if RLA satisfied the lien, the CW would not report the RLA to NCREC
- CW refused to sign the written agreement, hired an attorney, and sent a demand letter to the RLA requesting \$20K
- RLA paid CW \$7K for releasing and canceling the lien
- CW filed a complaint with NCREC
- RLA stated CW verbally accepted the \$20K offer and verbally authorized her to sign the well and septic permits
- RLA indicates she meant to sign POA document but signed CW name instead
- Owner of grading and landscaping company was the lien claimant and father of the prospective buyers
- CW denied verbally accepting a \$20K offer and giving RLA authorization to sign on her behalf

Evaluation and Discussion - Whose Lot Is It?

Errors made by RLA - Respondent Listing Agent:

Related law and Rule Considerations - Whose Lot Is It?

Competency

N.C.G.S. § 93A-6(a)(1) states:

- The Commission has the power to suspend, revoke, reprimand, or censure any licensee for making any willful or negligent misrepresentation or any willful or negligent omission of material fact.

N.C.G.S. § 93A-6(a)(2) states:

- The Commission has the power to suspend, revoke, reprimand, or censure any licensee if they make false promises of character likely to influence, persuade, or induce.

N.C.G.S. § 93A-6(a)(10) states:

- The Commission has the power to suspend, revoke, reprimand, or censure any licensee if they engage in conduct which constitutes improper, fraudulent, or dishonest dealing.

N.C.G.S. § 93A-6(a)(15) states:

- The Commission has power to suspend, revoke, reprimand, or censure any licensee if they violate any rule adopted by the Commission.

Agency Agreements and Disclosures

Commission Rule 58A .0104(a) requires:

Every agreement for brokerage services in a real estate transaction and every agreement for services connected with the management of a property owners association shall be in writing and signed by the parties thereto. Every agreement for brokerage services between a broker and an owner of the property to be the subject of a transaction shall be in writing and signed by the parties at the time of its formation.

ANSWERS TO DISCUSSION QUESTIONS

For Discussion on Page 69

Lisa, a broker with ABC Realty, represents Alicia. Lisa enters into a listing agreement with Alicia to sell her multi-family unit. Lisa lists the dwelling for \$786,000. Lisa and her husband, Sean, own an investment firm. Sean informs Lisa that he is interested in purchasing Alicia's multi-family unit and submits an offer for \$736,000 to Lisa on behalf of their investment firm.

Must Lisa disclose to Alicia that the offer was submitted by her husband, Sean, on behalf of the investment firm they own together?

Answer: Yes. Since Lisa has the property listed, she owes fiduciary duties to Alicia. Now that Lisa and her husband are interested in purchasing the property, Lisa must follow the directives set forth in Commission rule 58A .0104, subsection (p) which dictate:

(p) A broker or firm with an existing listing agreement for a property shall not enter into a contract to purchase that property unless, prior to entering into the contract, the listing broker or firm first discloses in writing to their seller-client that the listing broker or firm may have a conflict of interest in the transaction and that the seller-client may want to seek independent counsel of an attorney or another licensed broker. Prior to the listing broker entering into a contract to purchase the listed property, the listing broker and firm shall either terminate the listing agreement or transfer the listing to another broker affiliated with the firm. Prior to the listing firm entering into a contract to purchase the listed property, the listing broker and firm shall disclose to the seller-client in writing that the seller-client has the right to terminate the listing and the listing broker and firm shall terminate the listing upon the request of the seller-client.

Before Lisa can enter into a contract to purchase with Alicia, Lisa must disclose in writing to Alicia that she may have a conflict of interest in the transaction due to owning the investment firm with Sean, her husband. Further, Lisa must inform Alicia to independently seek the advice of an attorney or another broker regarding the investment firm's inquiry to purchase the property. Additionally, prior to Lisa and Sean entering into a contract to purchase the property on behalf of their investment firm, Lisa MUST terminate the listing agreement with Alicia or transfer the listing to another broker affiliated with the firm.

For Discussion on Page 70

Take a look at the following examples, and answer this question: What questions might the Commission ask if a complaint is filed?

1. A listing broker encourages a seller to delay showings by cooperating brokers / firms so that the property can be shown first to clients of the listing firm.

Answer: Here are examples of the types of questions the Commission might ask:

- *Did the listing broker fully inform the seller of the advantages and disadvantages of delaying the showing of their property to cooperating brokers / firms?*
- *Did the seller make the decision to delay the showing of their property after receiving all of the information that explains the advantages and disadvantages of this decision?*

- *Did the listing broker independently make the decision to delay the showings of the seller's property?*

The listing broker must be able to show the Commission that the suggestion to delay the showing of the seller's property to cooperating brokers /firms was in the best interest of the seller. Additionally, it must be shown that the seller received competent advice and relevant, material information from the listing broker regarding why a seller would or would not delay showings of their property to cooperating brokers / firms.

It is important for the listing broker to be loyal and obedient to the seller, follow their lawful instructions, and put the seller's needs before their own. The listing broker must not make the decision(s) for the seller.

NOTE: A broker may be in compliance with the guidelines established by their local MLS, but may still be in violation of Commission rules if they are not acting in the best interests of their principal.

2. Due to the hot market, a listing broker encourages a seller to set short deadlines for the submission of offers.

Answer: Here are examples of the types of questions the Commission might ask:

- *Did the listing broker fully inform the seller of the advantages and disadvantages of setting a short deadline for the submission of offers?*
- *Did the seller make the decision to set a short deadline for the submission of offers after receiving all of the information that explains the advantages and disadvantages of this decision?*
- *Did the listing broker independently make the decision to set a short deadline for the submission of offers?*

The listing broker must be able to show the Commission that the suggestion to delay the showing of the seller's property to cooperating brokers /firms was in the best interest of the seller. Additionally, it must be shown that the seller received competent advice and relevant, material information from the listing broker regarding why a seller would or would not shorten the deadline for the submission of offers in a hot real estate market.

It is important for the listing broker to be loyal and obedient to the seller, follow their lawful instructions, and put the seller's needs before their own. The listing broker must not make the decision(s) for the seller.

For Discussion on Page 71

A licensed broker and his unlicensed brother have started a renovation company called We Flip 'Em, LLC. The broker asks a seller, whose home is listed with We Flip 'Em, if the seller would like a quick cash sale. He tells the seller that We Flip 'Em is interested in buying the home.

What are the broker's obligations to the seller?

Answer: Since the broker has the property listed, the broker owes fiduciary duties to the seller-client. Now that the broker is interested in purchasing the property, the broker

must follow the directives set forth in Commission rule 58A .0104, subsection (p) which dictate:

(p) A broker or firm with an existing listing agreement for a property shall not enter into a contract to purchase that property unless, prior to entering into the contract, the listing broker or firm first discloses in writing to their seller-client that the listing broker or firm may have a conflict of interest in the transaction and that the seller-client may want to seek independent counsel of an attorney or another licensed broker. Prior to the listing broker entering into a contract to purchase the listed property, the listing broker and firm shall either terminate the listing agreement or transfer the listing to another broker affiliated with the firm. Prior to the listing firm entering into a contract to purchase the listed property, the listing broker and firm shall disclose to the seller-client in writing that the seller-client has the right to terminate the listing and the listing broker and firm shall terminate the listing upon the request of the seller-client.

Before the broker can enter into a contract to purchase with the seller-client, the broker must disclose in writing to the seller-client that they may have a conflict of interest in the transaction due to owning the renovation company, "WE FLIP EM, LLC." Further, the broker must inform the seller-client to independently seek the advice of an attorney or another broker regarding their inquiry to purchase the property. Additionally, prior to the broker entering into a contract to purchase the property on behalf of "WE FLIP EM, LLC", the broker MUST terminate the listing agreement with the seller-client or transfer the listing to another broker affiliated with the firm.

For Discussion on Page 72

Joe, a listing agent, is trying to help his brother find a home. He writes an offer for his brother and submits it to the seller who he is also representing.

May Joe's actions be considered a conflict of interest?

Answer: Yes, Joe's actions may be considered a conflict of interest because he is representing a family member, his brother. Joe must avoid all conflicts of interest with the seller. Joe should have immediately disclosed to the seller that the offer was from his brother so that the seller could make an informed decision on how to proceed with the transaction.

Can Joe help his brother write an offer?

Answer: No. Under these facts, Joe does not have the written authority from the seller to practice dual agency. Joe also does not have a written buyer agency agreement authorizing dual agency with his brother. Joe should not assist his brother in writing an offer. If Joe assists his brother in writing an offer, he is representing an interest that is adverse to the sellers without their full knowledge and informed consent. Joe must either withdraw as an agent in the transaction or disclose the personal interests in the transaction to the seller and proceed with the transaction only with the seller's informed consent. Also, Joe may in violation of §93A-6(a)(4) that prohibits brokers from acting for more than one party in a transaction without the knowledge of all parties for whom he or she acts.

Does Joe need a written buyer agency agreement for his brother?

Answer: It depends. First, Joe must have the written authority from the seller to even practice dual agency. Joe must also inform the seller that he has a conflict of interest due to his brother wanting to make an offer on the property. If the seller has provided written

authorization to practice dual agency, has full knowledge of Joe's representation of his brother and provides informed consent, Joe may represent the interest of his brother. Joe must enter into a written buyer agency agreement authorizing dual agency with his brother. If the seller does not provide their informed consent, Joe must withdraw from the transaction.

Did Joe comply with Commission Rule 58A .0104(d) regarding dual agency?

Answer: It depends. If Joe received written authority from the seller to practice dual agency and had a written buyer agency agreement with his brother authorizing dual agency, then yes. However, if Joe submitted an offer to the seller from his brother without the written authority of the seller to practice dual agency, he may be in violation of License Law and Commission rules and breached the fiduciary duties he owes to the seller. Although Joe may have the written authority to practice dual agency from the seller and his brother, Joe must still inform the seller immediately of the conflict of interest. Joe can only proceed in the transaction with the seller's informed consent or he must withdraw from the transaction.

Is it a good idea for Joe to assist his brother with purchasing this property from the seller?

Answer: No. It is probably not a good idea for Joe to assist his brother with purchasing the property. It is likely that Joe would have difficulty adhering to the fiduciary duties that he owes the seller when representing his brother.

For Discussion on Page 74

1. Stan, a buyer agent, wants to show Mary a property that is 100 miles outside of the geographic area he normally provides services. Also, Stan does not have access to the area's MLS.

Answer: Stan should be knowledgeable about the geographic area in which he wants to show Mary property. If Stan is considering property outside of the MLS, he should consult with his BIC to see if this is even permissible. Additionally, Stan would need to be knowledgeable about the area so that he could assist Mary with obtaining reliable information about the property, advising her about offers, discovering pertinent facts about the property, and assisting with contract preparation. If he is not knowledgeable about the area, Stan should refer Mary to another broker - or enlist the assistance of a broker who has knowledge of the area.

2. Kim, a buyer agent, posts in the "The Brokers of NC" private Facebook group that she has a buyer interested in vacant land. However, this is her first transaction assisting someone with vacant land. Therefore, she is requesting brokers to provide her with a list of vacant lots she can show her client.

Answer: Brokers are encouraged to ask for assistance and/or information from their network of real estate professionals. However, Kim may not be competent enough to represent this buyer with this vacant land purchase. Kim should consult with her BIC to determine if she can even assist this buyer, consider taking additional education before practicing brokerage in land transactions, and/or collaborate with an experienced broker to assist in this transaction with her BICs permission.

For Discussion on Page 75

Sara, a listing agent, is performing a listing presentation for Mark. During Sara's walk through of the property, she notices a stain on the ceiling. She asks Mark about the stain and he mentions that the roof has a leak and has been repaired three times, but needs to be replaced. Mark

further stated that this was one of the reasons he wanted to sell the property. He directs Sara not to mention this information to prospective buyers because he will repaint the ceiling before the open house.

Must Sara disclose the leaking roof?

Answer: Yes. Sara discovered the leaking roof and now she must disclose it to all parties in the transaction per License Law and Commission rules because it is a material fact.

Case Outcome: What About The Repairs I Requested?

Errors identified during the Commission's Investigation

- RBA received a DDRA back from the RLA which marked through a requested roof certification.
- RBA did not provide the document to his client or inform them of the refusal and claimed a roof certification had been completed when it had not.

Law & Rule Violations identified during the Commission's Investigation

- N.C.G.S. § 93A-6(a)(1) - Making any willful or negligent misrepresentation or any willful or negligent omission of material fact.
- N.C.G.S. § 93A-6(a)(2) - Being unworthy or incompetent to act as a real estate broker in a manner as to endanger the interest of the public.
- N.C.G.S. § 93A-6(a)(10)- Any other conduct which constitutes improper, fraudulent or dishonest dealing.
- N.C.G.S. § 93A-6(a)(15) - Violating any rule adopted by the Commission.
- Commission Rule 21 NCAC 58A .0106 - Delivery of Instruments

Sanctions Imposed by Commission

- RBA: conditional reprimand with courses
- RLA: **Closed** with a warning

Case Outcome: The Broker Who Disclosed My Offer

Errors identified during the Commission's Investigation

- RLA, at his seller's request, disclosed the highest offer received to several BAs and requested them to submit their H&B offer.
- The RLA did not have the express authority of the buyer whose offer was disclosed to do so.

Law & Rule Violations identified during the Commission's Investigation

- N.C.G.S. § 93A-6(a)(10)- Any other conduct which constitutes improper, fraudulent or dishonest dealing.
- N.C.G.S. § 93A-6(a)(15) - Violating any rule adopted by the Commission.
- Commission Rule 21 NCAC 58A .0115 - Disclosure of Offers Prohibited

Sanctions Imposed by Commission

- For RLA and RLF: Conditional stayed 1 year suspension with courses

Case Outcome: Whose Lot Is It?

Errors identified during the Commission's Investigation

- RLA listed an unimproved lot and, after the listing expired, presented an agency renewal agreement and offer from a proposed buyer.
- RLA signed seller's name to a form authorizing the buyers to obtain a well and septic permit and the buyers also did work to clear the lot.
- The buyers subsequently filed a lien for the work done when the seller refused to sell. (The RLA paid in order to have the lien released).

Law & Rule Violations identified during the Commission's Investigation

- N.C.G.S. § 93A-6(a)(1) - Making any willful or negligent misrepresentation or any willful or negligent omission of material fact.
- N.C.G.S. § 93A-6(a)(2) - Being unworthy or incompetent to act as a real estate broker in a manner as to endanger the interest of the public.
- N.C.G.S. § 93A-6(a)(10)- Any other conduct which constitutes improper, fraudulent or dishonest dealing.
- N.C.G.S. § 93A-6(a)(15) - Violating any rule adopted by the Commission.
- Commission Rule 21 NCAC 58A .0104(a) - Agency Agreement and Disclosure

Sanctions Imposed by Commission

- RLA: Conditional 18 month suspension with 2 months active with courses

Section 4

Law & Rules Updates



1. Tamela, a full broker, takes the 12-hour Broker-in-Charge course. After successfully completing the course, she completes a *Request for BIC Eligible Status and/or BIC Designation* (Form 2.25) and submits it to the Commission. However, she received a *Letter of Inquiry* from the Commission and is currently under investigation.

Will the Commission grant Tamela BIC Eligible status if there is a pending investigation? Yes / No _____

2. Kim has been a broker in NC for 17 years and has never provided an email address to the Commission. When he renews his license in June 2022, Kim discovers an email address is required. He's reluctant to provide an email address, because he doesn't want the address to be published.

What are Kim's options? _____

3. TRUE or FALSE? A BIC must complete the Basic Trust Account Procedures Course within 120 days of **assuming** responsibility for a trust account.

LEARNING OBJECTIVES

By the end of this section, you should be able to describe updates to License Law and Commission rules that were effective on July 1, 2021.

OVERVIEW

The Commission revised several rules with an effective date of July 1, 2021, in Chapter 58A. Some rule changes were discussed during the Racial Equity section of this course. The remaining rule changes are summarized here. The rule revisions are reprinted at the end of this section. Also, all revised rules can be viewed on the Commission's website.

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

COMMISSION RULE CHANGES EFFECTIVE JULY 1, 2021

Rule 58A .0110: Broker-In-Charge

Rule 58A .0110(g)(1) and (7)

Rule 58A .0110(g)(1) and (7) were amended by the Commission and became effective on July 1, 2021. The Commission removed the term *employee* and added the term *affiliated* to the rule language. Therefore, this amendment clarified the difference between a broker being affiliated with versus employed by a firm and/or company.

A BIC has the authority to determine the type of employment relationship a real estate broker will have with their firm and/or company. The BIC should indicate in their written office policies whether or not a real estate broker would be classified as an *employee* or *independent contractor*.

Regardless of the employment term(s) used to describe the working relationship, a BIC is responsible for supervising affiliated brokers.



Who is responsible for the supervision of affiliated brokers?

A BIC is responsible for the supervision of affiliated brokers. This responsibility exists even if the real estate broker is considered *affiliated* with the firm and/or company and not employed. As mentioned previously, the BIC should clarify the type of working relationship the broker has with the firm and/or company in the written employment agreement.

58A .0110(g)(1) and (7) were amended on July 1, 2021, to add language clarifying that the BIC is responsible for supervising brokers who are *affiliated* with the office.



Stan is the BIC of Homez Realty. When he hires new brokers, he reviews the employment agreement with them during new broker orientation. The employment agreement dictates that the brokers are *independent contractors* but they must obtain prior authorization from the BIC before placing advertisements and affiliating with other firms. Additionally, this agreement specifies that Homez Realty will distribute a 1099-Miscellaneous Income form to all affiliated brokers electronically.

Is Stan responsible under License Law and Commission rules for the brokers at the company since they are categorized as independent contractors?

Rule 58A .0110 (g)(9)

The Commission amended Rule 58A .0110(g)(9) on July 1, 2021, to clarify when a BIC must take the Basic Trust Account Procedures Course. Rule 58A .0110(g)(9) specifies that a designated BIC shall:

- complete the Commission’s Basic Trust Account Procedures Course within 120 days of **assuming** responsibility for a trust account, and
- not be required to complete the course *more than once in three years*.



If a BIC assumes responsibility for a trust account, must that BIC take any special education?

Yes!

As of July 1, 2021, Rule 58A .0110(g)(9) dictates that a designated BIC shall “complete the Commission’s Basic Trust Account Procedures Course within 120 days of assuming responsibility for a trust account in accordance with G.S. 93A-6(g).”

This rule requires brokers who have opened a new trust account and/or assumed responsibility for a trust account to take the Basic Trust Account Procedures Course. The course must be taken within 120 days of opening the account or assuming responsibility. The Commission’s Basic Trust Account Procedures Course provides instruction on the laws, rules and trust account guidelines as they pertain to trust

accounting. The 4-hour self-paced, distance course is offered only by the Commission.

To register for the course, go to the Commission's learning site, <https://learn.ncrec.gov/>.

About the Trust Account Course

- Taught by the Commission with NCREC auditors
- 4 hour self-paced online course
- \$45 cost
- 4 hours of elective credit

**REGISTER ONLINE at:
LEARN.ncrec.gov**



Rule 58A
.0110(g)(9)



4



What if the BIC took the Basic Trust Account Procedures Course within the last three years?

Rule 58A .0110(g)(9) specifies that a BIC must take the Basic Trust Account Procedures Course within 120 days of **assuming** a trust account. This subsection further indicates that a BIC is **not** required to complete the course more than once in a three year period. Although the BIC is not required to complete the course again, the Commission does not prohibit them from taking the course again for additional information.



Bob took the Basic Trust Account Procedures Course on August 2, 2021. Bob later became the new BIC of ABC Realty on June 16, 2022, and assumed responsibilities for the trust account.

Does Bob need to take the Basic Trust Account Procedures Course? YES/NO

Rule 58A .0110(g)(10)

Subsection (g)(10) was added to Rule 58A .0110 as of July 1, 2021, as follows:

(g) A designated BIC shall:

(10) supervise all unlicensed individuals employed at the office and ensure that unlicensed individuals comply with G.S. 93A-2(c)(6).

Per Rule 58A. 0110(g)(10), a BIC is responsible for ensuring that unlicensed assistants employed by the firm are not practicing illegal brokerage and are only engaging in permitted activities as specified by statute and office policies.

What is N.C.G.S. 93A-2?

N.C.G.S. 93A-2 is the law that dictates when a real estate broker license is required in North Carolina.

G.S. 93A-2(a) defines a **real estate broker** as one who:

- (1) lists, sells, buys, auctions, leases, rents, sells leases, offers to do any of the foregoing, or otherwise negotiates the purchase, sale or exchange of real estate or improvements thereon [LLBEANS],
- (2) for others,
- (3) for compensation, valuable consideration, or the promise thereof.

Thus, “brokerage” is:

- (1) listing, selling, buying, auctioning, leasing, renting, or offering to do any of the foregoing, or otherwise negotiating the purchase, sale or exchange of real estate or improvements thereon,
- (2) for others,
- (3) for compensation or consideration.

Exceptions to N.C.G.S. 93A-2

93A-2(c) provides exceptions to the licensing requirement. For the sake of this discussion, we'll focus on the exceptions set forth in 93A-2(c)(6).

N.C.G.S. 93A-2(c)(6) focuses on salaried employees hired by licensed brokers engaging in property management.

N.S.G.S. 93A-2(c)(6) states that the provisions of G.S. 93A-1 and G.S. 93A-2 do not apply to and do not include:

Any salaried person employed by a licensed real estate broker, for and on behalf of the owner of any real estate or the improvements thereon, which the licensed broker has contracted to manage for the owner, if the salaried employee's employment is limited to:

- exhibiting units on the real estate to prospective tenants;
- providing the prospective tenants with information about the lease of the units;
- accepting applications for lease of the units;
- completing and executing preprinted form leases; and
- accepting security deposits and rental payments for the units only when the deposits and rental payments are made payable to the owner or the broker employed by the owner.

The salaried employee shall not negotiate the amount of security deposits or rental payments and shall not negotiate leases or any rental agreements on behalf of the owner or broker. However, in a vacation rental transaction as defined by G.S. 42A-4(6), the employee may offer a prospective tenant a rental price and term from a schedule setting forth prices and terms and the conditions and limitations under which they may be offered. The schedule shall be written and provided by the employee's employing broker with the written authority of the landlord.

When a licensed broker hires a W-2 employee in property management, the law provides an unlicensed assistant some flexibility to engage in tasks that would generally require a real estate license.

As an example, the salaried, unlicensed assistant of a broker may legally show a property that the broker has listed for lease to prospective tenants. This is permissible in property management due to the exception in N.S.G.S. 93A-2(c)(6). However, an unlicensed assistant may NOT show a property listed for sale, because it does not fall under the exception in G.S. 93A-2(c)(6).

The following chart specifies the permitted activities related to *property management* that a salaried unlicensed assistant may perform.

IMPORTANT NOTE: Only W-2 employees of a property management licensed broker will qualify for the G.S. 93A-2(c)(6) exception.

Permitted Activities related to Property Management	
Unlicensed, salaried assistants MAY:	ONLY licensed brokers MAY:
Act as a courier at the direction of a broker	Solicit or negotiate management contracts from prospective clients
Coordinate or confirm appointments between brokers and other persons	Prepare information to be placed in promotional material or advertisements for properties for sale or lease
Schedule appointments for showing properties listed for rent	Discuss or explain management agreements, leases, or other similar matters with persons outside the firm
Show rental properties managed by the broker to prospective tenants	Negotiate the amount of rent, deposits, or other lease provisions in connection with properties listed for rent by the firm
Complete and execute preprinted form leases for rental property managed by the firm	Determine the deductions from a tenant security deposit
Answer basic questions from prospective tenants and others about listed properties if the broker has provided the information in promotional materials	Hold themselves out as licensed brokers
Receive and forward phone calls, texts and emails to the employing broker or other licensees in a firm	
Submit listings and changes to a MLS provider, but only if the listing or change is based upon data supplied by a broker	
Assist a broker with inspecting rental properties	
Research and obtain copies of documents in the public domain, such as the Registers of Deeds, Clerks of Court, or tax offices	
Obtain keys for listed properties	
Record and deposit trust monies under the close supervision of the office broker-in-charge (BIC)	
Type in lease forms with information provided by brokers	
Check license renewal records and other personnel information pertaining to brokers at the direction of the BIC	
Prepare checks and otherwise act as bookkeeper for the firm's operating account under the close supervision of the BIC	
Place "For Rent" signs on property at the direction of a broker	
Order and supervise routine and minor repairs at the direction of a broker	

What about sales transactions?

A broker may choose to hire an unlicensed assistant to assist them with office or administrative tasks in sales transactions. In such cases, the unlicensed assistant may NOT perform or engage in activities that require a real estate license. A broker must ensure unlicensed assistants perform *only* permitted tasks.

In sales transactions, an unlicensed assistant may:

- receive and forward phone calls and electronic messages to brokers;
- submit listings and changes to a multiple listing service, but only if the listing data or changes are compiled and provided by a broker;
- secure copies of public records from public repositories (i.e. register of deeds office, county tax office, etc.);
- place for sale signs and lock boxes on the property at the direction of a broker;
- act as a courier to deliver or pick up documents;
- provide basic factual information on listed property that might commonly appear in advertisements in a newspaper, real estate publication or internet website;
- schedule appointments for showing property listed for sale;
- communicate with brokers, property owners, prospects, inspectors, etc. to coordinate or confirm appointments;
- type offers, contracts and leases from drafts of preprinted forms completed by a broker;
- record and deposit earnest money deposits and other trust monies, and otherwise maintain records of trust account receipts and disbursements, under the close supervision of the office broker-in-charge, who is legally responsible for handling trust funds and maintaining trust accounts;
- assist a broker in assembling documents for closing; and
- compute commission checks for affiliated brokers and act as a bookkeeper for the firm's bank operating accounts.

A broker may be held liable for the actions of their unlicensed assistant if the unlicensed assistant engages in unpermitted activities. It is important for brokers to monitor the activities of their unlicensed assistants to prevent the unlicensed assistant from:

- showing properties for sale to prospective buyers;
- answering questions from prospective buyers and others about listed properties;
- offering opinions as to the seller's or landlord's intentions about a listed property;
- soliciting listings from prospective clients;
- preparing information to be placed in promotional material or advertisements for properties for sale;
- discussing or explaining listings, offers, agency agreements, or other similar matters with persons outside the firm; and
- negotiating the amount of earnest money deposits, due diligence fees, or other contract provisions in connection with properties listed for sale by the firm.

How does this apply to BICs?

The designated BIC is the primary person the Commission will hold responsible for the supervision and management of a firm/company. Therefore, the BIC has the responsibility to supervise affiliated brokers, employees, and others who perform duties on behalf of the brokerage including unlicensed assistants that are employed by the firm/company.

A BIC must communicate regularly with unlicensed assistants and monitor their activities to ensure they are permitted and in compliance with office policies and License Law and Commission rules.

Additionally, it is the BIC's responsibility to ensure that unlicensed assistants have a clear understanding that they are not allowed to engage in activities that require a real estate license. Moreover, a BIC should set the expectation that participation in illegal activities is a violation of License Law and Commission rules.

A BIC should determine whether they will allow affiliated brokers to hire unlicensed assistants. If affiliated brokers are permitted to employ unlicensed assistants, then the BIC should provide guidance in the office policies regarding the activities that can be performed by the assistants.

Also, the BIC should make affiliated brokers aware of their responsibility to supervise unlicensed assistants. Pursuant to N.C.G.S. 93A-6(b), the Commission may suspend or revoke any license issued under the provisions of this Chapter or reprimand or censure any licensee when:

(4) The Broker's unlicensed employee, who is exempt from the provisions of this Chapter under G.S. 93A-2(c)(6), has committed, in the regular course of business, any act which, if committed by the broker, would constitute a violation of G.S. 93A-6(a) for which the broker could be disciplined.

For clarification purposes, an unlicensed assistant may perform a variety of tasks for a firm/company and/or affiliated broker that are administrative in nature. If an unlicensed assistant is employed by the BIC of the firm, the BIC is responsible for supervising the unlicensed assistant to prevent illegal brokerage activity and ensuring they adhere to License Law and Commission rules.

However, if an unlicensed assistant is employed by an affiliated broker, the affiliated broker is responsible for ensuring the assistant adheres to License Law and Commission rules and does not engage in illegal brokerage activity.

General Responsibilities of a BIC

Although the affiliated broker is responsible for supervising their unlicensed assistant, the BIC is still responsible for the firm/company. Rule 58A .0110 states, in relevant part, that a designated BIC shall:

- (3) be responsible for the conduct of advertising by or in the name of the firm at such office,
- (4) maintain the trust or escrow account of the firm and the records pertaining thereto, and
- (5) retaining and maintaining records relating to transactions conducted on behalf of the firm.

In other words, the BIC has the full and final responsible for these items / issues within the office.



What if an affiliated broker permits their unlicensed assistant to create an advertisement for one of company's listed properties and the advertisement violates a Commission rule? Who will be held responsible - the affiliated broker or the BIC?

Answer: Both. The affiliated broker may be disciplined for allowing an unlicensed assistant to engage in an activity that requires a real estate license based on N.C.G.S. 93A-6(b). The BIC may be disciplined for the advertisement itself based on Commission rule 58A .0110.

If an unlicensed assistant does engage in activities that:

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

the BIC and/or affiliated broker may be held liable for the conduct of the unlicensed assistant.

To reduce risk and ensure unlicensed assistants are not participating in brokerage activities, a prudent BIC will implement training programs and provide educational resources for the unlicensed assistants employed by the firm and/or affiliated brokers. These training programs and resources should provide the unlicensed assistants with information that explains the obligations they must adhere to (e.g. fair housing, handling of trust money, and/or ADA compliance, etc.) while performing duties on behalf of the firm/company and/or affiliated broker.



Turner, the BIC of XYZ Realty, permits affiliated brokers to hire unlicensed assistants. John, an affiliated broker, hires Melissa as his unlicensed assistant. John tells Melissa to create and publish an advertisement for a property he has listed in Meadow Ridge. He instructs Melissa to use catch phrases that would appeal to a trendy professional. Melissa publishes the following advertisement:

1 bedroom, 1 ½ bathroom loft in downtown Meadow Ridge. This loft is perfect for an individual with no kids. It is within close proximity to walking trails for the physically fit, upscale boutique shops, restaurants, bars, and St. Paul Cathedral for Sunday worship.

Turner did not review the advertisement before it was published.

Is it possible that Turner is in violation of Commission rules? Explain your answer. _____

Rule 58A .0110(l)

Rule 58A .0110(l) was adopted on July 1, 2021. This subsection states:

A broker shall not be granted BIC Eligible Status or designated as BIC of a firm if there is a pending Commission investigation against the broker.



Can a broker be granted BIC Eligible Status and/or BIC Designation while subject to a pending investigation?

No!

A hold will be placed on the *Request for BIC Eligible Status and/or BIC Designation* in the brokers' license record for any pending investigation. Once the investigation is complete, Regulatory Affairs will instruct Commission staff on how to process the application.

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

Prior to July 1, 2021, the Residential Property Owners' Association and Disclosure Statement, question 27 stated:

Are there any hazardous or toxic substances, materials, or products (such as asbestos, formaldehyde, radon gas, methane gas, lead-based paint) which exceed government safety standards, any debris (whether buried or covered) or underground storage tanks, or any environmentally hazardous conditions (such as contaminated soil or water, or other environmental contamination) which affect the property?

Effective July 1, 2021, the Residential Property Owners' Association and Disclosure Statement, question 25 states:

Are there any hazardous or toxic substances, materials, or products (such as asbestos, formaldehyde, radon gas, methane gas, lead-based paint) which exceed government safety standards, any debris (whether buried or covered) or underground storage tanks, or any environmentally hazardous conditions (such as contaminated soil or water, or other environmental contamination) *located on or which otherwise affect the property?*

Prior to this change a seller who knew there were hazardous materials ON THE PROPERTY but did not believe that would affect the property could answer the question "No." Now they must disclose the mere existence of such materials on the property.

Rule 58A .0120: Prohibited Acts

Rule 58A .0120, is a new rule that was adopted by the Commission on July 1, 2021. Subsections (a)-(c) are discussed below. Subsection (d) of this rule includes racial equity language and was discussed in the racial equity section of this course. Let's discuss subsections (a)-(c) of the rule.

Rule 58A .0120, subsection (a).

A broker shall not require or demand of any escrow agent or attorney that a broker's commission be split with or paid to another person or entity.

Prior to July 1, 2021, it was becoming common in the brokerage industry for brokers to expect escrow agents and/or attorneys to split commission checks to multiple brokers, firms, vendors, and/or unlicensed individuals. This created a problem for the closing attorneys, who must verify every recipient is properly licensed in North Carolina or

possibly in other states as well. Attorneys also became responsible for sending out IRS form 1099s for each recipient, requiring them to collect information about each recipient. When closing attorneys limited the number of payments they were willing to be responsible for making, brokers threatened to steer clients to other closing attorneys who would split the commission as many times as required to secure the brokers' referrals.

However, effective July 1, 2021, Rule 58A .0120(a) prohibits a broker from **requiring** or **demanding** an escrow agent and/or attorney to split commission checks among multiple parties outside the customary practice of splitting between the listing and selling firms. The rule does not prohibit a broker from asking that the commission checks to be split further; however, the escrow agent and/or attorney cannot be threatened by the broker with steering clients away if they decline. It is always in the best interests of the parties to receive the best legal advice and services available, regardless of whether that service is the most convenient for the broker.

For instance, if a broker requests an escrow agent and/or attorney to disburse and split the commission and the escrow agent and/or attorney denies the request, the broker cannot **demand** that they comply with the request. Further, the broker cannot **threaten** the escrow agent and/ or attorney by stating that they will not use their services if the request is denied.

A broker who participates in such conduct may be in violation of Rule 58A .0120(a) and may be in breach of their fiduciary duties to their client. The escrow agent and/or attorney is hired by the client/consumer. The escrow agent and/or attorney does not owe a duty of obedience to the broker.



John is an affiliated broker with ABC Realty and is the BIC of the “Houses LLC” team within ABC. John asks Sue, the closing attorney, to disburse the commission check directly to Houses, LLC (rather than ABC Realty). Sue is not comfortable approving this request because she is concerned about having to verify licensure and collect sufficient information and assume the added burden of producing and delivering required tax forms at the end of the year. Sue denies the request. Sue disburses the commission to ABC Realty. The BIC of ABC Realty then disburses funds to John and his team members.

Has John violated Commission Rule 58A .0120(a)?

Rule 58A .0120, subsection (b).

An affiliated broker shall not be paid a commission or referral fee directly by anyone other than their current BIC or the person who served as their BIC at the time of the transaction.

Prior to July 1, 2021, affiliated “full” brokers were permitted to receive their commission or referral fees from anyone other than their BIC as long as doing so did not violate firm/office policies.

Effective July 1, 2021, **all** affiliated brokers - provisional and “full”- must now receive their commission or referral fees from their current BIC or the person who served as their BIC at the time of the real estate transaction. In other words, affiliated brokers are not allowed to receive **any** commission or referral fees from any other individual who is not their BIC or former BIC at the time of the transaction.

Furthermore, a BIC also cannot authorize an affiliated broker to receive a commission or referral fee from anyone else. If a BIC authorizes this conduct and does not pay the affiliated broker directly, they may be found in violation of License Law and Commission rules.

In plain English, an affiliated broker is **no longer allowed** to receive any compensation for brokerage service from any person other than their current or previous BIC.



Blake, a full broker with ABC Realty, assisted Jim with purchasing a home in Zebulon, NC. Tasha is the BIC of ABC Realty. ABC Realty has a rapport with 123 Attorneys, PLLC. Tasha contacts Steve, an attorney with 123 Attorneys, PLLC. Tasha tells Steve to disburse Blake’s commission check directly to him after settlement. Steve disbursed the funds to Blake as Tasha directed.

Has Tasha violated Commission Rule 58A .0120(b)? Explain your answer. _____

Rule 58A .0120, subsection (c).

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

A broker cannot participate in conduct that coerces a service provider to change their report or decision in a real estate transaction even if the broker thinks they are acting in the best interest of their client. If the conduct attempts to influence, threaten, or demand a particular action, it is prohibited under Rule 58A .0120(c).



Steve is an affiliated broker with 123 Homes. He has listed several properties in the Greenwood area that need extensive repairs. Sam, the seller-client, informs Steve to list the properties as a bundle. Sam also directs Steve to call Sean, the home inspector, and request a home inspection for all of the properties. Steve tells Sean to exclude any information in the report that indicates the electrical or plumbing systems need to be replaced because he would like to sell the properties quickly. He assures Sean that his business is growing and promises to recommend him as a home inspector to all of his clients and/or consumers in the future.

Has Steve violated Commission Rule 58A .0120(c)? Explain your answer.

Rule 58A .0503: License Renewal

Commission Rule 58A .0503 dictates the renewal process for licensure.

All real estate licenses issued by the Commission under G.S. 93A, Article 1 shall expire on June 30 following issuance.

Rule 58A .0503(b)

The Commission amended subsection (b) of this rule on July 1, 2021, to indicate that a broker must provide an email address to the Commission upon license renewal.



Is a broker required to renew their license each year?

Yes!

According to Rule 58A .0503(a), any broker desiring renewal of his or her license shall renew on the Commission's website within 45 days prior to license expiration and shall submit a renewal fee of forty-five dollars (\$45.00).



Is a valid email address required for license renewal?

Yes!

Prior to July 1, 2021, Rule 58A .0503(b) required every broker to submit an email address upon renewal. However, if a broker did not have an email address, the Commission did not require the broker to obtain one in order to complete the renewal process.

Effective July 1, 2021, a broker **must** provide an email address to the Commission upon the renewal of their license. The email address the broker provides should be an email address that is regularly used by the broker. If a broker does not provide an email address to the Commission, they cannot complete the license renewal process. Also, a broker may designate their email address as private in order to exempt it from public records disclosure pursuant to G.S. 93A-4(b2).

REMINDER: Per Rule 58A .0103(b), every broker shall notify the Commission in writing of each change of personal name, firm name, trade name, residence address, firm address, telephone number, and email address within 10 days of said change. Brokers must ensure that their contact information is current in the Commission's records.

ANSWERS TO DISCUSSION QUESTIONS

For Discussion on Page 93:

1. Tamela, a full broker, takes the 12-hour Broker-in-Charge course. After successfully completing the course, she completes a *Request for BIC Eligible Status and/or BIC Designation* (Form 2.25) and submits it to the Commission. However, she received a *Letter of Inquiry* from the Commission and is currently under investigation.

Will the Commission grant Tamela BIC Eligible status if there is a pending investigation?

Answer: No. Pursuant to 58A .0110(l), a hold will be placed in her license record for the Request for BIC Eligible Status and/or BIC Designation due to the pending investigation.

2. Kim has been a broker in NC for 17 years and has never provided an email address to the Commission. When he renews his license in June 2022, Kim discovers an email address is required. He's reluctant to provide an email address, because he doesn't want the address to be published. What are Kim's options?

Answer: Kim may designate his email address as PRIVATE, which means the email address will only be used for the Commission's direct communications, and the address will not be shared during a public records disclosure.

Kim must provide an email address to the Commission per Commission rule 58A .0503(b) to complete the renewal process. Kim should provide an email to the Commission that he checks on a regular basis.

3. TRUE or FALSE? A BIC must complete the Basic Trust Account Procedures Course within 120 days of **assuming** responsibility for a trust account.

Answer: True. Rule 58A .0110(g)(9) specifies that a designated BIC shall complete the Commission's Basic Trust Account Procedures Course within 120 days of assuming responsibility for a trust account in accordance with G.S. 93A-6(g). This requirement applies to a broker opening a new trust account and/or assuming a trust account.

For Discussion on page 95:

Stan is the BIC of Homez, Realty. When he hires new brokers, he reviews the employment agreement with them at the new broker orientation. The employment agreement dictates that the brokers are *independent contractors* but they must obtain prior authorization from the BIC before placing advertisements and affiliating with other firms. Additionally, this agreement specifies that Homez Realty will distribute a 1099-Miscellaneous Income form to all affiliated brokers electronically.

Is Stan responsible under License Law and Commission rules for the brokers at the company since they are categorized as independent contractors?

Answer: Yes. Stan is responsible for the supervision of all affiliated brokers with Homez Realty pursuant to Rule 58A .0110(g)(1) and g(7).

For Discussion on Page 97:

Bob took the Basic Trust Account Procedures Course on August 2, 2021. Bob later became the new BIC of ABC Realty on June 16, 2022, and assumed responsibilities for the trust account.

Does Bob need to take the Basic Trust Account Procedures Course?

Answer: No. Bob does not have to take the Basic Trust Account Procedures Course because he has already taken it within the previous three years per Rule 58A .0110(g)(9).

For Discussion on Page 103:

Turner, the BIC of XYZ Realty, permits affiliated brokers to hire unlicensed assistants. John, an affiliated broker, hires Melissa as his unlicensed assistant. John tells Melissa to create and publish an advertisement for a property he has listed in Meadow Ridge. He instructs Melissa to use catch phrases that would appeal to a trendy professional. Melissa publishes the following advertisement:

1 bedroom, 1 ½ bathroom loft in downtown Meadow Ridge. This loft is perfect for an individual with no kids. It is within close proximity to walking trails for the physically fit, upscale boutique shops, restaurants, bars, and St. Paul Cathedral for Sunday worship.

Turner did not review the advertisement before it was published. Is it possible that Turner is in violation of Commission rules?

Answer: Yes, it is possible that Turner may be in violation of Commission Rule 58A .0110(g)(10). Turner is the BIC of XYZ Realty. According to Rule 58A .0110, Turner is responsible for reviewing all advertisements. Although Melissa is John's unlicensed assistant, Turner is still responsible for ensuring that the advertisements published comply with License Law and Commission Rules and state and federal fair housing. Also, Turner may be liable for possible violations under the state and federal fair housing laws for the advertisement. If Turner is liable under state and federal fair housing laws, he may also be liable for violating Commission Rule 58A .1601 as well.

For Discussion on Page 105:

John is an affiliated broker with ABC Realty and is the BIC of the “Houses LLC” team within ABC. John asks Sue, the closing attorney, to disburse the commission check directly to Houses, LLC (rather than ABC Realty). Sue is not comfortable approving this request because she is concerned about having to verify licensure and collect sufficient information and assume the added burden of producing and delivering required tax forms at the end of the year. Sue denies the request. Sue disburses the commission to ABC Realty. The BIC of ABC Realty then disburses funds to John and his team members.

Has John violated Commission Rule 58A .0120(a)?

Answer: Answer: No, John is not in violation of Commission Rule 58A .0120(a). It is permissible for John to ask Sue to disburse the commission to the entity, Houses, LLC. John is not in violation because he did not require or demand Sue to disburse the commission, nor did he threaten to stop using her services because of her refusal. Also, although John is an affiliated broker with ABC Realty, he is the BIC of Houses, LLC. Therefore, John can receive the commission from Sue and pay the brokers affiliated with Houses, LLC, in compliance with Commission rules.

For Discussion on Page 106:

Blake, a full broker with ABC Realty, assisted Jim with purchasing a home in Zebulon, NC. Tasha is the BIC of ABC Realty. ABC Realty has a rapport with 123 Attorneys, PLLC. Tasha contacts Steve, an attorney with 123 Attorneys, PLLC. Tasha tells Steve to disburse Blake’s commission check directly to him after settlement. Steve disbursed the funds to Blake as Tasha directed.

Has Tasha violated Commission Rule 58A .0120?

Answer: Yes. Tasha has violated License Law and Commission rule 58A .0120(b). According to 58A .0120(b), Tasha must pay Blake his compensation directly because she is his current BIC. Tasha also cannot authorize Blake to receive his commission from Steve, the attorney.

For Discussion on Page 107:

Steve is an affiliated broker with 123 Homes. He has listed several properties in the Greenwood area that need extensive repairs. Sam, the seller-client, informs Steve to list the properties as a bundle. Sam also directs Steve to call Sean, the home inspector, and request a home inspection for all of the properties. Steve tells Sean to exclude any information in the report that indicates the electrical or plumbing systems need to be replaced because he would like to sell the properties quickly. He assures Sean that his business is growing and promises to recommend him as a home inspector to all of his clients and/or consumers in the future.

Has Steve violated Commission Rule 58A .0120(c)?

Answer: Yes. Steve may have violated Rule 58A .0120(c). Steve attempted to influence Sean to exclude the electrical and plumbing systems in the report because he wanted the properties to sell quickly. He informed Sean that if he complied, he would recommend his services to future clients/consumers. Steve's actions also may be in violation of License Law and Commission rules and N.C. Gen. Stat § 93A-6(a)(1) for failing to disclose a material fact.

1 21 NCAC 58A .0110 is amended with changes as published in 35:12 NCAC 1390 as follows:

2
3 **21 NCAC 58A .0110 BROKER-IN-CHARGE**

4 (a) Every real estate firm shall designate one BIC for its principal office and one BIC for each of its branch offices.
5 No office of a firm shall have more than one designated BIC. A BIC shall not serve as BIC for more than one office
6 unless each of those offices share the same physical office space and delivery address.

7 (b) Every sole proprietorship shall designate a BIC if the sole proprietorship:

- 8 (1) engages in any transaction where a broker is required to deposit and maintain monies belonging to
9 others in a trust account;
- 10 (2) engages in advertising or promoting services as a broker in any manner; or
- 11 (3) has one or more other brokers affiliated with the sole proprietorship in the real estate business.

12 (c) A licensed real estate firm shall not be required to have a BIC if it:

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

18 (d) A broker who maintains a trust or escrow account for the sole purpose of holding residential tenant security
19 deposits received by the broker on properties owned by the broker in compliance with G.S. 42-50 shall not be required
20 to be a BIC.

21 (e) In order for a broker to designate as a BIC for a sole proprietor, real estate firm, or branch office, a broker shall
22 apply for BIC Eligible status by submitting an application on a form available on the Commission's website. The BIC
23 Eligible status form shall include the broker's:

- 24 (1) name;
- 25 (2) license number;
- 26 (3) telephone number;
- 27 (4) email address;
- 28 (5) criminal history and history of occupational license disciplinary actions;
- 29 (6) certification of compliance with G.S. 93A-4.2, including that:
 - 30 (A) his or her broker license is on active status;
 - 31 (B) the broker has obtained at least two years of real estate brokerage experience equivalent to
32 40 hours per week within the previous five years or shall be a North Carolina licensed
33 attorney with a practice that consisted primarily of handling real estate closings and related
34 matters in North Carolina for three years immediately preceding application; and
 - 35 (C) the broker completed the 12-hour Broker-in-Charge Course no earlier than one year prior
36 to application and no later than 120 days after application; and
- 37 (7) signature.

1 (f) A broker who holds BIC Eligible status shall submit a form to become the designated BIC for a sole proprietor,
2 real estate firm, or branch office. The BIC designation form shall include:

- 3 (1) the broker's:
4 (A) name;
5 (B) license number;
6 (C) telephone number;
7 (D) email address; and
8 (E) criminal history and history of occupational license disciplinary actions; and
9 (2) the firm's:
10 (A) name; and
11 (B) license number, if applicable;

12 (g) A designated BIC shall:

- 13 (1) assure that each broker ~~employed~~ affiliated at the office has complied with Rules .0503, .0504, and
14 .0506 of this Subchapter;
15 (2) notify the Commission of any change of firm's business address or trade name and the registration
16 of any assumed business name adopted by the firm for its use;
17 (3) be responsible for the conduct of advertising by or in the name of the firm at such office;
18 (4) maintain the trust or escrow account of the firm and the records pertaining thereto;
19 (5) retain and maintain records relating to transactions conducted by or on behalf of the firm, including
20 those required to be retained pursuant to Rule .0108 of this Section;
21 (6) supervise provisional brokers associated with or engaged on behalf of the firm at such office in
22 accordance with the requirements of Rule .0506 of this Subchapter;
23 (7) supervise all brokers ~~employed~~ affiliated at the office with respect to adherence to agency agreement
24 and disclosure requirements;
25 (8) notify the Commission in writing that he or she is no longer serving as BIC of a particular office
26 within 10 days following any such change; ~~and~~
27 (9) complete the Commission's Basic Trust Account Procedures Course within 120 days of ~~opening~~
28 assuming responsibility for a trust account in accordance with G.S. 93A-6(g). 93A-6(g), however
29 the BIC shall not be required to complete the course more than once in three years; and
30 (10) supervise all unlicensed individuals employed at the office and ensure that unlicensed individuals
31 comply with G.S. 93A-2(c)(6).

32 (h) A broker holding BIC Eligible status shall take the Broker-in-Charge Update Course during the license year of
33 designation, unless the broker has satisfied the requirements of Rule .1702 of this Subchapter prior to designation.

34 (i) A broker's BIC Eligible status shall terminate if the broker:

- 35 (1) made any false statements or presented any false, incomplete, or incorrect information in connection
36 with an application;
37 (2) fails to complete the 12-hour Broker-in-Charge Course pursuant to Paragraph (e) of this Rule;

1 (3) fails to renew his or her broker license pursuant to Rule .0503 of this Subchapter, or the broker's
2 license has been suspended, revoked, or surrendered; or

3 (4) fails to complete the Broker-in-Charge Update Course and a four credit hour elective course
4 pursuant to Rules .1702 and .1711 of this Subchapter, if applicable.

5 (j) In order to regain BIC Eligible status after a broker's BIC Eligible status terminates, the broker shall complete the
6 12-hour Broker-in-Charge Course prior to application and then submit a BIC Eligible status form pursuant to
7 Paragraph (e) of this Rule.

8 (k) A nonresident commercial real estate broker licensed under the provisions of Section .1800 of this Subchapter
9 shall not act as or serve in the capacity of a broker-in-charge of a firm or office in North Carolina.

10 (l) A broker shall not be granted BIC Eligible status or designated as BIC of a firm if there is a pending Commission
11 investigation against the broker.

12
13 *History Note: Authority G.S. 93A-2; 93A-3(c); 93A-4; ~~93A-4.1~~; 93A-4.2; 93A-9; 93A-38.5;*
14 *Eff. September 1, 1983;*
15 *Amended Eff. July 1, 2014; May 1, 2013; July 1, 2010; July 1, 2009; January 1, 2008; April 1, 2006;*
16 *July 1, 2005; July 1, 2004; April 1, 2004; September 1, 2002; July 1, 2001; October 1, 2000; August*
17 *1, 1998; April 1, 1997; July 1, 1995; July 1, 1994;*
18 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018;*
19 *Amended Eff. July 1, 2021; July 1, 2020; July 1, 2018.*

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1 21 NCAC 58A .0120 is adopted with changes as published in 35:12 NCAC 1397 as follows:

2

3 **21 NCAC 58A .0120 PROHIBITED ACTS**

4 (a) A broker shall not require or demand of any escrow agent or attorney that a broker's commission be split with or
5 paid to another person or entity.

6 (b) An affiliated broker shall not be paid a commission or referral fee directly by anyone other than their current BIC
7 or the person who served as their BIC at the time of the transaction.

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

11 (d) A broker shall not conduct brokerage activities or otherwise promote their status as a real estate broker in any
12 manner that discriminates on the basis of race, color, religion, national origin, sex, familial status, or disability.

13

14 *History Note: Authority G.S. 93A-3(c); 93A-6;*

15 *Eff. July 1, 2021.*

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1 21 NCAC 58A .0503 is adopted with changes as published in 35:12 NCR 1397 as follows:

2

3 **21 NCAC 58A .0503 LICENSE RENEWAL**

4 (a) All real estate licenses issued by the Commission under G.S. 93A, Article 1 shall expire on June 30 following
5 issuance. Any broker desiring renewal of his or her license shall renew on the Commission's website within 45 days
6 prior to license expiration and shall submit a renewal fee of forty-five dollars (\$45.00).

7 (b) During the renewal process, every individual broker shall provide an email address to be used by the Commission.
8 The email address may be designated by the broker as private in order to be exempt from public records disclosures
9 pursuant to G.S. 93A-4(b2). ~~A broker who does not have an email address is not required to obtain an email address
10 to comply with this Rule.~~

11 (c) During the renewal process, every designated broker-in-charge shall disclose:

- 12 (1) each federally insured depository institution lawfully doing business in this State where the trust
13 account(s) for the broker-in-charge or the entity for which the broker-in-charge is designated is held,
14 if applicable; and
15 (2) any criminal conviction or occupational license disciplinary action that occurred within the previous
16 year.

17

18 *History Note: Authority G.S. 93A-3(c); 93A-4; ~~93A-4.1~~; 93A-6; 93A-38.5;*

19 *Eff. February 1, 1976;*

20 *Readopted Eff. September 30, 1977;*

21 *Amended Eff. July 1, 1994; February 1, 1991; February 1, 1989;*

22 *Temporary Amendment Eff. April 24, 1995 for a period of 180 days or until the permanent rule
23 becomes effective, whichever is sooner;*

24 *Amended Eff. July 1, 2017; July 1, 2014; April 1, 2013; April 1, 2006; January 1, 2006; July 1,
25 2004; December 4, 2002; April 1, 1997; July 1, 1996; August 1, 1995;*

26 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018;*

27 *Amended Eff. July 1, 2021; July 1, 2018.*

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Section 5

LICENSING & EDUCATION



1. Thomas, a full broker, did not complete CE during the July 1, 2020-June 10, 2021, CE period, and he did not renew his license in June 2021. Now his sister, Alice, wants to purchase a house.
 - a) Can he represent Alice?

 - b) Would the answer to (a) change if Thomas had renewed his license by June 30, 2021?

2. Today is April 15, 2022, and Tasha's license has been expired since June 30, 2019. What must Tasha do to reinstate her license and return it to active status?

LEARNING OBJECTIVES

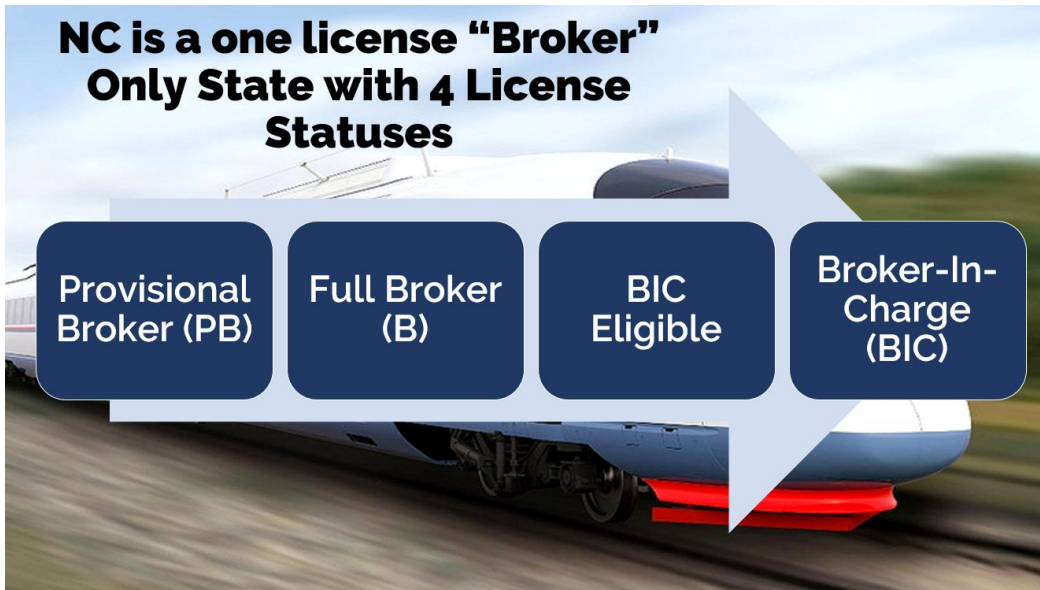
By the end of this section, you should be able to:

- define license categories and statuses;
- explain how to maintain a current and active license;
- describe how to attain *BIC Eligible* status;
- explain how to request or terminate BIC designation; and
- explain how to regain *BIC Eligible* status and BIC designation.

LICENSE CATEGORIES AND STATUSES

Category: Individual Broker License

North Carolina is a “broker only” state, meaning there are not separate salesperson and broker licenses. Instead, there are several statuses of the individual broker license as follows:



Provisional Broker (PB) Status

- Entry-level license status.
- A PB must be under the supervision of a BIC to be on active status and legally provide brokerage services.
- A PB must complete the 90-hour Postlicensing education program within 18 months after initial licensure to maintain active license status.

Broker (B) Status

- Primary individual license status.
- A “full” broker can engage in brokerage:
as an affiliated agent of a real estate brokerage company
(firm or sole proprietorship) under a (BIC),

OR

independently as a sole proprietor or an entity. In such case, the broker must also be designated as a BIC.

BIC Eligible Status

This status is granted to a broker who has...

- satisfied the qualification requirements for BIC Eligible status;
- submitted a *Request for BIC Eligible Status and/or BIC Designation* form (REC 2.25); and
- successfully completed the *12-hour Broker-in-Charge Course* within one year prior to or 120 days after submitting form REC 2.25.

Broker-in-Charge (BIC) Designation

- A broker with BIC Eligible status may be designated as broker-in-charge (BIC).
- Each real estate firm or sole proprietorship must have a different BIC for each office.
- A BIC is responsible for:
 - (1) assuring that all brokers employed at the office are maintaining active, current licenses and are maintaining up-to-date information in Commission records;
 - (2) notifying the Commission of firm name or address changes;
 - (3) advertising;
 - (4) maintaining trust/escrow account(s);
 - (5) retaining records;
 - (6) supervising affiliated provisional brokers;
 - (7) ensuring that all affiliated brokers are adhering to agency agreement and disclosure requirements; and
 - (8) notifying the Commission in writing that he or she is no longer serving as BIC of a particular office within 10 days following any such change.

Category: Firm License

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

Category: Limited Nonresident Commercial License (LCB)

A limited nonresident commercial broker (LCB) license is a license issued to a person who:

- does NOT live in North Carolina (NC),
- has an active real estate broker or salesperson license in another state,
- wants to enter NC to engage in a commercial transaction, and
- must enter into a Declaration of Affiliation and a Brokerage Cooperation Agreement with a resident NC broker who will be responsible for supervising the nonresident.

This restricted license permits the nonresident to enter NC to engage only in “commercial real estate transactions” as defined in Commission Rule 58A .1802(1).

If the LCB obtains any home, business or delivery address in North Carolina, the individual must apply for and obtain a NC broker license in order to engage in brokerage.

CURRENT AND ACTIVE LICENSURE

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

Renewing a license every year allows the person or entity to keep the license. If the person/entity fails to timely renew the license, the person/entity no longer has a license. One may renew and keep a license for years without it being on active status, but those with licenses on **inactive status** may **NOT** engage in brokerage services during that period.

Current vs. Expired INDIVIDUAL BROKER Licenses



CURRENT license status means the broker timely renewed their license by paying the annual license renewal fee of \$45 and providing required information/disclosures during May 15-June 30.



EXPIRED license status means the broker failed to timely renew their license.

ALL LICENSES EXPIRE ON JUNE 30.

Brokers, firms, and LCBs must renew their licenses every year during May 15-June 30. A broker must have a Current license on Active status to legally engage in brokerage.

The \$45 renewal fee...

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

There is no grace period. If your license expires on June 30, you may not engage in brokerage activities beginning July 1. You may not resume brokerage practice until your license has been reinstated and is back on "active" status.

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

Reinstating an Expired Individual License (21 NCAC 58A .0505)

License expired up to 6 months:

Pay \$90 reinstatement fee online (www.ncrec.gov).

NOTE: To regain active status, a license activation form (**REC 2.08**) must also be submitted.

License expired more than 6 months and up to 2 years:

1. Successfully complete one 30-hour Postlicensing course within 6 months prior to submitting reinstatement application;
2. submit a reinstatement application with \$90 application fee and all required documentation, including criminal background report; and
3. submit license activation form (**Rec 2.08**).

-OR-

1. Submit a reinstatement application with \$90 application fee and all required documentation, including criminal background report;
2. pass National and State sections of license exam; and
3. submit license activation form (**Rec 2.08**).

License expired more than 2 years: START OVER AS IF NEVER LICENSED

1. Successfully complete 75-hour NC Broker Prelicensing course;
2. Submit a license application with \$100 original application fee and all required documentation, including criminal background report; and
3. Pass National and State sections of license exam.

For a detailed review of reinstatement requirements, please visit the “Reinstate your License” page on the Commission’s website. You may also contact the Commission’s Education & Licensing Division for specific instructions.

Current vs. Expired FIRM License

CURRENT firm license means the Qualifying Broker (QB) timely renewed the firm’s license by paying the annual license renewal fee of \$45 and providing required information/disclosures during May 15-June 30.

The QB (Qualifying Broker) must renew the firm’s license each year (as well as his/her individual broker license) and periodically verify with the North Carolina Secretary of State’s Office that the entity remains in good standing.

A firm that fails to renew its license by 11:59pm on June 30 will not have a license as of July 1.

Reinstating an Expired FIRM License (21 NCAC 58A .0505)

Firm license expired up to 6 months:

Pay \$90 reinstatement fee online (www.ncrec.gov).

NOTE: If the QB's individual broker license is on active status, the firm's license will be returned to active status as soon as the reinstatement fee is processed.

Firm license expired more than 6 months and up to 2 years:

Submit a firm reinstatement application with \$90 application fee and all required documentation.

Firm license expired more than 2 years:

Submit a firm license application with \$100 original application fee and all required documentation.

Active vs. Inactive INDIVIDUAL BROKER Licenses

To legally receive any income from brokerage activity, including referral fees, you must have an ACTIVE North Carolina license at the time you provide the brokerage service or make the referral.

To maintain active status, brokers* must both timely renew their licenses and complete the appropriate 8 hours of Continuing Education by June 10 each year.

*Provisional Brokers must also timely complete Postlicensing Education and be affiliated with a BIC to maintain active status.

Continuing Education (CE)

MINIMUM REQUIRED CE:

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

NOTE: To determine whether you have completed your required continuing education, log into your license record on the Commission's website (ncrec.gov).

If you don't complete the correct CE courses by June 10, your license will be changed to "inactive" status on midnight on June 30. You must CEASE all brokerage activity immediately. You may not resume brokerage practice until your license is back on "active" status.



I took the Update in May but forgot to take an elective by June 10. Can I go online and take an elective on June 12?

Answer: No. NC brokers may not take courses for CE credit from June 11 through June 30, and providers of NC real estate CE courses are not allowed to offer CE during this period. This period is used as an administrative period, during which CE providers upload CE course results and the Commission updates its databases to determine which brokers will have active status as of July 1.



My license is Inactive because I didn't take CE. What do I need to do to reactivate it?

Answer: It depends on how long your license has been on inactive status.

Individual broker license on Inactive status with NO CE deficiency:

Submit the License Activation form (REC 2.08 - available online).

Individual broker license on Inactive status for LESS THAN 2 license years with a CE deficiency:

Complete the current year's CE requirement in full (i.e., take the General Update + 1 Commission-approved elective),

AND

take either 1 or 2 approved electives to make up for the number of hours you did not complete during the preceding license year;

AND THEN

submit the License Activation form (REC 2.08 - available online).

Individual broker license on Inactive status for MORE THAN 2 license years with a CE deficiency:

Successfully complete two 30-hour Postlicensing courses within 6 months prior to submitting activation form,

AND

complete the current year's CE requirement in full (i.e., take the General Update + 1 Commission-approved elective);

AND THEN

submit the License Activation form (REC 2.08 - available online).



The Commission doesn't automatically activate licenses.

A broker (or the BIC with whom the broker will be affiliated) must submit the License Activation form (REC 2.08) to notify the Commission of the broker's desire for Active status and of the office with which they will be affiliated and doing business.



Since entities don't take education, what determines whether a firm's license is on active or inactive status?

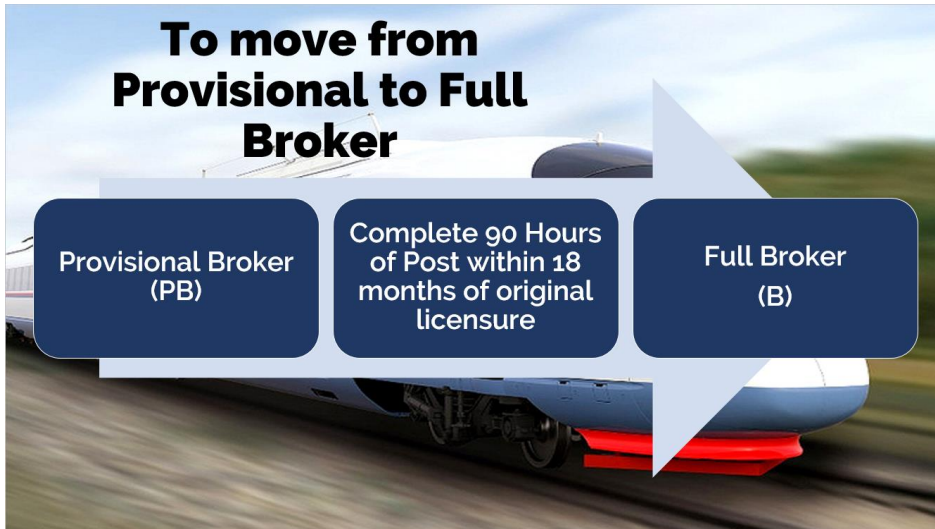
The firm must have a QB (Qualifying Broker) whose license is on active status. As long as the firm has an actively licensed QB, and the firm's license is timely renewed, the firm license will remain active.

If the QB's license expires or is inactive on July 1, the firm's license will also be inactive, meaning no brokers may engage in brokerage under the firm's umbrella. While losing a BIC only takes one office down, ***losing a QB takes the entire firm down.***

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

Postlicensing Education

A PB must complete the 90-hour Postlicensing education program within 18 months of the date of initial licensure to maintain active license status.



What are the Postlicensing courses?

Answer: Post 301-*Broker Relationships & Responsibilities*, Post 302-*Contracts & Closing*, and Post 303-*NC Law, Rules, and Legal Concepts*. Course syllabi are available on the Commission's website.



Do I have to take the Postlicensing courses in a certain order?

Answer: No. Postlicensing courses may be taken in any sequence. However, the Commission recommends that you follow the course number sequence (301, 302, & 303), as course materials were developed with that sequence in mind.



When do I have to complete the Postlicensing courses?

Answer: A PB will be required to complete the Postlicensing Education program within 18 months of the date of initial licensure. In other words, all three Postlicensing courses - Post 301, Post 302, and Post 303 - must be completed within 18 months of the date of initial licensure in order for the PB to maintain active license status.



Can I get CE credit for Postlicensing courses?

Answer: No. Postlicensing courses do not provide CE credit.



Are there course exams in Postlicensing courses?

Answer: Yes, and you must pass the end-of-course examinations to successfully complete the courses.



What happens if I don't take the Postlicensing courses before the deadline?

Answer: If you do not take the courses before the 18-month deadline, your license will be placed on inactive status. You may NOT perform any brokerage activities or collect brokerage fees (including referral fees) while your license is Inactive. Refer to Rule 58A .1902.



Where can I take the Postlicensing courses?

Answer: The courses are offered by the same education providers that conduct the Prelicensing course. A list of approved certified education providers is available on the Commission's website.

SUMMARY: Maintaining a Current and Active License

Provisional Brokers	"Full" Brokers (non-BIC Eligible)	Brokers-in-Charge AND Brokers with BIC Eligible Status
<p>Renew license each year between May 15-June 30</p> <p>Complete GENUP + 1 Elective by June 10 each year (after first renewal)</p> <p>Complete three 30-hour Postlicensing courses within 18 months of licensure.</p> <p>Maintain affiliation with a BIC</p>	<p>Renew license each year between May 15-June 30</p> <p>Complete GENUP + 1 Elective by June 10 each year</p>	<p>Renew license each year between May 15-June 30</p> <p>Complete BICUP + 1 Elective by June 10 each year</p>

NOTE: To determine whether you have completed your required Postlicensing courses, log into your license record on the Commission's website (ncrec.gov).



John has renewed his “full” broker license every year but hasn’t taken any CE since 2019.

- a. What is the status of John’s license? _____
- b. How many courses must John take to activate his license? _____
- c. Which courses must he take? _____
- d. Will John’s license be “active” once he completes the course(s)? YES / NO
Why or Why not? _____
- e. Assume John was a BIC before his license changed to “inactive” status. Will that change the courses he should take now to reactivate? YES / NO
- f. When he reactivates, will he still be a BIC? YES / NO

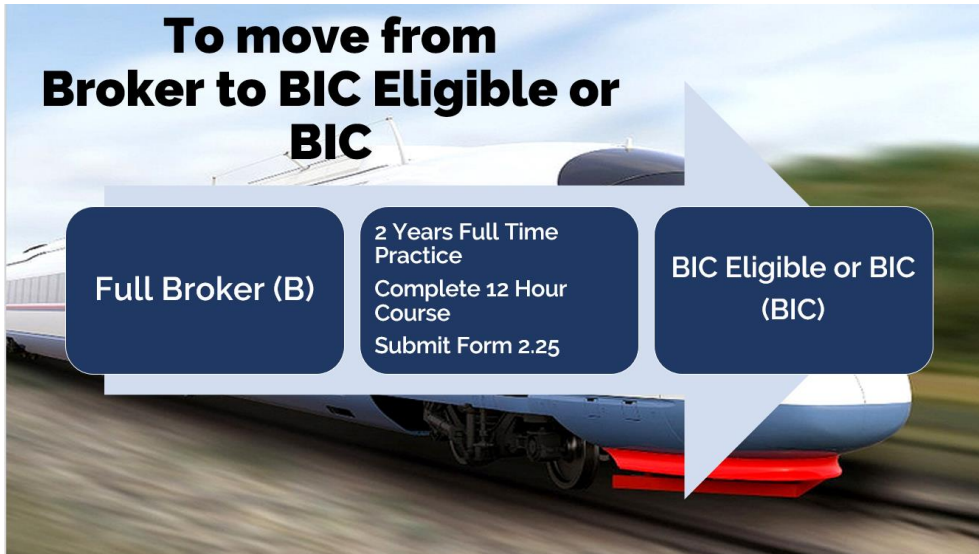
BIC ELIGIBLE STATUS AND BROKER-IN-CHARGE (BIC) DESIGNATION

If a broker wishes to designate as a BIC for a sole proprietorship, real estate firm, or branch office, a broker must FIRST have BIC Eligible status.

Obtaining BIC Eligible Status

To qualify for and obtain BIC Eligible Status, a broker must:

1. hold a “full” broker license (not provisional) on active status;
AND
2. have acquired at least **2 years of full-time** or 4 years of part-time real estate **brokerage experience within the previous 5 years** or be a North Carolina licensed attorney with a practice that consisted primarily of handling real estate closings and related matters in North Carolina for 3 years immediately preceding application;
AND
3. submit the *Request for BIC Eligible Status and/or BIC Designation form (REC 2.25)*;
AND
4. complete the Commission’s **12-hour Broker-in-Charge Course** no earlier than one year prior to and no later than 120 days after submission of form REC 2.25.



What is “full-time” brokerage experience?

Answer: The intent is that the individual’s primary occupation is real estate brokerage. Accordingly, the rough formula is:
 50 weeks/year at 40/hours per week = 2000 hours/year x 2 years = 4000 hours total.
 Thus, if a broker has acquired 4000 hours of brokerage experience within a five year period, the broker may request BIC Eligible status.

Note: Merely taking the *12-hour Broker-in-Charge Course* does NOT automatically make you BIC Eligible. You will not gain BIC Eligible status until you submit the *Request for BIC Eligible Status and/or BIC Designation form (REC 2.25)*.



What will happen if I obtain BIC Eligible status, but I don’t complete the 12-hour Broker-in-Charge course within 120 days?

Answer: Your BIC Eligible status will be terminated, and it will not be re-granted until the course is completed.

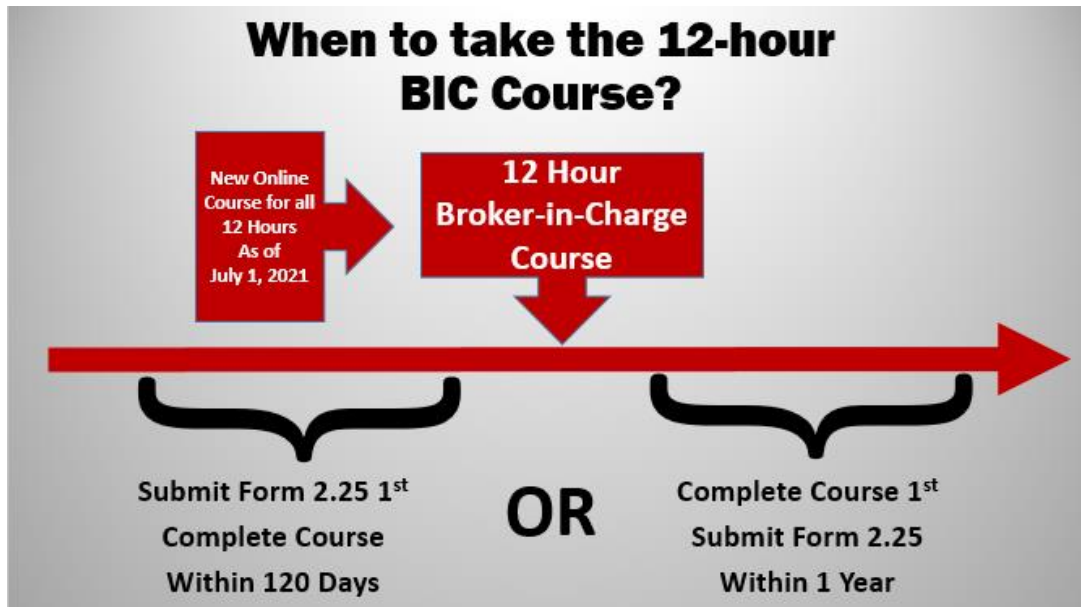


I am a nonresident. Do I have to take the 12-hour Broker-in-Charge Course?

Answer: Yes. The requirement to complete the *12-hour Broker-in-Charge Course* applies to all brokers who wish to obtain BIC Eligible status.

12-Hour Broker-in-Charge Course

To obtain BIC Eligible status, a broker must complete the *12-hour Broker-in-Charge Course*. The course may be completed either within one year prior to application for BIC Eligible status or within 120 days after being granted the status.



The *12-hour Broker-in-Charge Course* is an asynchronous distance education course. Brokers must register for the course on the Commission's website. Brokers must complete the course within 30 days of registration.

Upon successful completion of the course, brokers will be awarded 4 hours of CE elective credit in the license year in which the course was completed.



How many days does a broker have to complete the *12-hour Broker-in-Charge Course* after obtaining BIC Eligible status?

A broker has 120 days to complete the *12-hour Broker-in-Charge Course* after obtaining BIC Eligible Status. If a broker fails to complete the *12-hour Broker-in-Charge Course* within the 120 days of obtaining BIC Eligible status, BIC Eligible status (and BIC Designation) will be terminated. The broker will not be granted BIC Eligible status (and, in turn, BIC designation) until the course is completed.



How many days does a broker have to complete the *12-hour Broker-in-Charge Course* after registration for the course?

A broker has 30 days to complete the *12-hour Broker-in-Charge Course* after registering for the course.

Note: A broker must complete the 12-hour BIC course within 30 days from the date of registration or by 11:59pm on June 10, **whichever occurs first**.



What happens if I fail to complete the 12-hour Broker-in-Charge Course within 30 days of registration or by 11:59pm on June 10?

If a broker fails to complete the 12-hour Broker-in-Charge Course within 30 days from the date of registration or by 11:59pm on June 10, the broker will be required to register and pay for the course again and will be required to restart the course. Access to the 12-hour BIC course is prohibited from June 11 through June 30 each year, per rule 58H .0404.



How much CE elective credit will a broker receive upon successful completion of the 12-hour Broker-in-Charge Course?

A broker will receive 4 hours of elective credit upon successful completion of the 12-hour Broker-in-Charge Course.

Broker-in-Charge (BIC) Designation

Once a broker has obtained BIC Eligible status, the broker may step in and out of active BIC designation by submitting a request form.

As long as the broker maintains BIC Eligible status by timely renewing his/her license and completing the correct CE each year, the broker will not be required to repeat the 12-hour Broker-in-Charge Course.

Requesting Broker-in-Charge Designation:

Submit the ***Request for BIC Eligible Status and/or BIC Designation form (REC 2.25)***. You must indicate the firm or sole proprietorship for which you will be serving as BIC.

Terminating Broker-in-Charge Designation:

If another broker submits a *Request for BIC Eligible Status and/or BIC Designation form* to be designated as the BIC at your office, your BIC designation will be automatically terminated when the new BIC's form is processed.

However, if you wish to be removed as BIC immediately, you may submit a *Request for Termination of Affiliation form (REC 2.22)*.



I am not BIC Eligible, but I need to be designated as BIC right away. Can I request BIC Eligible status and BIC designation at the same time?

Answer: Yes. The *Request for BIC Eligible Status and/or BIC Designation* form (REC 2.25) enables a broker to request both statuses at the same time.

Maintaining BIC Eligible Status and BIC Designation

A broker may maintain BIC Eligible status and BIC designation by:

- renewing his/her license between May 15-June 30 each year;
AND
- completing the BICUP (Broker-in-Charge Update) course plus 1 Commission-approved elective by June 10 each year.



When do I have to begin taking the BICUP course?

Answer: Per Commission Rule 58A .0110(h):

A broker holding BIC Eligible status shall take the Broker-in-Charge Update Course during the license year of designation, unless the broker has satisfied the requirements of Rule .1702 of this Subchapter prior to designation.

Loss of BIC Eligible Status and BIC Designation

BIC Eligible status and BIC designation will be lost if:

- the broker's license is inactive, expired, surrendered, suspended, or revoked,
OR
- the broker fails to take the BICUP course during any license year.



What happens to the licenses of affiliated brokers in an office if a BIC's license expires or goes inactive?

When a BIC's license expires or goes inactive on July 1, his/her office may not continue to provide brokerage services. The "full" brokers will still be on active status at the broker's home address since they will no longer be affiliated with the company, and all provisional brokers will be on inactive status since they do not have a supervising BIC.



How can the office get back in business while the former BIC is expired or inactive?

Answer:

It depends on whether the former BIC was acting only as BIC for an office or was both BIC for the office and QB for the entity.

If the former BIC was serving only as BIC...

The firm still has an active license, but brokerage services may NOT be legally provided at this office location without a designated BIC.

The QB may appoint a new broker to serve as BIC and direct that broker to submit a **Request for BIC Eligible Status and/or BIC Designation form (REC 2.25)** to the Commission. Once the form is processed, the newly designated BIC must file activation/affiliation forms (REC 2.08) to re-associate all full and provisional brokers with the office.

If the former BIC was both the BIC and the QB...

The firm's license will be on inactive status (assuming the firm's license was timely renewed) because it doesn't have a QB.

As long as the QB's license is expired or on inactive status the firm's license will also be on inactive status, meaning the company may NOT legally engage in brokerage anywhere in NC. The firm's license will remain on inactive status until EITHER the former QB activates his/her individual license OR the QB is replaced. To inform the Commission of a new QB, the **Change in Qualifying Broker form (REC 2.20)** must be submitted.

Then, the QB may appoint a broker to serve as BIC and direct that broker to submit a **Request for BIC Eligible Status and/or BIC Designation form (REC 2.25)** to the Commission. Once the form is processed, the newly designated BIC must file activation/affiliation forms (REC 2.08) to re-associate all full and provisional brokers with the office.

Regaining BIC Eligible Status and Broker-in-Charge Designation

A broker who attains but later loses BIC Eligible status must complete the following steps in the order indicated to regain the status.

1. Do whatever is necessary to return the broker license to active status, i.e., pay reinstatement fee and/or complete required education;
THEN
2. Submit the **License Activation form (REC 2.08)** to the Commission;
THEN
3. Complete the Commission's **12-hour Broker-in-Charge Course**,
AND THEN
4. Submit the **Request for BIC Eligible Status and/or BIC Designation form (REC 2.25)** requesting BIC Eligible status (and BIC designation if needed).

NOTE: You must meet the qualification requirements for BIC Eligible status as prescribed by Rule 58A .0110(e)(6)(b).

NOTE: To determine whether you have BIC Eligible status and/or BIC designation, log into your license record on the Commission's website (ncrec.gov).

ANSWERS TO DISCUSSION QUESTIONS

For Discussion on page 121:

1. Thomas, a full broker, did not complete CE during the July 1, 2020-June 10, 2021, CE period, and he did not renew his license in June 2021. Now his sister, Alice, wants to purchase a house.
 - a. Can he represent Alice?
Answer: No. Thomas's license is expired, so he may not practice brokerage.
 - b. Would the answer to (a) change if Thomas had renewed his license by June 30, 2021?
Answer: No. Thomas had not timely completed required CE, so if he had renewed his license it would now be on Inactive status. A current AND active license is required in order to legally practice brokerage.

2. Today is April 15, 2022, and Tasha's license has been expired since June 30, 2019. What must Tasha do to reinstate her license and return it to active status?
Answer:
 1. Successfully complete 75-hour NC Broker Prelicensing course;
 2. Submit a license application with \$100 original application fee and all required
 3. documentation, including criminal background report; and
 4. Pass National and State sections of the license exam.

For Discussion on page 131:

John has renewed his "full" broker license every year but hasn't taken any CE since 2019.

- a. What is the status of John's license?
Answer: Inactive.
- b. How many courses must John take to activate his license?
Answer: 4 courses totaling 68 hours (two 30-hour Postlicensing courses PLUS GenUp PLUS an elective)
- c. Which courses must he take?
Answer: Two 30-hour Postlicensing courses PLUS current year's GenUp PLUS one Commission-approved elective.
- d. Will John's license be "active" once he completes the course(s)?
Answer: No, because he still needs to submit the *License Activation & Broker Affiliation Form* (REC 2.08).
- e. Assume John was a BIC before his license changed to "inactive" status. Will that change the courses he should take now to reactivate?
Answer: No, because he lost BIC Eligible status when his license became inactive.
- f. When he reactivates, will he still be BIC?
Answer: No. He still needs to take the 12-hour BIC Course and file form REC 2.25.

Note: At this point he may not have the requisite brokerage experience to qualify again to be a BIC.

Section 6

Broker-in-Charge Best Practices Guide



In addition to those dictated by License Law and Commission Rules, what are some policies you have in your office?

Are there additional issues that should be addressed in your policies and procedures? If so, please explain.

NOTE: Answers to these questions will vary based on individual office and/or company practices.

LEARNING OBJECTIVES

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

- explain the purpose of the *Broker-in-Charge Best Practices Guide*; and
- identify recommended issues / topics to be addressed in brokerage office policies.

PURPOSE OF THE *BROKER-IN-CHARGE BEST PRACTICES GUIDE*

Pursuant to Rule 58A. 0110(g), a designated BIC shall:

- (1) assure that each broker employed at the office has complied with Rules .0503, .0504, and .0506 of this Subchapter;
- (2) notify the Commission of any change of firm's business address or trade name and the registration of any assumed business name adopted by the firm for its use;
- (3) be responsible for the conduct of advertising by or in the name of the firm at such office;
- (4) maintain the trust or escrow account of the firm and the records pertaining thereto;
- (5) retain and maintain records relating to transactions conducted by or on behalf of the firm including those required to be retained pursuant to Rule .0108 of this Section;
- (6) supervise provisional brokers associated with or engaged on behalf of the firm at such office in accordance with the requirements of Rule .0506 of this Subchapter; and
- (7) supervise all brokers employed at the office with respect to adherence to agency agreement and disclosure requirements.

In plain English, the BIC is responsible for:

- (1) ensuring that affiliated brokers maintain **current, active licenses**;
- (2) notifying the Commission of **changes in firm or trade name**;
- (3) all **advertising** placed on behalf of the office;
- (4) the **trust/escrow account**;
- (5) **record retention**;
- (6) **supervising provisional brokers**; and
- (7) ensuring that affiliated brokers **disclose agency and execute agency agreements** properly.

BICs should consider carefully these responsibilities and how to address each of them. In addition, there are a variety of other operational issues, business practices, and office procedures for which rules and policies should be created.

The purpose of the *Broker-in-Charge Best Practices Guide* is to provide guidance for BICs as they are developing their operating procedures and establishing their expectations for affiliated brokers. The Guide provides the subject matter a BIC should consider when creating office policies.

Real estate offices differ in size and practice varying specializations of brokerage. So there is not a *one size fits all* office policy that would meet the needs of each real estate office. The *Broker-in-Charge Best Practices Guide* is intended only as a starting

point. BICs may want / need to create policies for many other topics or issues, depending upon the nature and complexity of their brokerage practice.

THE *BROKER-IN-CHARGE BEST PRACTICES GUIDE*

The *Broker-in-Charge Best Practices Guide* is available on the Commission's website (ncrec.gov) under **Resources**. You may view and download it on that page.

It is reprinted here for your review.

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Broker-in-Charge Best Practices Guide



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SECTION 1: DEFINITIONS

Regulatory Authority – The North Carolina Real Estate Commission (NCREC/ Commission). Voluntary regulatory authorities include, among other entities, the local Boards/Associations of Realtors, North Carolina Realtors, and the National Association of Realtors.

Broker-in-Charge (BIC) – The Broker who has been designated as the primary person having sole responsibility for the supervision and management of an office.

Broker – Any licensee, other than BIC, who is affiliated with the firm; aka associate broker.

Employee – Salaried employee as defined by the NC Department of Revenue.

Independent Contractor – Individual who contracts for a specific task or job and is responsible for all expenses per the contract. (This may also be defined by the NC Department of Revenue.)

Licensee – Broker, agent, sales associate, broker associate, provisional broker, etc. In North Carolina, a licensee is any person or firm who/which holds a North Carolina real estate license.

Assistant

- **Licensed Assistant** – A person who is licensed under the supervision of the BIC, who works and exclusively assists the BIC or a team, group, or individual licensee also licensed under the BIC. The BIC, in conjunction with the employing licensed individual, group, or team, is responsible for all acts of the assistant.
- **Unlicensed Assistant** – A person who is unlicensed and assists the BIC or a team, group, or individual licensee, and who is prohibited from performing activities that require a license. The BIC, in conjunction with the employing licensed individual, group, or team, is responsible for all acts of the unlicensed assistant.

Firm – Corporation, Partnership, Limited Liability Company, Sole Proprietorship. Note that in NC, any business entity (other than a sole proprietorship) must obtain a firm license prior to conducting brokerage activity.

Office – 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 records for such trust monies are maintained.

Branch Office – An extension of a main firm location (additional operating location). Any office other than the firm's principal office.

Branch Office BIC – An affiliated broker designated as the primary person having sole responsibility for the supervision and management of a branch office location. In North Carolina, the principal office and each branch must have its own BIC. A broker may serve as the BIC for only one office location of a firm.

Team or Group Members – A group of licensees who form a workgroup to assist each other and work as a team in all transactions.

SECTION 2: WRITTEN OFFICE POLICIES

Written office policies are useful for standardizing operational tasks and expectations, which in turn is an important component of a brokerage's enterprise risk management. The content will obviously vary with the size and complexity of the brokerage, and it may be started in a small way and grow in content as the BIC considers it necessary to augment procedures. The whole purpose is to provide guidance for all affiliated licensees, for employees, and any others who perform duties on behalf of the brokerage. It is a combination of instructions and procedures to be followed, and the documents or forms that should be utilized. The following section outlines the typical recommended subject matter that should be included in a written office policy manual. While the majority of this guide presumes the BIC's written policies are for affiliated brokers or employees, even a solo practitioner may find having written policies in place helpful for managing their own activities, planning for sudden challenges, and/or as their business grows.

1. **Orientation for New Licensees to the Company.** Orientation is the process of informing new employees about the nature of the organization, its policies, procedures, rules, and the duties and responsibilities of the job. Orientation is the employee's first step in the process of learning the norms, values, attitudes, and behaviors that are expected in the organization. It provides new employees with basic information about the duties of the job; working conditions; compensation and benefits; policies; procedures, and rules; and will also serve to correct any erroneous impressions which may have been created in the recruitment and selection process. *A firm's character begins at the top of the organizational chart. A BIC who wants his/her broker associates to conduct themselves with honesty and integrity and to strive for service excellence must model such behaviors himself or herself.*

Formal orientation programs are usually conducted within the first week of a broker joining an organization. Examples of the items to be included in an orientation program are listed below:

- A. Office Policy Manual
 - Read, date, sign agreement/acknowledgement page
 - Revision/Renewal of policy manual and acknowledgement page
 - Personal copy of manual
- B. Scheduled Meetings Attendance Requirements
- C. Training Session Attendance Requirements
- D. Licensing Requirements
 - Timely Payment of Renewal Fee
 - Compliance with education requirements (CE and Postlicensing)

- E. Accounting Duties/Requirements (broker policy and regulatory requirements)
 - Submission of Deposits to the Brokerage
 - Cash policy, including whether such payments accepted, identification of party making payment, purpose, receipts
 - Other
 - F. Transaction Flow Process/Requirements
 - Create a checklist of documents for each type of transaction (i.e., for sales – buyer agency agreements, listing agreements, Working with Real Estate Agents brochure, inspection reports; for property management – property management agreements, invoices, work orders, etc.) to ensure that licensees review the proper documents with clients and customers, and obtain signatures when required
 - G. Identification of Go-To Person(s) for Questions/Problems
 - H. Sexual Harassment
 - I. Discrimination
 - J. Personal Safety Procedures/Requirements
 - Review the Commission’s “North Carolina Real Estate Agent Safety Guide.”
 - K. Other
2. **Employment (or Work) Contract.** The BIC should have a written agreement with all licensees affiliated with the BIC whether that relationship is as an employee or an independent contractor. The agreement should spell out various terms of the relationship – it should be reviewed and/or renewed periodically. Following are some of the items that should be addressed in the agreement:
- A. **Terms.** This will establish the type of relationship that will exist between the BIC and the licensee, as well as define the extent of BIC supervision of the licensee and any assistant(s) (licensed or unlicensed). In general, the BIC is ultimately responsible for the actions of anyone in the firm and the BIC may want to have the authority to terminate anyone in the firm. All listings, contracts, service agreements, etc., are the property of the BIC or firm. Items to address:
- Independent contractor or employee
 - Personal assistants (licensed or unlicensed). An unlicensed assistant is prohibited from performing licensed activities. The BIC (and/or licensee) who engages any assistant to work for the firm is responsible for the acts of the assistant and should confirm what activities the assistant performs comply with license law
 - Teams or groups
 - Ownership of listings, contracts, management agreements, etc. (firm vs. individual licensee or team)
 - Licensee’s personally owned real property – sale or lease thereof
 - License renewals
 - Continuing education and/or postlicensing education
 - Other

- B. Compensation to Licensee.** All compensation received by licensees for performing licensed activities should be paid to them through the licensee's BIC. Under NC License Law, the BIC can agree that a full broker be paid directly and not through the BIC. Note that while a BIC may ask a closing attorney to issue commission checks directly to the BIC's full broker affiliate, it is up to the closing attorney whether to honor the request. Firms should not attempt to compel closing attorneys to pay their affiliated brokers nor threaten to boycott a settlement agent who refuses to pay compensation directly to individual brokers in addition to the listing and selling firms.

A BIC's written policy should address how compensation is to be paid to affiliated brokers, team members, and unlicensed assistants. The BIC should be sure to review related rules and regulations to make sure compensation disbursement is in compliance with Commission rules.

Items to address:

- Compensation schedule
- Compensation following termination
- Compensation to team members including unlicensed assistants
- Splits between licensees within office (referrals, members of a team) and co-brokerage referrals
- Withholdings, garnishment, remuneration assignment, etc.
- Annual income reporting – IRS 1099, etc.
- Communications with the closing attorney about disbursement
- Commission disputes
- Other

- C. Termination.** Termination of licensees could occur for many reasons, including: for cause, licensee's desire to transfer to another firm, death, or disability. Therefore, a BIC may have slightly different procedures regarding each type of termination and how it relates to the disposition of unfinished transactions, compensation, etc. Following are a few examples to consider:

- Disposition of agency agreements and contracts
- Unpaid expenses
- Licensee requested release to transfer to another firm versus firm decision to terminate licensee
- Communications with clients
- BIC review of agreements/contracts before a planned termination;
- Computer/Email access
- Process if a broker's license goes on inactive status temporarily
- Other

- D. Licensee Selling, Purchasing or Leasing Personally-Owned Real Property.**

The BIC should be very clear as to the requirements that will apply when a licensee sells, purchases, or leases personally-owned real property as both the BIC's policies

and North Carolina regulations should be followed. This includes any fee or commission that should be paid to the brokerage. The BIC's policy might address, among other things, required prior authorization by BIC, use of company tools and facilities, compensation, compliance with regulatory disclosures, etc. From a regulatory point of view, if a complaint is filed against a licensee involving the licensee's personal transaction, the BIC/firm may be included in the complaint if the transaction was advertised through the BIC/firm – thus the reason for licensees to keep their personal and real estate license business separate and clearly identified. Items to address:

- Broker/Firm policy
- Required Agency Agreements, if applicable
- Compliance with Commission Rule A .0104
- Required disclosures including disclosure of license status
- Errors & Omissions insurance coverage for personal transactions
- Personal residence vs. investment property
- Specific requirements when a broker proposes to purchase property for which they are listing agent
- Other

E. **Board/Association Membership.** The BIC should outline any requirements for maintaining membership in boards/associations. If the BIC is a member of a voluntary association, all licensees affiliated with the BIC may also be required to belong to the association. Most associations have a strict Code of Ethics and violations of the Code are met with consequences jeopardizing membership. Membership in the association may also include additional requirements, i.e., if a licensee is a member of REALTOR® organization, the licensee must also be a member of the Multiple Listing Service (MLS).

F. **Errors and Omissions (E&O) Insurance.** While the Commission does not require its licensees to obtain E&O insurance, a prudent BIC should consider such insurance as a means for managing the firm's risk. This is especially true in firms which recruit inexperienced brokers. The BIC should address any requirements related to such insurance in the employment or independent contractor agreement.

G. Other

3. **BIC Delegation of Duties (Multiple Responsible Brokers).** A BIC cannot delegate his duties under the license law/Commission rules and eliminate responsibility and liability. A BIC may appoint an alternate person, on a temporary basis, who may be in charge in the absence of the BIC, however, the BIC is fully responsible at all times. The BIC may be assisted by other licensees or unlicensed assistants in carrying out the duties of the BIC, but the BIC is ultimately responsible for all of those duties. See Commission Rule A.0110 for BIC duties.

Items to address:

- Communication with BIC, or BIC substitute(s)
- Mentoring Program
- Training Programs
- Team supervision
- Other

4. Licensee Compliance with Regulatory License Requirements

- A. The importance of maintaining an active real estate license is paramount. If regulatory requirements are not met on a timely basis, the license could be placed on inactive status or revoked or suspended. In order for a licensee to legally operate and attempt to limit their liability and risks, the licensee should timely meet all renewal requirements including paying the renewal fee and successfully completing continuing and/or postlicensing education, prior to each active license renewal term.
- B. The BIC should consider requiring brokers to immediately inform him/her if they receive notice of any inquiry or investigation by the Commission (or other governmental agency), notice of a possible claim from an E&O insurance carrier, or any demand letter from an attorney.
- C. In North Carolina, an active broker must also obtain a privilege license from the NC Dept. of Revenue and renew it annually.
- D. If the licensee is a member of a professional association, i.e., real estate boards/associations, multiple listing service, etc., the professional association may require the member to pay regular membership dues and complete additional training in specified content areas.
- E. In addition, if the licensee maintains certain professional designations, such designations may have certain yearly requirements that must be met in order to maintain the professional designation.
- F. The BIC should address these requirements with all licenses and have a system designed to consistently remind the licensees of the yearly requirements.
- G. If a licensee is placed on inactive status for not completing license renewal requirements, the BIC may also be included in the investigation for failure to supervise, unlicensed activity, false advertising, etc.
- H. In North Carolina, each office must have a BIC. If a licensee affiliated with the BIC proposed to conduct brokerage activity in a location other than the designated office, the BIC must determine whether a separately designated BIC is required. See Section 15 below for a discussion of determining when a location qualifies as an office.

5. Additional Regulatory Compliance. The BIC is responsible for performing the duties imposed on the brokerage and controlling the brokerage's real estate business, which includes the services and activities performed by licensees and others on behalf of the brokerage. The written office policies should reflect any applicable legal requirements, such as:

- A. License Law and Rules
- B. Related Laws (federal, state, county, city, etc.):
 - NC Residential Rental Agreements Act (NCGS 42-38 et seq.)
 - NC Tenant Security Deposit Act (NCGS 42-50 et seq.)

- NC Vacation Rental Act (NCGS 42A-1 et seq.)
- Other landlord-tenant laws
- NC Uniform Electronic Transactions Act (NCGS 66-311 et seq.)
- Fair-Housing Acts (federal and state)
- Tax laws (federal and state)
- Do Not Call Implementation Act
- Fair Credit Reporting Act
- Antitrust laws
- Sexual Harassment laws
- Real Estate Settlement and Procedures Act (RESPA)
- Truth in Lending Act (TILA)
- Foreign Investment in Real Property Tax Act (FIRPTA)
- Interstate Land Sales Act (ILS)
- Electronic Communications Privacy Act
- Reporting Cash Payments of Over \$10,000
- Other

6. **Establishing Competence.** Upon entering the real estate profession, a real estate licensee generally has only been exposed to basic real estate terminology, land descriptions, basic real estate facts, and instructor-formed scenarios. The licensee successfully passed an examination; however, most prelicensing education does not delve into the process of how to assist customers, how to obtain a listing, how to show a property, how to navigate a transaction, etc.

A. It is the BIC's responsibility to inform and educate the licensee with real estate knowledge and expertise necessary to adequately and professionally assist consumers through the real estate transaction process. The BIC may require that each licensee complete this process and could assign other mentors (within the office) to assist the newly affiliated licensee through the process. The BIC may wish to address:

- New Licensee Training Program(s)
- Mentoring Program
- Regular Office Meetings
- Forms/Contracts and Annual Changes
- Annual Rule/Law Changes
- CE/postlicensing requirements
- Other

B. A licensee should only work in the area of their expertise, i.e., residential sales, property management, commercial, land transactions, etc. As indicated previously, most prelicensing education is directed toward the basics of real estate, which is geared toward residential sales transactions. If licensees are to provide services in other specialty areas like commercial, property management or land transactions, additional education and certifications should be obtained by the licensee prior to providing services to the consumer. Other suitable options would be for the licensee to partner with another broker who is experienced in a specialty area or to refer the

prospect to another experienced broker in exchange for a referral fee. The BIC may wish to address:

- Specialization Training
- Mentoring or Shadowing
- Referrals
- Other

7. **Brokers' Relationships with Consumers.** The BIC should make clear all office policies related to the affiliated broker's relationship with customers and clients.

A. Permitted Brokerage Relationship with Consumer / Permitted Services

- Dual Agency
- Designated Dual Agency
- Property Management "on the side"

B. Agency Disclosure – use of WWREA Disclosure Form, Q&A Brochure and agency agreements

C. Fiduciary vs. Non-Fiduciary Duties

D. Protecting Confidential Client Data

- Email Safety
- Material Facts

E. Conflict of Interest Issues

- Transactions where a licensee is a party
 - The licensee is an owner of a listed or rental property
 - The licensee is potential buyer of a client's property
- Transactions where a licensee represents multiple buyers for the same property

F. Mandatory Duties/Responsibilities

G. Change in Agency Relationship

- Buyer agent becomes dual agent/designated agent
- Listing agent becomes dual/designated agent
- Seller subagent wants to become buyer's agent
- Termination of Agency
- Replacement of Individual Broker

H. Fair Housing Issues

I. Other

8. **Organization and Administrative Procedures.** BICs must be actively engaged in the management of their related brokerage, ensuring that the business of the brokerage is carried out competently and in accordance with applicable regulations. The BIC should ensure that there are adequate resources and training available for licensees, employees and others who perform duties on behalf of the brokerage.

The written office policies may assist in this regard, and should address the following:

A. Process and Procedures:

1. Residential Sales:
 - Contract Usage and Resources
 - Listing – Obtaining and Servicing
 - Buyer Representation Agreement
 - Showings, Open House Prospects
 - Obtaining and Presenting the Offer to Purchase
 - Counter-Offer, Back-up Offers
 - Inspections and Surveys
 - Title and abstract
 - Appraisal
 - Closing Procedures
 - Commission/compensation/referral fee, etc.
 - Other (appointment scheduling, key security)
2. Lease Purchase (must be drafted by attorneys)
3. Procedures for Receipt and Disbursement of Checks for Third Party Escrow Agents and Due Diligence
4. Property Management
 - Written property management agreement with terms compliant to Rule A.0104.
 - Written lease with terms compliant with NCGS 42
 - Tenant Screening
 - Application Fees/ Tenant Security Deposits
 - Move-in/Move-out inspections
 - Repair requests
 - Eviction Process
5. Commercial
 - Contract usage and resources
 - Representation/agency agreements
 - Letters of intent; offer and acceptance
 - Due diligence practices
 - Appraisal
 - Closing Procedures
 - Commission/compensation/referral fees
 - Other

B. Disclosures: (including how and when)

1. Agency or broker relationship
2. Material facts or defects
3. Property Condition (Residential Property & Owners Association Disclosure) including when updating is necessary
4. Mineral, Oil, and Gas Rights Disclosure (MOGRD)
5. Beneficial Interest
6. Referral/Other compensation

- 7. Lead-Based Paint
- 8. Radon
- 9. Meth labs
- 10. Mold
- 11. Floodplain Certificate
- 12. Landlord and Tenant
- 13. Other

- C. Forfeiture of earnest money or items
- D. Return of earnest money or items
- E. Closing
- F. File reconciliation – timely delivery of transaction documents to firm/BIC
- G. Out of state referrals
- H. Other

9. **Advertising and Solicitation.** The rules applying to advertising and other solicitations generally restrict licensees from knowingly publishing real estate advertising containing any false statement or misrepresentation concerning real estate, a trade in real estate or the provision of real estate services. They also prohibit advertising information a broker reasonably should know is false. In addition, licensees are generally prohibited from publishing real estate advertising concerning real estate sales or other disposition unless the owner of the real estate, or an authorized agent of the owner, has consented to the advertising. These provisions would include pamphlets, letters and electronic communication, and would also cover press releases about real estate deals and even references in letters to matters pertaining to properties. A BIC is responsible for all advertising by a firm and its broker associates. Therefore, associate brokers should submit all new advertisements to the BIC for review prior to publication. The brokerage's written policies should address the following:

- A. Definition of advertising (as per License Law and Commission rules)
- B. Forms of advertising (newspaper, internet, social media, billboards, etc., including use of personal versus professional social media accounts)
- C. Distribution methods for advertising
- D. General mandated rules for advertising (federal, state, county, city, etc.)
- E. Brokerage approval process
- F. Client solicitation and consent
- G. Joint advertising
- H. Special promotions
- I. Self-promotion and marketing
- J. Marketing licensee's separate brokerage or non-brokerage activities
- K. Teams and Groups
- L. Advertising personal offices as branch offices
- M. Unlicensed assistants
- N. Personally owned property
- O. Responsibility for costs related to advertising
- P. Other

10. **Teams and Groups.** The BIC must ensure that there is an adequate level of supervision for related licensees, including groups of licensees who work together (possibly referred to as a “team or group”). As for any other licensees, employees, and others who perform duties on behalf of the brokerage, the BIC is responsible for ensuring that such groups are supervised accordingly and that they are conducted in such a way as to avoid misleading the public (e.g. that they do not give the impression of being a separate real estate brokerage). Written office policies may assist in this regard and should include direction on the following:

- A. BIC authorization
- B. BIC and team identification in advertising
- C. Advertising of team must meet local statutes and regulations
- D. Supervision of team members including provisional brokers
- E. Unlicensed persons
- F. Compensation
- G. Other

There are a number of resources relating to Teams on the Commission’s website, nrec.gov.

11. **Safety Procedures.** Real estate licensees routinely find themselves in situations in which they are alone with clients or customers about whom they very little information. The very nature of showing real estate to prospective buyers and tenants who are virtual strangers can make licensees, both men and women, susceptible to becoming victim of violent crimes.

- A. The BIC should develop and implement safety procedures to be utilized by licensees and office staff on a daily basis
- B. There are a number of personal safety guides and tips available for view, including the Commission’s North Carolina Real Estate Agent Safety guide <https://www.nrec.gov/Brochures/Safetyguide.pdf> and the National Association of Realtor’s North Carolina Real Estate Agent Safety Guide; www.nar.realtor (search “safety”), etc. Many guides contain common sense safety tips that have been compiled from crime victims and real estate associations across the country
- C. Additionally, several software applications (apps) have been developed to facilitate broker safety in various situations

12. **Professional Conduct.** The Commission expects its licensees to conduct themselves in a professional manner at all times. The BIC may wish to address in the written office policies:

- A. Communication (with customers, other licensees, the public)
- B. Dress Code
- C. Etiquette and Professionalism
- D. Equal Opportunity/Fair Housing
- E. Other

13. **Associations' Code of Ethics and Multiple Listing Service (MLS).** The responsibilities of a BIC can be complex and are required to be performed with an increasingly high degree of professionalism. For this reason, knowledge of the law and business standards is crucial to maintaining good standing as a real estate licensee. The most important source of standards is the applicable license law and Commission rules; however, the law and rules only set a minimum standard of legal conduct. Therefore, nearly all professional bodies establish a Code of Ethics in order to raise general business standards to a higher level and also to provide guidelines for interaction between professional members. The written office policies should address professional ethics in general, and professional association rules specifically, as applicable.

14. **Unlicensed Activity.** A broker must ensure that no unlicensed person connected to the brokerage engages in brokerage activities. The BIC must provide an adequate level of supervision for licensees, licensee assistants, employees, and others who perform duties on behalf of the brokerage. The BIC must take steps to deal with any conduct that may constitute a breach of the licensing requirements or applicable Code of Ethics. The written office policies may assist in this regard, and should include the following information:

- A. Identify which activities require a license (and which do not) and develop office policy. Include identification of permitted activities of unlicensed assistants
- B. Require brokers to have an active license prior to performing licensed activity
- C. Prohibit splitting a fee with an unlicensed person
- D. Develop a policy on reporting individuals who perform licensed activity without a license to the Commission
- E. Require any licensee who creates an entity other than a sole proprietorship to apply for a firm license from the NC Real Estate Commission
- F. Other

15. **Office and Branch Offices.** The BIC should be aware of where affiliated brokers are working and whether their activities would require the brokerage to inform the Commission of the existence of a branch office and a designated BIC of that branch office. Key Points:

- Every office must have a BIC
- An individual may be BIC only ONE office (per entity)
- Lone Exception: if two companies each have an office at the same physical location, then one person may serve as BIC of each firm at that one location

A. What Is An Office?

Commission rules define an office as “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 records for such trust monies are maintained.” To determine whether a location is an office, the first step is to determine what activity occurs there and if those acts require a real estate license. What acts require a real estate license? 1) managing

property and /or advertising and negotiating the purchase, sale or exchange of property, 2) for others, 3) for consideration. If a location is deemed an “office,” then there must be a BIC designated with the Commission for that location.

B. Where the Trust Monies are Handled or Records Maintained

While the test most commonly applied is “a place where acts occur that require a license,” the second prong of the definition was added to address the following situation.

Example: A real estate company operates ten offices where real estate brokerage activities are performed. Additionally, the company has an administrative center at an eleventh location where there are no affiliated brokers, because the company doesn’t represent the public or engage in “acts that require a license” at that location. However, all the trust monies and trust account-related records for all ten office locations are funneled through the administrative center, since all book-keeping is done at this location, i.e., paying the operating expenses for each office, issuing commission checks, paying salaried employees, etc. Even though no brokerage activity occurs at this administrative center, the company still must designate a broker- in-charge for that location because trust monies and trust records are maintained at this location, rather than each office managing funds it receives. The BIC’s primary, if not sole, responsibility at this administrative center will be to supervise all employees handling trust monies and maintain the trust account records.

The other ten offices must each have a BIC because agents at those locations are actively engaged in real estate brokerage, i.e., meeting the public and discussing available properties for lease, sale, purchase or exchange.

C. Factors in Determining if a Location is an Office:

- Does the location’s address appear in advertising, on business cards or letterhead, or in the Commission’s records?
- Do licensees use the location on an ongoing basis to meet the public to perform some aspect of customary brokerage service?
- Does the location operate on a permanent, or at least indefinite, basis with regular hours?
- Is the location regularly staffed by licensees?
- Are files and records, such as trust account records and transaction files, maintained there?
- Is the location designed and furnished to facilitate the regular conduct of brokerage business, e.g., desks, computers, copiers, telephones, conference rooms, etc.?

NOTE: Not all of these factors must be present before a location will be deemed an office and some factors may be given greater weight than others. For example, the following factors generally demonstrate that a location is an “office” under Commission rules:

- if a physical address is printed on the company’s letterhead, its agents’ business cards or appears in the company’s advertising,

and

- when the public goes to that address, one or more licensees are available to discuss current properties for lease or sale,
and
 - the company's transaction files and, if applicable, trust account records are maintained at that address/location.
- Must a company, whether an entity or a sole proprietorship, have a brick-and-mortar office?

Regardless of whether the broker chooses to create an entity and obtain a firm license, or operate as a sole proprietorship, if that company is offering to represent others in real estate brokerage transactions, then it must have an office somewhere, even if it's in the broker-owner's home. This does not mean that the office must be a public meeting space. The Commission has never required a licensee to have a public meeting space. Within the bounds established by License Law, Commission rules, and other applicable law, how a broker chooses to engage in brokerage is up to the broker. The majority of offices currently designated with the Real Estate Commission (i.e., having a BIC) are the only office that the company maintains, and most of those companies only have 1-3 licensees affiliated with the company.

While a broker is not required to publish any physical office address in advertisements or on business cards or letterhead, the broker nonetheless will have an office somewhere — a base of operations where s/he keeps transaction files, does research, contacts clients, updates websites, etc., and the Commission needs to know where that space is if it wishes to visit. Understand that you cannot have an “office” without having an officially designated BIC for that location on Commission records!

Know too that a broker who chooses to have his/her office in the home and not publicize that address, must still request designation as a BIC at the home address on Commission records. However, the broker may provide the Real Estate Commission with an additional “delivery address” that is a post office box and instruct the Real Estate Commission to publish only the delivery address on the Commission's website, rather than the physical address.

D. Virtual Office (VO)

Understand that an independent broker who offers to provide real estate brokerage services to consumers must be a BIC, if they are not affiliated with a company where there is a BIC. A sole practitioner may very well have their office in their home, since so much of real estate brokerage is meeting consumers at outside locations or public places. Nonetheless, there are times when a conference room or office may be needed to meet clients or customers, but not on a full-time office lease basis. One option might be to have a “virtual office.” This term refers to an arrangement where the broker leases conference or meeting room space on an occasional or as-needed basis in a furnished office environment where the broker may meet clients or customers when not meeting them in their homes or other public place.

If a broker works primarily from home, but also occasionally leases conference

room/office space, where is their office? The broker can't declare themselves BIC at both locations, as one broker may only be a BIC at one location. Each case is reviewed on its own facts, but generally, the broker's true office is their home. Factors that might influence the analysis include:

- How frequently does the broker use the meeting/office space?
- Is the meeting space used as the address on business cards and in advertising?
- If the public visits that location are they greeted by a receptionist who may take messages?
- Where does the broker receive postal mail?
- Does a telephone number provided on business cards or advertising (in addition to the broker's cell phone) ring into the meeting space location?
- Where does the broker maintain their transaction files and trust account records?

The more these factors are present, the more it would appear that the broker is attempting to hold out to the public that the meeting space is their office.

E. Virtual Office Websites

Unlike a virtual office that is a physical place, a virtual office website is a presence on the internet that may or may not allow interaction with consumers. Whether the site is an Internet Data Exchange (IDX) website or a virtual office website (VOW), both are ethereal — there is no physical brick-and-mortar location to visit. In such a case, the independent broker who is actively representing consumers will have their office in their home unless they lease office space elsewhere.

The point for this discussion is that while an independent broker may conduct the majority of their real estate brokerage online, interacting with consumers and providing all required disclosures and agreements electronically, that broker must be designated as a BIC at their home, unless they have a brick-and-mortar office elsewhere.

F. Other Scenarios:

- A mall kiosk:
A real estate company rents a small kiosk in the main aisle of a shopping mall where the company displays photos of its listings and other available properties. The company's name appears at the top of the kiosk and its affiliated brokers share rotating shifts at the kiosk that is staffed most afternoons and some weekends for a few hours each day at different times, depending on the agents' availability. During these shifts, the licensees hand out their business cards, greet the public, answer questions and promote their and the company's listings and services. The kiosk is minimally furnished and has no private meeting rooms. The mall kiosk is not an office. Although the company is promoting its services and its agents at that location, there are no transaction files maintained at the kiosk nor is there a physical address or telephone number for the kiosk.
- A model home:
#1: A real estate company is hired by a builder/developer to market a

subdivision twenty miles away from the company's office. There is a model home at the subdivision that is used principally to display floor plans and quality of construction, but generally is not staffed by agents. The advertising for the subdivision gives the company's address and telephone number and all files relating to the subdivision lots are kept at the main office location, not at the model home. The model home has not become a branch office that requires a BIC.

#2: If the advertising for the subdivision gives the company's name and phone number but the address of the model home, agents staff the model home from 10am-7:00pm daily, and copies of information regarding available lots and homes and working files are kept at the model home, but the original files are at the main office and are regularly updated by agents after each shift at the model home

#3: If: the advertising for the subdivision has the company's name, but the address of the model home and the advertised telephone number rings directly into the model home, the model home is always staffed by agents whenever it is open, all the original records and files related to properties in that subdivision are kept at the model home, and, in addition to the model home being furnished, the company, for agents' convenience, installs a dedicated secure wireless modem, a desk, and a combined printer/copier/scanner.

Model Home #2 & #3: In the second and third examples, the model home comes increasingly closer to being a branch office. In both cases, the company in its advertising is directing the public to the model home address, rather than the original office location, and when the public visits the model home there is always a broker onsite to discuss various lots for sale and building options. However, in the second example, the public is calling the original office for information, the files and information at the model home are duplicate files with the originals regularly updated at the original office, and the model home has not been furnished with a wireless modem or other equipment to facilitate brokerage activity. Nonetheless, it is a close call.

In the third example, the model home has crossed most of the lines. The advertising is directing the public to the model home exclusively with no mention of the original office. There are agents onsite whenever the model home is open, the records and files for the properties are kept in the model home, and the model home has been equipped to facilitate brokerage activities. In this instance, the model home most likely is a branch office for which a BIC should be designated. Each situation is evaluated on a case by case basis.

The need to have a BIC for the model home increases if the model home is staffed primarily by provisional brokers. Why? Because provisional brokers won't be on active status and can't engage in brokerage activity unless they have a BIC and the BIC is responsible for directly and actively supervising provisional brokers in all brokerage activity. (See Commission Rule A.0506.)

Thus, provisional brokers have considerably less autonomy and ability to work independently than brokers not on provisional status.

If no BIC is required/designated at the model home/branch office, then the BIC of any licensees rotating through or staffing the remote location will remain responsible for supervising all affiliated agents in all brokerage activity wherever conducted.

- **A Rental Office in an Apartment Complex:**
North Carolina License Law provides a limited exception for brokers who are managing property for others; the broker or firm may hire unlicensed salaried (W-2) employees to assist the broker in leasing and managing that property (commercial or residential) so long as the employee stays within the parameters of NCGS 93A-2(c)(6); they may show units, accept rental applications, accept security deposits or monthly rent payments, complete and sign preprinted form leases, but can't negotiate any lease terms or amounts of deposits, etc. This is legal unlicensed activity. While the broker must be a BIC at some location, the broker-employer is not required to have a BIC physically at the apartment complex (or office building or retail center) because no acts are being performed there that require a real estate license. (NOTE: the major question and liability is how does the BIC-broker-employer ensure that all monies received by his/her onsite unlicensed W-2 employees make it into the trust account?)

16. Other

SECTION 3: RECORDS MANAGEMENT

Proper records management is vital to a well-run and efficient brokerage business. Ensuring that the files, accounts, records, and information are maintained and secured are fundamental steps toward limiting a broker's risk and providing public protection.

1. **Records Retention Schedule** (that complies with relevant laws). The Commission has specific laws and rules pertaining to record retention that must be followed. In North Carolina, brokers must retain all transaction records and trust account records for three (3) years from the conclusion of a transaction. Upon expiration of the time period, the records are to be destroyed in a secure manner. The BIC is responsible for assuring the appropriate maintenance and destruction of such records. Some examples of records that must be retained are service agreements, transaction file (consummated or not), trust or escrow account records, bookkeeping systems, i.e., canceled checks, expenditures, deposits, general account ledgers, etc., that pertain to a real estate transaction in which the broker provided services(s). Refer to Commission rules 21, NCGS 58A .0108 and A .0117 for more specific lists of documents to be retained.

Whether the retained records are hard copy documents or electronic images of documents, a reference log or filing system should be developed so that the records can be easily found and accessed. There should also be a notation on each file indicating when the records can be destroyed based on applicable retention time periods required.

2. Personal Information Protection (breach of consumer's personal information). If a licensee maintains a consumer's name along with personal identification numbers, i.e., SSN, driver's license, or credit card or financial information, the information should be encrypted or redacted so that in the event of a breach, the information cannot be obtained and used by a third party. Any paper records containing the aforementioned personal information should be kept in a locked cabinet or room to prevent theft.

3. Disaster Recovery. The brokerage should outline recovery procedures to be taken in the event of a disaster, i.e., fire, water damage, natural disaster, computer hardware crash, etc. Normally, these incidents occur without prior notice, thus the reason for an advance procedure plan. If possible, the brokerage should have a plan in place for minor incidents like a roof leak that damages IT equipment and transaction files versus a major natural disaster destroying the entire office contents. Of utmost importance is the following:

A. Ensure that data information is backed up nightly and stored at a remote location or taken off site. If all of the information that is kept by a brokerage is stored on a personal computer's hard drive, and the personal computer is destroyed in a disaster, or for that matter the hard drive crashed, all information will be lost – this is the reason for taking the backed-up information off site or backing the information to a remote location.

B. Transaction files that are in hard copy form should be maintained in one location within the office. Once a transaction file is closed, if at all possible, it should be scanned and made into an image that can be stored by a computer. Once the transaction file becomes a range of images, a file can be created and it can be included in the nightly backup of information.

C. Other

4. Company Acquisition – Continuity of Record Retention. The office policy should include a plan for storage and/or transfer of records in the event the brokerage is sold, merged into another company or otherwise discontinued business.

5. Other

SECTION 4: TRUST ACCOUNTS

Trust accounts are regulated by the Commission and subject to audit. If a broker accepts funds or items of others, the broker must maintain a trust account that is styled in the name of the broker, firm, or registered trade name and the broker must be a signor on the account. Only designated BICs are authorized to hold trust monies in North Carolina. Upon annual renewal beginning in 2018, the banks in which a BIC holds trust accounts must be registered

with the Commission. The funds held in a trust account must never be commingled with funds of the broker. Monies or items of others shall not be placed in the broker's operating account. North Carolina brokers who perform property management should also review the North Carolina Tenant Security Deposit Act, which starts at NCGS 42-50.

1. **Account responsibility and authorized signor(s).** The BIC is ultimately responsible for the trust account but may authorize additional persons to have signature authority on the account.
2. **Names, numbers, and banks.** The BIC may maintain several accounts in the same bank or in different banks; however, the BIC shall ensure that all accounts are registered with the Commission and updated annually (during license renewal). BICs holding substantial sums of money for one client should be mindful of FDIC limits.
3. **Bank fees.** Bank fees are not to be deducted from monies of others that are held in trust by the broker, but rather must be paid for by the broker. If bank fees are required to be paid, the bank should deduct the fees from the brokerage's operating account, or the broker must place an amount of money into the trust account to cover customary administrative account fees; however, the amount of funds should be minimal and routinely (at least monthly) accounted for on a separate ledger.
4. **Interest on trust account(s).** The BIC must ensure that the client/consumers have consented in writing to the BIC keeping any interest payment. When the BIC's account bears interest, the BIC shall account for said interest as interest is earned. If the BIC does not keep the interest payments and it instead accrues to the client, the BIC shall keep detailed records pertaining to the interest earned and should disburse such accrued funds regularly. If the interest belongs to the brokerage, the BIC shall routinely sweep the interest from the account so as to not be considered as commingling funds.
5. **Proper handling of trust account(s).** See Commission rules 21, NCGS 58A .0116, .0117, and .0118 for a specific outline of these requirements.
6. **Handling of option fees and earnest money.** Individual contracts and/or contract addenda should address these to include the disposition of these funds in the event of default.
7. **Deposits received by broker and placed in a trust account.** The Commission requires that funds or items held by a broker shall be placed in a trust account within a certain time period. See Commission rule 21, NCGS 58A .0116. In general, if the brokerage agrees to hold earnest money, checks should be deposited within three banking days of acceptance of the offer to purchase; cash must be deposited within three days of receipt.
8. **Property management accounts.** In addition to the Commission's requirements pertaining to trust accounts, there are additional laws governing accounts holding a tenant's security deposit which can be found under the NC Tenant Security Deposit Act and Vacation Rental Act. All funds received by the broker in connection with the

management of property must be placed in the trust account (rents, security deposits, pet deposits, advance funds for repair, etc.). Funds belonging to others may not be placed in the broker's operating account. North Carolina brokers should review Commission rules 21, NCGS 58A .0116, .0117 and .0118 regarding trust account requirements.

9. **Adequate controls for maintaining trust accounts.** Ultimately, the BIC is responsible for all funds held in the trust account. Even if day to day account maintenance is performed by another individual, the BIC should do periodic reviews on a routine basis verifying that accounting procedures are being followed, including bank reconciliations. Property management accounts have proven to be very vulnerable and subject to abuse by both licensed and unlicensed individuals, since the accounts and receivables are in constant flux.
10. **Audit requirements.** The Commission conducts periodic audits that may or may not be scheduled in advance with the broker. Either way, the BIC should always maintain the accounts and files in accordance with the License Law and Commission rules. Maintaining accounts and records in an organized manner allows audits to be performed efficiently.
11. **Other.** The Commission offers a Basic Trust Account Procedures course to give brokers, BICs, and their staff training on the proper handling and accounting for trust monies. This course is delivered in a self-paced online format and provides credit as a CE elective course. The BIC might consider a requirement for periodic attendance at this course for licensees and unlicensed individuals who assist in trust account maintenance.

SECTION 5: CRISIS MANAGEMENT & DISPUTE RESOLUTION

When people cannot agree or unexpected circumstances occur, the BIC should be ready to assist with a resolution. Most disputes can be handled by allowing the parties to voice their concerns. Sometimes, there is a ready solution at hand. Other disputes may require the use of a trained mediator or even an attorney to bring clarity to the facts at hand. Either way, the BIC should have a process outlined so that the licensees know the standard protocol when disputes occur. At a minimum, licensees should be strongly encouraged to involve the BIC when situations heat up.

Crisis management situations often occur quickly and without any advanced notice. For example, situations may range from a licensee being charged with a crime or a licensee's sudden death, to destruction of the office location and/or transaction records as a result of a disaster. The BIC should immediately evaluate the circumstances and consider damage control. Sometimes, bringing in outside assistance is helpful. The BIC should expect that, in some cases, the news media may contact the office to request a statement, so the BIC should ensure the person answering the phone knows the policy regarding speaking to the media. If the BIC has a policy setting out some simple steps that must be followed during crisis situations, the BIC will

reduce the brokerage's liability and risk. It is helpful to think about these hypothetical situations in advance and to have a plan in place.

SECTION 6: ADDITIONAL INFORMATION & RESOURCES

The BIC should find ways to motivate those they supervise to comply with all applicable laws, rules, and ethics requirements. To assist with the challenges of broker supervision, the BIC may wish to consider the following:

- 1. Create a “List of Reminders” like the following:**
 - A. You are required to work under the BIC's supervision.
 - B. All funds or items of value are to be turned over to BIC promptly
 - C. Seek approval prior to placing any advertising or promotions not previously approved.
 - D. Do not procrastinate in paying your license renewal fee or completing other license renewal requirements (education) for an active license
 - E. If you have questions, never hesitate to ask.
 - F. Never ask an unlicensed person to perform a licensed activity.
 - G. Safety first.
 - H. Follow through with what you say you will do.
 - I. Always return a customer's call or communication.
 - J. Remember to treat other brokers and co-workers with the same courtesy as customers and clients.
 - K. If a conflict arises with a client, customer, or another broker, or if you find yourself in a situation you have not encountered before, consult your BIC immediately. If your BIC does not have an answer, then you or the BIC may contact the Commission (for Licensing and Education questions call 919-875-3700 or email LS@nrec.gov, for Laws and Rules questions call 919-719-9180 or email RA@nrec.gov).
 - L. Other

- 2. Create a list of activities that do not require a license** (so that unlicensed individuals stay in compliance). For example:
 - A. Receiving/Forwarding phone calls to BIC or other active licensees in the firm.
 - B. Assisting a broker in assembling documents for closing.
 - C. Having keys made for the firm's listings.
 - D. Placing “for sale” or “for rent” signs on properties at the direction of a broker.
 - E. Etc.

- 3. Create a List of Resources.** See BIC Toolkit-Reference Material below

BROKER-IN-CHARGE TOOLKIT

Commission Website: www.ncrec.gov

For Access to Licensee Records, Forms, and Information

Annual Calendar Reminders

- May 15th: First day to renew licenses
- June 10th: Last day to complete Continuing Education
- June 30th: Last day to renew licenses
- December 31st: Last day to reinstate license after 6 months expiration

Real Estate Commission Prescribed Forms (all available at www.ncrec.gov/forms)

- BIC Eligible Status and/or BIC Designation
- Request for License Activation/Broker Affiliation
- Firm License Application
- Limited Non-Resident Commercial Affiliation Form
- Deposit of Disputed Trust Monies Affidavit
- Request to Remove Licensee from Broker Supervision
- Notification of Change in Qualifying Broker
- Firm Office Address Change Request Form

Reference Material

- Broker-in-Charge Best Practices Guide
- NC Real Estate License Law and Commission Rules
 - (from website or \$4.00 per booklet- order from Commissioner's distributor)
- Real Estate Commission eBulletin
- North Carolina Real Estate Manual
- Q& A Brochures
- NCREC Video Library