



**North Carolina
Postlicensing Course Syllabus**

**BROKER RELATIONSHIPS
AND RESPONSIBILITIES
COURSE**

March 2011 Edition

**North Carolina Real Estate Commission
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INTRODUCTION

Course Description: The *Broker Relationships and Responsibilities Course* is one of three 30-classroom hour mandatory postlicensing courses that must be completed by newly licensed North Carolina provisional brokers within three years after licensure. The primary objective of the course is to provide instruction at a level beyond that provided in prelicensing courses on topics deemed to be of special importance to licensees. Topics addressed in this course include a review of agency relationships in real estate sales transactions and a real estate agent's legal duties to clients and customers, a step-by-step review and discussion of the functions and responsibilities of a real estate agent when working with residential sellers and buyers, a review of issues associated with transactions in progress when an agent leaves a firm, and a review of license status and education issues.

Requirements for Teaching the Course: This course may only be taught by schools and instructors approved by the North Carolina Real Estate Commission to teach prelicensing and postlicensing courses. Rules governing the conduct of the course, including scheduling, course completion standards, course delivery, course completion reporting and other related matters may be obtained from the Commission. Course must be taught as prescribed by this syllabus.

Prerequisite: Possession of a North Carolina broker license (either provisional or non-provisional).

Textbook: *North Carolina Real Estate Manual* (most current edition) and *Residential Square Footage Guidelines* booklet.

Course Final Examinations and Completion Standards: Schools and instructors are required to utilize course final examinations provided by the Commission in accordance with Commission rules for such examinations. The confidentiality of examinations provided by the Commission must be protected at all times by schools and instructors. The examination minimum passing standard is 75%. Students must be required to pass the final examination and to satisfactorily complete the prescribed square footage and comparative market analysis (CMA) exercises (may be either in-class or out-of-class assignments or a combination of both). Schools and instructors may also, in their discretion, require other special assignments that may count for up to 25% of a student's grade for the course.

Order of Topic Presentation and Recommended Topic Emphasis: *Topics must be presented in the order shown in the outline.* Instructors may make reasonable minor adjustments in subject area emphasis as needed to facilitate instruction, but should be careful not to devote undue overemphasis or underemphasis to any topic.

General Instructional Approach: Instructors are expected to utilize "real world" illustrative examples, to employ instructional techniques that encourage active student participation in class and to employ practical in-class and out-of-class work assignments to the maximum extent possible in this course.

Syllabus Copies: Copies of this syllabus will be provided by the Commission only for use by school officials and instructors. Schools are authorized to reproduce all or part of this syllabus for student use at their own expense, and may charge students for the cost of reproduction.

BROKER RELATIONSHIPS AND RESPONSIBILITIES POSTLICENSING COURSE

RECOMMENDED TOPIC EMPHASIS

	Hours
Section 1: Agency Relationships and Duties – A Practical Review	5
Section 2: Working With Sellers (Residential Sales)	15
Section 3: Working With Buyers (Residential Sales)	6
Section 4: Working as a Dual Agent	2
Section 5: Other Topics	0.5
Final Examination	1.5
Total Hours	30

Broker Relationships and Responsibilities

Postlicensing Course Outline

References to “*Manual*” in this outline refer to the *North Carolina Real Estate Manual*, which is the prescribed text for this course. Page number references to the *Manual*, 2011-2012 edition, are included with major headings and some selected subheadings.

SECTION 1: Agency Relationships and Duties – A Practical Review *Manual, Chapter 8*

I. Duties of Real Estate Agents

- A. Duties to Principal under the Common Law of Agency (*pp 202-215*)
 - 1. Basic Agency Duties
 - a. Loyalty and Obedience (including duty of “confidentiality” with regard to information that could be harmful to principal’s interest if disclosed)
 - b. Skill, Care and Diligence
 - c. Disclosure of Information (including discussion with examples of concept of “material fact”)
 - d. Accounting
 - 2. Agent’s Duty to Principal after Termination of Agency Relationship
- B. Duties to Third Persons under the Common Law
 - 1. Honesty
 - 2. Fairness
- C. Duties to Principals and Third Persons under the Real Estate License Law and Commission Rules (*pp. 216-227*)
 - 1. Miscellaneous Duties. [*See the Manual, page 216 for a complete list of these duties and the statute and rule references set forth in the endnotes.*]

2. Duty to avoid any willful or negligent misrepresentation or omission. [*G.S. 93A-6(a)(1) and (3)*]
 - a. Willful Misrepresentation
 - b. Negligent Misrepresentation
 - c. Willful Omission
 - d. Negligent Omission

- D. Other Issues Affecting a Real Estate Broker's Duties (*pp. 227-230*)
 1. Unfair and Deceptive Trade Practices Act
 2. Doctrine of *Caveat Emptor*
 3. Sale of Property "As Is"

II. Agency Relationships in Sales Transactions (*pp 193-201*)

- A. Agency Options for Real Estate Firms
 1. Seller Agency Only
 2. Buyer Agency Only
 3. Both Seller Agency and Buyer Agency with Dual Agency for "In-House" Sales

- B. Agency Relationships When Brokers/Firms Cooperate
 1. Cooperating Broker/Firm as Seller's Subagent
 2. Cooperating Broker/Firm as Buyer's Agent

III. Disclosure of Agency Relationships in Real Estate Sales

Manual, Chapter 8, pp 246-256; see also 2009-10 Real Estate Update Course

- A. The Commission Rule – 58A.0104
- B. *Working with Real Estate Agents* Brochure
- C. "First Substantial Contact"

1. With Seller
 2. With Buyer
- D. Disclosure in Various Situations
1. Listing Agent Working with a Prospective Seller
 2. Working with a Prospective Buyer
 3. Disclosure by Buyer's Agent to Seller/Seller's Agent
 4. Disclosure of and Consent to Dual Agency

SECTION 2: Working With Sellers (Residential Sales) *Manual, Chapter 9, pp 298-320*

I. Solicitation of Listings (pp 299-305)

- A. Soliciting Listings of Other Firms/Brokers
- B. "Do Not Call" Laws and Rules
 1. Applies to real estate brokers; may not make telephone calls for the purpose of soliciting a listing *to anyone* whose name appears on the "Do Not Call Registry" (with limited exceptions) and caller must check the federal Do Not Call Registry at least once every 31 days.
 2. Prohibition includes calls *to solicit listings* made to property owners marketing their property as "for sale by owner" (FSBO) if the owner's name is on the registry; however, brokers may call a FSBO owner on behalf of a prospective buyer-client who is interested in the FSBO property.
- C. "Do Not Fax" Laws and Rules
- D. "Anti-spam" Laws and Rules. Brokers should keep abreast of any restrictions on email solicitations that might affect their solicitation of business in that manner.

II. Preparing for Prelisting Meeting with Prospective Seller *(pp. 305-307)*

- A. Documents to Be Acquired by Listing Agent:
1. Completed copy of the Commission's *Working with Real Estate Agents* brochure.
 2. Signed listing agreement.
 3. Copy of the *Residential Property Disclosure Statement* form (available from Commission's website REALTORS® may use NCAR Standard Form 140).
 4. Property listing data sheet (if property will be placed in MLS).
- B. Advise Seller to Gather the Following Documents/Information:
1. Copy of Seller's Deed
 2. Copy of Survey
 3. Copy of Restrictive Covenants
 4. Copy of HOA Bylaws, Rules and Regulations; Dues and Assessment Info
 5. Balance Due on Seller's Mortgage(s) and Status of Mortgage(s)

III. Prelisting Meeting with Prospective Seller *(pp. 307-309)*

- A. Explain Agency Relationship and Company Policies/Services.
1. Make required agency disclosure. Explain the various duties and relationships of real estate agents. Simply handing the seller a copy of the brochure and saying you are required to provide it is NOT sufficient!
 2. Determine if and how the firm will represent the seller (seller's agent only or possibly also as a dual agent).
 3. Discuss marketing options. If listing will be placed in MLS, explain how MLS works and its benefits for both sellers and buyers.
 4. Advise seller of firm's proposed brokerage fee for listing and selling the seller's property and negotiate, if applicable.
 5. Caution seller about providing confidential information to the listing agent (or any other potential listing agent) prior to signing a listing contract.

- B. Review Documents/Information Obtained from Seller (*see list on pp. 306-307*)
Note in particular: who holds title to the property and confirm is fee simple; gather information concerning homeowners' dues and assessments (which must be included in listing information and provided to buyers); determine balance due on any outstanding mortgages/liens on the property and if a possible "short sale" situation exists. If so, discuss thoroughly with seller and review with BIC prior to taking the listing. See also *Manual, Pages 517-519*
- C. Inspect Property, Prepare Listing Data Sheet and Identify Personal Property.
- D. Advise the seller of the seller's rights and obligations under the **Residential Property Disclosure Act** and assist the seller in fulfilling these statutory obligations. (*Manual, pp. 230-238*)
1. Advise the seller whether the disclosure statement is required.
 2. Advise the seller of a buyer's three-day right to rescind a sales contract if the seller (or seller's agent) fails to deliver the disclosure statement prior to or at the time the buyer makes an offer.
 3. Inform Seller of his/her options in answering and the right to choose "No Representation." Seller is NOT required to make any representations regarding the property's condition.
 4. Explain a real estate licensee's statutory duty to disclose to any prospective buyer any material fact regarding a listed property about which the agent knows or should reasonably be expected to be aware, *even if the seller chooses not to disclose such material fact or makes no representation regarding the matter.*
 5. If the seller demands that the listing agent agree not to disclose a material defect (or other material fact) as a condition of granting the listing, *the listing should be refused!*
 6. Help the seller understand how to complete the disclosure statement form, but allow the seller to complete the form.
- E. Comply with **Residential Lead-Based Paint Hazard Reduction Act** if applicable. (*Manual, pp. 238-243*)

- F. Verify the acreage of the lot or tract and locate corners/lines on the ground if possible. (*p. 309*)
1. Real estate licensees are NOT expected to measure lots or tracts and calculate the acreage, although licensees should be able to convert acreage to square footage, and vice-versa.
 2. Verify acreage by checking seller's deed or a survey performed not earlier than the time the seller acquired the property.
 3. Tour the lot or tract with the seller and actually locate corners and property lines if possible in order to avoid subsequently making a misrepresentation to a prospective buyer about such matters.

IV. Verify and Report Building Square Footage in Accordance with Real Estate Commission's Residential Square Footage Guidelines
(*Manual, pp. 310-311*)

V. Perform a Comparative Market Analysis (CMA) for the Seller
(*Manual, pp. 311-312; 577-578; 593-596; 607-609*)

- A. Agent's Duty to Advise Seller as to Property's Estimated Market Value [Performing a CMA is the best way to determine estimated market value.]
- B. What is a CMA and When May a Real Estate Licensee Perform One? Distinguish CMA from an appraisal.
- C. How to Perform a CMA
1. Identify major subject property characteristics.
 2. Select appropriate comparables.
 3. Make adjustments to the sales price of each comparable for significant differences between the subject and the comparable.
 4. Report findings as to estimated value range.

VI. Assist the Seller in Setting an Appropriate Listing Price
(*pp. 312-315*)

- A. Review How to Estimate Seller's Net Proceeds
- B. Review How to Calculate a Seller's Net Profit

- C. Advise the Seller as to Appropriate Listing Price – Factors to Consider
 - 1. Estimated range for property value (per CMA)
 - 2. Current market conditions.
 - 3. Pros and cons of setting listing price at “high” vs. “low” end of range of estimated value.
 - 4. Seller’s needs and desires.
 - 5. Possibility of “Short Sale” situation. *Manual, Pages 517-519*

VII. Review and Complete the Listing Contract
(pp. 260-263, 273-275, 287-296)

- A. General Requirements for All Agency Contracts [*See Commission Rule 58A.0104(a) and (b).*]
 - 1. Listing contracts must be in writing from the outset of the relationship. Oral listing agreements are unlawful in NC.
 - 2. Listing contracts must have a definite expiration date.
 - 3. Listing contracts must contain prescribed anti-discriminatory provision.
- B. Listing Contract Provisions – Standard “Full-Service” Listing Contract
- C. Selected Points About Listing Contract Completion
 - 1. When to complete the listing contract
 - 2. Explain contract provisions to seller.
 - 3. All provisions should be filled in prior to having the seller sign. Seller should not be asked to sign an incomplete listing contract (for example, one without the listing price filled in).
 - 4. Names and Signatures
 - a. All co-owners should sign!
 - b. Where one spouse is the owner, best practice is still to have the non-titled spouse also sign.
 - c. Listing agent signs on behalf of his/her firm.

- D. Provide seller a copy of the signed listing agreement.
- E. It is a good idea to also provide seller with a copy of the standard Offer to Purchase and Contract form at this time and familiarize seller with major provisions so seller knows what to expect when an offer is received.

VIII. Working as a Limited Services Broker (pp. 284-286)

- A. Limited Services Listing Contract
- B. Duties of Limited Services Listing Broker under the Real Estate License Law and Commission Rules

IX. Submitting Property Data to MLS

- A. The Commission will hold a listing agent personally responsible for the accuracy of property data reported in MLS. This responsibility cannot be delegated. A mistake made by an assistant or secretary will not excuse the listing agent from responsibility. (p. 316)
- B. Overview and discussion of typical MLS operational rules. [*Mandatory training on MLS use is standard among the various MLS operations.*] (pp. 296-298)

X. Marketing Listed Property

- A. Legal Compliance in Marketing/Advertising (p. 317)
 - 1. Signage and blind ads
 - 2. Comply with advertising requirements of Truth in Lending Laws. 488-489) Discuss “trigger terms,” what they are, what disclosures they trigger and how to avoid violating Regulation Z.
 - 3. Fair Housing Considerations in Advertising
 - 4. Internet Advertising
- B. Fulfilling Listing Agent’s/Firm’s Agency and Contractual Duties Relating to Marketing a Property (pp 317-318)
 - 1. Review customary practices.

2. “Other Points to Consider”

- a) A listing agent might want to obtain permission from his/her seller-client prior to using photographs (or videos) of the inside of a seller’s home in advertising (e.g., in flyers, on websites, etc.).
- b) Providing Copy of Seller’s Survey with Promotional Flyer: while this common practice is not objectionable, agents working with buyers should make certain this does not mislead buyers into thinking they should not obtain a survey.

3. Educating Sellers on their Role

XI. Working with a Seller/FSBO as a Buyer’s Agent (pp. 319-320)

- A. Acting as Buyer’s Agent Only. Agent is required to provide and explain *Working with Real Estate Agents* brochure and fully disclose status as buyer’s agent. [See *Commission Rule 58A.0104(c) and (f).*]
- B. Acting as Disclosed Dual Agent.
- C. Buyer agent working with a seller who listed with a limited services broker.

SECTION 3 – Working with Buyers (Residential Sales)

Manual, Pages 320-342

I. Agency Disclosure to Buyers – Basic Requirements

Manual, p. 321 and See Commission Rule 58A.0104(c)]

II. Working with Buyers as Seller’s Agent or Subagent (pp. 321-322)

- A. Disclose and Document Agency Relationship *in writing*. Use the *Working with Real Estate Agents* brochure for this purpose.
- B. Co-brokerage Subagency Situations.
- C. In-house Situations.
- D. Switching from seller’s subagent to buyer’s agent requires seller’s consent.

III. Working with Buyers as a Buyer's Agent (pp. 323-336)

- A. Basic Requirement for *Express* Agreement from the outset. (p. 323)

- B. Oral Buyer Agency Agreement Option (pp. 323-325)
 - 1. Requirements for oral buyer agency agreement:
 - a. must be *non-exclusive*; buyer may work with multiple agents
 - b. may NOT bind the buyer for any specific period of time
 - 2. Must be reduced to writing no later than the time an offer to purchase is made.
 - 3. Switching from buyer's agent to seller's subagent

- C. Written Buyer Agency Agreements
 - 1. Nonexclusive agreement [See NCAR Standard Form 203 – Agency Disclosure and Non-Exclusive Buyer Agency Agreement, pp 333-335]
 - 2. Exclusive agreement [See NCAR Standard Form 201 – Exclusive Right to Represent Buyer (Buyer Agency Agreement) pp. 328-332, and 201-G – Guidelines for Completing the Exclusive Right to Represent Buyer Form]
 - 3. Alternate Options for Working with Buyers (p. 336)
 - a. Limit duration of agreement
 - b. Limit agreement to specific properties

- D. Duties to Buyer of Buyer's Agent versus Seller's Subagent Working With a Buyer (pp. 336-339)

IV. Practices of Agents Working With Buyers (pp. 339-342)

SECTION 4 – Working as a Dual Agent

Manual, Pages 342-353

I. Review of Dual Agency Basics (pp 342-347)

- A. Requirements for Brokers in Dual Agency Situations
 - 1. Disclosure and consent
 - 2. Requirement for written agreement (with oral agreement permitted in certain situations) [*Commission Rule 58A.0104(d)*]
 - 3. Authorization of dual agency in listing and buyer agency agreements
 - a. Advance consent by both seller and buyer
 - b. Advance consent by one party only
 - c. No advance consent by either party
- B. The Conflicting Duties of a Dual Agent

II. Dual Agency Solutions

- A. Limiting the Dual Agent's Duties by Contract (*pp. 345-347*)
 - 1. Limiting disclosure of certain information to principals
 - 2. Limiting the duties of loyalty and skill, care and diligence
 - 3. Effect of this approach
- B. Designated Agency [*Commission Rule 58A.0104(j)-(m)*] (*pp. 348-352*)
 - 1. Basic concept
 - 2. Major rule provisions
 - 3. Special features of designated agency
 - 4. Protecting confidential information in general, and small office considerations
- C. Individual Broker Dual Agent [*Commission Rule 58A.0104(n)*]
- D. Alternatives to Dual Agency in Other States
- E. Dual Agency Agreement without Pre-existing Agency Relationship

SECTION 5 – Miscellaneous Related Issues

I. When Agents Leave/Change Firms

- A. Required Notice to Commission
- B. Handling of Transactions in Progress

II. License Status and Education Issues

See most recent Real Estate Update course materials, if need information, as well as GS 93A-4 and Commission rules A.0503, A.0504, A.0505, and A.0506 in Appendices A & B.

- A. License Status: Meaning of provisional broker, active, inactive, expired, suspended, revoked, and canceled status.
- B. Postlicensing Education Requirement (and consequences of failure to satisfy)
- C. Continuing Education Requirement (and consequences of failure to satisfy)
- D. Requirements and procedures to activate an inactive license
- E. Requirements and procedures to reinstate an expired license
 - 1. License expired for not more than 6 months
 - 2. License expired for more than 6 months

End of Syllabus