

# STUDENT ADVENTURE GUIDE NOTEBOOK

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**Welcome to Superior School's  
Post 301 – Graduate Program**



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# Postlicensing 301: Broker Relationships & Responsibilities

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# **North Carolina Postlicensing Course Syllabus Post 301: Broker Relationships & Responsibilities (Student Version)**

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## INTRODUCTION

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

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

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

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

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

An EP should require an individual enrolling in a Postlicensing course for Postlicensing educational credit to verify their identity and to provide their NC real estate license number to assure compliance with the above rule.

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

- *North Carolina Real Estate Manual (hereinafter called Manual),*
- *North Carolina Real Estate License Law and Commission Rules (hereinafter called LLCR), and*
- the Commission's *Residential Square Footage Guidelines* booklet.

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

Text references throughout the syllabus are for the July 2020 edition of the *LLCR* and the 2020 edition of the *Manual*. For your benefit, all *Manual* chapters referenced in this course syllabus are consolidated within *Chapter 24. POST 301, Broker Relationships and Responsibilities* in the digital version of the *Manual*. Italicized [*Digital REM search words*] in braces after a subheading will help you narrow your digital search for a *Manual* reference.



**Instructor Note:** Copies of current standard NC REALTORS® forms required for teaching this course may be downloaded (by instructors & education directors) in your ShareFile account (<https://ncrec.sharefile.com>) with *SAMPLE* watermarked across each page.

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

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

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

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

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

**Instructor Notes:** EPs and instructors are REQUIRED to comply with the assigned Instructor Notes and conduct "Required Activities" when teaching this course. Any "Suggested Activities" are not required to be implemented.

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

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

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

EPs are required to utilize end-of-course examinations in accordance with [Commission Rule 58H .0207](#). End-of-course exams must be closed-book and proctored. The minimum passing grade is 75%. The Commission recommends that certified EPs and approved instructors use end-of-course examinations that are comprehensive in scope. EPs and instructors shall safeguard the integrity and confidentiality of examinations at all times.

**Syllabus Copies:**

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

**Order of Subject Area Presentation:** The order in which subject areas are presented in the Syllabus is the recommended order, but instructors may make adjustments in the order of presentation.

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

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

**Level 1 – Recall**

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

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

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

**Level 2 – Application**

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

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

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

### Level 3 –Analysis

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

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

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

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

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

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

**Instructional Hours per Section**

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

# Post 301

## ***Broker Relationships and Responsibilities***

### **Postlicensing Course Syllabus**

**Instructor Note:** Some sections have **Required Activities** while others give **Suggested Activities** for a topic or section. In addition to the Required Activities, instructors are strongly encouraged to use other activities to maximize student engagement and retention of information.

#### **Section 1: Agency Relationships & Duties: A Practical Review (5 hours)**(*Manual*, Chapter 8, Relationships in Brokerage Practice, pp.141-206; Chapter 17, Property Management, pp. 601-602; Chapter 19, Commercial Real Estate Brokerage, pp. 667-668)

**Instructor Note:** This section is intended to be a solid **review** of basic agency concepts. Instructors are strongly encouraged to utilize situational discussions and activities that model real-world brokerage scenarios to help students internalize the concepts. Real world examples should include situations from commercial and property management in addition to residential brokerage relationships.

- I. Duties of Real Estate Agents (*Manual*, Chapter 8, Relationships in Brokerage Practice, pp. 141-178) [Digital REM search for: *common law of agency*]
  - A. Duties to Principal under the Common Law of Agency [search for *common law of agency*]
    1. Definition of *Fiduciary*: A relationship of trust and confidence wherein one person is usually entrusted to hold or manage property or money for another. A fiduciary (e.g., agent) is bound to act primarily for the benefit of the principal (e.g., client) before any self-interest.
    2. Basic Agency Duties [NCGS 93A-6] [Digital REM search for: *agency law*]

**Instructor Note:** Focus on common fact situations that illustrate compliance with and violation of each duty from both buyer and seller viewpoints. OLD CAR acronym is used below.

- a. Obedience to all client's lawful instructions pertaining to the transaction
- b. Loyalty to client's best interests over and above interests of others including those of agent [NCGS 93A-6(a)(4)]
  - i. Avoidance of *self-dealing* by agent
  - ii. Written client consent to represent adverse interests (e.g., dual agency) [Rule 58A .0104(d),(i),(o),(p)]

- c. **Disclosure of Information** to include agent's affirmative duty to discover and disclose **all** transactional information including, but not limited to, *material facts* [NCGS 93A-6(a)(1)]

**Note:** Personal information known to an agent about a third party that might influence the agent's principal in the transaction must be disclosed to the principal.

- d. **Confidentiality** of client's personal information that would hurt the client's bargaining position, unless disclosure is required by law or rule [Rule 58A .0104(k) & (n)]
  - e. **Accounting** for safeguarding goods & funds handled plus retention of transactional records [NCGS 93A-6(a)(7), (13) & (14); Rules 58A .0106, .0108, .0116, .0117]
  - f. **Reasonable Skill, Care and Diligence** in delivery of brokerage services to the standard of other competent brokers [NCGS 93A-6(a)(8)]
    - i. Examples of services expected from an agent
      - Reliable info relevant to transaction
      - Competent advice on property's probable selling price
      - Discover pertinent facts related to property
      - Effectively advertise listed property
      - Advise about offers
      - Assist with contract preparation
    - ii. Property value has no effect on agency duties
3. **Agent's Duty to Principal after Termination of Agency Relationship** [Digital REM search for: *termination of agency*]

- a. Duty generally ends when agency ends, the following exceptions

<b>Instructor Note:</b> Provide examples of the following exceptions.
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- i. Express promise or implied obligation
  - ii. Pending transaction at termination date of agency agreement
  - iii. Self-dealing [NCGS 93A-6(a)(4)]
- b. Duty of confidentiality may be expected to continue as long as the agent has no duty to disclose to a new client

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

<b>Instructor Note:</b> Help students differentiate between <i>providing material facts</i> to a third party versus <i>advising</i> a client.
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1. Honesty
  2. Fairness
- C. Duties to Principals and Third persons under the Real Estate License Law and Commission Rules [NCGS 93A-6(a)] (*Manual*, Chapter 8, Agent's Duties Under Real Estate License Law, pp. 163-176; Chapter 17, Preparing a Management Plan, pp. 603-604) [Digital REM search for: *material facts*]

**Instructor Note:** Remind students of the substantial overlap between duties mandated by License Law and Commission rules and duties imposed under the Common Law of Agency (i.e., many of the duties owed to a principal under the License Law and Commission rules are also owed to a third person). Additional resources available on the Commission's website under *Publications* include: *Material Facts* section of the 2019-2020 Update.

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

1. Duty to avoid any willful or negligent misrepresentation or omission of material facts [NCGS 93A-6(a)(1) & (3)]

**Instructor Note:** Emphasis should be placed on the broker's affirmative duty to *discover and disclose* material facts and on the difference between misrepresentation and omission. You may mention the general definitions of willful vs negligent, but do not attempt to provide a detailed analysis of the difference. Utilize discussion and a highly interactive teaching approach featuring examples that illustrate both compliance and violation of these duties. Refer to *LLRC*, pp. 85-88, and disciplinary cases in the Bulletin for examples.

- a. Misrepresentation: words are used to communicate false or incorrect information
  - b. Omission: no words are used; failure to disclose information
2. Material Facts

**Suggested Activity:** For a quick topic review, have students provide examples of common material facts for each category.

**Instructor Note:** Be prepared to re-categorize any suggested examples, if necessary. Also, use scenarios to illustrate material facts with positive impact and the need to alert a third party to a material fact.

- a. Definition: any fact that is important or relevant to the issue at hand, including anything that may affect a party's decision to move forward in a transaction

- b. Categories of Material Facts
  - i. Facts about the property itself
  - ii. Facts relating directly to the property
  - iii. Facts relating directly to the ability of the parties to complete the transaction regardless of agency relationships
  - iv. Facts known to be of specific importance to a party
- c. Affirmative duty to discover & volunteer material facts to all parties to the transaction, regardless of whom the broker represents (including lender, if used)
- d. Material fact does not have to have negative impact
- e. Items declared “material” in North Carolina
  - i. EIFS/synthetic stucco, even if fully replaced
  - ii. Polybutylene pipes that have leaked, even if repaired or fully replaced
  - iii. Current or former “Meth” house

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

- 3. Stigmatized/Psychologically Impacted Properties are **not** material facts in NC (*Manual, Chapter 8, State Law and Disclosure of Certain “Material” Facts*, pp. 154-155)
  - a. Previous occupant died or had a serious illness while occupying the property (including AIDS/HIV) [NCGS 39-50]
  - b. Convicted sex offender resides near a property [NCGS 42-14.2]

**Suggested Activity:** Have students search area around their residence using the NC Sex Offender Registry: <https://www.ncsbi.gov/Services/Sex-Offender-Registry.aspx>. Discuss reasons why this information is not considered material fact by state law.

- c. Reputation as a haunted property

**Suggested Activity:** Ask students if they are aware of any properties that are thought to be haunted in their market area. Be prepared to put a short time limit on this activity.

- 4. Miscellaneous Disclosure Concepts
  - a. *Puffing*: opinion that does not constitute misrepresentation [Digital REM search for: *puffing*]



- b. Representation made without regard for the truth
- c. Reasonable expectation that a prudent broker would discover
- d. Disclaimers are seldom a defense
- e. Standards for listing agents vs. selling agents

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

1. Unfair and Deceptive Practices Act [NCGS 75-1.1] (*Manual*, Chapter 8, Unfair and Deceptive Practices Act, pp. 176-177; Chapter 10, Unfair & Deceptive Practices in Commerce, pp. 305-306; Chapter 16, Violation of Unfair & Deceptive Practices Act, p. 555) [Digital REM search for: *unfair and deceptive*]
  - a. Consumer legislation that applies to real estate brokers (& some property owners)
  - b. Applies to actions including postings on internet and social media
  - c. Creates separate legal cause of action with the possibility of treble damages
  - d. Could invalidate sales contract for transfer of real property
2. Equity Issues

**Required Activity:** Use *Racial Equity* section of the 2021-2022 General Update course materials as basis for this topic.

- a. Definitions
  - i. *Disparate Impact*: occurs when a doctrine, policy or practice that seems neutral on its face, disproportionately harms people of a certain protected class as identified in the Fair Housing Act
  - ii. *Implicit Bias*: a bias or prejudice that is present but not consciously held or recognized
  - iii. *Racial Equity*: There are various definitions of racial equity. 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.
    - The [Center for Assessment and Policy Development](#) defines racial equity as the condition that would be achieved if one's racial identity no longer predicted, in a statistical sense, how one fares.
    - The [City of Durham](#) defines racial equity as the condition when racial identity cannot be used to predict individual or group

outcomes (e.g. wealth, income, employment, criminal justice, housing, health care, education) and outcomes for all groups are improved.

- According to [Merriam-Webster](#), equity is a freedom from bias or favoritism

b. NCREC Commitment to Racial Equity

**Required Activity:** Provide NCREC's public statement on *Racial Equity* on website and in 2021-2022 Update materials

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

c. Relevant Commission Rules

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

**Note:** HUD has provided guidance on advertising in “*Part-109-Fair Housing Advertising*” to help individuals ensure compliance with the Fair Housing Act (<https://www.hud.gov/sites/dfiles/FHEO/documents/BBE%20Part%20109%20Fair%20Housing%20Advertising.pdf>).

d. Implicit Bias

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

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

e. Housing Choice Voucher Program

- i. Purpose of program
- ii. Voluntary participation for voucher recipients and landlords
- iii. Quick review of NC statistics regarding program participation

**Suggested Activity:** Provide contact information for any local voucher programs.

f. Disparate Impact

i. Examples

- Source of Income Discrimination
- People with Disabilities
- Families with Children
- Race and National Origin

ii. How brokers can raise awareness

g. Resources

**Instructor Note:** Provide current resources similar to those provided in the 2021-2022 Update materials.

3. Doctrine of *Caveat Emptor* (*Manual*, Chapter 8, Doctrine of *Caveat Emptor*, pp. 177-178; Chapter 10, Fraud & Misrepresentation, pp. 304-305) [Digital REM search for: *doctrine of caveat emptor*]

a. Burden of discovery is on the buyer to investigate the property

b. Seller is not required to disclose property condition information (other than known presence of lead-based paint), but may not commit fraud; this is the reason for the “No Representation” option on RPOADS

c. Difficult to bring action against the seller, but the seller could be held liable if

- i. Engages in fraud
- ii. Induces the buyer to forego an inspection
- iii. Does not provide RPOADS & MOG (if required) prior to presentation of 1<sup>st</sup> offer

4. Sale of Property “As Is” (*Manual*, Chapter 8, Sale of Property “As Is”, pg. 178)

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

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

II. Agency Relationships in Residential & Commercial Sales Transactions (*Manual*, Chapter 8, Agency Relationships in Real Estate Sales, pp. 145-151)

**Instructor Note:** Remind students that agency agreements are between the client and the brokerage company; not the client and the individual licensee.

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

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

1. Single Agency -- Seller Agency Only

- a. The company only represents property owners
- b. All affiliated brokers represent all seller-clients of the company as seller subagents
- c. All potential buyers are shown any of the company's listed properties by any affiliated brokers as unrepresented third parties (customers)
- d. Beware of undisclosed dual agency through careless actions of brokers

2. Single Agency -- Buyer Agency Only

- a. The company has no listings since it does not represent sellers
- b. All affiliated brokers represent all buyer-clients of the company as buyer subagents
- c. Affiliated brokers will only show properties listed with cooperating companies or unrepresented sellers (FSBOs)
- d. Conflict of interest prohibits buyer representation by broker with ownership interest in the property the buyer wants [Rule 58A .0104(o)]
  - i. Applies to all residential sales regardless of percentage of broker's ownership
  - ii. Representation allowed for commercial property purchase if:
    - Broker has less than 25% ownership of property
    - Buyer consents to representation after full written disclosure of broker's ownership interest

**Instructor Note:** Refer to the *Revised Commission Rules* section of the 2014-2015 General Update Course Materials for examples and detailed discussion points.

3. Both Seller Agency and Buyer Agency with Dual Agency for “In-House” Sales [NCGS 93A-6(a)(4) & (5); Rule 58A .0104(d) and (i) - (n)] [Digital REM search for: *dual agency*]

<b>Instructor Note:</b> Dual agency is introduced only briefly at this point. Detailed coverage occurs in Section 4.
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- a. The company represents both sellers and buyers
    - i. Exclusive representation for a co-brokered transaction
    - ii. Dual or designated dual agency for in-house transactions
  - b. Unintentional, undisclosed dual agency versus intentional, disclosed dual agency
- B. Agency Relationships When **Two** Companies Cooperate in a Cross Sale or Co-brokered Transaction [Digital REM search for: *co-brokered*]
1. Exclusive Agency
    - a. Both companies exclusively represent their client’s side of the transaction
    - b. Listing company may split commission with buyer agent company
      - i. Addressed in listing agreement
      - ii. Should be indicated in multiple listing service (MLS) entry
      - iii. Buyer agent should resolve all compensation issues prior to presentation of the buyer’s offer, preferably before showing property

<b>Required Activity:</b> Tie this discussion to a search for the relevant provisions in the Agency Agreements and the Sales Contract.
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2. Seller Subagency [Digital REM search for: *seller subagency*]
  - a. Company working with the buyer is not hired to represent the buyer but the buyer still wants the company to provide services such as showing property and facilitating negotiations with seller
  - b. Listing company may split commission with other company
    - i. Addressed in listing agreement
    - ii. Should be indicated in MLS entry
    - iii. Broker working with the buyer as a seller subagent should resolve all compensation issues prior to showing the property to the buyer

- c. Listing company can refuse to offer subagency to the other company
  - i. May be used/requested if the potential buyer refuses representation from other company
  - ii. Potential *vicarious liability* of listing company, and possibly the seller, for actions of agents from other company
  - iii. Seller-client's permission must be obtained to restrict cooperation
    - Addressed in listing agreement
    - Should be indicated on MLS entry

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

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

**Suggested Activity:** Have students discuss why such a switch might not be advisable.

### III. Disclosure of Agency Relationships in Residential & Commercial Sales [Rule 58A .0104] (*Manual*, Chapter 8, Agency Disclosure-The Commission Rule, pp. 191-198)

**Instructor Note:** Only address basic agency disclosure rule here; disclosure requirements for different types of agency addressed later in this section.

- A. Primary purpose of agency disclosure is to ensure that the consumer understands as soon as possible that there is no confidentiality between the broker and the consumer until an agency relationship is established and to introduce the consumer to available agency options
- B. **All** brokers must give and review *Working with Real Estate Agents Disclosure* with **all** sellers and buyers at *first substantial contact* [Rule 58A .0104(c)]
- C. Rule applies to **all** residential and commercial sales transactions; not required for property management/lease transactions
- D. *Working with Real Estate Agents* Publication [Rule 58A .0104(c)]

**Instructor Note:** Do not allow this important disclosure requirement to be glossed over or trivialized as merely a state law requirement.

- 1. *Working with Real Estate Agents Disclosure (WWREA)* (new July 2021)
  - a. 1-page, 2-sided disclosure form, one side for sellers and one side for buyers

- i. Broker checks all agency relationship types that may apply to potential client
- ii. Must include broker's name and license number
- iii. Form is not a contract, so consumer signature does not create an agency relationship with the broker
- iv. Consumer must not be forced to sign; broker can note on the form if consumer signature is withheld
- v. Consumer is referred to companion Q&A brochure for more detail
- vi. Broker must give a completed copy to consumer and retain a copy for 3 years (even if agency is not reached) [Rule 58A .0108]
- vii. Inclusion in broker's email signature or sending by an electronic signature program alone does not comply with disclosure requirements

b. Required Disclosure Steps

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

2. Questions & Answers on *Working with Real Estate Agents* (new July 2021)

- a. Companion brochure for *WWREA Disclosure* to provide more detail about agency options in writing

b. Brokers are encouraged to provide a copy with the *WWREA Disclosure*

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

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

1. Definition: Point in time when EITHER

- a. A broker begins to speak or act as if an agency relationship exists  
**OR**
- b. A consumer begins to
  - i. Act as if an agency relationship exists; **or**
  - ii. Disclose their particular needs, desires, or wants about property to be sold or purchased; **or**

- iii. Disclose any confidential information that could be used against them in contract negotiation, such as motivation, financial or family circumstances, or acceptable price or terms
- 2. Disclosure must always occur before consumer, either voluntarily or in response to questions from the broker, discloses any confidential information
 

**Note:** A broker should immediately stop a consumer from volunteering confidential information if agency disclosure has not yet occurred
- 3. Required timeframe for disclosure when first substantial contact occurs
  - a. In-person: provide & review *WWREA* immediately at first substantial contact
  - b. Phone or electronic means (email, social media, etc.): at earliest opportunity after first substantial contact (no later than 3 days after)
    - i. Transmit copy of *WWREA* to consumer
    - ii. Review agency options at earliest practicable opportunity after receipt by consumer
    - iii. Determine whether broker will act as an agent of the buyer or the seller in the transaction

#### F. Disclosure in Various Situations

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

- 1. Working with a Prospective Seller
  - a. First substantial contact usually occurs when prospective seller calls to schedule a listing appointment or at the listing appointment
  - b. Broker should not delay agency disclosure; probability of seller sharing confidential information is high
  - c. None of the information shared by seller is confidential until the seller hires the broker's company in writing
- 2. Working with a Prospective Buyer
  - a. Broker may work with a buyer as a buyer agent, a seller subagent, or dual agent



- b. Agency disclosure and determination of how buyer will work with broker must occur **before** broker
  - i. Asks for any information about the buyer's wants, needs, or personal info
  - ii. Shows property to the buyer because the broker **must** have either
    - An express oral or written buyer agency agreement with the prospective buyer, **OR**
    - Written disclosure to the buyer that the broker is working as a seller agent or subagent
- c. All brokers working with a buyer as a seller subagent must disclose agency status, including broker's license number, in writing to the buyer at *first substantial contact* [Rule 58A .0104(e)]
- 3. Disclosure by Buyer Agent to Seller or Seller Agent [Rule 58A .0104(f)]
  - a. All buyer agents (including oral buyer agents) must disclose agency status, at least orally, to seller or seller agent upon *initial contact*
  - b. Written disclosure of buyer agency status must be made no later than presentation of offer to seller or seller agent; the Standard 2-T Offer to Purchase and Contract provides a place for agency disclosure and license numbers in the signature area
- 4. Disclosure of and Consent to Dual Agency [Rule 58A .0104(i-n)] [Digital REM search for: *consent to dual agency*]
  - a. Must be discussed if offered by broker's company
  - b. All authorization for dual agency must be in writing from both represented parties
    - i. Generally prior to acting as a dual agent
    - ii. When broker is working with a buyer under nonexclusive oral buyer agency with authority for dual agency, dual agency authorization (for both parties) must be in writing as soon as the buyer agency agreement is reduced to writing, but no later than prior to presentation of first offer

<p><b>Instructor Note:</b> Oral buyer agency is covered in detail in Section 3.</p>
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**Section 2: Working With Residential & Commercial Sellers (16.25 hours)**(*Manual*, Chapter 9, Working with Sellers, pp. 229-247 and Chapter 19, Client and Customer Perspectives, pp. 684-686)

**Instructor Note:** The purpose of this and other Postlicensing courses is to educate a broker on how to work with clients and customers in a manner that complies with the law and good ethical practices and best serves the interests of real estate consumers – **not** how to be successful in the real estate business. The subjects about how to solicit listings (e.g., *farming*, referral systems, cold calling, expired listings, *for sale by owner* properties, personal marketing and websites, social media, etc.), time management, managing data on prospective clients, designing effective marketing, using computers, etc. are beyond the scope of this course and NO instructional time should be used for them. Instructors may urge any real estate licensee to obtain appropriate training on these subjects in order to enhance their opportunities for success in real estate brokerage practice.

I. Solicitation of Listings [Digital REM search for: *solicitation of listing*]

A. Soliciting Listings of Other Firms/Brokers

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

B. “Do Not Call” Laws and Rules (Federal [www.donotcall.gov; fcc.gov/consumers/guides/stop-unwanted-robocalls-and-texts](http://www.donotcall.gov;fcc.gov/consumers/guides/stop-unwanted-robocalls-and-texts) & NCGS 75-100 through 75-105; *Manual*, pp. 230-231) [Level 2] [Digital REM search for: *do not call*]

1. *Do Not Call Registry* managed by Federal Trade Commission [ftc.gov]
  - a. Check the national *Registry* at least once every 31 days
  - b. Maintain an internal company “Do Not Call” list for any additional consumers who asked to not be called

- c. Keep complete records, especially of an unpermitted calls that are made inadvertently
- 2. Brokers may not make telephone calls or send robotexts to anyone whose name appears on the *Do Not Call Registry* (with limited exceptions), even for the purpose of soliciting a listing (e.g., cold calling)
  - a. Prohibition includes calls
    - i. To solicit listings made to *for sale by owner* (FSBO) on the registry; however, brokers may call a registered FSBO owner on behalf of a prospective buyer-client who is interested in the FSBO property
    - ii. To homeowners with expired listings with another broker/ company; the “established business relationship” exemption only applies to expired listing broker, not to entire MLS membership
  - b. Exemptions, unless consumer asked to not be called
    - i. Express permission or invitation
    - ii. Established business relationship (Note: 18-month limit after last purchase, delivery or payment)
    - iii. Consumer inquiry or application (Note: 3-month limit)
    - iv. Personal relationship
  - c. Penalties
    - i. Federal: As of August 2020, up to \$ 43,792 per call with possibility for treble fines for willful violations
    - ii. NC: Up to \$500 for 1<sup>st</sup> violation, \$1000 for the 2<sup>nd</sup>, and \$5000 for subsequent ones within 2 years of 1<sup>st</sup> violation

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

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

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

II. Preparing for Prelisting Meeting with Prospective Seller (*Manual*, Chapter 9, Preparing for Prelisting Meeting with Prospective Seller, pp. 231-234)

**Instructor Note:** This is meant to be just a quick list of documents that broker and sellers should gather in preparation for a listing appointment. Detailed discussion of each document and its completion will be covered later in this section.

A. Documents to be Provided by Listing Agent

**Instructor Note:** Commission forms and publications are available in ShareFile and at [www.ncrec.gov](http://www.ncrec.gov) under Publications. NC REALTORS® forms watermarked as SAMPLES are available in ShareFile.

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

B. Advise Seller to Gather the Following Documents/Information

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

**Suggested Activity:** Divide class into groups and assign each group one or more of the above items. Have them discuss why a broker should obtain that information from the seller. Have groups report to entire class. Ask if there are other documents or information that a broker should ask the seller to provide.

III. Prelisting/Listing Meeting with Prospective Seller (*Manual*, Chapter 9, Prelisting Meeting with Prospective Seller, pp. 234-246; Chapter 8, Other State Disclosure Laws, pp. 178-189) [Digital REM search for: *listing meeting*]

**Instructor Note:** Prior to the easy access and use of the internet and web-based forms, it was commonplace for brokers to have an initial information-gathering meeting with the potential seller prior to performing a CMA and actually obtaining a signed listing agreement. Technology has almost eliminated the “2-step” listing procedure. While it is now possible to gather needed info to perform a CMA while initially meeting with the seller, the broker should be cautioned to act competently and knowledgeably.

Briefly discuss safety precautions brokers should exercise related to meeting unknown people outside the company office, such as for listing appointments. Reference the Commission’s Safety Guide.

A. Explain Agency Relationship and Company Policies/Services

1. Make required agency disclosure

**Instructor Note:** Agency disclosure to prospective clients was covered in depth in Section 1. Be sure to emphasize that simply handing the seller a copy of the *WWREA Disclosure* & the Q&A brochure and stating that the broker is required to provide it is **not** sufficient! Teach students to approach this as an opportunity to sell their skills & services and impress prospective sellers with professionalism rather than a burdensome requirement imposed by the state.

**Required Activity:** Have students role-play agency disclosure in a variety of residential and commercial scenarios. A possible role-playing technique would be having different students explain various parts of the Disclosure or different approaches they use so that all students may gain more comfort with and understanding of the disclosure process.

2. Caution seller against providing confidential information to any potential listing agent prior to signing a listing contract
3. Determine if and how the broker/company will represent the seller (e.g., exclusive seller agent or possibly as a dual agent)
4. Explain listing agent’s obligation to disclose material facts to all prospective buyers
5. Advise seller of company’s proposed brokerage fee for listing, marketing, and selling the seller’s property and negotiate within parameters established by company policy
  - a. Avoid violations of the federal Sherman Antitrust Act

- b. Never imply the quoted fee is “customary” or “the going rate” for the industry or a local area
- c. Only discuss the listing company’s fee and do not answer questions about how this fee compares to other companies

**Instructor Note:** Antitrust regulations will be discussed in more detail in IX. of this section.

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

**Instructor Note:** MLS operations are addressed later in IX. of this section.

## B. Review Documents/Information Obtained from Seller

**Instructor Note:** Explore why it is so important for the listing broker to see all of the listed documents/information. Examples: the need to check the deed to see who holds title and whether it is fee simple; the importance of checking boundaries and acreage indicated by the survey; the need to have the covenants, bylaws, R&Rs, etc. available to deal with a prospective buyer’s questions and to know about homeowners’ dues; and the importance of knowing the balance due on any existing mortgages as early as possible in the transaction.

The broker needs to know early on if they might be dealing with a situation where the broker might need to agree to a lower brokerage fee than their firm normally charges in order to make a deal work, whether a short sale situation exists or whether foreclosure is imminent. (Refer to *Manual*, Chapter 13, Short Sales, pp. 434-437.)

## C. Inspect Property and Verify Questionable Information

**Instructor Note:** Facilitate a class discussion about a broker’s affirmative obligation to discover and disclose material facts and the need for a thorough property walk-through. This can be an exceptionally helpful learning experience for students – one that may help them avoid having to deal with unhappy buyers, complaints to the Real Estate Commission, and even lawsuits. Many examples should be used and students should be strongly encouraged to participate by sharing experiences or asking questions.

**Suggested Activity:** Have students, individually or in groups, list what a listing broker should be looking for during the initial property inspection. Be sure to discuss why the following details are important.

1. Inspect the property, with the seller if possible, noting all features that will be needed for the listing data sheet
2. Identify personal property to be conveyed and fixtures **not** to be conveyed with the property; make sure seller understands what stays and what goes unless there is written agreement to the contrary in the sales contract

3. Note all significant defects and any signs that may indicate defects (e.g., *red flags*); remind seller of broker's duty to disclose all material facts about the seller's property to prospective buyers
4. Suggest needed repairs and improvements to make the property more marketable; unresolved repair issues must be disclosed as a material fact to all prospective buyers
5. Inquire as to whether any construction/alterations/repairs have been done
  - a. Determine if required permits were obtained for
    - i. Construction, alteration, repair, removal or demolition of a building (e.g., room addition, deck addition, outbuilding construction)
    - ii. Installation, extension, alteration or general repair of a plumbing system, HVAC system, electrical wiring, devices, appliances or equipment
    - iii. Some work is exempt in a single-family residence; and permit requirements may vary between municipalities
  - b. Broker should verify that a permit was obtained by checking county or municipality records, and, if not, what remediation is needed
  - c. If seller does not resolve permitting issues prior to listing, then broker must disclose as a material fact to all prospective buyers

**Instructor Note:** Discuss how unpermitted repairs or construction are material facts that can cause major problems. Instructors are encouraged to contact local municipalities to determine how they handle unpermitted space, e.g., remove the space or retro-permit it after construction, etc. Also consider obtaining a cost comparison for correctly obtaining a permit prior to construction vs. obtaining a retro permit. The Commission has taken disciplinary actions against brokers for ignoring permit issues.

**Suggested Activity:** Encourage students to share their experiences with unpermitted space and repairs.

6. If property is served by a septic system, verify the system's capacity with the county health department; obtain a copy of the septic permit, if available (*The 4S's: Septic, Streets, Underground Storage Tanks and Square Footage* section of the 2016-2017 General Update course) [Digital REM search for: *septic system*]
  - a. Marketing should only indicate the number of bedrooms approved on the septic permit
  - b. Occupancy is presumed to be 2 persons per bedroom

- c. Resolve any septic system issues prior to listing or disclose as a material fact to all prospective buyers
- D. Advise seller of their rights and obligations under the *Residential Property Disclosure Act* and assist the seller in fulfilling the statutory obligations [NCGS48E, Rules 58A .0114 & .0019] (*Manual*, Chapter 8, Other State Disclosure Laws, pp. 178-185) / [Digital REM search for: *RPOADS*]

**Instructor Note:** Address ALL requirements of the Residential Property Disclosure Act, including the broker's responsibilities.

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

# 1. Basic requirements of the Act

## a. Requirement for most sellers of 1-4 residential units

- i. For transfers by
  - Sale or exchange, including installment land contracts
  - An option contract
  - Lease with option to purchase, except where lessee occupies or plans to occupy the property
- ii. Whether or not a broker is involved
- iii. Applies to relocation company "owners"
- iv. See relevant exemptions under each form covered below

## b. Major points of the Law

- i. *Caveat emptor* still active in NC
- ii. Seller required to provide completed disclosure forms to prospective buyers prior to presentation of first offer
- iii. Seller not required to disclose anything about property condition or if previous owners have severed mineral, oil or gas rights; seller has the right to choose *No Representation*
- iv. Seller may be held liable for misrepresentation by the courts if they choose "No" rather than "No Representation" [if the seller knows a problem exists].
- v. Voluntary disclosure; mandatory form completion/delivery

## c. Must use the two prescribed forms issued by NCREC that must not be altered (e.g., *Residential Property and Owners' Association Disclosure Statement (RPOADS)* and *Mineral and Oil and Gas Rights Disclosure Statement (MOG)*)



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

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

- 2. Advise the seller as to whether the *Residential Property and Owners' Association Disclosure Statement (RPOADS)* is required
  - a. Common exemptions for the following transfers
    - i. Never inhabited new construction

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

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

- E. Comply with Federal *Residential Lead-Based Paint Hazard Reduction Act of 1992* (Title X) and updated HUD & EPA Rules (if applicable) (*Manual*, Chapter 8, Residential Lead-Based Paint Disclosures, pp. 186-189; [www.epa.gov/lead](http://www.epa.gov/lead))[Level 2]  
[Digital REM search for: *lead-based*]

1. Basic disclosure requirement

**Instructor Note:** Provide students with EPA web address plus a copy of or access to the EPA pamphlet, *Protect your Family from Lead in your Home*.

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

**Instructor Note:** Provide students with a copy of current NC REALTORS®/NCBA Standard Form 2A9-T: *Lead-Based Paint or Lead-Based Paint Hazard Addendum* that is used with the Standard 2-T Offer to Purchase and Contract. Be sure to point out that this is one of the few times a broker must sign part of a client’s sales contract or lease.

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

- iii. Includes a “Lead Warning Statement”

- iv. Signed statements of compliance from all parties and agent of property owner
2. Agents' responsibilities (under federal rules and NC Real Estate License Law)
    - a. Each agent of target housing has liability for ensuring compliance with lead paint disclosure requirements
      - i. Inform seller or lessor of their obligations under the rules
      - ii. Either ensure that owner has performed all required activities or personally ensure compliance
    - b. "Agent" under these rules includes all brokers in the transaction that were paid by the property owner or through a cooperative brokerage agreement with the listing agent; only a buyer agent totally paid by the buyer is exempt
    - c. Possible consequences of agent's breach of duties
      - i. Disciplinary action by NCREC for failure to comply with federal obligations to the parties for breach of legal duties to client and/or 3<sup>rd</sup> parties
      - ii. Penalties noted below
  3. Enforcement and penalties for non-compliant sellers, lessors, and their agents
    - a. Warnings (for 1<sup>st</sup>-time unintentional offenders)
    - b. Injunctive relief to force compliance
    - c. Civil monetary penalties up to \$ 10,000 per violation
    - d. Civil suits for actual damage
    - e. Criminal prosecution with maximum penalty of 1-year imprisonment and \$10,000 fine
  4. N.C. Lead-Based Paint Hazard Management Program (40 CFR Part 745, Subparts E & L; [epi.dph.ncdhhs.gov/lead/rrp.html](http://epi.dph.ncdhhs.gov/lead/rrp.html))

**Instructor Note:** Use information in 2011-2012 Broker-in-Charge Annual Review, "[Lead-Based Paint Renovation Requirements](#)". Provide access to pamphlet, *The Lead-Safe Certified Guide to Renovate Right*.

- a. Since January 1, 2010, inspectors and firms/individuals performing renovation, repair and painting projects for compensation that disturb lead-based paint in homes and child-occupied facilities, such as pre- schools or day-care facilities, built before 1978 must
  - i. Take required training for certification
  - ii. Follow specific work practices
  - iii. Provide *The Lead-Safe Certified Guide to Renovate Right* pamphlet to owners and occupants before starting renovation work
- b. Fines for violations up to \$750 per day under NC law and up to \$32,500 per day under EPA sanctions
- c. Owner-occupied do-it-yourself renovations are exempt from certification requirement; but following lead-safe work practices and proper disposal of renovation waste is recommended

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

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

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

IV. Verify and Report Building Square Footage in Accordance with NC Real Estate Commission's *Residential Square Footage Guidelines* (Manual, Chapter 9, Verify and Properly Report Building Square Footage, pp. 237-239; entire *Guidelines* booklet) [Digital REM search for: *square footage*]

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

#### A. General Notes

1. Square footage is **not** a material fact, but must be accurate if reported
2. Brokers are expected to possess the expertise necessary to accurately measure, calculate, and report the square footage of most buildings
3. It is strongly recommended that listing agents personally measure any listed dwelling that is not particularly unusual or complex; brokers may rely on professionals with more expertise in determining square footage, such as an appraiser or veteran broker
4. Broker should **not** rely on
  - a. Property owner's personal statement
  - b. Blueprints
  - c. Tax records
  - d. Information from an earlier transaction
5. A broker working with a buyer can reasonably rely on the listing agent's reported square footage unless there is an error that would be obvious to a prudent agent

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

1. In North Carolina, the square footage of residential living area is calculated on exterior measurements
2. For condos, townhomes and basements, adjusted interior measurements are necessary
3. Criteria for "heated living area"
  - a. Intended for human occupancy
  - b. Heated by permanently installed heating system(s) sufficient for year-round occupancy
  - c. Finished walls, ceilings and floors
    - i. Constructed of generally accepted interior materials
    - ii. Ceiling height of at least 7 feet; sloped ceilings at least ½ of area at 7 feet and no area lower than 5 feet
  - d. Directly accessible from other "heated living area"
  - e. Interior stairwell area counts on all levels accessed

### C. Commercial Buildings

- a. NCREC's *Residential Square Footage Guidelines* is not appropriate for commercial buildings
- b. Before sharing square footage numbers, a broker should take reasonable steps to ensure accuracy of information; broker should at least understand how the square footage was determined

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

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

### V. Perform a Comparative Market Analysis (CMA) for the Residential & Commercial Seller [NCGS 93A-82 & 83; NCGS E-1-3(c); Rules 58A .0108; .2201 & .2202] (*Manual*, Chapter 9, Prepare a Comparative Market Analysis (CMA) for the Seller, pp. 239-240; Chapter 15, Approaches to Value, pp. 514-547)

#### A. Broker's Duty with Regard to Providing a CMA or Broker Price Opinion (BPO) [Digital REM search for: *cma*]

1. As estimated *probable selling price*
  - a. Under law of agency, an agent has an affirmative duty to provide a client with competent advice on an appropriate listing or selling price
  - b. Performance of a CMA on every listing is not mandated by rule
    - i. It is highly recommended despite experience level of broker
    - ii. Any broker that "shortcuts" the valuation process and harms the client by significantly missing the mark will be subject to disciplinary action by NCREC and possible liability for monetary damages in a civil lawsuit
    - iii. If broker is not confident in their CMA skills, seller should be advised to have property appraised before setting a listing price

2. As a BPO/CMA for a fee [NCGS 93A-83; Rule Section .2200] (*Manual*, Chapter 15, Real Estate Broker's Duty Regarding a CMA/BPO, pp. 516- 523)
  - a. May be performed by a “full” broker whose license is active and in good standing; prohibited for provisional brokers
  - b. Must include all content required by law [NCGS 93A-83(c)] including broker’s name, license number, signature, and the name of the firm for which the broker is acting
  - c. May not under any circumstances be referred to a “valuation” or an “appraisal” or produce estimates of “value” or “worth”
  - d. May not be performed for a lienholder or others as basis for establishing “value” for origination of any type of mortgage
  - e. May not be knowingly prepared in lieu of an appraisal that is required by federal or state law [NCGS 93A-83(f)]
  - f. Must be in writing and meet standards set by Rule 58A .2202
    - i. Compliant with NCGS 93A-83
    - ii. The broker must
      - Have direct access to real estate market data & brokerage or appraisal experience in subject property’s geographic location
      - Be free of influence of any interested party
      - Personally inspect the exterior and interior of the subject property unless waived in writing by recipient of the BPO
      - Use appropriate methodology for subject property type
      - Use at least 3 sold or leased properties similar to subject property and make credible adjustments for differences
  - g. Broker who performs a CMA/BPO incompetently may be subject to disciplinary action by the Commission [NCGS 93A-6(a)(8)]

C. Performing a CMA/BPO (*Manual*, pp. 532-547)

1. Steps in the CMA/BPO Process
  - a. Based on the same valuation concepts and principles as standards for appraisers performing an appraisal
  - b. Identifying the subject property and the scope, purpose, and legality of the assignment
  - c. Collecting data on subject property and local real estate market



d. Analysis

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

**Instructor Note:** Conduct basic instruction on the Income Capitalization Approach and its calculations (*Manual*, Chapter 15, Income Approach, pp. 527-531).

**Suggested Activity:** Have students, independently or in groups, complete an Income Capitalization work problem to arrive at the probable sales price for an income producing property.

- iv. Estimating a Probable Leasing Price (Lease Rate) (*Manual*, Chapter 15, Analysis Relating to Estimating a Probable Leasing Price, pg. 542)
- e. Report Probable Selling/Leasing Price as a “Range” (*Manual*, Chapter 15, Reporting Probable Selling/Leasing Price as a “Range”, pg. 542)
- f. The BPO/CMA Report (*Manual*, Chapter 15, The BPO/CMA Report, pp.542-543)

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

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

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

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

**Instructor Note:** Use practical examples to involve students in a discussion of the practical considerations in setting a listing price.

1. Estimated Probable Selling Price (or range) of Property (per CMA)
2. Current Market Conditions
3. Pros and Cons of setting listing price at “high” vs. “low” end of range of estimated price
4. Seller’s Needs and Desires
5. Estimating net to seller and possibility of “Short Sale” (*Manual*, Chapter 9, Likelihood of Sale Proceeds Being Insufficient, pp. 241; Chapter 13, Short Sales, pp. 451-454) [Digital REM search for: *short sale*]

- B. Review How to Estimate Seller's Net Proceeds and Seller's Net Profit (*Manual*, pg. 241-243)

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

VII. Review and Complete the Listing Contract (*Manual*, Chapter 9, General Requirements for Agency Contracts, pp. 208-210; Chapter 9, Major Listing Contract Provisions, pp. 220-227) [Digital REM search for: *listing agreement*]

**Instructor Note:** The requirements for a valid agency agreement between a landlord and a broker (e.g., property management agreement) will be covered in the Property Management section of Post 303.

A. General Requirements for All Agency Agreements [NCGS 93A-13; Rule 58A .0104(a) and (b)] (*Manual*, pp. 208-210) [Digital REM search for: *agency agreement*]

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

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

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

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

**Instructor Note:** Discuss how brokers might explain and discuss reason for inclusion of each contract provision in 101 with sellers. Use Guidelines to address appropriate entries for various common circumstances. Make students aware that different listing agreements are available for different types of real estate (e.g., land & vacant lot, commercial).

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

**Suggested Activity:** Provide students with a current version of NC REALTORS® Standard Form 103 – *Exclusive Right to Sell Listing Agreement (Vacant Lot/Land)* and the Guidelines 103G. Discuss the purpose of provisions that are different from the 101 listing form.

### C. Selected Points about Listing Contract Completion

1. Executed listing contract required prior to providing any brokerage services, such as marketing
2. All contract provision blanks should be filled in prior to having the seller(s) sign  
**Note:** Seller should never be asked to sign an incomplete listing contract, e.g., one without the listing price filled in
3. Names and signatures of parties
  - a. All co-owners should be named in the agreement and sign
  - b. If only one spouse is the titled property owner, best practice is to have the non-titled spouse also sign
  - c. For property owned by an entity, broker should determine who has authority to sign a listing agreement (and eventual sales contract)
  - d. Listing agent signs on behalf of their brokerage company and includes their individual license number
4. Term of agreement
  - a. Parties do not have a right to terminate early unless specifically written into agreement
  - b. If the property goes under contract during the term of the listing agreement, the broker is entitled to the commission even if closing occurs after the end of listing period

- c. Any broker who continues to actively represent a seller after the listing expires and prior to seller accepting an offer on the property will not be eligible for compensation [NCGS 93A-13]
- d. Any agreement to amend or extend the listing period must be in writing to be enforceable

**Instructor Note:** Introduce NC REALTORS® Standard Form 710 – *Agency Agreement Renewal and/or Amendment* and discuss why use of this form is preferable to striking through terms on the original listing agreement.

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

VIII. Working as a Limited Services Broker (*Manual*, Chapter 9, Limited Service Listing Contract, pp. 218-219) [*Level 2*] [Digital REM search for: *limited services broker*]

**Instructor Note:** Be sure to note and discourage the use of the term “discount broker,” a potential violation of anti-trust laws since it implies there is a standard compensation.

A. Limited Services Listing Contract

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

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

- 1. Broker owes client skill, care and diligence
- 2. Broker owes fiduciary duties under common law of agency

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

**Note:** Broker should not rely solely on property information received from the seller
  - b. Avoid making false promises [NCGS 93A-6(a)(2&3)]
  - c. Avoid undisclosed conflict of interest [NCGS 93A-6(a)(4); Rule 58A .0104]
  - d. Properly account for trust funds held for client [NCGS 93A-6(a)(7, 12 & 14); Rules 58A .0116, .0117]
  - e. Act competently in performance of services [NCGS 93A-6(a)(8)]
    - i. Includes providing accurate information in the MLS (e.g., square footage)
    - ii. Servicing the listing per MLS rules
  - f. Promptly deliver all offers and contracts to parties to the transaction [NCGS 93A-6(a)(13); Rules 58A .0106]
 

**Note:** If an offer is sent directly to the limited listing agent (despite listing agreement terms to the contrary), they must deliver the offer to the appropriate party as soon as possible but in no case later than 3 days
  - g. Comply with the Residential Property Disclosure Act [Rule 58A .0114]
  - h. Comply with the federal *Residential Lead-Based Paint Hazard Reduction Act of 1992*

C. Protection Agreement (*Manual*, pp. 219-220)

1. Purpose – agreement between a buyer agent and a seller for a single transaction, usually when dealing with a FSBO situation
2. Agent should provide and review the *Working with Real Estate Agents Disclosure*

3. Review NC REALTORS® *Unrepresented Seller Disclosure and Fee Arrangement* Standard Form #150

IX. Submitting Property Data to a Listing Service (*Manual*, Chapter 9, Multiple Listing Service, pp. 227-228; Chapter 9, Prepare Property Data Sheet and Place Listing in Multiple Listing Service, pg. 244) [Digital REM search for: *property data*]

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

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

1. A voluntary association of local brokers who agree to share information on listings, to cooperate in the sale of such properties, and to share compensation
2. A major advantage is the broad marketing of all listings through member brokers to potential buyers

B. Listing Agent Responsible for Accuracy of Property Data Reported in Listing Service

1. This responsibility should not be delegated; a mistake made by an assistant or information supplied by a seller will not excuse the listing agent from responsibility
2. Disclaimers published in the MLS will not protect a listing agent who misrepresents a material fact

C. Antitrust Laws Prohibit Anti-competitive Practices (*Manual*, pp. 228-229) [Digital REM search for: *antitrust*]

1. *Price fixing*: any collaboration between 2 or more brokers to set brokerage fees
2. *Boycotting*: any collaboration between 2 or more brokers to not cooperate equally with specified groups in such a way as to make them less competitive (e.g., joining to boycott certain service providers, such as certain appraisers, attorneys, home inspectors, etc.; excluding certain categories of brokers, such as limited service listing brokers, from MLS membership)

- X. Marketing Listed Property (*Manual*, Chapter 9, Marketing Listed Property - Legal Compliance, pp. 244-246; Chapter 13, Disclosures in Credit Advertising, pp. 424-425). [Digital REM search for: *marketing properties* and *credit advertising*]

**Instructor Note:** The subject of how to effectively market property for sale is beyond the scope of this course and no instructional time may be spent on this topic. You might recommend that a licensee consider obtaining training on effective real estate marketing.

A. Legal Compliance in Marketing/Advertising

1. Owner's written permission required to advertise or place signage [Rule 58A .0105(a)(2)]
  - a. Usually included in listing agreement
  - b. Signage should be promptly removed after closing or termination of the listing agreement
2. Comply with laws/rules on signage placement
  - a. State law prohibits placement of private signs on state-owned property such as right-of-ways or road medians
  - b. Subdivision covenants and city/county ordinances frequently address signage restrictions
  - c. Usually apply to "for sale" and directional signs
3. Prohibition of "blind" ads [Rule 58A .0105(b)]
4. Comply with Truth-in-Lending advertising requirements [Digital REM search for: *trigger terms*]
  - a. Applies to ads about possible financing of real property that contain *Trigger Terms*
  - b. *Trigger Terms*
    - i. Down payment, whether as a dollar amount or percentage
    - ii. Amount of any payment, whether as a dollar amount or percentage
    - iii. Number of payments or period of repayment
    - iv. Dollar amount of any finance charge
  - c. Required disclosures if any trigger term appears in an ad
    - i. Amount or percentage of down payment
    - ii. Terms of loan repayment over the full term



- iii. Annual percentage rate (APR) and if it can be increased
- d. How to avoid violating Regulation Z [Digital REM search for: *regulationz*]
  - i. If **any** specific credit term is advertised, **all** required credit terms should be included
  - ii. Advertise only a list or lease price and avoid all numbers related to financing

**Suggested Activity:** Have students review existing local ads for compliance with Regulation Z.

- 5. Fair Housing Considerations in Advertising (*Manual*, Chapter 18, Discrimination in Advertising, pp.634-635) [Digital REM search for: *advertising guidelines*]
  - a. Fair Housing Act prohibits anyone from making, printing or publishing any notice, statement or advertisement with respect to sale or rental of a residential dwelling
    - i. Which indicates any preference, limitation, or discrimination because of a person's race, color, religion, sex, handicap, familial status or national origin
 

**Note:** HUD's definition of *sex* expanded in 2021 to include *sexual orientation* and *gender identity*
    - ii. Not limited to print media; applies to webpages, social media, emails, texts, and oral statements
  - b. Advertising Guidelines
    - i. Describe the property, not the person
    - ii. Mention amenities, not participants
    - iii. State geographic location, not landmarks

**Suggested Activity:** Have students review ads for compliance with Fair Housing Act. This could be combined with Suggested Activity about Regulation Z.

- 6. Retain all advertising in any format for at least 3 years [Rule 58A .0108]

B. Duties Relating to Marketing a Property [Digital REM search for: *marketing practices*]

**Instructor Note:** This coverage focuses on the duty of a listing agent to their seller-principal under agency law to exercise *skill, care and diligence* in the performance of their contractual obligation under a typical *full-service* listing contract such as NC REALTORS® *Exclusive Right to Sell Listing Agreement* (Standard Form 101) to exercise their best efforts to find a buyer for the seller's property. This discussion assumes that the seller has not restricted the listing agent/company with regard to marketing of the property (e.g., the seller has not prohibited such actions as placing a for-sale sign on the property, placing the listing in a listing service, cooperating with brokers of other companies, etc.).

1. Provide customary marketing practices for the area, such as
  - a. Place a “for sale” sign on the property
  - b. Place listing in the local MLS
  - c. Provide a reasonable means for showing by other brokers
  - d. Use media commonly used to advertise properties for sale
  - e. Prepare a promotional flyer available to prospective buyers
  - f. Advertise the property on the Internet
  - g. Conduct an open house, if appropriate
  - h. Be available to show the property in a timely manner
  - i. Fully cooperate with other agents as authorized by seller
2. Other Points to Consider with Caution
  - a. For security reasons, a listing agent should obtain permission from their seller-client prior to using photographs (or videos) of the inside of a seller's home in advertising (e.g., in flyers, on websites, etc.)
  - b. Providing a copy of Seller's survey is not objectionable, but brokers working with buyers should make certain this does not discourage the buyers from obtaining a new or updated survey
3. Educating Sellers on their Role in Selling their Property

**Suggested Activity:** Divide class into groups and assign each group one or more of the following items. Have them discuss the importance of addressing the topic with the seller at the time of the listing. Have groups report to entire class.

- a. Increasing marketability: enhance “curb appeal,” make repairs, de-clutter, paint
- b. Safeguarding personal valuables
- c. Making property available for showings
- d. Being absent during showings
- e. Removing or securing pets for showings
- f. Handling unscheduled showings
- g. Responding to inquiries without damaging negotiating position
- h. Handling offers

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

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

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

1. Obtain a written agreement signed by the seller

**Instructor Note:** Introduce use of NC REALTOR® Form 150: *Unrepresented Seller Disclosure and Fee Agreement*.

2. Refrain from actions that might be interpreted as the broker is representing the seller

B. Acting as Disclosed Dual Agent

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

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

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

**Section 3: Working with Residential & Commercial Buyers (5 hours)** (*Manual*, Chapter 9, Working with Buyers, pp. 247-257) [Digital REM search for: *working with buyers*]

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

**Instructor Note:** Agency disclosure to both sellers and buyers was covered in depth in Section 1; however, the topic should be briefly reviewed here with an emphasis on explaining the brochure to a buyer. Consider using role-play to involve students in practicing the disclosure and explanation of agency relationships. Students need to be comfortable in handling this disclosure.

II. Working with Buyers as Seller Agent or Subagent (*Manual*, pp. 247-248) [Digital REM search for: *seller subagent*]

**Instructor Note:** Remind brokers of prohibition against representing a buyer in a broker-owner transaction, per Rule 58A .0104(o) and (p). Refer to the *Revised Commission Rules* section of the 2014-2015 General Update Course for examples and detailed discussion points.

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

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

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

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

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

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

1. Requirements for temporary oral buyer agency agreement
  - a. Must be non-exclusive; a buyer may work with multiple brokers at the same time
  - b. May **not** bind the buyer for any specific period of time
  - c. **All** terms of the written agency agreement must be addressed in the oral agreement

- d. If the buyer is asked to limit the oral agreement to a specific firm or for a specific time period, agency must be reduced to a written agreement immediately
2. Must be reduced to writing no later than the time an offer to purchase is made by any party

**Instructor Note:** Discuss the hazards of preparing an offer on behalf of a buyer-client prior to the buyer-client signing a written agency agreement, as the broker would be precluded from presenting that offer without a written agency agreement [Rule 58A .0104(a)]. Discuss how to handle such a situation.

3. Switching from buyer agent to seller subagent requires the buyer's written consent as well as written consent of the seller and listing company
  4. Brokerage companies are not required to allow the practice of oral agency
- C. Review of Essential Elements of a Written Buyer Agency Agreement [Rule 58A .0104(a & b)]
1. Same requirements as a Listing Agreement
  2. Have a definite expiration date
    - a. Agreement will terminate on expiration date without prior notice
    - b. Must **not** automatically renew
    - c. Stating a time period (e.g., 6 months or 90 days) vs. a date is inappropriate
  3. Contain the anti-discriminatory language prescribed by rule in a clear conspicuous manner
  4. Be signed by all parties; and
  5. Include the listing broker's individual license number
- D. Types of Buyer Agency Agreements [Level 2] [Digital REM search for: *types of buyer agency*]
1. *Exclusive Buyer Agency Agreement* (e.g., NCREALTORS® Standard Form 201 and 201-G – *Guidelines for Completing the Form*)
  2. *Non-Exclusive Buyer Agency Agreement* (e.g., NC REALTORS® Standard Form 203)

3. *Agency Agreement Renewal and/or Amendment* (e.g., NC REALTORS® Standard Form 710)

**Required Activity:** Perform a detailed line-by-line review of these NC REALTORS® forms and completion guidelines, discussing appropriate completion of each provision in various circumstances.

4. Alternate options for working with hesitant buyers
  - a. Limit duration of agreement
  - b. Limit agreement to specific properties

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

E. Duties to Buyer: Buyer Agent versus Seller Subagent Working with a Buyer

**Instructor Note:** Extensive discussion and use of examples or role play should be to assure student understanding of the respective duties of a buyer agent versus a seller subagent working with a buyer.

IV. Practices of Brokers Working With Buyers (*Manual*, pp. 255-257)

A. Comply with Agency Disclosure and Buyer Agency Contract Requirements

**Instructor Note:** Both these topics have been covered previously in this course. Briefly remind students of these requirements here and move on. Emphasize the importance of reaching an agency decision of how the broker/company will work with the buyer prior to inquiring about a buyer's specific housing needs and desires. Brokers should not show property to a prospective buyer until the agency relationship with the buyer is properly established.

B. Educate Buyer and Solicit Information on Buyer's Needs and Desires

**Instructor Note:** Advise students of the special importance of educating buyers, especially first-time homebuyers, on the home-buying process and current market conditions. Discuss the need to clearly determine the buyer's property needs and desires so appropriate property can be selected for showing.

C. Qualify the Buyer (*Manual*, Chapter 13, Buyer Loan Prequalification, pp. 431-437; Chapter 13, Major Types of Residential Mortgage Loans, pp. 439-444) [Digital REM search for: *qualify the buyer*]

**Instructor Note:** Remind students of the merits of *qualifying the buyer* to avoid wasting the time of the buyer, the broker, listing agents, and sellers. Referral to a mortgage lender for loan qualification/approval is a common and perfectly appropriate practice. Even if a prospective buyer is referred to a mortgage lender for qualification, brokers are expected to have a good understanding of loan application/qualifying requirements and procedures. Thus, brokers should possess the ability to independently *prequalify* a buyer using the general adequacy of income standards for conventional/conforming loans and FHA loans (also VA loans in areas where these are common). *Prequalification* means estimating the maximum loan amount a buyer is likely to be eligible to obtain and, given the buyer's assets, the approximate purchase price the buyer can afford. Teach loan prequalification procedures (for a conventional-conforming loan).

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

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

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

2. Schedule and show selected properties

- a. Should not limit to only properties listed with broker's company if properties listed with other companies meet the client's criteria
- b. Should not automatically exclude listings that offer lower commissionsplits

E. Discover and Disclose Material Facts

**Instructor Note:** Quickly remind students of a broker's affirmative duty to discover and disclose material facts to all parties to the transaction regardless of whom the broker represents. Material facts may be discovered by walk-through inspections or by inspections ordered by the buyer while under contract; such material facts (not the actual inspection reports) must be shared with all parties. Broker working with the buyer should also communicate any issues with buyer's loan approval that would affect the buyer's ability to perform according to contract terms.

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

**Instructor Note:** CMA calculations and considerations have been previously covered in this course. During this section, remind brokers that preparing a CMA for a buyer-client is one of the most important services a buyer agent can provide to the client.

G. Check Land Use Restrictions and Compliance with Related Requirements (*Manual*, Chapter 7, Public Land Use Controls, pp. 108-117; Chapter 7, Flood Hazard Area Regulations and Insurance, p. 125; Chapter 7, Private Land Use Controls, pp. 126-130 Chapter 14, Property Insurance, pp. 462-463) [Digital REM search for: *land use restriction* and *flood insurance*]

**Instructor Note:** Remind students to avoid making any unverified representations regarding any of the following matters. Buyer agent should recommend that the buyer obtain and review any protective covenants and homeowners' association bylaws regarding a property prior to buyer making an offer on the property. Agent should assist the buyer in obtaining such information, if requested by the buyer.

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



## H. Additional Buyer Agent Responsibilities and Practices

**Instructor Note:** Explain that additional responsibilities of a buyer agent that are related to preparing an offer to purchase, handling contract matters, assisting with a buyer's "due diligence," preparing for closing and assisting with closing are addressed in the *Post 302: Contracts and Closing* Postlicensing course.

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

**Instructor Note:** Active student involvement is critically important to assure understanding of these crucial concepts. Additional resources available on the Commission's website under *Publications* include: *Agency Issues* section of the 2018-2019 Update.

**Suggested Activity:** Provide agency scenarios to test student awareness of when dual agency can or should occur plus recognition of fiduciary duty violations.

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

**Required Activity:** Review appropriate dual agency provisions in the NC REALTORS® standard listing and buyer agency agreement forms.

B. Designated Dual Agency [Rule 58A .0104(i)-(n)] [Digital REM search for: *designated dual*]

1. Basic concept

- a. An optional approach when brokerage company is dual agent
- b. One or more agents of the company are designated to represent only the interests of the seller
- c. One or more agents of the company are designated to represent only the interests of the buyer
- d. The company and all non-designated agents of the company remain as dual agents

2. Major rule provisions

- a. Prior express approval of both buyer and seller clients required
- b. Confidential information of designated client may not be shared with the designated agent of the other party
  - i. Price, terms or conditions of sale
  - ii. Motivation
  - iii. Information identified as confidential by client
- c. Identity of all designated agents must be disclosed to the buyer and the seller no later than presentation of first offer

3. Special features of designated dual agency

- a. Dual agency is not eliminated; merely a form of dual agency
- b. Only possible for in-house dual agency sales situations
- c. Prior approval of both seller and buyer is mandatory and must commence no later than presentation of the first offer
- d. Individual designated dual agents will act only as agent for principal for whom designated, similar to an exclusive listing agent or buyer agent
- e. A broker may not be appointed as a designated dual agent for one party if that broker has already received confidential information about the other party

- f. A comprehensive company policy on the practice of designated dual agency is necessary
  - i. Should address confidentiality in record keeping, file access, and internal communications
  - ii. Should specify how designated dual agents are appointed
- g. Multiple agents can be designated to represent a principal, such as including the licensed personal assistant of a designated dual agent
- h. A broker-in-charge (BIC) must not serve as a designated dual agent in a transaction opposite an affiliated provisional broker [Rule 58A .0104(j)]

**Required Activity:** Discuss how office policies would differ if the company practices dual and/or designate dual agency.

## Section 5: Working in Residential or Commercial Property Management (1 hour) (*Manual*, Chapter 17, Property Management, pp. 599- 614; Chapter 19, The Typical Cycle-Lease Transaction, pp. 693-714) [Digital REM search for: *property management*]

### I. Introduction to Property Management

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

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

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

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

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

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

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

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

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

**Instructor Note:** Provide students with a current version of NC REALTORS® Standard Form #401, *Exclusive Property Management Agreement (Long-term Rental Property)* and review all the provisions. Remind licensees that this form is a REALTOR® form and thus may only be used by a REALTOR® member or an employee of a REALTOR® member.

- A. Must meet Requirements of all Agency Agreements as noted in Section 2, VII.A, including agency contracts with property owners must be in writing from the outset of the relationship
- B. Property management agreements may automatically renew so long as the landlord may terminate with notice prior to end of any contract period [Rule 58A .0104]

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

**Instructor Note:** Cover this information from a general knowledge perspective.

**Suggested Activity:** Assign 1-2 of the functions to student groups and have them briefly describe the expectations to the whole class.

- A. Preparing a Management Plan
- B. Establishing a Rental Schedule

### C. Preparing an Operating Budget

**Suggested Activity:** Have students prepare a *Sample Operating Budget* (e.g., *Manual*, Chapter 17, Sample annual Operating Budget, pp. 606-607) to assist in understanding the various annual expenses related to a property and to calculate the amount of rent required to satisfy, and hopefully exceed, the annual expenses. Students could be encouraged to assume they are planning to rent their own residence or office building, to calculate their annual expenses, and then determine the minimum rent needed to cover all expenses and produce the desired net rental income.

### D. Marketing and Renting the Property

### E. Collecting Rents and Security Deposits

### F. Maintaining and Protecting the Property

### G. Preparing and Enforcing Rules and Regulations

### H. Performing Landlord's Duties under Leases

### I. Instituting Legal Actions

### J. Maintaining Property Insurance

### K. Maintaining Records and Accounting to Owner

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

- I. When Brokers Leave/Change Companies (*Manual*, Chapter 21, Paying Brokers No Longer with Firm, Inactive Brokers or Former Brokers, pp. 761-762) [Digital REM search for: *paying brokers*]

#### A. Required Notice to Commission within 10 Days [Rules 58A .0103(b) & .0506(e)]

- B. If broker's license was on active status throughout the period that brokerage services were rendered, broker can be paid even if their license is expired or inactive at time of payment

#### C. Handling of Transactions in Progress when Brokers Leave/Change Companies

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

1. If broker's license was on active status throughout the period that brokerage services were rendered, broker can be paid even if they are no longer with the company at time of payment

2. Payment to an individual broker is dictated by terms of the employment agreement with the brokerage company, not Commission rules
  3. If a provisional broker (PB) who earned compensation is now working for a different company, the former supervising broker-in-charge (BIC) can pay
    - a. The PB directly **OR**
    - b. The PB's current BIC to pass through to the PB
  4. Broker working on a pending transaction after leaving a company
    - a. Not possible if a provisional broker
    - b. "Full" broker can lawfully affiliate with 2 companies simultaneously with full knowledge and consent of both BICs
- II. License Status and Education Issues [NCGS 93A-4; Rules 58A .0503, .0504, .0505, & .0506]

**Instructor Note:** Refer to the *Licensing & Education Review* section of the most recent Update course.

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

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

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**MODULE 1: AGENCY RELATIONSHIPS & DUTIES**

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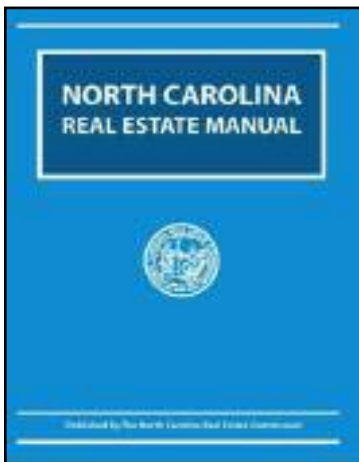
**MODULE 1: AGENCY RELATIONSHIPS & DUTIES**



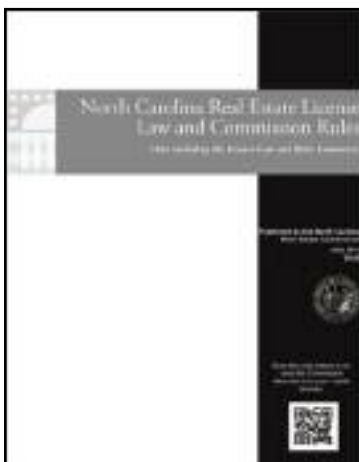


## Section 1: The Basics of Agency Relationships

### Critical Reading Information



- Chapter 8 – Relationships in Brokerage Practice
- Chapter 10 & 16 – “Unfair & Deceptive Trade Practice”



- §93A-6 – OLDCAR Acronym
- Rule A.0104 – Agreements & Disclosure
- Rule A.0105 – Advertising
- Rule A.0106 – Delivery of Instruments
- Rule A.0115 – Disclosure of Offers
- Rule A.0116 – Handling of Trust Money
- Rule A.0117 – Accounting for Trust Money
- Rule A.0120(d) – Discrimination
- Rule A.1601 – State Fair Housing

## The Importance of Agency Relationships



Agency obligations come from three sources:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

When a licensee breaches agency obligations, all of the following are potential consequences:

4. \_\_\_\_\_
5. \_\_\_\_\_
6. \_\_\_\_\_
7. \_\_\_\_\_

The NCREC, as part of a disciplinary action, can revoke, suspend, reprimand, or censure a licensee. The Commission may never 8. \_\_\_\_\_ a licensee as part of a disciplinary action.

Fiduciary duties and obligations are important in the real estate industry because they impact the 9. \_\_\_\_\_ that consumers have in working with real estate professionals.



## Rank the Following Professions from 1–10

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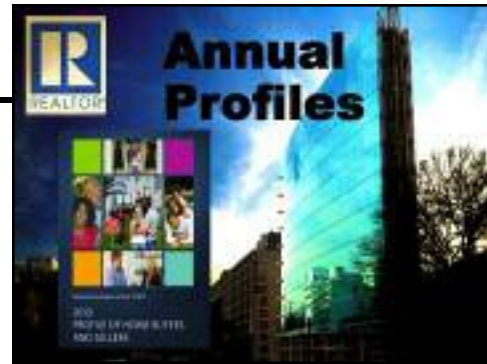
1 – The Profession You Trust the Most

10 – The Profession You Trust the Least

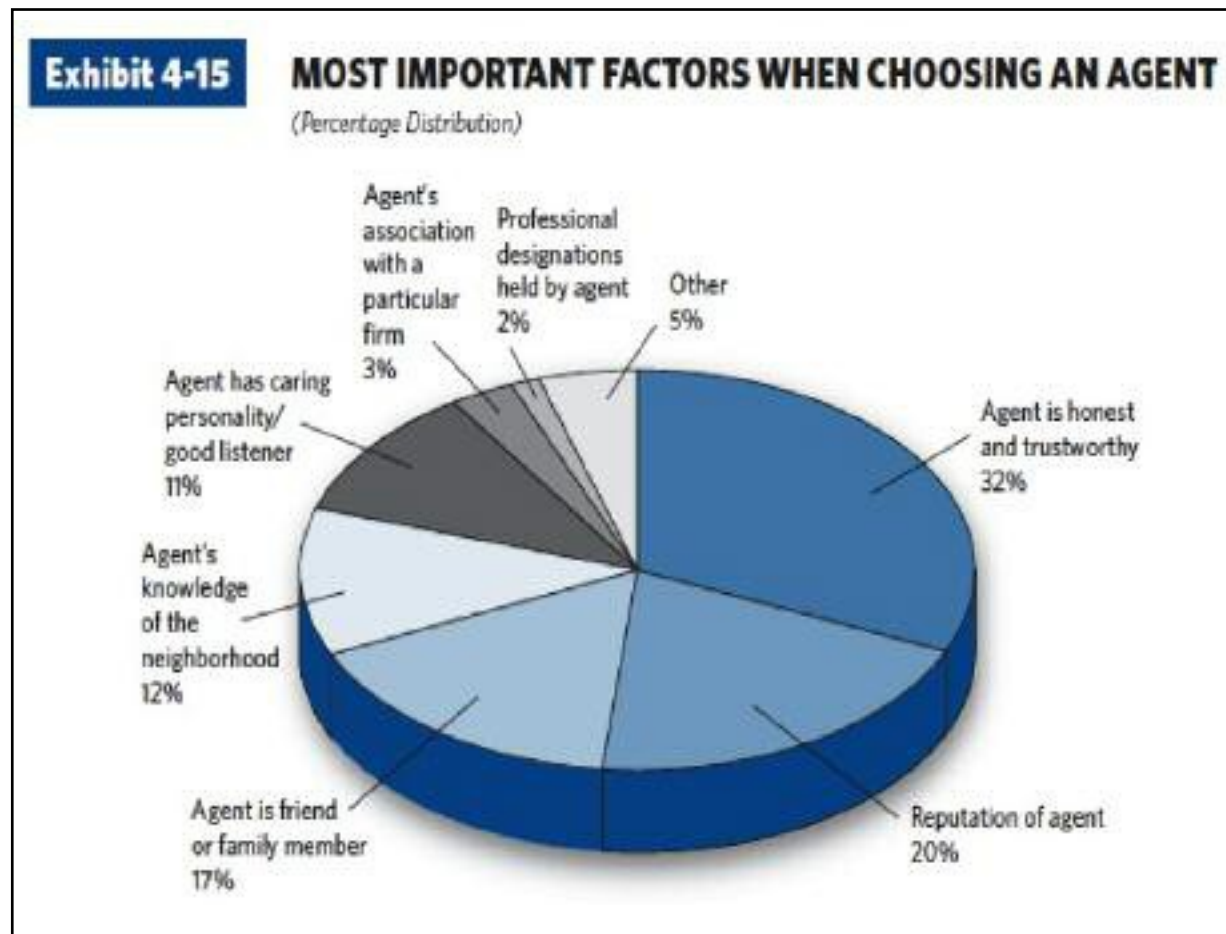
- ☐ Military Officers
- ☐ Lawyers
- ☐ Teachers
- ☐ Nurses
- ☐ Congressional Members
- ☐ News Reporters
- ☐ Real Estate Professionals
- ☐ Doctors
- ☐ Police Officers
- ☐ Clergy

## Annual Profiles

Every year the National Association of REALTORS® asks our past clients and consumers why they choose to work with a particular agent. The surveys appear in NAR's Annual Profile of Home Buyers & Sellers and are available at REALTOR.Org. Get the full report from REALTOR.Org for approximately \$20.



Here is what our clients said:



## Building Trust in Agency Relationships



List 3 things you could do to build TRUST with clients quicker and easier.

1. \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

2. \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

3. \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**How do these three things relate to agency?**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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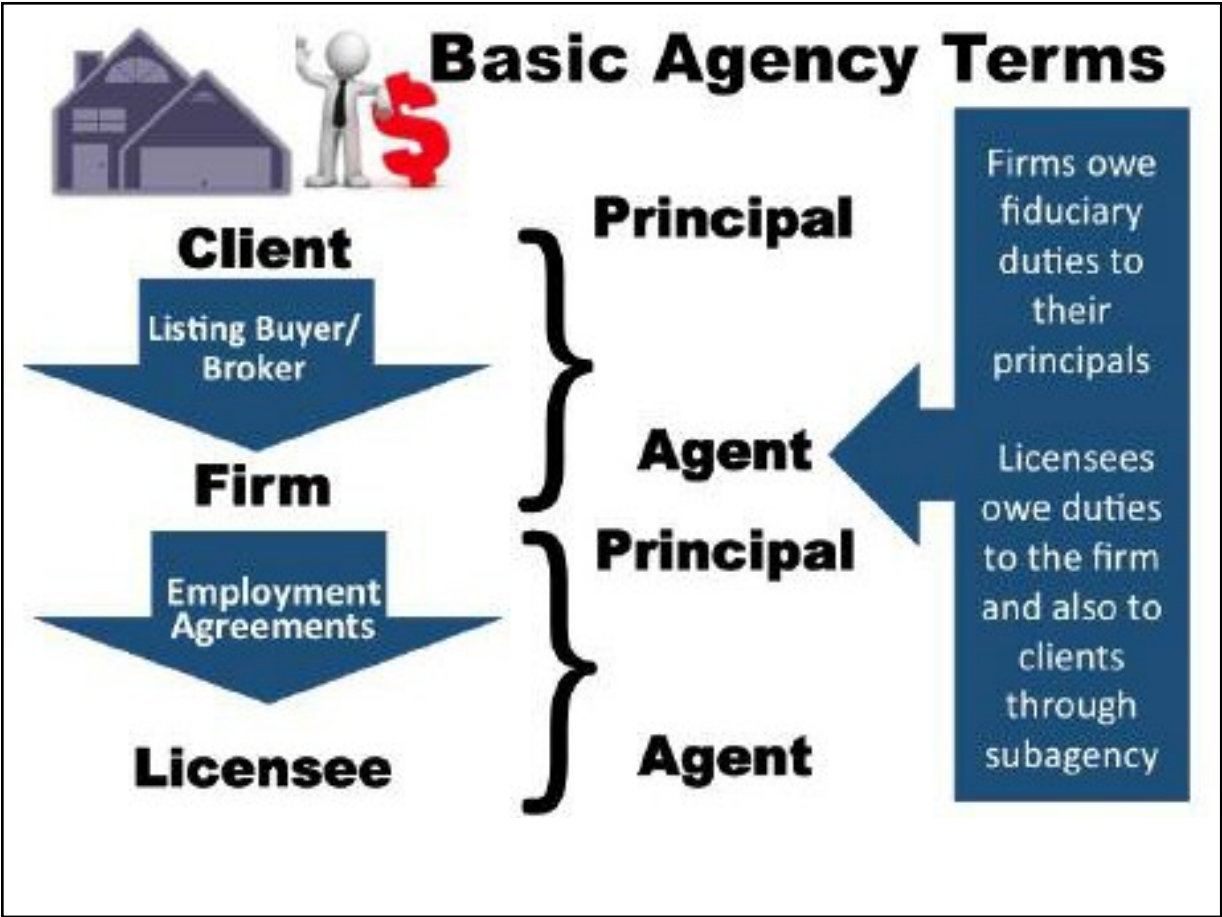
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# Flight Simulator

## How do you start your listing and buyer presentations?

[illegible]



Student Notes

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## O.L.D.C.A.R.

The fiduciary duties which a licensee owes to a client (through the concept of subagency) include all of the following responsibilities:



O – 10. \_\_\_\_\_

L – 11. \_\_\_\_\_

D – 12. \_\_\_\_\_

C – 13. \_\_\_\_\_

A – 14. \_\_\_\_\_

R – 15. \_\_\_\_\_

### The Obligation of Obedience

Real estate licensees are required to follow the instructions and direction of the

16. \_\_\_\_\_ unless those instructions 17. \_\_\_\_\_.

If the instruction given is illegal, then a real estate professional should take the following action. 18. \_\_\_\_\_.

Typical agency relationships in real estate DO NOT permit the agent to:

19. \_\_\_\_\_

20. \_\_\_\_\_

21. \_\_\_\_\_



**The Obligation of Loyalty**

The obligation of loyalty requires a real estate professional to put the

22. \_\_\_\_\_ interest above all others, including

23. \_\_\_\_\_.

**The Obligation of Disclosure**

A licensee has many obligations of disclosure. Disclosure includes:

24. \_\_\_\_\_

25. \_\_\_\_\_

26. \_\_\_\_\_

27. \_\_\_\_\_

Disclose personal information known to an agent about a third party that might influence the agent's principal in the transaction.

**The Obligation of Confidentiality**

A licensee must keep confidential all of the following of their client:

28. \_\_\_\_\_

29. \_\_\_\_\_

30. \_\_\_\_\_

31. \_\_\_\_\_

**The Obligation of Accounting**

A licensee has an obligation to 32. \_\_\_\_\_ and

33. \_\_\_\_\_ handled in a real estate transaction.

**The Obligation of Reasonable Care & Skill**

A real estate licensee is required to not be 34. \_\_\_\_\_ and

possess reasonable 35. \_\_\_\_\_.

# Flight Simulator

## Postlicensing Meets the Real World

### REAL WORLD Agency Choices



### Fiduciary Duties: Duties to Clients – Confidentiality

Ken Smith, a buyer, tells Pluribus Homey, a broker from MYsecret Realty, that he will offer \$152,000 for a property at 124 A Street, but will go as high as \$157,000 if necessary.

1. In this scenario, if Pluribus is representing Ken Smith, what is Pluribus's duty?
  - a. Keep Ken's comment confidential
  - b. Tell the seller what Ken said
  
2. In this scenario, if Pluribus is representing the seller, what is Pluribus's duty?
  - a. Keep Ken's comment confidential
  - b. Tell the seller what Ken said
  
3. If Pluribus represents Ken, and Pluribus represented a different buyer who previously negotiated with the seller of 124 A Street, should Pluribus tell Ken about those previous negotiations?
  - a. Yes
  - b. No
  - c. Only if Ken asks MYsecret Realty about previous negotiations
  - d. Only after obtaining the consent of the previous buyer/client
  - e. Only after obtaining the consent of the seller
  
4. If Pluribus represented the seller of 124 A Street in a previous negotiation, should Pluribus tell Ken, Pluribus's new buyer/client about those previous negotiations?
  - a. Yes
  - b. No
  - c. Only if Ken asks Pluribus about previous negotiations
  - d. Only after obtaining the consent of the previous buyer
  - e. Only after obtaining the consent seller

### Duties to Clients – Undivided Loyalty

Constance Gripper, a new homebuilder, has hired Matt to represent her in acquiring properties, which contain a house and at least one subdividable lot on which she can build. Matt, who is a salesperson with MYsecret Realty, takes Constance to a property that is listed with GottaSell Realty. Matt believes the property may have as many as four subdividable lots.

While showing the property to Constance, the seller, a 76-year-old widow, tells Matt and Constance that she does not want to move, but her Social Security is not sufficient to meet her living expenses. Matt does not know if GottaSell Realty has discussed alternative solutions with the seller, which may enable her to stay in her home. Matt's buyer/client, Constance, wants to make an offer immediately because this is the best deal she has seen in years.

1. How should Matt proceed?
  - a. Before discussing the property with Constance, call GottaSell Realty to see if anyone from GottaSell Realty discussed alternative solutions with the seller.
  - b. Before discussing the property with Constance, call the seller to see if anyone from GottaSell Realty discussed alternative solutions with her.
  - c. The seller is not Matt's client. He should provide whatever assistance is required to help Constance decide how she wants to proceed.

## Flight Simulator (CONTINUED)

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### Duties to Clients – Undivided Loyalty, Confidentiality

Jayne and Chris have chosen MYsecret Realty to represent them in the purchase of a property. The provisional broker, Matt Gainer, agrees to help Chris and Jayne find a home.

Jayne tells Matt that she has always loved Cottonwood Manor Estates, but no homes have gone on the market in Cottonwood Manor Estates for more than 2 years. Matt tells the buyers he will call the owners in Cottonwood Manor Estates and inquire if anyone is interested in selling their home. Matt is able to discover that Mario and Ruby Needago, who are legally separated, are contemplating selling their property in Cottonwood Manor Estates. When Matt calls the sellers, he identifies himself as a buyer's representative and learns they are not represented by a real estate brokerage company and are seeking a firm to sell their property.

1. Does the fact that a real estate brokerage company is not representing the seller affect Matt's ability to show the property to Chris and Jayne?

\_\_\_\_ Yes      \_\_\_\_ No

2. If Matt does set an appointment to show the property, who would be Matt's client and who would be Matt's customer?
  - a. Chris and Jayne would be Matt's client, and the Ruby and Mario would be Matt's customer.
  - b. Ruby and Mario would be Matt's client, and Chris and Jayne would be Matt's customer.

3. Should Matt tell Chris and Jayne that he has heard that the Sellers are getting a divorce?

\_\_\_\_ Yes      \_\_\_\_ No

4. Should Matt tell the seller about Jayne's love of the Cottonwood Manor Estates houses?

\_\_\_\_\_Yes      \_\_\_\_\_No

5. The property owner proceeds to tell Matt they are interested in selling and they want \$250,000 for the property. Matt takes Chris and Jayne to see the seller's property. Chris and Jayne love the property and tell Matt they want to make an offer. What does Matt do next?

6. The highest sale in Cottonwood Manor Estates has been \$195,000. Chris and Jayne make an offer of \$195,000, but Mario and Ruby counteroffer at \$250,000. Chris and Jayne tell Matt they will not make a counteroffer. They said they would give the sellers a few weeks and then decide if they want to make another offer on the property. Can Matt now show this property to another buyer client?

\_\_\_\_\_Yes      \_\_\_\_\_No

## Flight Simulator (CONTINUED)

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### Duties to Clients – Disclosure, Reasonable Care and Diligence

MYsecret Realty is representing buyers Rick and Bobbi in the purchase of a property. Rick and Bobbi are unfamiliar with the area but have found Plum Creek subdivision and like it very much. The Plum Creek subdivision is half in Cabarrus County and half in Mecklenburg County. Property values in Cabarrus County are substantially higher than similar properties in Mecklenburg County. The Plum Creek properties in the Cabarrus County portion of Plum Creek have been selling between \$235,000 and \$250,000, while the homes in the Mecklenburg County portion of Plum Creek have been selling between \$210,000 and \$215,000. Two of the properties for sale are in the Cabarrus County portion of Plum Creek for \$265,000 and two properties in the Mecklenburg County portion of Plum Creek are listed for \$223,500 and \$225,000.

After seeing the four houses, the buyers tell their agent the two Cabarrus County properties are not of interest to them, but do think the Mecklenburg County properties are possibilities. When Rick and Bobbi's broker calls the listing broker for more information about the property, the listing broker says that the sellers have authorized him to tell the buyer that they do not even want to see offers under \$220,000. Also, if they receive no offers over \$220,000, they will simply take their home off the market.

The buyers view the Mecklenburg County property for a second time; they are considering an offer of \$216,000 for the property contingent on obtaining a \$195,000 mortgage. Rick and Bobbi's broker has not told them about the property value difference between the two counties.

1. If MYsecret Realty tells the buyers about the discrepancy in property values between the two counties, this may:
  - a. Lead the buyers toward an offer to purchase with the sellers.
  - b. Lead the buyers away from an offer to purchase with the sellers.
  
2. How should MYsecret Realty proceed?
  - a. Because MYsecret Realty is in the business of listing and selling real estate, they should withhold the information from the buyers.
  - b. Because MYsecret Realty is representing the buyers, they should tell them about difference in property value and allow the buyers to make an informed purchase decision.
  
3. If you were the broker for MYsecret Realty, what would be your recommendations to the broker dealing with these buyer client?
  
  
  
  
  
  
  
  
  
  
4. If the buyer still wants to make an offer, what should their broker do?

## **Flight Simulator (CONTINUED)**

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### **Responsibilities to a Customer – Fairness, Honesty and Disclosure**

What responsibility does the seller's representative have to a buyer customer?

1. The seller's property borders on a land fill.
  - a. Should be disclosed
  - b. Should not be disclosed without the client's consent
2. The basement of the seller's property is dry, except on days when it rains, snows, or sleets.
  - a. Must be disclosed
  - b. Should not be disclosed without the client's consent
3. The fact that the seller will take less money for his property.
  - a. Should be disclosed
  - b. Should not be disclosed without the seller's consent
4. The seller has overpriced his home.
  - a. Should be disclosed
  - b. Should not be disclosed
5. There is a major highway being built 400 yards beyond the seller's backyard within the year.
  - a. Should be disclosed
  - b. Should not be disclosed without seller's permission

### **Agent's Duty to Principal after Termination of Agency Relationship**

Duty generally ends when agency ends, the following exceptions:

- 1) express promise or implied obligation;
- 2) pending transaction at termination date of agency agreement and;
- 3) self-dealing.

And, duty of confidentiality may be expected to continue as long as the agent has no duty to disclose to a new client.





## Understanding Material Facts

Material facts must be disclosed to 36. \_\_\_\_\_  
in the transaction. A licensee must disclose 37. \_\_\_\_\_  
and 38. \_\_\_\_\_

Material facts generally fall into four categories, which include:

- 39. \_\_\_\_\_
- 40. \_\_\_\_\_
- 41. \_\_\_\_\_
- 42. \_\_\_\_\_

NC state law exempts a licensee from liability for failing to disclose the following three things:

- 43. \_\_\_\_\_
- 44. \_\_\_\_\_
- 45. \_\_\_\_\_

Listing property “AS IS” in NC likely means:

- 46. \_\_\_\_\_

When dealing with an “AS IS” property the licensee:

- 47. \_\_\_\_\_

Foreclosure in North Carolina becomes a material fact:

- 48. \_\_\_\_\_

### Read and Discuss Chapter 20 - Case Study #13 – Broker’s Disclosure of Material Fact

# Flight Simulator



## Potential Red Flags

Indicate whether the following items are material facts, and if so, what about them should agents and clients know?

1. Manufactured homes and manufactured buildings \_\_\_\_\_  
\_\_\_\_\_
2. Modular homes \_\_\_\_\_  
\_\_\_\_\_
3. Polybutylene pipes \_\_\_\_\_  
\_\_\_\_\_
4. Square footage of heated area \_\_\_\_\_  
\_\_\_\_\_
5. Synthetic stucco \_\_\_\_\_  
\_\_\_\_\_
6. Real stucco \_\_\_\_\_  
\_\_\_\_\_
7. Asbestos siding not friable \_\_\_\_\_  
\_\_\_\_\_
8. Hardboard \_\_\_\_\_  
\_\_\_\_\_
9. Pressure treated lumber \_\_\_\_\_  
\_\_\_\_\_
10. Radon gas \_\_\_\_\_  
\_\_\_\_\_
11. Lead paint disclosure \_\_\_\_\_  
\_\_\_\_\_

## Flight Simulator (CONTINUED)

12. “Meth” houses \_\_\_\_\_  
\_\_\_\_\_
13. Subdivision streets: private or public maintained \_\_\_\_\_  
\_\_\_\_\_
14. Zoning \_\_\_\_\_  
\_\_\_\_\_
15. Flood plains \_\_\_\_\_  
\_\_\_\_\_
16. SWIM buffer (stormwater infrastructure management) \_\_\_\_\_  
\_\_\_\_\_
17. Onsite septic system \_\_\_\_\_  
\_\_\_\_\_
18. “Straight-piping” \_\_\_\_\_  
\_\_\_\_\_
19. Pending foreclosure \_\_\_\_\_  
\_\_\_\_\_
20. Seller behind on house payments by 4 months \_\_\_\_\_  
\_\_\_\_\_
21. “Short sale” \_\_\_\_\_  
\_\_\_\_\_
22. Buyer’s failure to qualify for a loan \_\_\_\_\_  
\_\_\_\_\_
23. Death or serious illness \_\_\_\_\_  
\_\_\_\_\_
24. Murder on the property \_\_\_\_\_  
\_\_\_\_\_

## Flight Simulator (CONTINUED)

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25. Suicide on the property \_\_\_\_\_  
\_\_\_\_\_

26. Person with AIDS/HIV positive \_\_\_\_\_  
\_\_\_\_\_

27. Pending highway expansion near a property \_\_\_\_\_  
\_\_\_\_\_

28. Presence of registered sex offenders \_\_\_\_\_  
\_\_\_\_\_

29. Gravesites on property \_\_\_\_\_  
\_\_\_\_\_

30. Lack of homeowner's insurance due to property being uninsurable by HO \_\_\_\_\_  
\_\_\_\_\_

31. Unpermitted additions/improvements \_\_\_\_\_  
\_\_\_\_\_

32. Partial destruction of property by fire and was repaired and remodeled \_\_\_\_\_  
\_\_\_\_\_

33. Partial destruction of property by flood and was repaired and remodeled \_\_\_\_\_  
\_\_\_\_\_

34. Haunted houses \_\_\_\_\_  
\_\_\_\_\_

35. Buried oil tank in ground \_\_\_\_\_  
\_\_\_\_\_

36. Aluminum wiring \_\_\_\_\_  
\_\_\_\_\_



## Pilot Training

Identify current HOT issues in real estate disclosure, and discuss how they should be approached in order to fulfill agency obligations.

### Hot Issue or Topic

### Fiduciary Obligation Approach

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## Misrepresentations & Omissions

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Real estate licensees can be held liable for both misrepresentations and omissions.

A misrepresentation is 49. \_\_\_\_\_

They can be either: 50. \_\_\_\_\_ or 51. \_\_\_\_\_

Make a list of some common examples of misrepresentations in real estate:

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An omission is 52. \_

They can be either 53. \_\_\_\_\_ or 54. \_\_\_\_\_

Make a list of some common examples of omissions in real estate:

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Real estate professionals are permitted to make generalized statements about the property that do not create liability. This is called: 55.

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Examples of puffing include all of the following:

56. \_

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**Unfair and Deceptive Practices Act** is consumer legislation that applies to real estate brokers (& some property owners); applies to actions including postings on internet and social media; creates separate legal cause of action with the possibility of treble damages and; could invalidate sales contract for transfer of real property.

## Racial Equity (NCREC 2021-2022 GENUP)

### Definitions

- 57. \_\_\_\_\_ 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
- 58. \_\_\_\_\_ a bias or prejudice that is present but not consciously held or recognized
- 59. \_\_\_\_\_ 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.
  - The Center for Assessment and Policy Development defines racial equity as the condition that would be achieved if one's racial identity no longer predicted, in a statistical sense, how one fares.
  - The City of Durham defines racial equity as the condition when racial identity cannot be used to predict individual or group

## NCREC Commitment to Racial Equity

### NORTH CAROLINA REAL ESTATE COMMISSION COMMITMENT TO RACIAL EQUITY

The North Carolina Real Estate Commission members and its staff are deeply saddened by the senseless death of George Floyd, and far too many other people of color. We grieve with our fellow Americans and with people across the world over these 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, to ensure equal housing opportunities, and to end discrimination. We stand with those who seek change to make sure racism and discrimination are not part of our present. We vow to listen, learn, and work with our communities and should

Hyperlinks appear at the end of the Commitment on the Commission's website landing page.

The Commission is committed to examining its rules to ensure that we 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. Suggest a Rule Change / File a Complaint

On the NCREC website, at the end of their racial equity statement, they state

“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”

and there is a link for suggesting a rule change or filing a complaint.

## **NORTH CAROLINA REAL ESTATE COMMISSION COMMITMENT TO RACIAL EQUITY STATEMENT**

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.

## NCREC Commitment to Racial Equity

### Relevant Commission Rules

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 60. \_\_\_\_\_. 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.

*NOTE: Subsections (a)-(c) of this new rule are unrelated to racial equity.*

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 61. \_\_\_\_\_, 62. \_\_\_\_\_, and/or 63. \_\_\_\_\_ 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 64. \_\_\_\_\_ 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 65.

\_\_\_\_\_ with consumers. A broker who does so is in violation of the new Rule.

### **Advertising**

Brokers must ensure their advertisements are not discriminatory or prejudicial to members of a 66. \_\_\_\_\_, in order to be in compliance with State and Federal Fair Housing laws.

For example, advertisements should be 67. \_\_\_\_\_ and 68. \_\_\_\_\_ 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 NCREC 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>

## Implicit Bias

### *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.

It is caused by

69. \_\_\_\_\_

70. \_\_\_\_\_

71. \_\_\_\_\_

72. \_\_\_\_\_

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

Unconscious attitudes and bias can lead to brokers choosing what they **think** is best for their clients. Such actions can lead to 73 \_\_\_\_\_.

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 74. \_\_\_\_\_ or 75. \_\_\_\_\_ particular neighborhoods is prohibited under the Fair Housing Acts.

Brokers can refrain from participating in steering by using objective criteria such as 76. \_\_\_\_\_ and 77. \_\_\_\_\_ when providing listings to clients.

## Pilot Training



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?

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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.

### *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 78. \_\_\_\_\_ 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 79. \_\_\_\_\_ about fair housing laws.
- Participate in educational programs and/or 80. \_\_\_\_\_ opportunities that focus on racial bias, diversity, and equality.
- Adopt 81. \_\_\_\_\_ that include racial equity.

A broker has a responsibility to provide brokerage and real estate related services to all individuals equally. Remember, 82. \_\_\_\_\_ 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.

Brokers are encouraged to participate in the National Association of REALTORS® Fairhaven: A Fair Housing Simulation and to take an Implicit Bias Test (IAT) (just internet search "implicit bias tests" to see examples).

### **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.

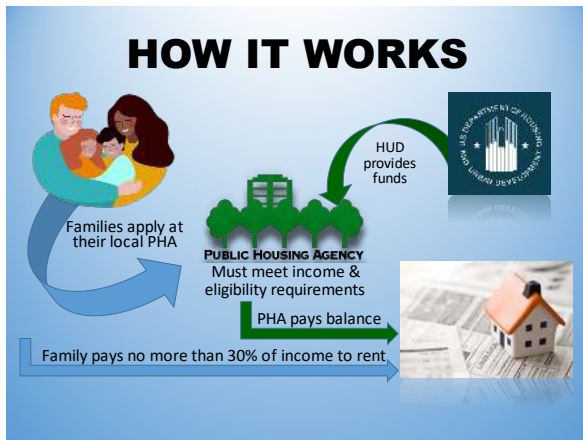
This authorization created the 83. \_\_\_\_\_ program (hereafter known as "HCV"). This program is also known as Section 8 housing.

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.

*How it works:*



Low-income families apply for vouchers at their local PHA. The PHA evaluates the families' income and other eligibility requirements. If income & 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.

## **DISPARATE IMPACT**

Disparate impact defined

OCCURS WHEN:

- 84. \_\_\_\_\_
- that is 85. \_\_\_\_\_ on its face
- 86. \_\_\_\_\_ harms people of a protected class

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**

- The practice of refusing to rent to a housing applicant because of that person's lawful form of income
- Decisions made based on source of income can have a 87. \_\_\_\_\_.

### **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. Local efforts exist: Raleigh – Resolution 236; Charlotte Ad Hoc Advisory Committee and; 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.

### **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](http://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.

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.

<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.

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



## Section 1: The Basics of Agency Relationships Notebook Guide

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1. Common law
2. General statutes
3. Commission rules
4. Civil liability
5. Criminal liability
6. Ethical violations
7. NCREC disciplinary actions
8. Fine
9. Trust
10. Obedience
11. Loyalty
12. Disclosure
13. Confidentiality
14. Accounting
15. Reasonable care
16. Client's
17. They violate the law
18. Explain the illegality and may have to terminate relationship
19. Make decisions for the client
20. Sign the client's name
21. Make offers or accept offers on behalf of the client
22. Client's
23. Including your own
24. Agency explanations
25. Material facts
26. Interests in the transaction (Yours and your family members)
27. Status as a licensee
28. Motivations

## **Section 1: The Basics of Agency Relationships Notebook Guide (CONTINUED)**

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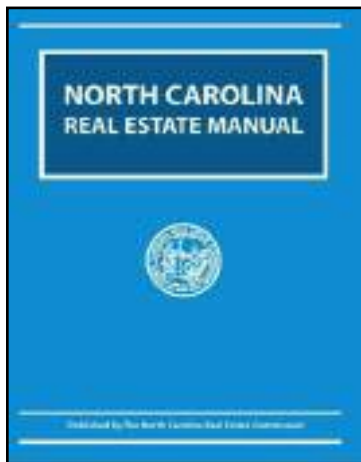
29. Finances
30. Amount Willing to Pay or Accept
31. Personal Information
32. Safeguard
33. Document
34. Negligent
35. Knowledge and skill
36. All parties in the transaction
37. Everything you know
38. Everything you should have known
39. Facts about the property itself
40. Facts that affect the property
41. Inability of any party to perform
42. Facts known to be of particular interest to a party
43. Death in a property
44. Serious illness of a previous owner
45. Proximity of sex offenders
46. May mean seller not willing to consider any repair request
47. Disclose all material facts
48. Once legal notice has been file or recorded
49. Any statement that is incorrect
50. Negligent
51. Willful
52. Information that should have been conveyed but was not
53. Negligent
54. Willful
55. Puffing
56. Nice house
  - Great neighborhood
  - Wonderful opportunity
  - Luxurious living
57. Disparate impact
58. Implicit bias
59. Racial Equity
60. Agency agreement
61. Representation

- 62. Fees
- 63. Services
- 64. Antidiscriminatory
- 65. Interact
- 66. Protected class
- 67. Inclusive
- 68. Representative
- 69. Cultural interactions
- 70. Historical interpretations
- 71. Childhood experience
- 72. Environment
- 73. Steering
- 74. Towards
- 75. Away from
- 76. Purchase price
- 77. Property features
- 78. Education
- 79. Knowledgeable
- 80. Training
- 81. Policies & procedures
- 82. Implicit bias
- 83. Housing Choice Voucher Program (HCV)
- 84. A doctrine, policy, or practice
- 85. Neutral
- 86. Disproportionately
- 87. Disparate impact

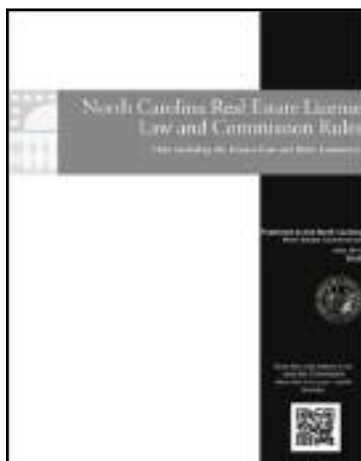


## Section 2: The Rules of Agency Relationships

### Critical Reading Information



- Chapter 8 – Relationships in Brokerage Practice



- §93A-6 Licensing Obligations
- §93A-4 – Applications & Reinstatement
- Rule A.0101 – Proof of Licensure
- Rule A.0103 – Broker Name & Address
- Rule A.0104 – Agreements & Disclosure
- Rule A.0108 – Retention of Records

## Agency Classifications



Property managers have

1. \_\_\_\_\_ agency relationships.

Sales agents have

2. \_\_\_\_\_ agency relationships



North Carolina requires written agency agreements.

For property management and listings, the agreement must be in writing:

3. \_\_\_\_\_

For buyers, there can be an oral agency relationship while showing properties, but the buyer broker agreement must be in writing: 4. \_\_\_\_\_

When the buyer and seller are represented by separate firms, it is

5. \_\_\_\_\_ agency and full fiduciary duties are owed to each client.

## Understanding Limited Dual Agency

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When the same firm represents the buyer and seller it is

6. \_\_\_\_\_

Dual agency can occur in either of the following two scenarios:

7. \_\_\_\_\_

8. \_\_\_\_\_

Dual agency always requires 9. \_\_\_\_\_

and 10. \_\_\_\_\_

Consent should be obtained before 11. \_\_\_\_\_

The consent can either be obtained 12. \_\_\_\_\_

or 13. \_\_\_\_\_

The consent for dual agency must be in writing when

14. \_\_\_\_\_

Because dual agency creates an inherent conflict of interest, the WWREA brochure makes the following statement regarding dual agency:

15. \_\_\_\_\_

When acting as a dual agent, the licensee's representation is limited because they cannot:

16. \_\_\_\_\_

17. \_\_\_\_\_

18. \_\_\_\_\_

This means that dual agency is a 19. \_\_\_\_\_

that 20. \_\_\_\_\_

Acting as an undisclosed dual agent can result in the following:

21. \_\_\_\_\_

22. \_\_\_\_\_

23. \_\_\_\_\_



## Practicing Designated Agency

Designated agency is still a form of 24. \_\_\_\_\_  
and requires 25. \_\_\_\_\_ and 26. \_\_\_\_\_.

Designated agents are selected and chosen in either of the following ways:

27. \_\_\_\_\_

28. \_\_\_\_\_

Not all real estate offices or agents practice designated agency. In order to practice designated agency, the real estate commission requires each of the following:

29. \_\_\_\_\_

30. \_\_\_\_\_

31. \_\_\_\_\_

## Student Notes

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## Pilot Training

**Discuss the pros and cons of dual and designated agency**

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## Proper Use of the *Working with Real Estate Agents* Brochure

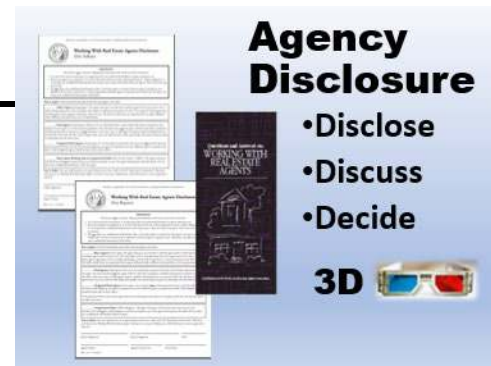
Real estate agents are required to make an

32. \_\_\_\_\_

to every customer and/or potential client

33. \_\_\_\_\_

by using the *Working with Real Estate Agents* (WWREA) brochure.



First substantial client contact occurs any time the agent solicits or the client offers:

34. \_\_\_\_\_

35. \_\_\_\_\_

36. \_\_\_\_\_

37. \_\_\_\_\_

Brokers are required after reviewing the brochure and providing it to:

38. \_\_\_\_\_

39. \_\_\_\_\_

The client is not required to: 40. \_\_\_\_\_

If the contact is not face to face, the agent must still provide a disclosure and explanation of agency 41. \_\_\_\_\_

but has 42. \_\_\_\_\_ days to provide the brochure.

Agents always disclose their agency status and agency role to another licensee at

43. \_\_\_\_\_



# Flight Simulator

**With a partner, explain the *Working with Real Estate Agents* brochure as if he or she were a client.**

*(Be certain to ask each other for examples and use questions that clients might pose.)*

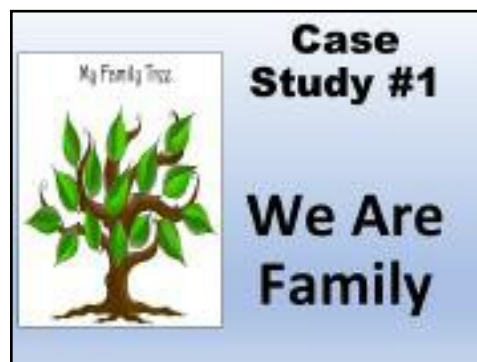
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## Pilot Training

The following are actual court cases and NCREC disciplinary actions based on agency principles along with examples from the *Real Estate Manual*.

### Case Study #1: “We Are Family” The Case of the Family Benefit

A property is listed through Broker A with ABC Realty at a listing price of \$225,000. Broker B, also affiliated with ABC Realty, shows the property to his sister and her husband, and they make an offer of \$225,000. Broker A is aware of Broker B’s relationship with the prospective buyers. Brokers A and B submit the offer to the sellers, but do not advise the seller about Broker B’s relationship to the buyers. The seller accepts the offer and the transaction closes.



### Questions for Discussion:

1. Is this appropriate?

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2. If not, which duties have been breached?

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3. Who has potential liability?

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**Case Study #2**  
**The Case of Extraordinary Powers**

**Case Study #2: The Case of Extraordinary Powers (NCREC Real Estate Bulletin)**

A Charlotte real estate licensee, John, was hired by a client in a formal agency relationship. As part of the employment agreement, the licensee requested that his client also appoint him to act on his behalf with a formal power of attorney. On investigation, the Commission found that John entered into a lease agreement on behalf of his client in which the client leased the property to the buyer with a rental period that began prior to the client taking title or possession of the property. The Commission further found that John’s client obtained a loan to purchase the property but John as the agent failed to disclose that the client had sold the property before obtaining the loan and the client’s agreement with his lender included a due on sale clause, and that John signed all documentation for his client, selling the property in violation of the due on sale clause without the consent of the lender.

**Questions for Discussion:**

1. Is this appropriate?

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2. If not, which duties have been breached?

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3. Who has potential liability?

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4. What should we know about the use of powers of attorney in real estate transactions?

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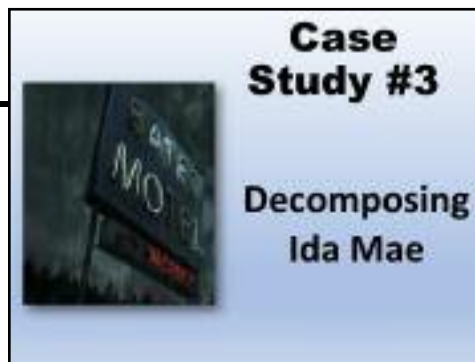
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## Pilot Training (CONTINUED)

### Case Study #3: Decomposing Ida Mae

*Deptula vs. Simpson*, 164 P3d 640  
(2007 Alaska Supreme Court)

Ida Mae died in the kitchen of her home. Her body was on the kitchen floor a month before it was discovered. During this time, her body decomposed and fluids saturated the floor and damaged the subflooring. Ida's daughter came to Alaska to dispose of her mother's estate. She was unaware of the damage to the floor because a well-meaning neighbor had cleaned up the floor before the daughter arrived in Alaska. Ida's daughter listed the house for sale. She decided to fill out a disclosure statement explaining that she was uncomfortable with filling out the form since she had never lived in the house. The Deptulas bought the home. They knew that Ida Mae had died there, but no one told them her body had decomposed. The contract was marked "As Is," and the buyers waived their receipt of the disclosure form. After the Deptulas moved in, they noticed an unusual stain on the kitchen floor. They filed a lawsuit against the daughter, Ms. Simpson, as the seller of the property.



### Questions for Discussion:

1. Does the seller have a duty to disclose?

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2. Does the agent have a duty to disclose?

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3. What is the impact of "As Is" on the liability of the parties?

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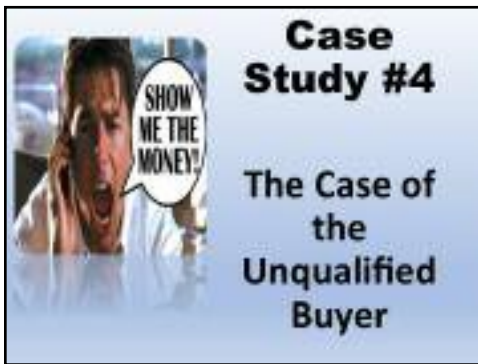
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4. What are the obligations of the buyer's agent to discover and disclose?

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## Pilot Training (CONTINUED)

### Case Study #4: The Case of the Unqualified Buyer *Lombardo vs. Albu* (Arizona Supreme Court, 2000)

Elaine Albu represented buyers under an exclusive buyer representation agreement in their purchase of a home from the Lombardos. During the pendency of the contract, the buyers told Elaine that they were having great difficulty in financing and that they probably would not be able to close. Elaine told no one. When the buyers failed to close, the sellers lost their home in foreclosure to the lender and the Lombardos sued the buyers and Elaine for failing to disclose the status of the buyer's financing. Elaine claimed that the information her buyers shared with her about their personal financial situation was confidential, and therefore she had a conflict of duties between the fiduciary duties she owed to her client and the disclosure duties she owed to the sellers as a mere customer. She argued that the fiduciary duties she owed to the sellers were more important.

#### Questions for Discussion:

1. What duties does Elaine owe to the respective parties in the transaction?

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2. Is the fact that the borrower cannot qualify for the loan confidential?

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3. What borrower financial information might be confidential?

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4. Is Elaine correct that the obligations and duties she owes to the seller and buyer are in conflict?

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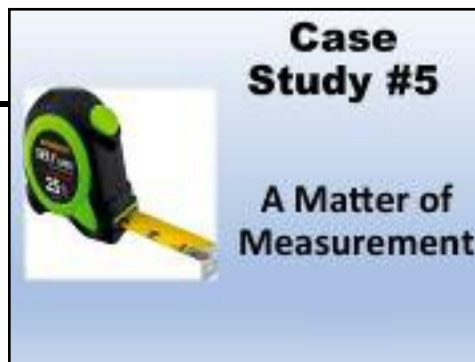
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## Pilot Training (CONTINUED)

### Case Study #5: A Matter of Measurement *Brown vs. Roth* 133 NC App 52, 514 SE2d 294 (1999)

The sellers hired a real estate agent to sell their home. The agent prepared a multiple listing form that represented that the house had 3,484 square feet of heated living area. The agent did not verify that measurement because she believed the square footage had been verified in a previous appraisal upon which she relied. After purchasing the home, the Browns discovered that the house had only 3,108 square feet of living area. The Browns filed claims for fraud, breach of fiduciary duty and negligent misrepresentation. The agent responded that she relied on professional measurements and that the clients had duties and obligations to verify concerns during the due diligence period and that North Carolina followed principles of caveat emptor in real estate transactions.



#### Questions for Discussion:

1. Does the concept of caveat emptor apply when it comes to the fulfillment of fiduciary duties?

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2. Did the agent make a misrepresentation to the buyers?

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3. Does the agent have an independent duty to measure square footage?

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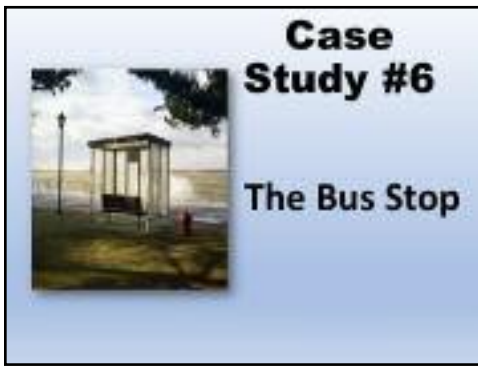
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4. Were the actions of the agent in relying on a professional appraisal from a previous transaction proper?

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## Pilot Training (CONTINUED)

### Case #6: The Bus Stop NAR Arbitration Claims on Fiduciary Duties

A real estate agent listed a property for sale acting under an Exclusive Right to Sell Listing Agreement. The property was located next to a bus stop and that fact was promoted in the marketing of the property.

A buyer who indicated that the proximity of the bus stop was important to them entered into a purchase contract with the seller. After the contract had been signed, the listing agent learned that the city had plans for relocating the bus stop. The listing agent reported this information to the buyer, who cancelled the contract. The seller then filed a claim against the listing agent for disclosing the information to the buyer and alleged that the listing agent had failed to protect and promote the seller's interest and had breached fiduciary duties of loyalty.

#### Questions for Discussion:

1. Should the seller prevail on their claim against the listing agent for breach of fiduciary duties?

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2. What is the appropriate conduct that was required of the listing agent?

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3. When will the seller again hire a real estate professional in a transaction?

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4. Whose fault is that and how could this lawsuit have been prevented?

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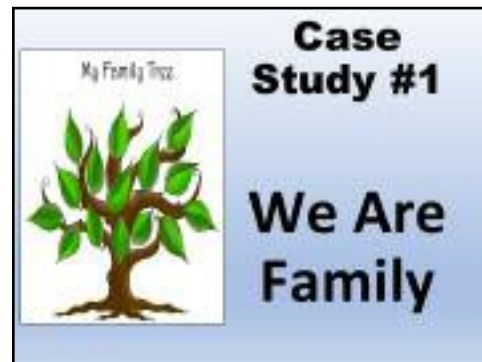
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## Analysis & Case Study Court Resolutions

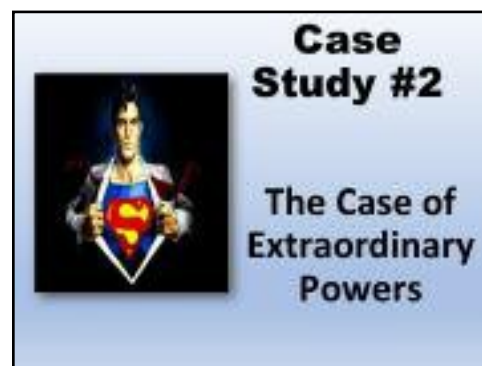
### Case Study #1

The buyers in this case study are related to Broker B. General Statute 93A-6(a)(4) prohibits any self-dealing on the part of an agent. Any interest in the transaction by the agent or a family member must be disclosed. Broker B has breached a duty of disclosure to a seller customer. Only Broker B has liability since the family member relationship was not known to the listing agent, Broker A.



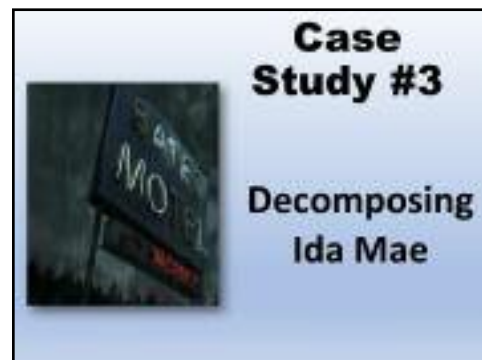
### Case Study #2

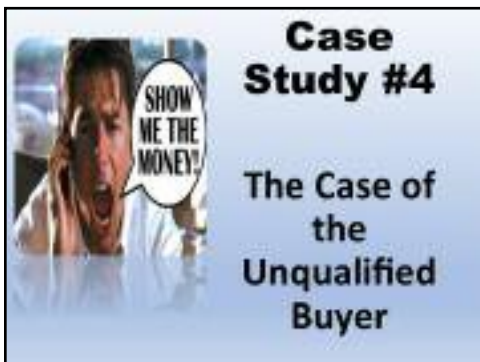
John committed willful misrepresentations and willful omissions in the transaction. Although it is legal for a licensee to obtain a power of attorney from his or her client allowing the agent to act on the client's behalf, this is a process that is highly discouraged and not recommended. John has liability for his actions and John may also have created liability for his client because he was acting as the client's agent.



### Case Study #3

A seller does not have a duty to disclose. In fact, in North Carolina, Ms. Simpson is exempt from the RPOADS disclosure requirement within an estate transaction. An agent only has liability to disclose those material facts of which they knew or should have known and there is no evidence in this case that the agent had knowledge. The limitation of liability is based on disclosure obligations, not because the property was sold "as is." An "as is" sale in no way reduces the liability of a real estate professional to disclose material facts.





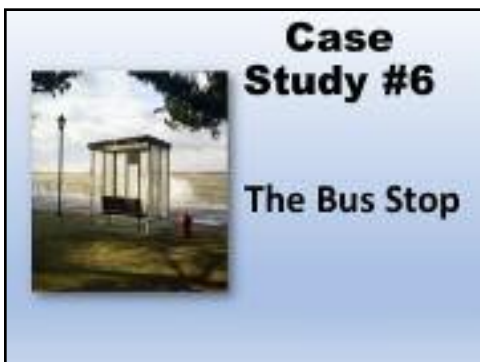
### Case Study #4

Elaine Albu owes fiduciary duties to her buyer clients and she also owes duties to the Lombardos, the sellers, of all material facts. The ability of a borrower to perform is a material fact and must be disclosed. Elaine did not have a duty to disclose the exact reason why the borrower could not perform, certain aspects of that information may be confidential, but the inability to perform must be disclosed. There is no conflict in these duties.



### Case Study #5

The doctrine of caveat emptor does not limit or affect the agent's obligations to fulfill either their fiduciary duties or the obligations and duties owed to customers. The agent made a misrepresentation regarding square footage and erroneously relied on the measurements from an appraisal in a previous transaction. An agent has a duty to verify the reporting of square footage and may not rely on documents and measurements done in previous transactions.



### Case Study #6

There is no breach of fiduciary duty presented by these facts. The location of the bus stop was a material fact and its relocation was required to be disclosed by the listing agent. The listing agent should have done a better job of explaining their duties and obligations to the seller.

## Agency Relationships Within Firms

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Firms have agency relationships with clients and licensees have agency relationships with the firm with which they are affiliated

Some licensees work as 44. \_\_\_\_\_ and receive a  
45. \_\_\_\_\_ taxes and deductions withheld by their employer.

Other licensees work as 46. \_\_\_\_\_, are responsible for payment of  
their own taxes and receive a 47. \_\_\_\_\_ form.

Contrary to popular opinion, licensed real estate professionals paid commissions and working  
under a written agreement are not 48. \_\_\_\_\_.  
The IRS classifies them as 49. \_\_\_\_\_.

This means that as licensees receiving a 1099, the traditional rules between employee  
and “independent contractor” do not apply. Because of this, BICs are able to do all of  
the following:

50. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

All North Carolina licensees are now required to complete an acknowledgement and  
disclosure at renewal that they understand employee classification and will not violate the  
rules, particularly when it comes to unlicensed people.



## Revelations, Insights, Ideas & To Do List

What are the best and brightest “to do” items  
you got out of this section?



1. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
2. \_\_\_\_\_  
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3. \_\_\_\_\_  
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7. \_\_\_\_\_  
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8. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



## Section 2: The Rules of Agency Relationships Notebook Guide

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1. General agency
2. Special agency
3. At the start of the relationship (No such thing as an oral listing agreement)
4. Before preparing an offer
5. Single agency
6. Dual agency
7. One licensee representing the seller and buyer
8. Two licensees with the same firm representing a seller and a buyer
9. Disclosure
10. Consent
11. Before showing the property
12. In the initial employment agreement
13. Obtained separately prior to showing
14. When the employment agreement is in writing
15. Dual agency is difficult and limits the ability to advocate
16. Price negotiations
17. Motivations of parties
18. Confidential information
19. Contractual agreement
20. Reduces the level of fiduciary duties
21. Civil liability
22. Disciplinary action
23. Loss of commissions
24. Dual Agency
25. Disclosure
26. Consent



## Section 2: The Rules of Agency Relationships Notebook Guide (CONTINUED)

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27. Chosen by the BIC
28. Based on company policy
29. The firm must create policies to protect the financial and confidential information of the clients
30. You cannot be a designated agent if you already possess the personal, financial or confidential information of the client
31. A BIC and a provisional broker cannot be designated agents in the same transaction
32. Agency disclosure
33. At first substantial contact
34. Personal
35. Financial
36. Confidential
37. Motivational
38. Document client receipt with signature on the bottom of form
39. Retain a copy as part of the real estate transaction file
40. Sign the brochure
41. At first substantial contact
42. Within 3 calendar days
43. At initial contact
44. Employee
45. W2
46. Self-employed
47. 1009
48. Independent contractors
49. Statutory non-employees
50. Set agency policies
  - Set and monitor educational requirements
  - Develop office policies and procedures
  - Impose other requirements

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**MODULE 2: WORKING WITH SELLERS**

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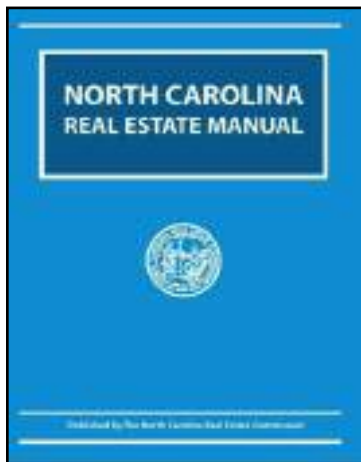
**MODULE 2: WORKING WITH SELLERS**



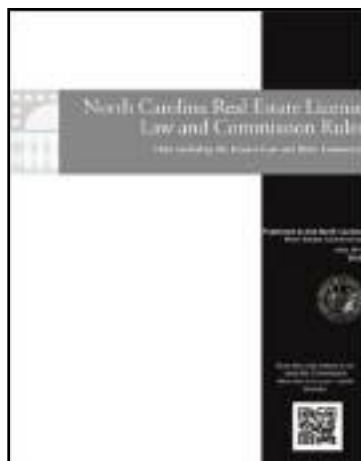


## Section 3: Working With Sellers

### Critical Reading Information



- Chapter 9 - Agency Contracts
- Chapter 13 – “Short Sales”
- Chapter 15 – “Approaches to Value”
- Chapter 19 – “Client & Customer”



- Laws 93A-6 & 93A-13
- Rule A.0104 – Agreements & Disclosure
- Rule A.0105 – Advertising
- Rule A.0106 – Delivery of Instruments
- Rule A.0108 – Retention of Records
- Rule A.0116 & .0117 – Trust Money
- Rule A.2200 – BPO/CMA

### NCREC Residential Square Footage Guidelines

## The Solicitation of Listings

---

Agents are prohibited from interfering in the 1. \_\_\_\_\_

This means that agents should not:

2. \_\_\_\_\_

3. \_\_\_\_\_

4. \_\_\_\_\_

Both a federal and state Do Not Call list exists. Businesses and professionals are required to check the list at DONOTCALL.gov every 5. \_\_\_\_\_ days.

It is not necessary to check the list in order to call the following:

6. \_\_\_\_\_

7. \_\_\_\_\_

8. \_\_\_\_\_

9. \_\_\_\_\_

10. \_\_\_\_\_



The Junk Fax Prevention Act (CAN SPAM ACT) requires that mass emails contain a:

11. \_\_\_\_\_

## Advertising Rules of the NCREC

---

All real estate ads must contain the name of the

12. \_\_\_\_\_

This includes social media, open house flyers, and all other forms of advertising.





## Pilot Training

List 5 sources of finding and soliciting sellers.

1. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
2. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
3. \_\_\_\_\_  
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4. \_\_\_\_\_  
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5. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

# Pilot Training

List and discuss 3 specific plans that you can implement to solicit sellers.



1.

Details
2.

Details
3.

Details





## Pilot Training

List the items that both the agent and the seller need prior to the listing appointment.

### The Agent Needs to Check or Review

13. \_\_\_\_\_
14. \_\_\_\_\_
15. \_\_\_\_\_
16. \_\_\_\_\_
17. \_\_\_\_\_

### The Seller Needs to Gather & Collect

18. \_\_\_\_\_
19. \_\_\_\_\_
20. \_\_\_\_\_
21. \_\_\_\_\_
22. \_\_\_\_\_

The licensee should always review the 23. \_\_\_\_\_ to the property.

In reviewing the deed, the licensee should note all of the following:

24. \_\_\_\_\_
25. \_\_\_\_\_
26. \_\_\_\_\_
27. \_\_\_\_\_

## Flight Simulator

Create your meeting checklist with the seller  
and put your presentation in order.



1. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
2. \_\_\_\_\_  
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\_\_\_\_\_
3. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
4. \_\_\_\_\_  
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6. \_\_\_\_\_  
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7. \_\_\_\_\_  
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8. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## The Residential Property Owners' and Association Disclosure Statement (RPOADS) & the MOG

---

The RPOADS should be completed by the 28. \_\_\_\_\_ and provided to the buyer 29. \_\_\_\_\_.

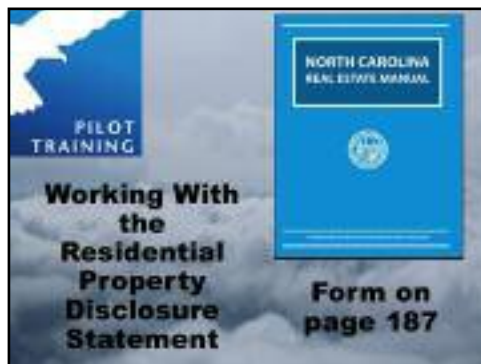
Failure to provide the RPOADS provides the buyer with a 30. \_\_\_\_\_ day rescission period.

The agent's obligation is to 31. \_\_\_\_\_.

A FSBO is not exempt and is required to complete the form.

Advise the seller as to whether the Mineral and Oil and Gas Rights Disclosure Statement (MOG) is required.

- a. Same points as above for RPOADS with following differences
- b. Seller must disclose if they have severed or will sever MOG rights; No Representation is not an option on this point
- c. Common exemptions match those for RPOADS excluding the following transfers where MOG is still mandated:
  - i. Never inhabited new construction
  - ii. Lease with option to purchase where lessee occupies or plans to occupy the property
  - iii. When parties agreed to waive RPOADS disclosure statement



### Roundtable Discussion Regarding the Use & Issues with RPOADS and the MOG

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## The Lead-Based Paint Disclosure

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A lead-based paint disclosure is required on the 32. \_\_\_\_\_ or  
33. \_\_\_\_\_ of all residential property built prior to 34. \_\_\_\_\_.

As part of the disclosure process, the buyer is entitled to all of the following:

- 35. \_\_\_\_\_
- 36. \_\_\_\_\_
- 37. \_\_\_\_\_
- 38. \_\_\_\_\_
- 39. \_\_\_\_\_

The seller is under no obligation to 40. \_\_\_\_\_ nor does  
the seller have any obligation to 41. \_\_\_\_\_.



Review the addendum and note where do you find the following mandatory parts of the Lead-Based or Lead-Based Paint Hazard Addendum: “Lead Warning Statement” and signed statements of compliance from all parties and agent of the property owner.

## The Agent Walk-Through

---

Because a licensee has an obligation to disclose material facts, the licensee should conduct a  
42. \_\_\_\_\_ of the property prior to listing. The licensee  
should pay particular attention to each of the following:

- 43. \_\_\_\_\_
- 44. \_\_\_\_\_
- 45. \_\_\_\_\_
- 46. \_\_\_\_\_



## Pilot Training

**Make a list of the things that a reasonable  
real estate professional should notice.**

Area \_\_\_\_\_

Potential Red Flags \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Area \_\_\_\_\_

Potential Red Flags \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Area \_\_\_\_\_

Potential Red Flags \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Area \_\_\_\_\_

Potential Red Flags \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Area \_\_\_\_\_

Potential Red Flags \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Area \_\_\_\_\_

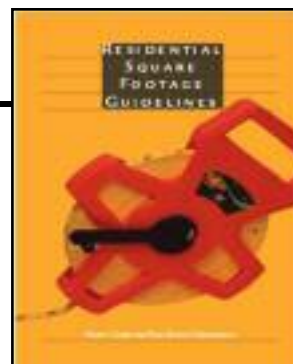
Potential Red Flags \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

## Matters of Measurement

There is no rule requiring a licensee to measure a home, the rule requires licensees to 47. \_\_\_\_\_ the square footage of the property before the licensee uses square footage:

48. \_\_\_\_\_



Licensees May Rely On

49. \_\_\_\_\_

50. \_\_\_\_\_

Licensees May NOT Rely On

51. \_\_\_\_\_

52. \_\_\_\_\_

53. \_\_\_\_\_

Living area is defined as space that is 54. \_\_\_\_\_ and finished and directly accessible from other heated living area. The standard approach is to measure the home from the

55. \_\_\_\_\_ and exclude the 56. \_\_\_\_\_.

All of the following areas get counted as living area if they are connected to and accessible from the main living area:

57. \_\_\_\_\_ 59. \_\_\_\_\_

58. \_\_\_\_\_ 60. \_\_\_\_\_

When counting the area occupied by the stairs the actual stairway gets counted as

61. \_\_\_\_\_

The area under the stairs gets counted as part of 62. \_\_\_\_\_

Another way of saying that is to say: 63. \_\_\_\_\_

Total Ceiling Height	Sloped Ceilings	Basement Areas
At least half the room must be at least 64. _____ feet high to count any of the room	When ceilings are sloped you start counting when the ceiling is at least 65. _____ feet high	Pipes and beams can extend down to 66. _____ and the area still counts as living area

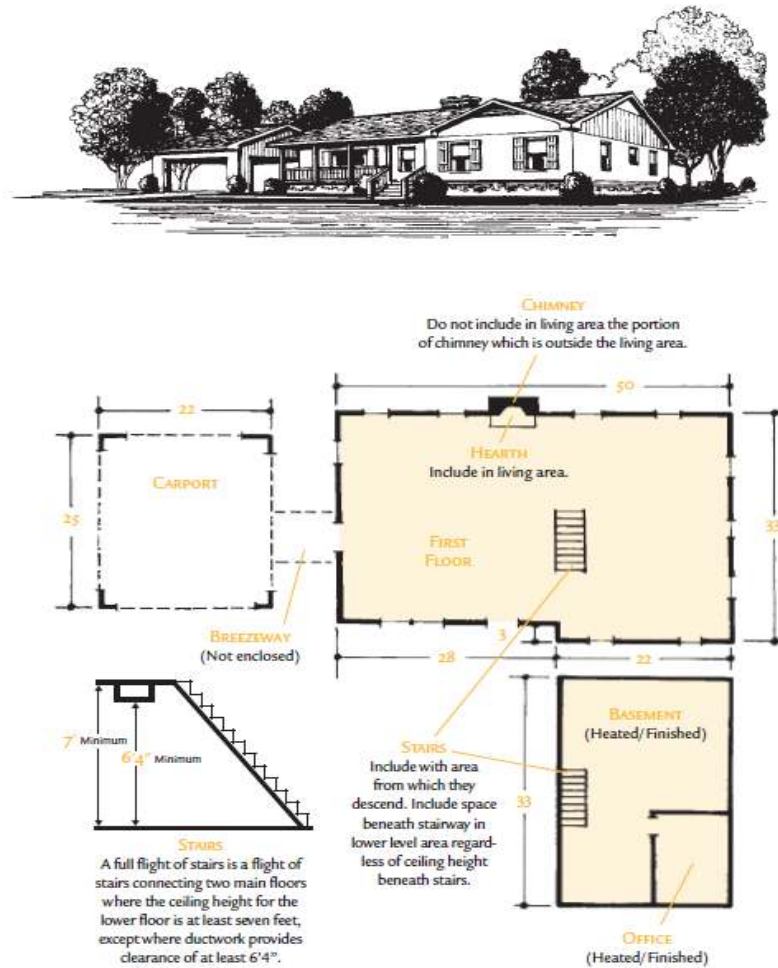


## Flight Simulator

Practical applications of the residential square footage guidelines. See NCREC Residential Square Footage Guidelines Figure 1 & 3

### ONE STORY WITH BASEMENT AND CARPORT

(Figure 1)



RESIDENTIAL SQUARE FOOTAGE GUIDELINES • PAGE 8

### ONE STORY WITH BASEMENT AND CARPORT WORKSHEET

LIVING AREA			
AREA	DIMENSIONS	SUBTOTAL	TOTAL
1st Floor	50 x 30	1,500	
	3 x 22	+ 66	1,566
Basement	22 x 33		<u>726</u>
Total			2,292

## Flight Simulator (CONTINUED)

### TWO STORY WITH "BONUS ROOM" OVER GARAGE

(Figure 3)



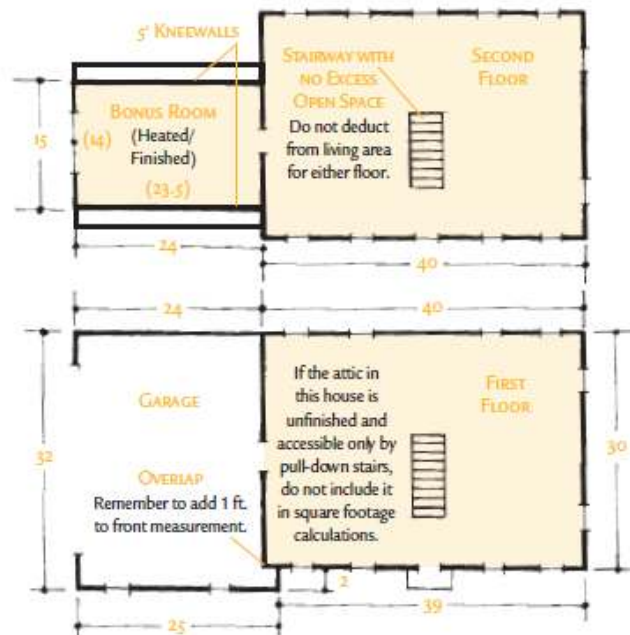
#### BONUS ROOM

If the "Bonus Room" is accessible from living area through a door, hallway or stairway, include in living area; otherwise, report as other area.

Add 6" to inside measurements for each exterior wall.

Thus, 14' x 23.5' inside measurement equals 15' x 24' exterior measurements.

In rooms with sloped ceilings, do not include any space with a ceiling height of less than 5 ft. in height.



#### TWO STORY WITH "BONUS ROOM" OVER GARAGE WORKSHEET

LIVING AREA			
AREA	DIMENSIONS	SUBTOTAL	TOTAL
1st Floor	40 x 30		1,200
2nd Floor	40 x 30		1,200
Bonus Room	15 x 24		<u>360</u>
Total			2,760





## Mandatory Take Home Test

**Draw a diagram and measure the square footage of your home.**

*(This page must be approved and initialed by your instructor to successfully complete this course and take the exam.)*



Approved \_\_\_\_\_

Instructor Signature \_\_\_\_\_

## Improving Property Valuation Skills

---

When a licensee lacks confidence in the valuation of a property, the licensee should

67. \_\_\_\_\_.

Real estate licensees should use the following language and terminology in valuation:

### USE THE FOLLOWING

### DO NOT USE THESE TERMS

68. \_\_\_\_\_

69. \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## Basic CMA or Market Analysis Principles

---

Always adjust the 70. \_\_\_\_\_, not the subject property.

Give the comp with the 71. \_\_\_\_\_ the greatest weight.

If the comp is inferior, then you 72. \_\_\_\_\_.

If the comp is superior, then you 73. \_\_\_\_\_.

## Rules for BPOs

---

A Broker Price Opinion is an estimated selling price prepared by a licensee when they are not anticipating either the representation of a seller or a buyer.

74. \_\_\_\_\_ is authorized to prepare and conduct a BPO.

Provisional brokers may perform a BPO, but they may not be

75. \_\_\_\_\_ for performing them.

1. A broker is performing a comparable property analysis for a property. The broker finds four good comparable properties: A, B, C & D. Comparables A & B have features worth \$2,000 and \$4,000, respectively, that are superior to the subject property. Comparable D has features worth \$3,000 that are inferior to the subject property. The comparables sold for: A – \$232,000, B – \$218,000, C – \$239,000, and D – \$242,000. Based on these comparable properties, what is the indicated probable selling price for the subject property?

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

## Working with Comparable Sales Problems (CONTINUED)

2. A broker is performing a comparative market analysis (CMA) for a seller-client in connection with listing the seller's house. The 24-year-old house is located in a subdivision and has the following features: two-story design, vinyl siding, 2,400 square feet, 2-car garage, 1-acre lot. Which of the following sold properties in MLS is the best comp?
- A. 12-year-old home, 2,000 square feet, no garage, 0.5-acre lot.  
Time on the market 287 days.
  - B. 20-year-old home, 2,400 square feet, no garage, 2.0-acre lot, sold as a short sale.  
Time on the market 92 days.
  - C. 28-year-old home, 2,300 square feet, 2-car garage, .75-acre lot.  
Time on the market 32 days.
  - D. 24-year-old home, 1,800 square feet, 2-car garage, .05-acre lot.  
Priced as quick sale due to a pending divorce. Time on the market 5 days.

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- This image shows a full page of blank white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page, typical of notebook paper or a document template. There are no margins, text, or other markings present.

## Working with Comparable Sales Answers

### Answer to Comparable Sales Problem #1

Comp A \$232,000	Comp B \$218,000	Comp C \$239,000	Comp D \$242,000
-\$2,000	-\$4,000		+\$3,000
\$230,000	\$214,000	\$239,000	\$245,000

Therefore, the probable selling range is \$214,000 – \$245,000.

### Answer to Comparable Sales Problem #2

FEATURES	SUBJECT	COMP A	COMP B	COMP C	COMP D
Age	24	12	20	28	24
Sq. Feet	2,400	2,000	2,400	2,300	1,800
Garage	2 Car	No	No	2 Car	2 Car
Site / Lot	1 Acre	0.5 Acre	2 Acre	.75 Acre	.05 Acre
DOM		287	92	32	5
Considerations			Short Sale		Divorce

Comp C is the best comp. When properties have special considerations, like short sales or quick sales due to divorces or job transfers, they should be given less weight. Comp C has the most number of features like the subject property.

### Answer to Comparable Sales Problem #3

Comp A \$182,000	Comp B \$218,000	Comp C \$195,000	Comp D \$216,000
-\$3,000	-\$6,000		-\$8,000
	+\$3,000	+\$3,000	
\$179,000	\$215,000	\$198,000	\$208,000

Therefore, the probable selling range is \$179,000 – \$215,000.

# Comparative Market Analysis

Owner(s)	Telephone:
Subject Property (Address):	
Date of Inspection:	<input type="checkbox"/> Occupied <input type="checkbox"/> Vacant
Agent:	Agency:      Telephone:

Data	Subject	Comparable Sale 1	Comparable Sale 2	Comparable Sale 3					
Address									
Distance from Subject									
Original List Price									
List Price at Time of Sale									
Days on Market									
Sales Price/Closing Date									
	<b>Description</b>	<b>Description</b>	<b>+/-</b>	<b>Description</b>	<b>+/-</b>	<b>Description</b>	<b>+/-</b>		
Approximate Age									
Lot Size/ Location/ Site View									
Architectural Style									
Condition									
Room Count	Total	s	aths	Total	s	aths	Total	s	aths
Total s aths									
Approximate Sq. Ft.									
Assessment									
Garage									
Pool/Deck/Patio									
Air Conditioning									
Financing/ Concessions									
Special Features									
<b>Overall rating of Comparable Sale compared to Subject</b>				<input type="checkbox"/> More Favorable <input type="checkbox"/> Equal <input type="checkbox"/> Less Favorable		<input type="checkbox"/> More Favorable <input type="checkbox"/> Equal <input type="checkbox"/> Less Favorable		<input type="checkbox"/> More Favorable <input type="checkbox"/> Equal <input type="checkbox"/> Less Favorable	

\*Note: A plus (+) indicates the Comparable is *significantly more favorable* than Subject; a minus (-) indicates *significantly less favorable* than Subject.

Describe significant value-related differences between Subject Property and Comparable Sales:

Comparable Sale 1: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Comparable Sale 2: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Comparable Sale 3: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## THE COMPARATIVE MARKET ANALYSIS

<b>Probable Price Range</b>	<b>Most Probable Sales Price</b>	<b>Suggested Initial List Price</b>
\$ _____ to \$ _____	\$ _____	\$ _____

**This information is not an appraisal.**

## Flight Simulator

**Analyze your home and complete the comparative market analysis.**

*(This page must be approved and initialed by your instructor to successfully complete this course and take the exam.)*



## NOTES



Approved \_\_\_\_\_

Instructor Signature \_\_\_\_\_



# Comparative Market Analysis

Owner(s)	Telephone:
Subject Property (Address):	
Date of Inspection:	<input type="checkbox"/> Occupied <input type="checkbox"/> Vacant
Agent:	Agency:      Telephone:

Data	Subject	Comparable Sale 1	Comparable Sale 2	Comparable Sale 3					
Address									
Distance from Subject									
Original List Price									
List Price at Time of Sale									
Days on Market									
Sales Price/Closing Date									
	<b>Description</b>	<b>Description</b>	<b>+/-</b>	<b>Description</b>	<b>+/-</b>	<b>Description</b>	<b>+/-</b>		
Approximate Age									
Lot Size/ Location/ Site View									
Architectural Style									
Condition									
Room Count	Total	s	aths	Total	s	aths	Total	s	aths
Total s aths									
Approximate Sq. Ft.									
Assessment									
Garage									
Pool/Deck/Patio									
Air Conditioning									
Financing/ Concessions									
Special Features									
<b>Overall rating of Comparable Sale compared to Subject</b>		<input type="checkbox"/> More Favorable <input type="checkbox"/> Equal <input type="checkbox"/> Less Favorable		<input type="checkbox"/> More Favorable <input type="checkbox"/> Equal <input type="checkbox"/> Less Favorable		<input type="checkbox"/> More Favorable <input type="checkbox"/> Equal <input type="checkbox"/> Less Favorable			

\*Note: A plus (+) indicates the Comparable is *significantly more favorable* than Subject; a minus (-) indicates *significantly less favorable* than Subject.

Describe significant value-related differences between Subject Property and Comparable Sales:

Comparable Sale 1: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Comparable Sale 2: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Comparable Sale 3: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## THE COMPARATIVE MARKET ANALYSIS

<b>Probable Price Range</b>	<b>Most Probable Sales Price</b>	<b>Suggested Initial List Price</b>
\$ _____ to \$ _____	\$ _____	\$ _____

**This information is not an appraisal.**

# Pilot Training

## Overcoming Pricing Objections

List the most common seller objections to pricing and create a best practice for handling them.



### Objection

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### Best Practice

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### Objection

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### Best Practice

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### Objection

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### Best Practice

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### Objection

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### Best Practice

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# Flight Simulator

Calculating Seller Net



## Seller Net Math

### The SUPERIOR WAY Seller Net Math

1. Add Net Amount + Closing + Costs
2. Subtract 100% – Commission Rate
3. Divide Step 1 by Step 2

Example:

A seller wants to net \$100,000. The seller is paying \$1,000 in closing costs.

The commission rate is 6%. What sales price is required to net the seller \$100,000?

**$\$101,000 \div 94\% = \$107,446.80$**

1. Sallie wants to net \$150,000 on the sale of her property. She will pay \$3,000 in closing costs. She will pay a commission rate of 6.5%. What is the minimum sales price required for Sallie to receive her net amount?

2. You are listing a house and the seller wants to net \$200,000 after paying a 6% commission and \$3,000 in closing costs. What will the house have to sell for in order for the seller to net \$200,000?

3. You are on a listing appointment and the sellers tell you they would like to net \$135,000 from the sale of their home. You estimate they will have to pay \$950 in miscellaneous closing costs. You will charge them a 6.5% commission to sell the property. They also have a loan payoff of \$53,500. What must the property sell for to ensure they receive their desired net?

### **Solutions to Seller Net Math**

1.  $1 \rightarrow \$150,000 + \$3,000 = \$153,000$

2.  $100\% - 6.5\% = 93.5\%$

3.  $\$153,000 \div 93.5\% = \$163,636.36$

2.  $1 \rightarrow \$200,000 + \$3,000 = \$203,000$

2.  $100\% - 6\% = 94\%$

3.  $\$203,000 \div 94\% = \$215,957.44$

3.  $1 \rightarrow \$135,000 + \$950 + \$53,500 = \$189,450$

2.  $100\% - 6.5\% = 93.5\%$

3.  $\$189,450 \div 93.5\% = \$202,620.32$

- Range pricing
- E-neighborhoods
- Cloud CMA
- Zestimates



## Classroom Roundtable Discussion

[illegible]

## Working with the North Carolina Exclusive Right to Sell Agreement

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All listing agreements in NC must be in 76.\_\_\_\_\_.

There is no such thing as an 77.\_\_\_\_\_.

All listing agreements must have the following items:

78. \_\_\_\_\_

79. \_\_\_\_\_

80. \_\_\_\_\_

Listings should NOT contain:

81. \_\_\_\_\_

82. \_\_\_\_\_

Individual agent initials\_\_\_\_\_Seller initials \_\_\_\_\_

© 7/2018

© 7/2018



## Pilot Training

### Identifying the Practical Issues in the Listing Agreement

In teams, identify key issues that require more explanation.

1. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
2. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
3. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
4. \_\_\_\_\_  
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6. \_\_\_\_\_  
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7. \_\_\_\_\_  
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8. \_\_\_\_\_  
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\_\_\_\_\_



## Pilot Training

List other forms of representation and additional documents.



1. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
2. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
3. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
4. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
5. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



Compare and contrast provisions in residential and commercial listing agreements. Discuss the purpose of provisions that are different from the residential forms.

### Limited Services & Other Agreements



*The Course That  
Teaches You to  
Fly to New  
Heights*

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### Brokers Can Limit Services

- Usually excludes services such as:
  - Showings
  - Open houses
  - Contract negotiations



**For a Fee of \$500 We Can Put  
Your Property Into MLS**

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### But You CANNOT Limit Duties

- Disclose
- Fulfill fiduciary obligations
- To present offers




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### Protection Agreements

- Separate seller commission agreement
- Paying a fee for a particular buyer
- No other warranties or obligations between broker & seller
- Not a contract with the buyer




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Determine what duties the firm owes the seller and what duties the firm owes the buyer.

[illegible]

# Pilot Training

What other points should be considered  
in representing sellers?



- 1. \_\_\_\_\_  
\_\_\_\_\_
- 2. \_\_\_\_\_  
\_\_\_\_\_
- 3. \_\_\_\_\_  
\_\_\_\_\_
- 4. \_\_\_\_\_  
\_\_\_\_\_
- 5. \_\_\_\_\_  
\_\_\_\_\_
- 6. \_\_\_\_\_  
\_\_\_\_\_
- 7. \_\_\_\_\_  
\_\_\_\_\_
- 8. \_\_\_\_\_  
\_\_\_\_\_



## Other Key Discussions to Have With a Seller



## Pilot Training

## What safety discussions should you have with the seller?

[illegible]



## What accessibility discussions should you have with the seller?

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

## Pilot Training

Make a list of great questions to ask every seller during the listing presentation.



1. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
2. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
3. \_\_\_\_\_  
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\_\_\_\_\_
4. \_\_\_\_\_  
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5. \_\_\_\_\_  
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6. \_\_\_\_\_  
\_\_\_\_\_  
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7. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
8. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_





## Revelations, Insights, Ideas & To Do List

What are the best and brightest “to do” items  
you got out of this section?

1. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
2. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
3. \_\_\_\_\_  
\_\_\_\_\_  
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4. \_\_\_\_\_  
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6. \_\_\_\_\_  
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\_\_\_\_\_
7. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
8. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## Section 3: Working with Sellers

### Notebook Guide

1. Interfere in the agency relationships of others
2. Contact another agent's client directly
3. Engage in discussions with another agent's client
4. Solicit other agent's clients
5. 31 days
6. Previous business relationship in last 18 months
7. 3 months from an inquiry
8. FSBO for the purposes of working with a buyer
9. Political campaigns
10. Charities
11. Opt out provision
12. Name of firm or sole proprietorship
13. Deed
14. Copy of the listing agreement
15. A copy of the WWREA brochure
16. Copies of the RPOADS, MOG and Lead-based paint disclosure
17. Property data sheet
18. Deed
19. Survey
20. Restrictive covenants
21. HOA information
22. Mortgage balances & info
23. Review the deed
24. Seller's name
25. Manner of holding title
26. Legal description
27. Verify type of ownership as fee simple
28. Completed by the seller
29. Prior to submission of an offer
30. 3 day
31. Advise and assist the seller
32. Sale



## Section 3: Working with Sellers

### Notebook Guide (CONTINUED)

---

33. Lease
34. Pre-1978
35. Addendum
36. Booklet
37. Disclosure of any knowledge
38. Copies of any reports
39. 10-day inspection period
40. Test
41. Remove or remediate
42. Walkthrough
43. Defects and material facts
44. Physical features
45. Fixtures and personal property
46. Potential repair and inspection issues
47. Verify the square footage
48. Prior to using SF in marketing or advertising
49. Listing agent
50. Other professionals
51. Tax records
52. Owner
53. Past transactions
54. Heated with conventional source
55. Exterior measurements
56. Garage
57. Storage
58. Bonus rooms
59. Furnace rooms
60. Bay windows
61. Included with the level from which it descends
62. Included with the 1st floor
63. Include the stairs as part of the first and second floor
64. 7 feet

## Section 3: Working with Sellers

### Notebook Guide (CONTINUED)

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- 65. 5 feet
- 66. 6 feet 4 inches
- 67. Price the property higher
- 68. CMA
  - Market analysis
  - Probable selling or list price
- 69. Appraisal
  - Value or worth
  - URAR appraisal form
- 70. Comparable property
- 71. Fewest number of adjustments
- 72. Add to the value
- 73. Subtract from the value
- 74. Any licensed broker
- 75. Cannot be paid
- 76. In writing
- 77. Oral listing agreement
- 78. Definite beginning and ending date
- 79. All banks completed
- 80. Signatures of all owners
- 81. Automatic extensions
- 82. Disclaimers of liability

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**MODULE 3: MARKETING THE PROPERTY &  
WORKING WITH BUYERS**

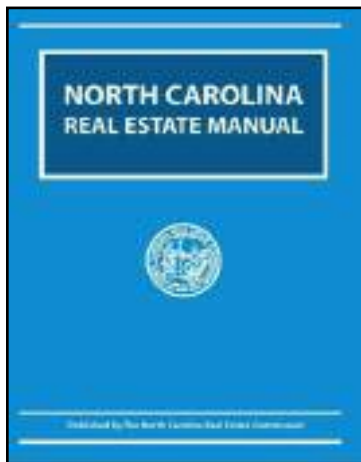
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**MODULE 3: MARKETING THE PROPERTY &  
WORKING WITH BUYERS**

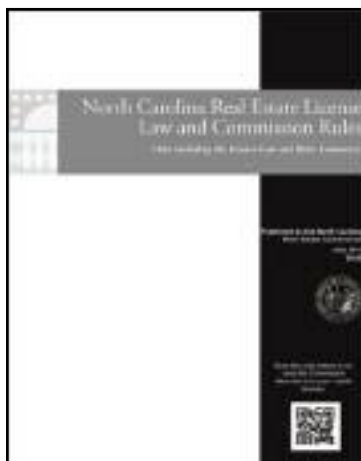


## Section 4: Marketing Property

### Critical Reading Information



- Chapter 9 – Agency Contracts & Brokerage Practices
- Chapter 18 – “Discrimination in Advertising”



**Roundtable Classroom Discussion**  
**regarding syndication.**

**Roundtable Classroom Discussion**  
**regarding syndication.**

[illegible]



## Rules and Regulations Regarding Marketing & Advertising

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The Sherman Anti-Trust Act prohibits businesses from engaging in anti-competitive conduct. Three specific things which are prohibited by Act include:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

The prohibitions of the Sherman Anti-Trust account do not prevent or prohibit

4. \_\_\_\_\_ from developing office policies.



The North Carolina real estate commission requires all of the following in all advertising:

Ads may not make claims which create a 5. \_\_\_\_\_ or an 6. \_\_\_\_\_.

Every office location must have a 7. \_\_\_\_\_ to supervise and approve all advertising.

All ads must indicate that the advertising is being conducted by a

8. \_\_\_\_\_ and all ads must contain
9. \_\_\_\_\_.

## The Federal Truth in Lending Act

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The federal Truth in Lending Act is also known as 10. \_\_\_\_\_  
or 11. \_\_\_\_\_ and regulates 12. \_\_\_\_\_.

The Act is enforced by 13. \_\_\_\_\_ and  
applies to all 14. \_\_\_\_\_.

The Act requires disclosure to a consumer of the 15. \_\_\_\_\_, which is  
an acronym for 16. \_\_\_\_\_.

The APR disclosure is required in any advertisement that provides information that is known  
as 17. \_\_\_\_\_.

All of the following are examples of trigger terms:

- 18. \_\_\_\_\_
- 19. \_\_\_\_\_
- 20. \_\_\_\_\_
- 21. \_\_\_\_\_

## Compliance with Federal and State Fair Housing Laws

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Every entity involved in the providing or sale of housing must display in their place of  
business the 22. \_\_\_\_\_.

The use of the Fair Housing logo is only required on 23. \_\_\_\_\_  
in periodicals or magazines of general circulation in ads that are larger than 2 column inches x  
2 column inches.

Use of the logo on business cards, flyers, brochures, and websites is not mandatory, but  
encouraged.

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

The Oregon Newspaper Publishers Association in conjunction with HUD has released the  
following lists of words that are acceptable, unacceptable, and some that should be used for  
caution in real estate advertising.

# FAIR HOUSING ADVERTISING WORD & PHRASE LIST: Describe the Property, Not the People

Note: This list is **NOT** all-inclusive. Each word must be considered in context.

## AVOID • AVOID • AVOID

able-bodied adult community* adult living* adult only* adult pool* African Agle AIDS alcoholics, no American Indian appliance Asian Black(s) Blind, no blind approval required Catholic Caucasian Chinese children, no	childhood, number of Chinese Christian colored couples, no church deaf, no disabled, not suitable for disabled(s), no employee(s), and be employee(s)* highly only (ethnic references) public area* poor homes, no not suitable for healthy only Hindu	Hispanic HIV Hispanic impaired, no Indian Irish Italian married Jewish landlord, (description) Latin married minor people* minor individual* minor person(s)* membership approval required mentally disabled, no mentally ill, no	Mexican-American migrant workers, no Mosque Muslim (Autism(s)) Negro not-a-father non-resident older person(s)* one child Oriental parent park rules must comply with Philippine physically ill only Polish preferred community	Preferential (more than quiet area(s)) (religious references) responsible retarded, no seasonal workers, no senior discount* smoker(s), no Social Security Insurance OSI, no Special-operations/able Straight Temple tenant(s), (description of two people unemployed, no white, white-only
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## CAUTION • CAUTION

55 and older community* 62 and older* active bachelor bachelor pool close to country club, near couple couples-only couples exclusive executive female(s) only lesbian roommate	fisherman's retreat gay(s), no (gender) gentleman's farm granny's house golden ages only* handicap handyman's dream heterosexual homosexual ideal for... lesbian(s), no male(s) only male roommate	man, men only membership approval required Marion Temple mother-in-law apt. nanny's room near newspaper one person older person* perfect for... person(s), (number of) play area, no postage	quality neighborhood restricted retired retired(s)* retirement home* safe neighborhood Section 8, no secure seeking same senior(s)* senior citizen(s)* senior housing* (sex or gender) thrive	singles only single person single woman, man sophisticated straight only student(s) students, no temple traditional two people walking distance to... woman, women only
--	---	---	--	--

## ACCEPTABLE

accessible alcohol, no assistance animals only bedrooms, (number of) bus, near condemned home convenient to credit check required den desirable neighborhood domestic quarters drugs, no drug use, no	Equal Housing Opportunity family great for family room four-apper golf course, near great view guest house handicap accessible hobby farm kids welcome luxury farmhouse master bedroom membership available	(neighborhood name) nice nursery nursing home places of worship, near play area privacy private driveway private entrance private property private setting public transportation, near	quality construction quiet quiet neighborhood references required responsible (school district) (school name) seasonal rates secluded security provided senior discount* single family home	sleeping area(s) number of smoking, no (square feet) warehouse traditional style tranquil setting verifiable income view of view, with wheelchair accessible winter rental rates
---	---	---	--	---

Oklahoma Press Association  
3601 N. Lincoln Blvd.  
Oklahoma City, OK 73106  
www.OKPress.com

Acceptable & Unacceptable  
Advertising Words & Phrases  
Relating to Fair Housing

## Pilot Training

Identifying and using customary marketing practices.



1. \_\_\_\_\_  
\_\_\_\_\_
2. \_\_\_\_\_  
\_\_\_\_\_
3. \_\_\_\_\_  
\_\_\_\_\_
4. \_\_\_\_\_  
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5. \_\_\_\_\_  
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6. \_\_\_\_\_  
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7. \_\_\_\_\_  
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8. \_\_\_\_\_  
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\_\_\_\_\_





### Innovative & Powerful Customary Marketing Tools

How could you use the power of YouTube for the benefit of your sellers?

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How could you use the power of Facebook for the benefit of your sellers?

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**How could you use Quick Response (QR) Codes for the benefit of your sellers?**

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**How could you use the power of Zillow & Trulia for the benefit of your sellers?**

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# Flight Simulator

**Crafting a marketing plan that complies with advertising rules and statutes.**

[illegible]

## Section 4: Marketing Property Notebook Guide

1. Price fixing
2. Market allocation
3. Boycotting
4. Firms or agents
5. Misrepresentation
6. Omission
7. BIC
8. Broker or brokerage firm
9. Firm name
10. TILA
11. Regulation Z
12. True cost of credit
13. Federal Trade Commission
14. All financed transactions
15. APR
16. Annual percentage rate
17. Trigger
18. Payment
19. Down payment
20. Interest rate
21. Monthly payment
22. Fair Housing poster
23. Printed ads of general circulation

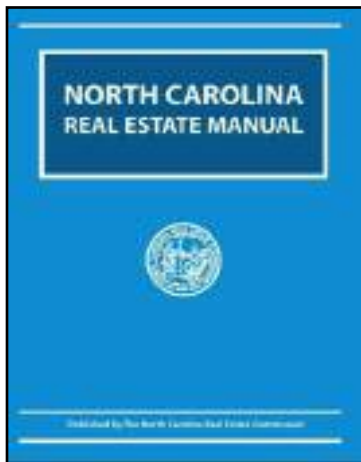




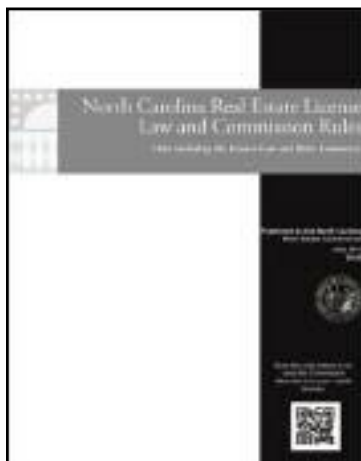


## Section 5: Working with Buyers

### Critical Reading Information



- Chapter 9 – Agency Contracts & Brokerage
- Chapter 13 – “Disclosure in Credit Advertising” & “Buyer Loan Qualifications” & “Major Types of Loans”



- Rule A.0104 – Agency Disclosure

## Disclosing Agency to Buyers

---

Real estate licensees must have an 1. \_\_\_\_\_ to work with buyers in NC.  
The agreement may initially be either 2. \_\_\_\_\_  
or 3. \_\_\_\_\_.

A buyer and the licensee have options in NC which are as follows:

4. \_\_\_\_\_  
Either under a 5. \_\_\_\_\_  
or pursuant to 6. \_\_\_\_\_  
7. \_\_\_\_\_  
8. \_\_\_\_\_

Regardless, an agency disclosure must occur with buyers at:

9. \_\_\_\_\_ by providing and reviewing  
10. \_\_\_\_\_  
Receipt of the brochure must be 11. \_\_\_\_\_

## Working as a Seller's Subagent

---

A buyer may choose not to be represented. In order to practice co-brokerage seller subagency, the licensee must do all of the following:

12. \_\_\_\_\_  
13. \_\_\_\_\_  
14. \_\_\_\_\_  
15. \_\_\_\_\_

During the transaction it is possible, but not advisable, for the broker to switch back to buyer agency. Doing that requires two things:

16. \_\_\_\_\_  
17. \_\_\_\_\_

Oral buyer agency may be practiced but it cannot be:

18. \_\_\_\_\_ and it cannot be

19. \_\_\_\_\_

The oral agreement must be placed in 20. \_\_\_\_\_ before

21. \_\_\_\_\_

If the buyer is willing to sign a written agreement at that point, then the licensee must

22. \_\_\_\_\_

## Student Notes

This image shows a blank sheet of white paper with horizontal ruling lines. The lines are evenly spaced and extend across the width of the page. There are no margins, text, or other markings on the paper.

# Flight Simulator

**Explain the WWREA brochure and options to a buyer.**

[illegible]

## Pilot Training

**Roundtable Classroom Discussion**  
regarding getting buyers to sign the  
written agreement

This image shows a full page of blank white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page, providing a template for writing or drawing. There are no margins, text, or other markings present.

[illegible]



## Review of Agency Agreement Renewal and/or Amendment

This image shows a full page of white paper with horizontal black ruling lines. The lines are evenly spaced and run across the width of the page, typical of notebook or legal stationery. There are no margins, text, or other markings on the page.



# Flight Simulator

## NCAR Exclusive Right to Represent Buyer Agreement

With a partner, review and explain the content of the agreement. (*Ask questions that clients are likely to pose.*)

This image shows a blank sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.



## Pilot Training

Identify the practical issues in the buyer agreement.

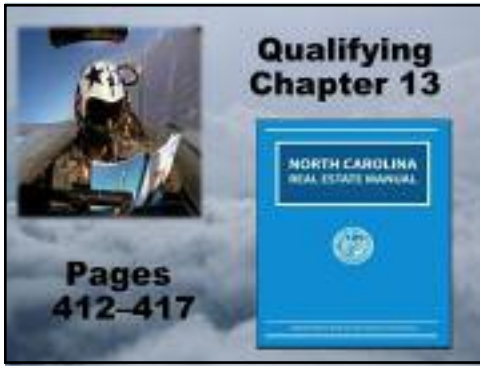
In teams, identify the key issues that require more explanation.



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[illegible]



## Qualifying a Buyer

Qualifying a buyer involves the 4 Cs of loan qualification:

23. \_\_\_\_\_
24. \_\_\_\_\_
25. \_\_\_\_\_
26. \_\_\_\_\_

Lenders rely heavily on credit scores maintained by 3 national databases:

27. \_\_\_\_\_
28. \_\_\_\_\_
29. \_\_\_\_\_

The federal website that is maintained for consumers under the FCRA where a consumer can obtain a copy of their credit report once a year for FREE is:

30. \_\_\_\_\_

## Debt & Qualifying Ratios

Debt/qualifying ratios are based on

31. \_\_\_\_\_

and calculate a 32. \_\_\_\_\_ and

use 33. \_\_\_\_\_

to calculate a

34. \_\_\_\_\_.

**Total Gross Monthly Income**  
**\$4,000**

- x 28% = \$1,120  
Max House Payment
- x 36% = \$1,440  
Max Total Debt



MONTHLY PAYMENT



## Student Notes

[illegible]

## Working with Debt Ratios Problems

1. A couple wants to obtain a 30-year mortgage loan for \$175,000 at 6.5%. Their principal and interest payment is \$1,106. Their monthly escrow payment is estimated at \$145 and they must pay mortgage insurance of \$60 per month. They have other recurring debt excluding the house payment of \$750. What is the minimum monthly income they need to earn in order to qualify for the loan if the lender is using expense to income ratios of 28/36%?

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2. A borrower wants to obtain a conventional loan in the amount of \$130,000 with a monthly PITI payment of \$950. The HOA dues are projected to be \$50 per month. The borrower has a car payment of \$325 and additional recurring debt of \$280. What is the minimum monthly income the borrower needs in order to qualify for the loan if the lender is using debt ratios of 28/36%?

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3. A couple is currently earning \$68,000 per year. If the lender is qualifying them using a debt ratio of 28/36% and they have additional recurring debt of \$350, what is the maximum house payment (PITI) for which they will be able to qualify for the loan?

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## Working with Debt Ratios

### Answers

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#### Answer to Debt Ratio Question #1

P & I	\$1,106	House Payment	\$1,311
Escrow	\$145	Recurring Debt	\$750
Mortgage Ins.	\$60		
PITI Total	\$1,311	Total Debt	\$2,061
	÷ 28%		÷ 36%
	\$4,682		\$5,725

Since the borrower has to meet both ratios, the answer is \$5,725 per month.

#### Answer to Debt Ratio Question #2

PITI	\$950	House Payment	\$1,000
HOA Dues	\$50	Recurring Debt	\$605
PITI Total	\$1,000	Total Debt	\$1,605
	÷ 28%		÷ 36%
	\$3,751		\$4,458

Since the borrower has to meet both ratios, the answer is \$4,458 per month.

#### Answer to Debt Ratio Question #3

$$\begin{aligned} \$68,000 \div 12 &= \$5,666 \text{ gross monthly income} \\ &\times 28\% = \$1,586 && \times 36\% = \$2,039 \\ & && - \$350 \\ & && \$1,689 \end{aligned}$$

Since the borrower cannot exceed either ratio, their maximum allowable house payment is \$1,586.



## Pilot Training

List 3 reasons why buyers should get prequalified.

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## Revelations, Insights, Ideas & To Do List

What are the best and brightest “to do” items  
you got out of this section?



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## Section 5: Working with Buyers Notebook Guide

1. Express
2. Oral
3. Written
4. Buyer's agent
5. Written exclusive
6. Oral non-exclusive
7. Seller's subagent
8. Disclosed dual agent
9. First substantial contact
10. NCREC Disclosure *Working with Real Estate Agents*
11. Documented
12. Subagency disclosure to a buyer
13. Full buyer awareness of non-representation
14. Broker initials Unrepresented Buyer on the WWREA
15. Disclosure and consent by seller or listing firm
16. Consent of seller
17. Careful attention to confidentiality issues
18. Be exclusive
19. Specify or limit a time period
20. Writing
21. Before an offer is prepared
22. Cease representation and not write the offer
23. Character
24. Credit
25. Capacity

## **Section 5: Working with Buyers**

### **Notebook Guide (CONTINUED)**

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26. Collateral
27. Experian
28. Transunion
29. Equifax
30. AnnualCreditReport.com
31. Gross monthly income
32. Housing ratio
33. Recurring expenses
34. Total debt ratio

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**MODULE 4: PROPERTY MANAGEMENT  
RELATIONSHIPS & LICENSE LAW**

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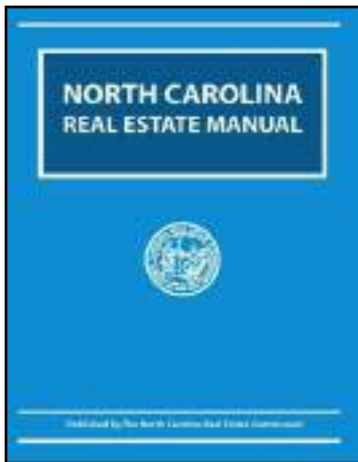
**MODULE 4: PROPERTY MANAGEMENT  
RELATIONSHIPS & LICENSE LAW**



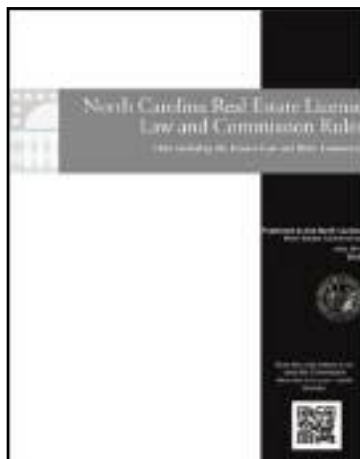


## Section 6: Working as a Residential or Commercial Property Manager

### Critical Reading Information



- Chapter 17 – Property Management
- Chapter 19 – “The Typical Cycle-Lease Transaction”



- Laws 93A-2 & 93A-6
- Rule A.0118 – Trust Money

## The Nature of Property Management

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Property management is defined as:

1. \_\_\_\_\_  
of 2. \_\_\_\_\_ for a fee.

Advertising a property for rent or lease is considered:

3. \_\_\_\_\_

There are 3 exceptions to licensing requirements in property management:

4. \_\_\_\_\_

\_\_\_\_\_

5. \_\_\_\_\_

\_\_\_\_\_

6. \_\_\_\_\_

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The primary job of a property manager is to: 7. \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Property managers must have a written: 8. \_\_\_\_\_

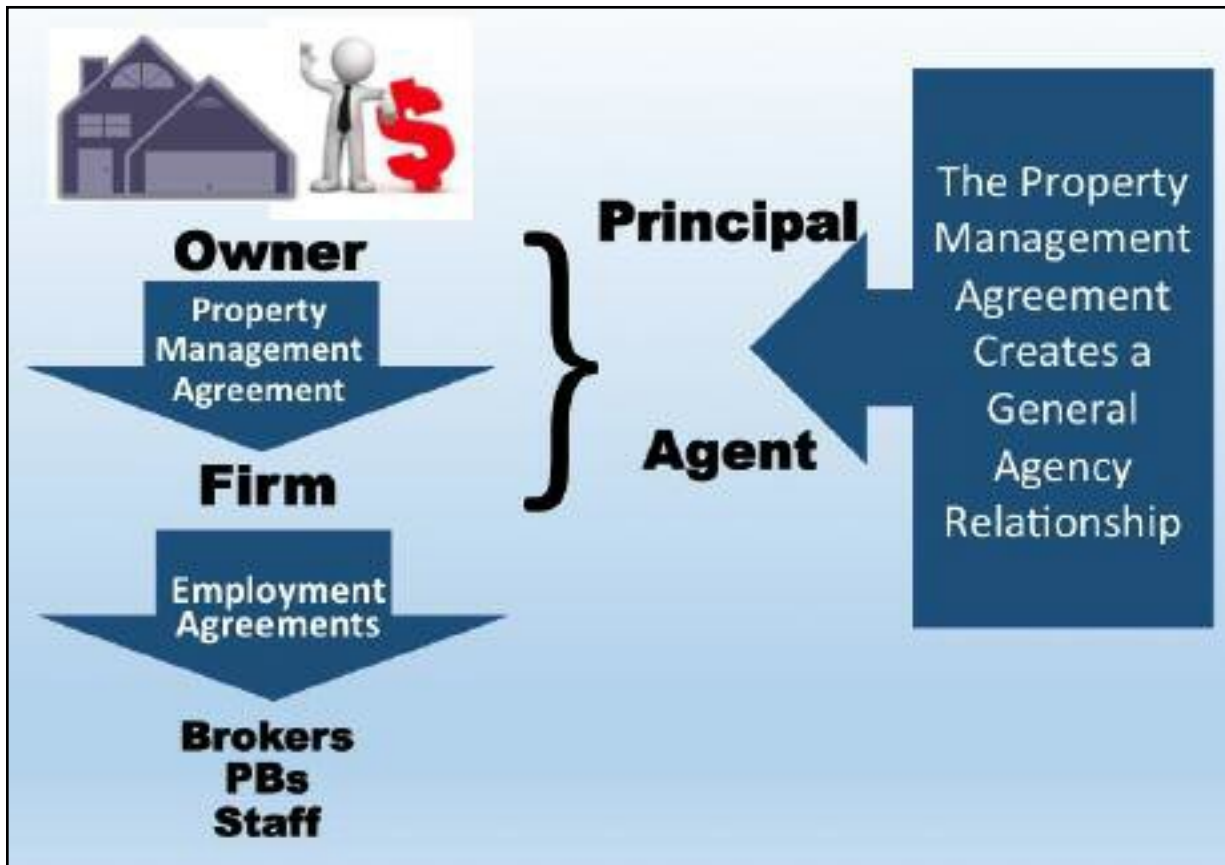
The property management agreement creates a fiduciary relationship between the

9. \_\_\_\_\_ and the owner 10. \_\_\_\_\_.

The type of agency agreement that is created is a 11. \_\_\_\_\_ agency.



## The Nature of Property Management (CONTINUED)



The most important responsibility of a property manager is to

12. \_\_\_\_\_.

The most important component of being a property manager is

13. \_\_\_\_\_.

The most important factor in drafting a management plan is

14. \_\_\_\_\_.

All of the following are contained in a written property management agreement:

15. \_\_\_\_\_ 19. \_\_\_\_\_

16. \_\_\_\_\_ 20. \_\_\_\_\_

17. \_\_\_\_\_ 21. \_\_\_\_\_

18. \_\_\_\_\_ 22. \_\_\_\_\_

## Obligations & Duties of Property Managers

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Property manager duties and obligations include all of the following:

- |           |           |
|-----------|-----------|
| 23. _____ | 31. _____ |
| 24. _____ | 32. _____ |
| 25. _____ | 33. _____ |
| 26. _____ | 34. _____ |
| 27. _____ | 35. _____ |
| 28. _____ | 36. _____ |
| 29. _____ |           |
| 30. _____ |           |

## The Use of Unlicensed Assistants

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In a property management office, unlicensed assistants who are W2 employees of the property manager:

- | CAN       | CANNOT    |
|-----------|-----------|
| 37. _____ | 40. _____ |
| 38. _____ | 41. _____ |
| 39. _____ | 42. _____ |

## Intro to Cash Flow Analysis



### Potential Gross Income

- Vacancy
- Collection losses
- + Additional income

**\$100,000 (Gross)**

- 10,000 - Vacancy
- 10,000 - Collection losses

### = Effective Gross Income

- Operating expenses

**= \$80,000 (Effective)**

- 20,000 - Operating

### = Net Operating Income

- Debt service
- Capital expenditures
- Reserves
- Commissions

**= \$60,000 (NOI)**

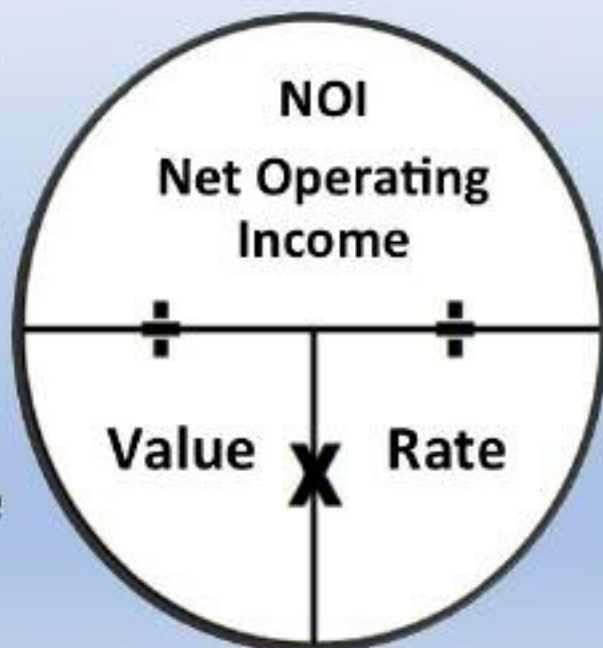
- 30,000 - Debt Service
- 5,000 - Capital Exp.
- 5,000 - Reserves

### = Cash Flow Before Taxes

**= \$20,000 (Cash Flow)**

## The Capitalization Formula

- **Value = NOI ÷ Rate**
- **You can't do a CAP rate problem without the income information for the property**



## Working with Capitalization Rates Problems

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1. A 20-unit apartment building has rents that total \$650 per unit. Vacancy and collection losses have been a total of 7% of gross potential income. Annual operating expenses for the building are \$45,000. An appraiser finds through market research that an appropriate capitalization rate for these types of buildings is 9%. Using this information, what would the appraiser find to be the estimate of value for the building?

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2. An eight-unit office building has 5 units that rent for \$750 and 3 units that rent for \$600. Vacancy and collection losses have been a total of 10% of gross potential income. Annual operating expenses are \$35,000. An appraiser finds through market research that an appropriate capitalization rate for these types of buildings is 11%. Using this information, what would the appraiser find to be the estimate of value for the building?

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## Working with Capitalization Rates Problems (CONTINUED)

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3. A commercial office building produces rents totaling \$6,800 per month. The owner pays maintenance fees annually of \$22,000, annual brokerage service fees of 8,000, annual taxes of \$5,800, and annual utilities of \$15,000. They also have a monthly mortgage payment of \$7,200 per month. If an appraiser determines the appropriate capitalization rate to be 10%, what is the value of the building?

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## Working with Capitalization Rates

### Answers

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#### Answer to Capitalization Problem #1

20 units $\times$ \$650 $\times$ 12 =	Gross Potential Income of	\$156,000
– Vacancy and Collection Losses of 7%		– 10,920
Equals Effective Gross Income		\$145,080
– Operating Expenses		\$45,000
Equals Net Operating Income		\$100,080

$$\text{\$100,080 (NOI)} \div 9\% \text{ (Cap Rate)} = \text{\$1,112,000 Value}$$

#### Answer to Capitalization Problem #2

5 units $\times$ \$750 $\times$ 12 =		\$45,000
3 units $\times$ \$600 $\times$ 12 =		\$21,600
Gross Potential Income of		\$66,600
– Vacancy and Collection Losses of 10%		– \$6,660
Equals Effective Gross Income		\$59,940
– Operating Expenses		\$35,000
Equals Net Operating Income		\$24,940

$$\text{\$24,940 (NOI)} \div 11\% \text{ (Cap Rate)} = \text{\$226,727 Value}$$

#### Answer to Capitalization Problem #2

\$6,800 $\times$ 12 =		\$81,600
Gross Potential Income of		\$81,600
– Maintenance Fees		– \$22,000
– Brokerage Service Fees		– \$8,000
– Real Estate Taxes		– \$5,800
– Utilities		– \$15,000
Equals Net Operating Income		\$30,800

$$\text{\$30,800 (NOI)} \div 10\% \text{ (Cap Rate)} = \text{\$308,000 Value}$$



## Section 6: Working as a Residential or Commercial Property Manager Notebook Guide

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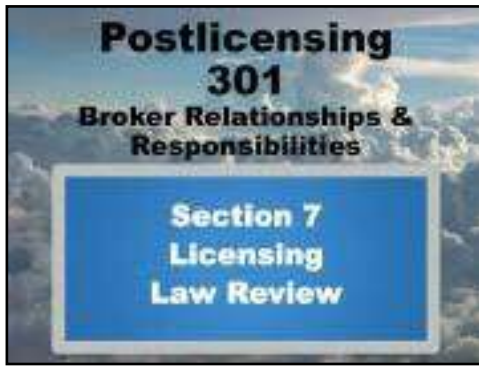
1. Managing the property
2. Another
3. Property management
4. Employees of an entity renting its own property
5. Unlicensed salaried employees
6. HOA management
7. Maximize the owner's net income
8. Property management agreement
9. Firm
10. Owner of the property
11. General
12. Realize profit as the owner instructs
13. Management plan that meets the owner's objectives
14. Operating expenses
15. Must be in writing
16. Begin and end date
17. Management fee
18. Firm responsibilities
19. Manager's authority
20. Reporting
21. Owner's responsibilities
22. Termination duties
23. Creating a budget
24. Planning capital expenditures
25. Calculating cash flow

## **Section 6: Working as a Residential or Commercial Property Manager Notebook Guide (CONTINUED)**

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26. Creating reports
27. Establishing rental schedules
28. Marketing the property
29. Screening tenants
30. Maintaining the property
31. Engaging in competitive bidding
32. Creating a market analysis
33. Creating leasing concessions
34. Enforcing rules and regulations
35. Instituting legal actions
36. Maintaining records and accounting to owners
37. Show rentals
38. Collect rent
39. Fill in blanks
40. Negotiate
41. Receive commissions
42. Give advice





## Section 7: Licensing Law Review

### Critical Reading Information

Chapter 21 – “Paying Brokers No Longer with Firm, brokers or Former Brokers”

Law 93A-4

Rule A.0103 – Broker Name & Address

Rule A.0503 – License Renewal

Rule A.0504 – Active & Inactive License

Rule A.0505 – Reinstatement

Rule A.0506 – Supervision

Rule A.1702 – CE

Rule A.1703 – CE

Rule A.1902 - Postlicensing



## Section 7: Licensing Law Review

### Critical Dates for License Renewal



The deadline to renew is midnight on:

1. \_\_\_\_\_

The fee to renew your license is:

2. \_\_\_\_\_

The deadline for all CE course completions is: 3. \_\_\_\_\_

Failure to renew the license results in the license being 4. \_\_\_\_\_

## Critical Dates for License Renewal (CONTINUED)

Provisional brokers must complete Postlicensing:

5. \_\_\_\_\_ Total hours required  
6. Deadline \_\_\_\_\_ from license issue date

May take the classes in any order &  
sooner than the

7. \_\_\_\_\_

All licensees must complete 8. \_\_\_\_\_ hours of CE per year.

9. \_\_\_\_\_ Hours in mandatory update course

10. \_\_\_\_\_ Hours of elective credit

Deadline is: 11. \_\_\_\_\_

The CE requirement for provisional brokers starts with:

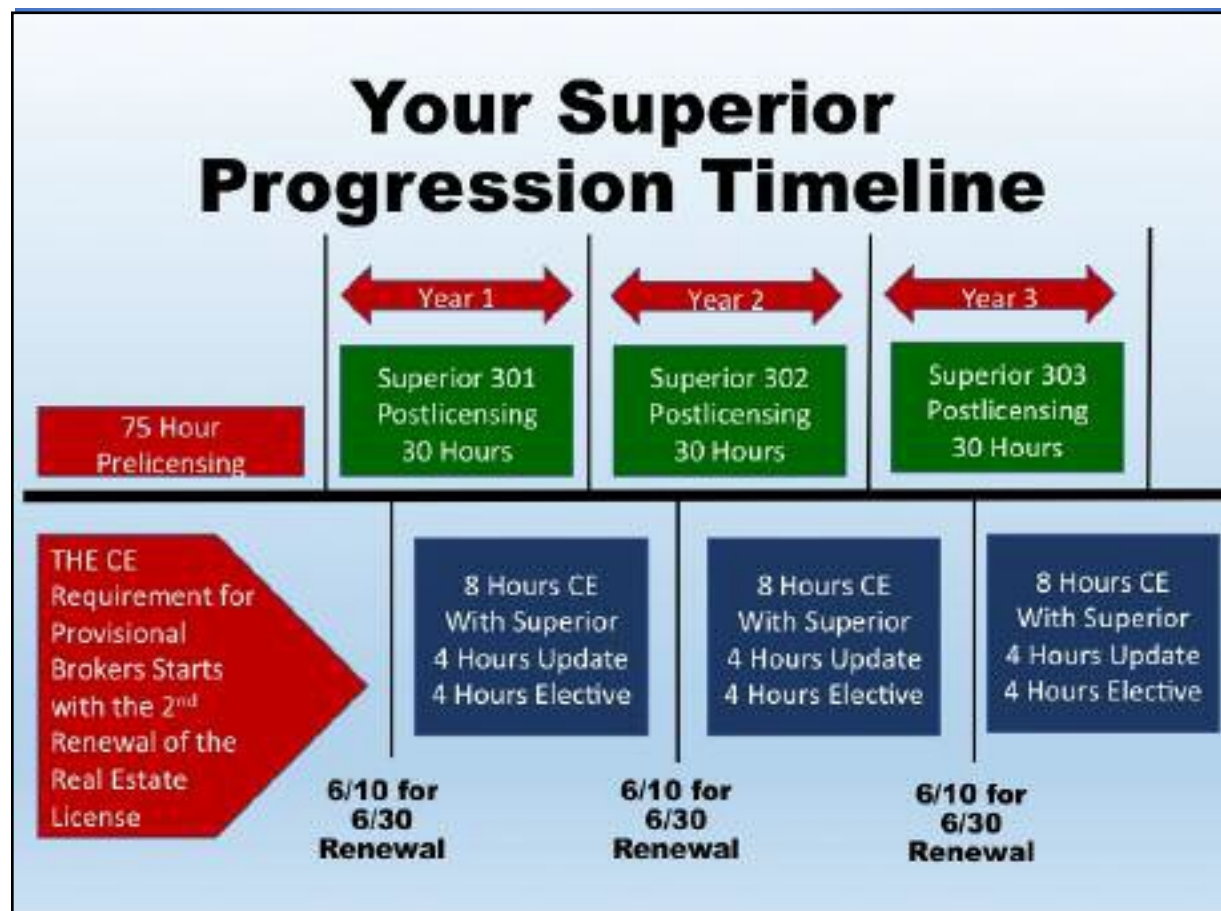
12. \_\_\_\_\_

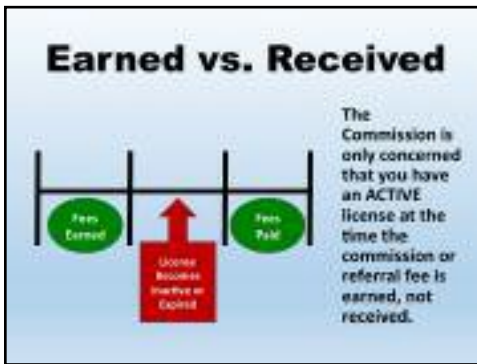
**Maintaining Your Real Estate License POST Education Requirements**



**§93A-4**

- Provisional Broker POST Education Requirements
  - Must complete 90 hours
  - Deadline is 18 months from licensure date
  - Courses are 301, 302, 303
  - May take in any order & sooner than the deadlines
- Completion Removes Provisional Status





## Distinguishing Between Earning & Receiving Compensation

A licensee must have a current and active license in order to EARN any compensation, including referral fees. The Commission is only concerned that you were active and current at the time the compensation was EARNED, not RECEIVED. A licensee can

RECEIVE compensation when they are inactive or expired for brokerage services that were provided when the license was current and active.

If a licensee engages in activity when their license is inactive or expired, they can be paid NOTHING by their BIC.

## Additional Obligations Regarding Licensure

A licensee must include their 13. \_\_\_\_\_ on all contracts and disclosures.

A licensee must carry their 14. \_\_\_\_\_ at all times when practicing real estate. **Rule A.0101.**

A licensee must report all changes of address (both home and firm) to the real estate commission within 15. \_\_\_\_\_ days.

A licensee has a duty to report to the commission all of the following within 16. \_\_\_\_\_ days of the conviction, judgment, order or adjudication. **Rule A.0113.**

17. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## Section 7: Licensing Law Review Notebook Guide

1. June 30 every year
2. \$45
3. June 10
4. Expired
5. 90 hours
6. 18 months
7. deadline
8. 8 hours
9. 4 hours
10. 4 hours
11. Midnight, June 10 every year
12. 2nd renewal of the license
13. License number
14. Pocket card
15. 10 days
16. 60 days
17. Felony or misdemeanor convictions

Disciplinary actions against other professional licenses

Revocation or suspension of a notarial commission





## Revelations, Insights, Ideas & To Do List

What are the best and brightest “to do” items  
you got out of this section?

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## This image shows a full page of blank, lined paper. It features approximately 28 horizontal blue or grey lines spaced evenly apart, typical of notebook paper. The lines extend across the entire width of the page, leaving small margins at the top and bottom. There are no vertical lines, text, or other markings on the page.