HOLLYWOOD

NCREC PRESENTS

HOW TO BECOME A SUPERSTAR BROKER!

GENERAL

UPDATE COURSE

2025-2026

Welcome to the 2025-2026 Mandatory Update

The North Carolina Real Estate Commission is honored and excited to bring you the General Update and Broker-in-Charge Update courses for the 2025-2026 season.

NCREC realizes that the Update courses form the core of continuing education for North Carolina brokers every year. They are the product of months of work, decades of experience, and involve the time, energy, and efforts of many people throughout the Education & Licensing and Regulatory Affairs Divisions.

Beginning each fall the Commission members rely on input from brokers, instructors, surveys and staff to identify potential topics for the course. The topics eventually chosen by the Commission members are selected to provide current information about law and rule changes, areas of disciplinary concern, and evolving brokerage practices which affect compliance with NC statutes and Commission rules.

Many months of research and authorship are involved in drafting the course. Every word of content contained in the course is reviewed and refined on several levels at NCREC. The goal is to have the Education & License Services and Regulatory Affairs Divisions provide consistent, accurate information to consumers and brokers using a unified voice. The voice this year was created by education officers, the Commission's Directors, staff attorneys, consumer protection officers, and subject matter experts.

This year's course is titled "How to Become a Superstar Broker!" and is built around a movie industry theme. We did this to maximize engagement in the courses and to create lots of interaction between the instructor and the students. We know students learn best when they are engaged and having fun while learning. We have also powered this year's UPDATE courses with AI tools to create better quality videos and be more innovative in the conveying of information. There are tons of resources shared through the course.

We trust you will walk away with a rewarding experience and lots of useful and practical information. Our hope is that you have a fun educational experience while taking this course, just as we did in creating it for you.

Leonard C. Elder, JD, DREI, GSI
Director of Education & Licensing

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Assistant Director of Education & Licensing

INTRODUCTION

The *2025-2026 General Update (GENUP) Course* is a four (4) hour* course that must be completed by all provisional and non-provisional brokers who are not Brokers-in-Charge and/or do not have *BIC-Eligible* status and who wish to renew their licenses on active status on July 1, 2026, for the 2026-2027 license year.

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

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

Development and Delivery

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

Per Commission Rule 58H .0403(d): *Education providers shall use the Commission-developed course materials to conduct Update courses. Education providers shall provide a copy of the course materials to each broker taking an Update course.*

Per Commission Rule 58H .0207(d & e): *For each continuing education course taught, an education provider shall provide a course completion certificate signed by the education director to each student that meets the requirements of 21 NCAC 58A .1705. The course completion certificate shall identify the course, date of completion, student, and instructor.*

Commission Rule 58A .1705: Attendance & Participation Requirements

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

(1) attend at least 90 percent of the scheduled instructional hours for the course;

(2) provide the broker's legal name and license number to the education provider;

(3) present the broker's pocket card or photo identification card, if necessary; and

(4) personally perform all work required to complete the course.

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

(1) approved by the instructor; and

(2) for circumstances beyond the broker's control that could not have been reasonably foreseen by the broker, such as:

(A) an illness;

(B) a family emergency; or

(C) acts of God.

Comments and Complaints

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

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

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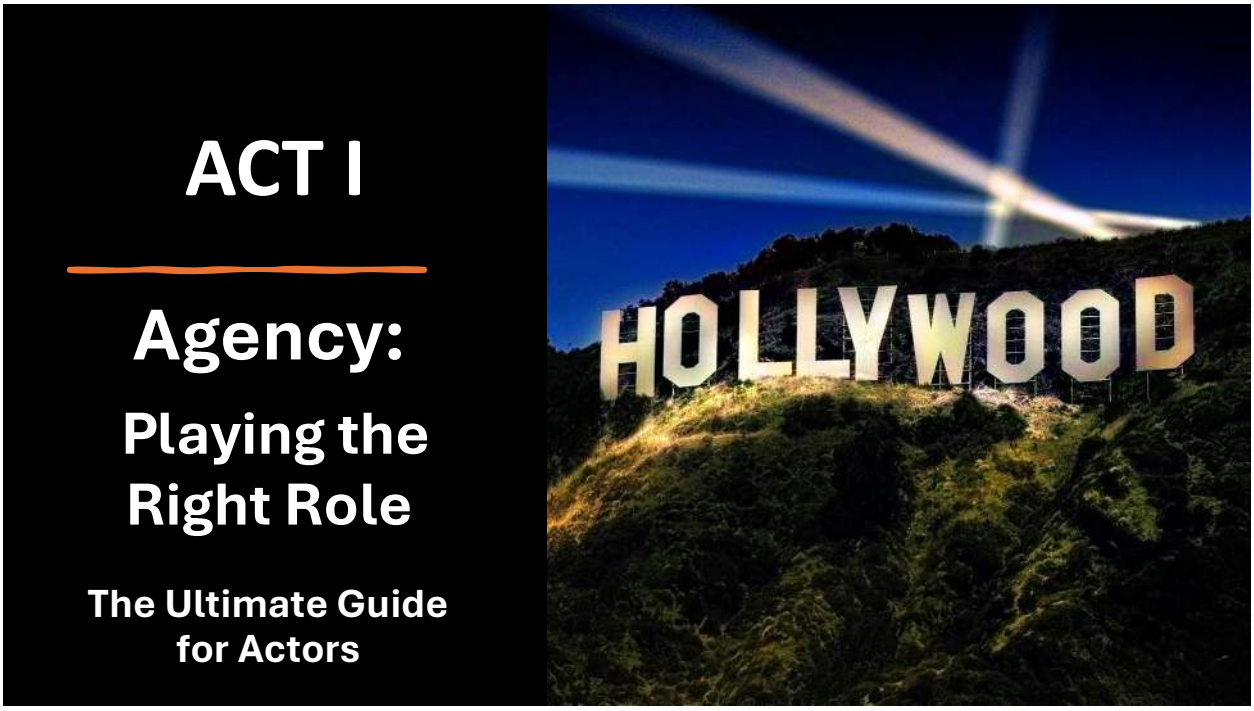
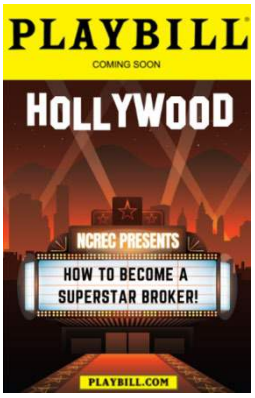
Agency:
Playing the Right Role



LEARNING OBJECTIVES



After completing this Section, you should be able to:

- define key terms related to agency and fiduciary duties;
- explain the basic requirements of Commission Rule 58A .0104;
- explain the broker's fiduciary responsibilities to clients; and
- describe the concept of reasonable skill, care, and diligence.

TERMINOLOGY

Agency: The relationship that exists when one person or entity is authorized to act for and on behalf of another.

Agent: The person or entity acting for and on behalf of the principal within the bounds of the authority granted and who owes fiduciary (legal) duties to the principal.

Brokerage Subagency*:** An agency relationship where the brokerage and all affiliated brokers within the ***same brokerage as the real estate broker representing the seller, act as subagents of the seller. This means that the brokerage, the agent for the seller, and all affiliated brokers of that brokerage represent the seller's interests. A seller subagent owes the same fiduciary duties as the seller's agent towards the seller, emphasizing loyalty, obedience, disclosure, confidentiality, and accounting.

Principal/Client: The party who authorizes another (the agent) to act on the principal's behalf within specified parameters and to whom the agent owes certain legal duties.

***Seller Subagency*:** An agency relationship where a broker from a brokerage other than the listing firm represents the seller's interest with written permission in a transaction with an unrepresented buyer. A seller subagent owes the same fiduciary duties towards the seller as the listing agent, emphasizing loyalty, obedience, disclosure, confidentiality, and accounting.

NOTE: Commission rules commonly use the term firm. However, these rules apply to firms AND sole proprietorships. According to the ***BIC Best Practices Guide***, a firm may be a corporation, partnership, limited liability company, or any other type of business entity. A sole proprietorship does not need to obtain a firm license; it operates under the broker's personal license. However, prior to an entity conducting brokerage activity, a firm license is required.

A sole proprietorship is a business that is owned and managed by one individual who is solely responsible for its debts and obligations. A sole proprietorship may have more than one broker associated with their brokerage company.

COMMON LAW OF AGENCY

The concept of agency has its origins in early England. Agency is a relationship that authorizes an agent to act on behalf of their principal, essentially binding them legally in certain matters. The legal framework that developed around this concept is called the "common law of agency." Common law relies on judicial decisions and case law rather than on laws codified by statute.

Under common law, agency relationships can be either express or implied, created through conduct, oral agreements, or written contracts. An agent can only act within the authority granted by the principal, which may vary depending on the type of agency relationship. However, a principal is usually not bound by the actions of an agent that are outside the agent's authority unless the principal ratifies the act or reasonably appears to a third party that the agent had authority to perform the action.

A fiduciary is a person who acts in a relationship of trust and is bound to act in the best interests of the principal, prioritizing those interests above their own. Brokers acting as agents are considered fiduciaries and must fulfill their responsibilities to their principals while performing brokerage activities.

The fiduciary duties an agent owes to a principal includes:

- obedience;
  - An agent must follow all lawful instructions of the principal.
- loyalty;
  - An agent must act in the best interests of the principal and place the principal's interests ahead of the agent's personal, business, or family interests.
- disclosure;
  - An agent must provide the principal with all relevant facts that could influence their decision-making.

- confidentiality;
    - An agent must protect all personal and confidential information of the principal. However, the broker-agent must discover and disclose all material facts to all parties in the transaction.
- accounting; and
    - An agent must safeguard and account for the principal's funds and property.
- reasonable skill, care, and diligence.
    - An agent must exercise reasonable skill, care, and diligence of the professional standards of the community in fulfilling all their fiduciary duties.

Additionally, brokers must act in good faith to promote the principal's interest. Basically, while acting as an agent, a broker must offer absolute loyalty/obedience to the principal and refrain from activities that might conflict with the principal's interests.

Loyalty and Obedience

In an agency relationship, the broker must avoid any activities that could compromise their loyalty to the principal and stay clear of activities that fail to prioritize or may conflict with the principal's interests.

Moreover, the agent is bound to follow all lawful instructions provided by the principal, that adhere to terms in the agency agreement. However, it is crucial to note than an agent should not follow any ***unlawful*** instructions, regardless of the principal's directions.

Disclosure of Relevant Information

An agent's role is to act in good faith and diligently disclose any information, that is not protected by law, that could affect the principal's rights and interests or influence their decisions in the transaction. Relevant information that an agent must disclose to their principal include:

- the other party's willingness to agree to a price or terms different from those previously stated;
- the other party's motivation for engaging in the transaction; or
- any other information that might affect the principal's rights and interests or influence the principal's decision in a transaction.

Confidentiality

An agent also has the responsibility of safeguarding the principal's confidential information and not disclosing it to third parties without consent, unless disclosure is required by law.

Accounting

Brokers must maintain meticulous records and be accountable for their principal's property. Quite frankly, the broker is responsible for safeguarding any real or personal property related to the client's transaction, such as funds, deeds, or documents.

Skill, Care, and Diligence

Real estate brokers are expected to operate with reasonable skill, care, and diligence. This standard is shaped by:

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

An agent must exert reasonable skill, care, and diligence on the principal's behalf and strive to obtain the most advantageous bargaining position possible under the circumstances. Brokers must diligently work to achieve the best possible outcomes for their principals, and failure to uphold these standards could possibly result in:

- charges of negligence or misconduct,
- liability to the principal for any damages the principal may sustain,
- forfeiture of any claim to compensation, and/or
- violation of License Law and Commission rules.

The agent may be liable to the principal for all damages that are the direct, or "proximate," consequences of the negligence.

In an effort to act with reasonable skill, care, and diligence, brokers are advised to:

- provide reliable information on matters relevant to the transaction,
- provide competent advice on a property's probable selling or leasing price,
- discover pertinent facts related to the property,
- effectively advertise a listed property,
- advise about offers, and
- assist with contract preparation.

For more detailed information regarding how brokers can exercise reasonable skill, care, and diligence while representing a client in brokerage transactions, you can review the 2021-2022 General Update Course Section, "Broker Fiduciary Duties."

Screen Test Questions

Determine whether the broker fulfilled or breached their fiduciary duties.

1. A seller confides their lowest acceptable sales price to their listing broker; the listing has now expired. That same broker enters a buyer agency agreement with a buyer who is interested in that property. The broker tells their buyer client the seller's bottom-line sales price.

2. A listing agent provides a full Comparative Market Analysis (CMA) of the property they have listed to prospective buyers.

3. A listing agent follows the directions of their seller in keeping information about a water leak confidential.

4. A broker is actively and simultaneously representing two different buyers interested in the same property.

5. A listing broker insists that a seller does an exclusive listing only advertised within the firm's private listing network.

6. A broker from XYZ brokerage holds an open house for a listing agent who is a friend affiliated with ABC brokerage without any written documentation.

Best Practices for an Ovation Regarding Fiduciary Duties

To ensure compliance with agency law and fulfill their fiduciary duties, brokers should adhere to the following best practices:

- determine in what agency capacity the broker will work with the consumer;
- always place the principal's interest before their own;
- identify/communicate conflicts of interest immediately;
- provide timely and relevant information to the principal so they can make an informed decision;
- follow the principal's lawful directions;
- possess knowledge of the geographic location and transaction cycle types; and
- account for all the principal's funds and property.

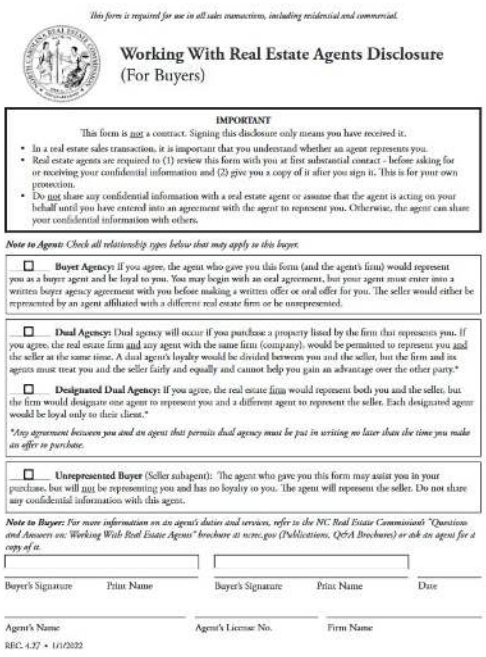
An agent is NOT authorized to:

- give legal advice, draft legal documents in which the agent is not a party, or otherwise act as an attorney;
- sign documents on behalf of the client without written authorization, preferably in the form of a limited Power of Attorney;
- accept or decline offers; or
- transfer possession of a property to a buyer or tenant without the owner's express, written permission.

AGENCY AGREEMENTS AND DISCLOSURES

Brokers must comply with Commission Rule 58A .0104(c) at or before first substantial contact. This Rule requires brokers to:

- provide and review the "Working with Real Estate Agents (WWREA) Disclosure Form" (e.g., publication) with a prospective buyer or seller at first substantial contact in a real estate ***sales transaction***, and
- educate the consumer on the types of agency relationships that may be offered by the brokerage and instruct them not to share confidential information before an agency relationship is established.



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

Working With Real Estate Agents Disclosure
(For Buyers)

IMPORTANT

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

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

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

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

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

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

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

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

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

Buyer's Signature | Print Name | Buyer's Signature | Print Name | Date

Agent's Name | Agent's License No. | Firm Name

REC. 4.27 • 1/1/2022

After the broker reviews the disclosure form with the consumer, the consumer can then decide whether they wish to enter into an agency relationship with the brokerage. If the consumer declines, the broker does not owe any fiduciary duties to the individual. Moreover, any personal information that the broker learned from communicating with the consumer is not considered confidential information.

Commission Rule 58A .0104(a) mandates that brokers formalize their relationships with clients through written agency agreements, such as listing and buyer agency agreements, to ensure all parties are clear about their contractual obligations.

NOTE: N.C.G.S. §93A-13 establishes the criteria for written agreements for brokers to adhere to in the event they need to pursue legal action for the recovery of their compensation.

WRITTEN AGREEMENTS

An agency agreement must:

- be in writing;
- identify parties and get signed by all;
- include the broker's license number;
- contain the fair housing non-discrimination language as stated in Rule 58A .0104(b); and
- specify a definite automatic termination date.
    - However, a property management agreement between a landlord and broker to procure tenants or receive rents for the landlord's property may allow for an automatic renewal so long as the landlord may terminate with notice at the end of the contract period and any subsequent renewals.

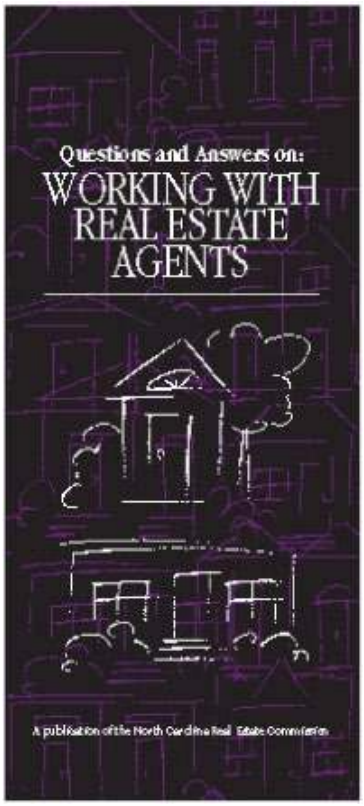
Also, all agency agreements must be express from the beginning before any brokerage services can be conducted. An express agreement means that the agreement, even if oral, includes **all** of the contractual terms between the parties.

Owners and Lessors: Agency Agreement

Rule 58A .0104(a) specifically states:

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

Basically, brokers may not provide any sales, leasing, or management services for any property owner without having a written agency agreement from the onset of the brokerage relationship. Also, if a broker is providing limited brokerage services, the agency agreement must still be executed in writing before the agreed upon services are provided. If a written agency agreement does not exist, the broker may be forfeiting any right to receive compensation.



Agency relationships may be complex in nature and, therefore, challenging to clearly explain to consumers. However, brokers may use the Commission publication, Questions and Answers on: Working with Real Estate Agents to assist brokers with explaining agency. This brochure provides a thorough explanation of listing agreements, the duties of a real estate broker, and how compensation is paid to the broker. Let's review some of the questions that sellers may have regarding listing their property.

I want to sell my property. What do I need to know about working with real estate agents? If you own real estate and want to sell it, you may want to "list" your property for sale with a real estate brokerage company. If so, you will sign a "written listing agreement" authorizing the brokerage and its agents to represent you as your "listing" agent in your dealings with buyers. The real estate brokerage must enter a written listing agreement with you before it's allowed to begin marketing or showing your property to prospective buyers or taking any other steps to help you sell your property. Also, the listing company may ask you to allow agents from other brokerage companies to show your property to their buyer-clients. However, until you sign the listing agreement, you should avoid telling any broker anything you would not want the buyer to know in a transaction.

What are the listing agent's duties to a seller? The listing agent/firm must:

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

Once you have signed the listing agreement, the brokerage company and its affiliated agents may not during the agency relationship give any confidential information about you to prospective buyers or their agents without your permission.

What services might a listing agent provide? To help you sell your property, a listing brokerage and its agents will offer to perform a number of services for you. These may include:

- helping you price your property,
- advertising and marketing your property,
- giving you all required property disclosure forms for you to complete,
- negotiating for you the best possible price and terms,
- reviewing all written offers with you, and
- otherwise promoting your interests.

NOTE: If a consumer needs more clarity on

- deciding which agency relationship they would like to have with a real estate agent,
- the various services real estate agents can provide sellers, and
- explaining how real estate agents are paid,

they should review the Questions and Answers on: Working with Real Estate Agents brochure.

Buyer Agency Agreements

Commission Rule 58A .0104(a) states:

> *…Every agreement for brokerage services between a broker and a buyer or tenant shall be express and shall be in writing and signed by the parties thereto not later than the time one of the parties makes an offer to purchase, sell, rent, lease, or exchange real estate to another. However, every agreement between a broker and a buyer or tenant that seeks to bind the buyer or tenant for a period of time or to restrict the buyer's or tenant's right to work with other agents or without an agent shall be in writing and signed by the parties thereto from its formation.*

An agency agreement with a buyer/tenant must be reduced to writing and signed no later than the time one of the parties makes an offer to purchase, sell, rent, lease or exchange real estate to another. However, if the policies of a brokerage permit a broker to enter into an oral buyer agency agreement, then the broker may do this initially until required to be in writing by rule.

Oral Agency Agreements

Oral agency agreements must be express and permit the buyer and/or tenant to work with other agents for an undetermined time period. In other words, the oral agreement may not be exclusive and obligate the buyer/tenant to work only with that brokerage for any specified period of time. The moment the agency relationship is restricted to a specific time period or to only one brokerage company, the agency agreement must immediately be reduced to writing and signed by all parties. Further, this Rule does not prohibit a broker from entering into a written agency agreement earlier than the time of offer submission.

The Questions and Answers on: Working with Real Estate Agents also provides a thorough explanation of buyer agency agreements, the duties of a real estate broker, and how compensation is paid to the broker. Let's review some of the questions.

I want to buy real estate. What do I need to know about working with real estate agents? When buying real estate, you may have several choices as to how you want a real estate brokerage company and its agents to work with you.

For example, you may want them to represent only you (as a buyer agent). You may be willing for them to represent both you and the seller at the same time (as a dual agent), or you may agree to let them represent only the seller (seller's agent or subagent). Some agents will offer you a choice of these services, others may not.

What are a buyer agent's duties to a buyer? If the real estate brokerage company and its agents represent you, they must:

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

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

Must a buyer have a written agency agreement with the agent who represents the buyer? To make sure that you and the real estate brokerage have a clear understanding of what your relationship will be and what the brokerage will do for you, you may want to have a written agreement when you first begin working with an agent. However, some brokerages may be willing to represent and assist you initially as a buyer agent without a written agreement. But if you decide to make an offer to purchase a particular property, you must enter into a written agency agreement with the broker. If you do not enter into a written agency agreement, then the agent can no longer represent you and is not required to keep information about you confidential.

Also, the Commission has published the article, "Buyer Agency Agreements" to further explain Rule 58A .0104(a).

In summary, agreements must be in writing for:

- owners/lessors;
  - Brokers cannot provide sales, leasing, or property management services without a written agency agreement from the beginning of the relationship, per Rule 58A .0104(a).
- limited services; and
  - If a broker is providing limited services, they are still responsible for executing an agency agreement in writing before services are provided. If a broker fails to do so, they may forfeit their right to compensation.
- buyers/tenants.
  - A written agency agreement must be executed no later than the time one of the parties to the contract makes an offer to purchase, sell, rent, lease, or exchange real estate. If the brokerage permits oral agreements initially, the oral buyer agency agreement must be express and non-exclusive. If the agreement becomes exclusive or specifies a contractual time frame, the agreement must be reduced to writing and signed by all parties.

NOTE: By following these rules and ensuring all agency relationships are clearly defined and documented, brokers can fulfill their legal obligations, maintain trust with their clients, and adhere to License Law and Commission rules.

NCREC VERSUS NAR: WHAT'S THE DIFFERENCE?

In March 2024, the National Association of REALTORS® (NAR) proposed a landmark settlement to resolve major antitrust lawsuits unfolding across the country. The settlement was accepted in November 2024 and has reshaped real estate practices for its members. Among the key changes was the requirement for NAR members to enter into touring agreements with buyers before showing properties, and the discontinuation of compensation offers on multiple listing services (MLS). However, NAR's changes apply only to its members. Brokers who are not members of NAR are governed by state-specific regulations. In North Carolina, ***all*** brokers must comply with License Law and Commission rules.

NCREC's Continued Oversight vs. NAR's Changes

The Commission, an independent state agency, is responsible for regulating real estate practice in North Carolina, with a focus on protecting consumers by educating, licensing, and regulating brokers. License Law and Commission rules still remain the primary framework for brokers practicing in North Carolina, even as NAR undergoes significant changes.

The key distinction here is that License Law and Commission rules apply to all brokers in North Carolina, regardless of the brokers' NAR membership. In contrast, the NAR rules affect only NAR members and introduce changes such as requiring touring agreements with buyers before showing property, including virtual tours. This shift is significant but does not override License Law and Commission rules, which already require written agency agreements under Rule 58A .0104(a).

The Impact of NAR's Written Agreement Requirement

One of the major changes imposed by the NAR settlement is the requirement for written agreements with buyers before any property showings, including virtual tours. These agreements allow transparency and for the buyer to understand the services that the REALTOR® will provide them and the amount that the REALTOR® will be compensated for their services. License Law and Commission rules already mandate written buyer agency agreements before offers are made, and brokers can continue to operate under oral agreements with buyers until that point. This means that while the NAR change introduces a new requirement for its members, it is in line with existing Commission rules, which emphasize the importance of written agreements but also allows for temporary oral agency agreements.

A significant contrast between the requirements of the two entities is the introduction of “touring agreements” under NAR’s settlement. These written agreements allow brokers to show a home to a buyer for a limited time or under specific conditions, which can include a small fee or no fee at all. While the Commission does not have a specific rule for "touring agreements," brokers may use non-exclusive buyer agency agreements to establish clear terms before any property showings.

Broker Compliance: NCREC’s Written Requirements vs. NAR’s Flexibility

Both the Commission and NAR require brokers to establish clear agreements, but the way these mandates are implemented differs. Commission Rule 58A .0104(a) mandates that every agreement for brokerage services between a broker and a buyer or tenant shall be express and shall be in writing and signed by the parties thereto not later than the time one of the parties makes an offer to purchase, sell, rent, lease, or exchange real estate to another. However, every agreement between a broker and a buyer or tenant that seeks to bind the buyer or tenant for a period of time or to restrict the buyer’s or tenant’s right to work with other agents or without an agent shall be in writing and signed by the parties thereto from its formation.

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

Commission rules also require brokers to provide and review the Working with Real Estate Agents Disclosure Form to prospective buyers and sellers so that they will know the types of agency options a brokerage may provide in an agency relationship.

On the other hand, while NAR’s settlement requires a written agreement before any showings, it does not necessarily mandate a full agency agreement. NAR mandates a touring agreement but does not require a full agency commitment at the time of the first showing.

Commission and Compensation Rules

Rule 58A .0120, requires affiliated brokers to be paid commission and/or referral fees from their current BIC or the BIC at the time of the transaction. Additionally, the Commission does not specify commission rates nor arbitrate compensation issues between brokers and brokerages.

Essentially, brokers are free to negotiate commission terms with their clients, but they must ensure transparency and proper documentation. NAR has eliminated compensation offers on the Multiple Listing Service (MLS), which is a major shift in how listing agents used to advertise the payment of commission to potential selling agents.

Further, Commission Rule 58A .0112(b)(1), prohibits brokers from including commission terms in preprinted offer or sales contracts. This ensures that commission discussions remain separate from the terms between the buyer and seller.

Broker Guidance: Managing Changes with Policies and Training

With these changes from NAR, brokers-in-charge (BICs) in North Carolina must stay informed and proactive. While NAR started requiring touring agreements for all buyer showings in August 2024, License Law and Commission rules already demanded clear agency agreements.

BICs should implement policies and provide training to assist affiliated brokers with navigating these evolving requirements, ensuring full compliance with both License Law and Commission rules and NAR guidelines where applicable.

Conclusion

In conclusion, while the changes from NAR represent a significant shift for its members, they align closely with many of North Carolina's existing real estate practices. The Commission continues to regulate the state's real estate industry with a focus on disclosure and written agency agreements ensuring brokers act in their clients' best interests. Brokers in North Carolina should carefully adhere to both License Law and Commission rules and NAR, if they are a REALTOR®, to maintain effective practices and remain compliant with all regulations.

AGENCY PITFALLS

Brokers are fiduciaries in real estate transactions and are tasked with safeguarding the interests of their clients. Although brokers are fiduciaries, they may encounter some potential pitfalls where the lack of knowledge may lead to some legal and ethical challenges. Among the most significant issues are self-dealing by brokers, acting as a seller subagent, and utilizing "showing assistants" to show a property when they are unavailable due to scheduling demands.

At the Movies: All Mine, The Personal Portfolio Enhancer

Brecca, a listing agent, listed Samantha's three-bedroom bungalow in historic Oakwood. Although the property was in need of repairs, it had great potential. Samantha was eager to sell the inherited property very quickly.

Brecca realized that the three-bedroom bungalow would be a great rental property for her own portfolio and believed that the value of the property would increase exponentially after some minor renovations. Therefore, she personally wanted to purchase the property.

Brecca approached Samanatha with an offer. She suggested that, given the property's current condition, Samanatha should consider selling it to her directly. Brecca reassured Samanatha that she was offering her a fair price and a guarantee that she could close within 30 days, something that was rare for other buyers who needed to secure financing. Samantha accepted Brecca's offer, and the parties went under contract. Settlement occurred 14 days later.

Critic's Review: Has Brecca adhered to her fiduciary duties with Samantha?

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Brokers owe their clients fiduciary duties, which explicitly forbid any form of self-dealing.

Under Commission Rule 58A .0104(p), a broker or firm with an existing listing agreement for a property shall not enter into a contract to purchase that property unless, prior to entering into the contract, the listing broker or firm first discloses in writing to their seller-client that the listing broker or firm may have a conflict of interest in the transaction and that the seller-client may want to seek independent counsel of an attorney or another licensed broker.

This subsection further indicates:

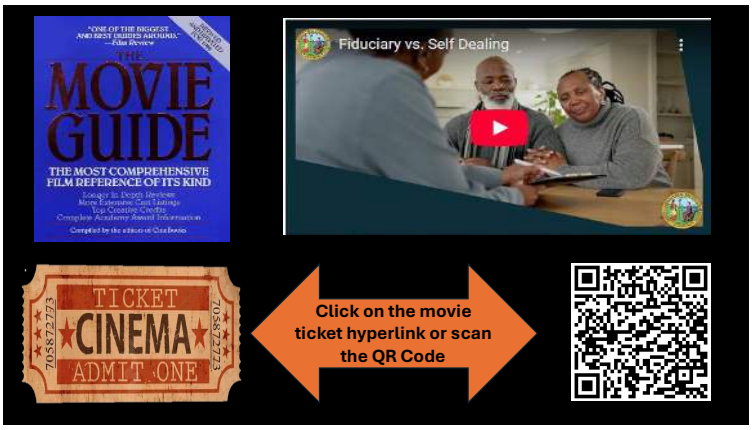
> *Prior to the listing broker entering into a contract to purchase the listed property, the listing broker and firm shall either terminate the listing agreement or transfer the listing to another broker affiliated with the firm. Prior to the listing firm entering into a contract to purchase the listed property, the listing broker and firm shall disclose to the seller-client in writing that the seller-client has the right to terminate the listing, and the listing broker and firm shall terminate the listing upon the request of the seller-client.*

Furthermore, N.C.G.S. §93A-6(a)(8) and (10) empowers the Commission to take disciplinary action against brokers who are unworthy or act in an incompetent manner which endangers the public interest or engages in improper, fraudulent, or dishonest conduct.

An agent's primary duty is to champion their principal's interests, even above their own. The appearance of "self-dealing," where an agent places their business interests over the principal's, must be avoided at all costs. If an agent has a personal interest in a transaction that could affect their loyalty and obedience to the principal, the agent must either:

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

Transparency is paramount, and any potential conflicts of interest must be communicated without hesitation, allowing the principal to make a well-informed decision. Self-dealing can also manifest through the usage of a "straw man." Basically, the straw man participates in the real estate transaction by purchasing the property from the principal on behalf of the agent. After the sale has concluded, the property is sold at a higher price, and the agent realizes the profit. The realization of a profit without your principal's knowledge is a violation of agency law and a breach of fiduciary duty.



The Commission has created a YouTube video, "Self-Dealing vs. Fiduciary," that compares and contrasts self-dealing and fiduciaries.

Representing Adverse Interests

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

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

- breach the agency duties owed to the principal and may be liable for damages;
- likely make the contract negotiated by the agent voidable;
- not be entitled to a commission or any form of compensation for the transaction; and
- have violated N.C.G.S. §93A-6(a)(4) which prohibits brokers from acting for more than one party in a transaction without the knowledge of all parties for whom they act.

At the Movies: Who Exactly Are You?

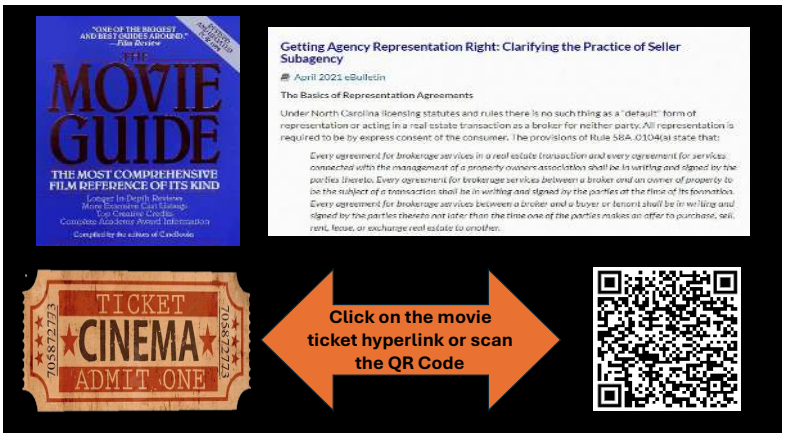
Elvina, a broker with XYZ Realty, is showing a property listed by ABC Brokerage. Elvina is acting as a subagent of the seller, which is authorized in the listing agreement. Prior to showing the property, Elvina discloses her seller subagency relationship while providing and reviewing the Working with Real Estate Disclosure form to the prospective buyer, Amy.

While viewing the property, Amy tells Elvina that she needs to purchase quickly because she is starting a new job. She further indicates that she has been approved for a $750,000 loan, so this property is great because it is under her budget. Amy submits an offer of $495,000 to Elvina, and Elvina forwards the offer to the listing agent. Elvina tells the listing agent that Amy needs to move quickly but fails to disclose her pre-approval amount.

Critic's Review: Has Elvina complied with License Law and Commission rules? Why or why not?

_____

The Commission has published the article, "Getting Agency Representation Right: Clarifying the Practice of Seller Subagency" which states when acting as a seller subagent is legally permissible, how disclosure must be made, and brokers acting as subagents of the seller still owe all fiduciary duties to the seller.



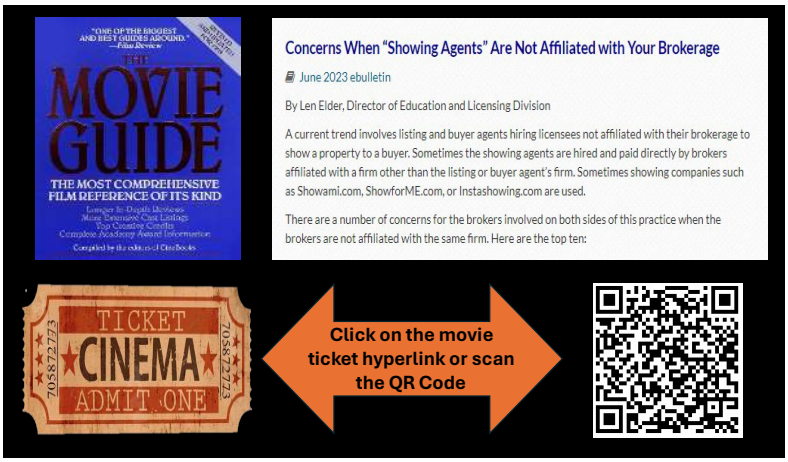
Seller Subagency Grid

	Brokerage Subagency	Seller Subagency (Different Brokerage)
WWREA Disclosure	Provided in brokerage file	Provide and review at first substantial contact
Written Authority to Act on Behalf of the Owner	Already obtained with listing agreement	Must be evidenced in written document from seller
Fiduciary Duties	Owed to Seller	Owed to Seller
Representation of Buyer	Requires seller to authorize dual agency and buyer must consent to dual agency	No buyer representation without written release from seller of seller subagency
Pitfalls	• Undisclosed dual agency • must review company policies with affiliated brokers sharing compensation	• Prohibitions by company policy • Errors and omission coverage • Issues with sharing compensation

Showing Brokers

In today's dynamic real estate landscape, a notable trend has gained momentum, the hiring of unaffiliated brokers by both listing and buyer agents to conduct property showings. These "showing" brokers, often contracted through third-party platforms, operate outside of traditional brokerage affiliations. While this approach may foster flexibility and efficiency, it presents a plethora of critical challenges that must be considered by brokers.

Brokers who choose to utilize these third-party platforms, must navigate potential legal and compliance challenges; therefore, the following ten concerns/issues should be considered and addressed proactively.



The challenges were explained by the Commission in the article, Concerns When "Showing Agents" Are Not Affiliated with Your Brokerage, and are discussed in further detail below.

1. If you hold an open house for a brokerage with whom you are not affiliated, you are just representing potential buyers. It is unlikely that showing brokers are operating under a valid agency agreement. Further, they are neither hired by nor authorized to act on behalf of the seller or buyer. In North Carolina, agency relationships must be created by an express agreement, and when showing brokers are not a part of the buyer or seller's brokerage company, it may create compliance risks and/or rule violations under Commission Rule 58A .0104(a).

Some brokers have misrepresented that showing brokers are acting as subagents of the seller. However, as highlighted in the eBulletin article, Getting Agency Representation Right: Clarifying the Practice of Seller Subagency, this misrepresentation may violate License Law and Commission Rule 58A .0104. For example, without a written agency agreement with the seller consenting to a subagency relationship, showing brokers do not meet the legal requirements to act in this capacity. Moreover, even if showing brokers were acting as subagents, it is unlikely that the buyer may be informed that any information shared during the showing will be disclosed to the listing agent/seller.

2. ***A showing broker must provide and review the Working With Real Estate Agents Disclosure form with potential buyers at first substantial contact.*** Under Commission Rule 58A .0104(c), brokers are required to provide and review the Working With Real Estate Agents Disclosure form with prospective buyers and sellers at first substantial contact. Even if a showing broker is not affiliated with the listing firm or selling firm, they are still required to provide and review the Working With Real Estate Agents Disclosure Form under License Law and Commission rules. If a showing broker fails to make this disclosure, the prospective buyer may falsely believe that the showing broker represents their interest and is acting as an agent on their behalf.

3. ***Showing brokers can be restricted from forming agency relationships with the buyers.*** To safeguard their relationship with their buyer clients, some hiring brokers require showing brokers to sign restrictive agreements. These agreements usually prohibit showing brokers from entering into an agency relationship with the buyer and often attempts to solidify the relationship between the buyer and the hiring broker. Although this approach may seem logical, it may be in violation of License Law and Commission Rule 58A .0104(a).

   Under License Law and Commission rules, exclusive buyer agency agreements can only be established through a written agency agreement. Although it is permissible for brokers to work with buyers under an oral buyer agency agreement under Rule 58A .0104, brokers are prohibited from binding buyers to a specific time frame or restrict their ability to work with other brokers during the transaction. Therefore, any attempt/effort by brokers to limit the ability of buyers to be represented by other brokers may be in direct violation of License Law and Commission rules.

4. ***A showing broker has no obligation to discover and disclose material facts.*** Showing a home to a potential buyer is more than unlocking a door and escorting them around the property. As highlighted in the 2022-2023 Update Course, brokers in NC have a legal duty to discover and disclose material facts to all parties in a transaction. If brokers fail to affirmatively discover and disclose material facts to all parties in a transaction, they may be in violation of N.C.G.S. §93A-6(a)(1). Further, the course also noted the importance of brokers conducting a visual inspection of the property to ascertain whether red flags exist.

   Therefore, when a broker requests a showing broker, who is affiliated with a different brokerage to show a property to a buyer, the duty to disclose material facts is actually an obligation that is shared by both the hiring broker and the showing broker. So, if the showing broker is actually showing the property, the hiring broker may miss opportunities to visually inspect the property, look for red flags, and possibly discover and disclosure of material facts.

Further, some agreements with showing brokers attempt to silence the showing broker from making any comments, disclosures, or representations regarding material facts by including prohibition clauses. These restrictions may violate License Law and Commission rules. Thus, brokers cannot use private agreements with other brokers or third-party platforms to circumvent their fiduciary duties and compliance with License Law and Commission rules. Brokers must ensure that complying with License Law and Commission rules and representing their clients' interests remain paramount in any transaction.

5. ***The showing broker can be paid being paid directly by the hiring broker***. In many instances, hiring brokers pay showing brokers directly, even when those brokers are affiliated with a different brokerage. Depending on the specific facts of the transaction, the payment of compensation may be in violation of Commission Rule 58A .01020(b). Commission Rule 58A .0120(b) states:

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

   Hiring brokers must remit compensation for the showing broker to the BIC of the showing broker to comply with the Rule.

6. ***NCREC does not care whether showing services companies are licensed or not***. Commission Rule 58A .0109 prohibits a broker from paying an unlicensed person/entity compensation for brokerage services. This includes compensating showing brokers through third-party platforms that are not licensed brokerages in North Carolina.

7. ***The seller must consent to the payment and receipt of compensation for showing services***. Showing fees are considered compensation for showing services. Therefore, Commission Rule 58A .0109 requires full disclosure to, and consent from, the principals in the transaction. Therefore, this means the showing broker must obtain documented proof of disclosure and consent from one of the principals before receiving any payment for showing a property.

8. ***Errors and omissions coverage may have been voided by showing services***. Usually, errors & omissions insurance policies do not extend coverage to brokers who are unaffiliated with the insured brokerage. Also, most errors & omission policies do not extend coverage to a broker acting outside the scope of their brokerage affiliation. Therefore, brokers and their Brokers-in-Charge should carefully review their insurance policies to determine the risks and liabilities associated with hiring showing brokers from outside their brokerage.
9. ***A provisional broker may be restricted from acting for two brokerages***. Commission Rule 58A .0506(a) requires provisional brokers to be affiliated and

directly supervised by a Broker-in-Charge to have an active license status. However, the Rule provides an exception for provisional brokers to be supervised by two BICs. The exception indicates that a provisional broker may be supervised by no more than two BICs of two licensed affiliated firms located in the same physical location and acting as co-listing or co-selling agents in real estate transactions. Quite frankly, this means that provisional brokers cannot provide brokerage services without the supervision of their BIC.

10. ***It is okay if two brokers involved in the showings affiliate themselves with an unlicensed entity in order to provide brokerage services***. Showing properties for compensation requires a NC real estate license. Therefore, prior to affiliating with an entity that shows properties, brokers must perform their due diligence to ensure that the entity is licensed. Basically, all entities in North Carolina that engage in brokerage activities must adhere to the requirements for firm licensure in Commission Rule 58A .0502.

NAR has published the following article, "Show Common Sense When Showing Property," to assist their REALTOR® members when showing properties. This article reminds listing brokers that if they allow unaffiliated brokers to show their clients' properties, they must exercise caution to avoid potential violations of both the Code of Ethics and License Law and Commission rules. Further, listing brokers have a duty to protect their clients' interests, and improperly managing access to the property can compromise that responsibility and damage the integrity of the transaction.

Article 1 of the REALTOR® Code of Ethics mandates that REALTORS® "protect and promote the interests of their client," while Standard of Practice 1-16 clarifies that REALTORS® must not allow others to access a listed property outside the terms authorized by the owner or seller. By permitting an unaffiliated broker to show a property without clearly defining the terms and expectations, the listing broker risks breaching this duty. Basically, if a showing broker—who isn't formally part of the listing agreement—enters or shows the property outside of the agreed-upon conditions with the client, it could result in an ethical violation.

In conclusion, utilizing a showing broker who is not affiliated with the hiring broker's brokerage can introduce various pitfalls and liabilities. Brokers and BICs are strongly encouraged to contemplate the issues that may arise to ensure compliance with License

Law and Commission rules. BICs would be wise to mitigate risks by creating clear, well-written office policies specifying whether affiliated brokers are permitted to hire non-affiliated showing brokers.

SUMMARY OF IMPORTANT POINTS

- Agency is a relationship that authorizes an agent to act on behalf of their principal, essentially binding them legally in certain matters.
- The fiduciary duties an agent owes to a principal includes:
    - obedience;
        - An agent must follow all lawful instructions of the principal.
    - loyalty;
        - An agent must act in the best interests of the principal and place the principal's interests ahead of the agent's personal, business, or family interests.
    - disclosure;
        - An agent must provide the principal with all relevant facts that could influence their decision-making.
    - confidentiality;
        - An agent must protect all personal and confidential information of the principal. However, the broker-agent must discover and disclose all material facts to all parties in the transaction.
    - accounting; and
        - An agent must safeguard and account for the principal's funds and property.
    - reasonable skill, care, and diligence.
        - An agent must exercise reasonable skill, care, and diligence of the professional standards of the community in fulfilling all their fiduciary duties.

- In an agency relationship, the broker must avoid any activities that could compromise their loyalty to the principal and stay clear of activities that fail to prioritize or may conflict with the principal's interests.
- An agent is bound to follow all lawful instructions provided by the principal, that adhere to terms in the agency agreement.
    - An agent should not follow any ***unlawful*** instructions, regardless of the principal's directions.
- Relevant information that an agent must disclose to their principal include:
    - the other party's willingness to agree to a price or terms different from those previously stated;
    - the other party's motivation for engaging in the transaction; or
    - any other information that might affect the principal's rights and interests or influence the principal's decision in a transaction.
- An agent also has the responsibility of safeguarding the principal's confidential information and not disclosing it to third parties without consent, unless disclosure is required by law.
- Broker must maintain meticulous records and be accountable for their principal's property.
- Real estate brokers are expected to operate with exceptional skill, care, and diligence. This standard is shaped by:
    - North Carolina General Statutes,
    - North Carolina Real Estate Commission Rules,
    - court decisions, and
    - professional standards within the community.
- Brokers must diligently work to achieve the best possible outcomes for their principals, and failure to uphold these standards could possibly result in:
    - charges of negligence or misconduct,
    - liability to the principal for any damages the principal may sustain,
    - forfeiture of any claim to compensation, and/or
    - violation of License Law and Commission rules.
- Brokers must comply with Commission Rule 58A .0104(c) prior to forming an agency relationship. This Rule requires brokers to:
    - provide and review the "Working with Real Estate Agents (WWREA) Disclosure Form" (e.g., publication) with a prospective buyer or seller at first substantial contact in a real estate sales transaction, and
    - educate the consumer on the types of agency relationships that may be offered by the brokerage and instruct them not to share confidential information before an agency relationship is established.

- An agency agreement must:
    - be in writing;
    - identify and be signed by all parties;
    - include the broker's license number;
    - contain the fair housing non-discrimination language as stated in Rule 58A .0104(b); and
    - specify a definite automatic termination date.
        - However, a property management agreement between a landlord and broker to procure tenants or receive rents for the landlord's property may allow for an automatic renewal so long as the landlord may terminate with notice at the end of the contract period and any subsequent renewals.
- All agency agreements must be express from the beginning before any brokerage services can be conducted.
    - An express agreement means that the agreement, even if oral, includes **all** of the contractual terms between the parties.
- Brokers may not provide any sales, leasing, or management services for any property owner without having a written agency agreement from the onset of the brokerage relationship.
- Oral agency agreements must be express and permit the buyer and/or tenant to work with other agents for an undetermined time period.
- License Law and Commission rules apply to all brokers in North Carolina, regardless of their NAR membership.
    - In contrast, the proposed NAR rules affect only NAR members and introduce changes such as requiring touring agreements with buyers before showing property, including virtual tours.
- Rule 58A .0120, requires affiliated brokers to be paid commission and/or referral fees from their current BIC or the BIC at the time of the transaction.
    - Additionally, the Commission does not specify commission rates nor arbitrate compensation issues between brokers and brokerages.

ACT II

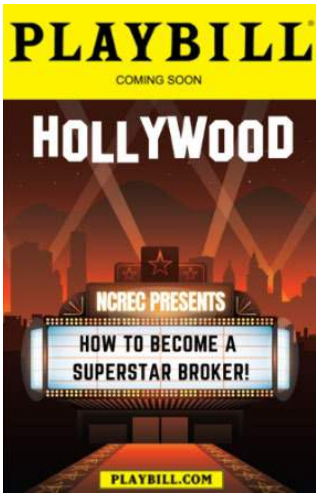
Frequently Asked Questions:

Red Carpet Interviews

LEARNING OBJECTIVES

After completing this Section, you should be able to:

- identify the most frequently asked questions; and
- explain the Commission's responses to the most frequently asked questions.



TERMINOLOGY

- ***Material fact*:** Any fact that could affect a reasonable person's decision to buy, sell, or lease real property.

INTERACTING WITH THE COMMISSION

The North Carolina Real Estate Commission offers brokers multiple, convenient communication options to effectively connect with staff. Brokers can choose from the following options:

- Telephone;
  - Staff is available to accept calls Monday through Friday, from 8:30AM-5:00PM.
- email; and/or
  - Brokers can send an inquiry to staff via individual staff email addresses or generic division email addresses provided on the website.
- website.
  - The Commission's website features a Chatbot named Alfred, which provides an interactive platform for quick assistance.

Callers are asked to provide their name, a phone number, and their NC real estate license number (if applicable) so that staff may answer questions specific to the caller's license status. In the Regulatory Affairs Division, callers are asked to leave their contact information, and a staff member usually returns phone calls on the same business day.

Alfred, the Commission's Chatbot, leverages artificial intelligence and natural language processing to provide personalized assistance. Using resources, such as the *License Law and Commission Rules*, the *North Carolina Real Estate Manual*, and *Real Estate Licensing in North Carolina*, Alfred delivers accurate and timely responses to both brokers and consumers. Further, the Chatbot can efficiently address frequently asked questions about licensing and continuing education requirements. This enhances the Commission's overall efficiency through proactive engagement and tailored responses.

Brokers can also contact the Commission directly to speak with a License Specialist or Information Officer for guidance on licensure, form submission, or interpreting license law related to brokerage activity.

As explained in the 2023-2024 Update Course, the Commission handles an average of 500 telephone calls and 1,000 emails daily. While most broker inquiries focus on licensure and form processing, staff also addresses a variety of questions related to brokerage activities.

Moreover, incoming calls are directed to one of two divisions: License Services or Regulatory Affairs – based on the purpose of the communication.

Main Number (919) 875-3700 **Regulatory Affairs (919) 719-9180**

These options for communication can ensure accessibility and efficiency for brokers seeking guidance or information from the Commission.

Due to the Commission receiving high call volumes, brokers may need to leave their phone number, license number, and a brief description of their inquiry. Upon receipt of this information, a call ticket will be created, ensuring a Commission staff member can respond to the inquiry promptly.

When the Commission requests your license number, it is used to:

- review your license record and ensure the accuracy of the response;
- create a record of the call and enhance the Commission's services; and
- document the conversation to protect the broker.

ACTIVE, UNAFFLIATED "FULL" BROKER

Can an active, unaffiliated "full" broker receive a referral fee paid directly to them?

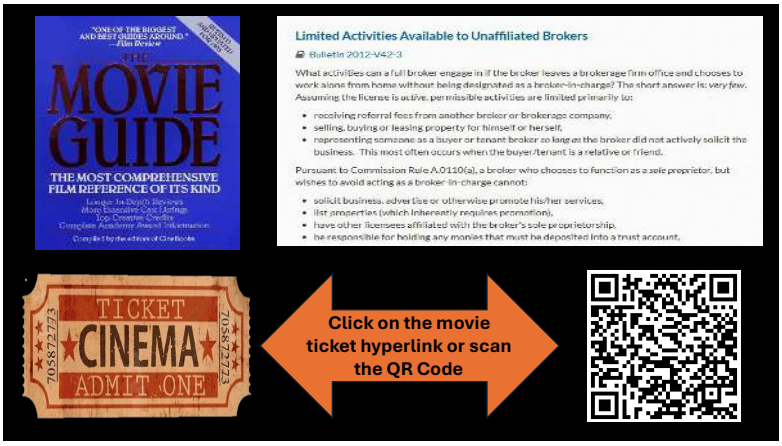
Yes. Pursuant to Rule 58A .0120(b), an ***affiliated*** broker shall not be paid a commission or referral fee directly by anyone other than their current BIC or the person who served as their BIC at the time of the transaction. However, the Rule does not prohibit an unaffiliated "full" broker from receiving a referral fee paid directly to them, so long as their license is on active status at the time the referral is placed.

Prior to July 1, 2021, affiliated "full" brokers could receive commission and/or referral fees from individuals other than their Broker-in-Charge (BIC), provided the receipt of the commission/referral fee did not violate firm or office policies.

As of July 1, 2021, all affiliated brokers, both provisional and "full," must receive their commission and/or referral fees *exclusively* from their current BIC or the BIC who oversaw them at the time of the real estate transaction. Therefore, affiliated brokers are no longer permitted to accept commission and/or referral fees from anyone other than their current BIC or former BIC involved in the transaction.

Most importantly, a BIC cannot authorize an affiliated broker to receive compensation from any other individual. If a BIC allows this and fails to pay the affiliated broker directly, they could be found in violation of License Law and Commission rules.

However, an unaffiliated "full" broker may be paid a commission/referral fee directly for their brokerage services. Although unaffiliated "full" brokers may be paid directly, they need to understand the brokerage activities they are permitted to conduct is limited if they do not affiliate with a BIC or designate themselves as BIC.



The article, "Limited Activities Available to Unaffiliated Broker" thoroughly explains the limited, permitted activities of unaffiliated "full" brokers.

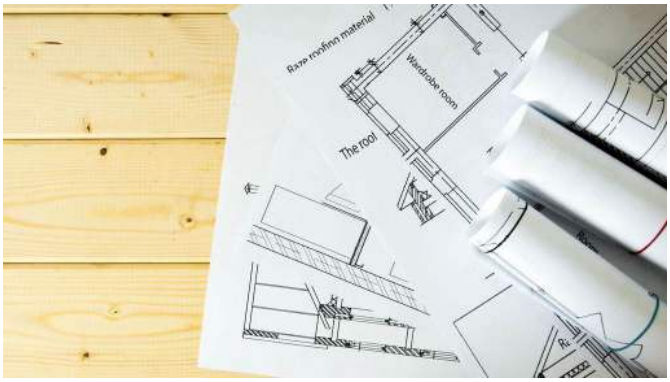
The permissible activities of an unaffiliated active "full" broker are limited primarily to the following:

- receiving referral fees from another broker or brokerage company;
- selling, buying, or leasing property for themselves; and
- representing someone as a buyer or tenant broker, so long as the broker did not actively solicit the business.

Pursuant to Commission Rule 58A .0110(a), a "full" broker who chooses to function as a sole proprietor, but wishes to avoid acting as a BIC **cannot**:

- solicit business, advertise, or otherwise promote their services;
- list properties;
- have other licensees affiliated with the broker's sole proprietorship; or
- be responsible for holding any monies that must be deposited into a trust account.

UNPERMITTED SPACE: BEDROOM



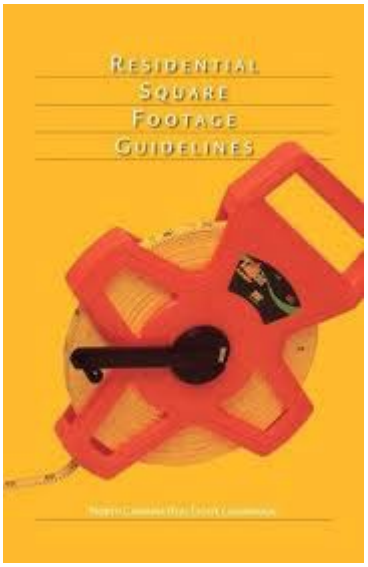
If a bedroom is unpermitted, can that bedroom be included in the overall square footage for the property?

Yes. Although the square footage for the unpermitted section may be included in the overall square footage for the property, the unpermitted square footage must be identified **separately** and disclosed to all of the parties in writing.

A listing agent should disclose this information in writing to ensure they are not misrepresenting the property and/or misleading the buyer. Further, the buyer should be made aware of the unpermitted section's size and location as well.

NOTE: Brokers should clearly identify unpermitted space within a property.

The Commission has published a resource entitled, ***"Residential Square Footage Guidelines."*** These guidelines clarify that NC brokers are not required to state the square footage of a property.



This resource also provides guidance on how brokers should measure, calculate, and report the living area of both detached and attached single-family residential dwellings, whether in writing or orally.

While brokers are not obligated by Commission rules to report the square footage of properties for sale or rent, it is crucial that any square footage information they provide is accurate. The Commission recognizes that brokers who belong to certain professional trade associations may be required to include square footage in their listings. As such, the Commission strongly recommends that brokers adhere to the *Residential Square Footage Guidelines* or other comparable standards, such as those set by the *American National Standards Institute (ANSI),* which are also recognized by the Commission.

Brokers should also be mindful of the standards used by third-party vendors when measuring a property, as different vendors may follow different guidelines. Additionally, brokers may use various technology or hire a vendor to ascertain the square footage of a property. Be aware that the broker may still be responsible for inaccurate information/calculations even if they used technology and/or a vendor to determine the square footage.

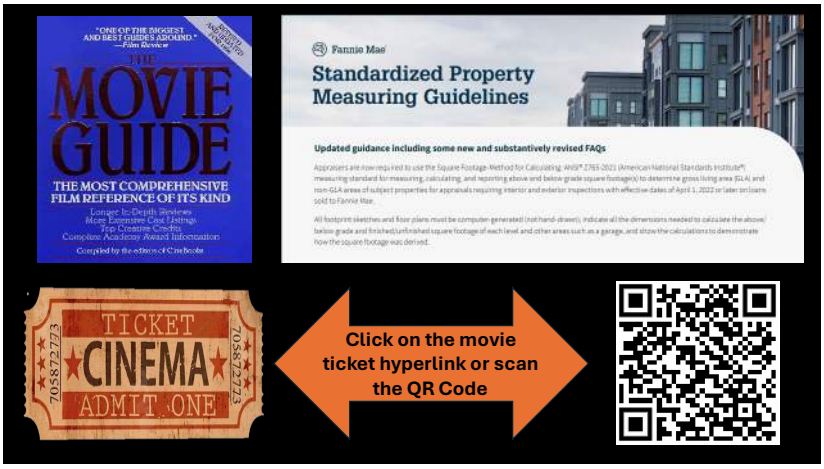
The Commission published an article in 2015 titled, *Your Square Footage Measurements Must Be Right When Listing a Property*, which remains relevant today. Therefore, brokers should review the article to understand the Commission's responses to common inquiries about square footage measurements.

Regarding an unpermitted bedroom being included in the square footage calculation, the Commission indicates that, while an unpermitted area may be included in the total square footage, any unpermitted space within a property should be disclosed separately, in writing, to all parties involved in the transaction. The listing agent must inform the potential buyer of the size and location of the unpermitted space to avoid misrepresentation or misleading the buyer. Brokers should clearly identify and disclose unpermitted areas.

Further, if a broker incorrectly reports the square footage of a property, the listing agent and brokerage may be held responsible. Pursuant to N.C.G.S. §93A-6(a)(1), a broker who makes a willful or negligent misrepresentation in advertising could face disciplinary action by the Commission. Additionally, under Rule 58A .0110, the Broker-in-Charge (BIC) is accountable for all advertising and could also face disciplinary action.

The Commission will evaluate the factual allegations of each case individually to determine the cause and percentage of the inaccurate square footage. For more information on the investigative process the Commission utilizes to determine the inaccuracy of square footage, brokers should review the previously mentioned article, *"Your Square Footage Measurement Must Be Right When Listing a Property"*.

The Commission permits a buyer agent to rely upon information provided by a listing agent, unless there is a red flag. For example, if a listing agent advertises that a house has 3,000 square feet when it actually has 2,000 square feet, a competent buyer agent should notice a potential issue and verify the advertised square footage.



NOTE: Brokers can familiarize themselves with the *American National Standards Institute* ***(ANSI)*** standards/resources on the FannieMae website. Additionally, brokers and/or vendors may use technology to assist them with measuring the square footage of a property. The Commission does NOT endorse specific applications and/or companies. Therefore, brokers should ensure that the technology that they use or is used by contracted vendors yields an accurate measurement. Brokers may still be held responsible for the inaccurate square footage of a property that is derived from the usage of technology.

UNLICENSED INDIVIDUALS: CO-HOSTING VACATION RENTALS

Can an unlicensed vacation rental host be paid for bookings, advertise on websites, or enter into Property Management Agreements?

No. An unlicensed vacation rental host cannot be paid for bookings, advertise on websites, or enter into Property Management Agreements with an owner of a rental property. Additionally, unlicensed individuals cannot pay or be paid referral or finder fees for referring potential tenants or owners.

According to the article, "What can a co-host do without a license?", the Commission has indicated that unlicensed individuals who wish to assist owners on online rental platforms may perform the following without having a NC real estate license:

- obtain keys from owners and provide them to renters;
- place "For Rent" signs on properties at the direction of a broker or the owner;
- report and coordinate minor repairs at the direction of a broker or the owner;
- coordinate move-ins and move-outs of renters;
- coordinate or perform cleaning services;
- replenish supplies; and/or,
- be the point of contact for renters for issues that may arise during a tenancy.

Further, unlicensed individuals cannot:

- prepare information to be placed in promotional material or advertisements;
- place advertisements;
- discuss management agreements or leases with owners or tenants;
- negotiate rents; or
- handle any money belonging to others.

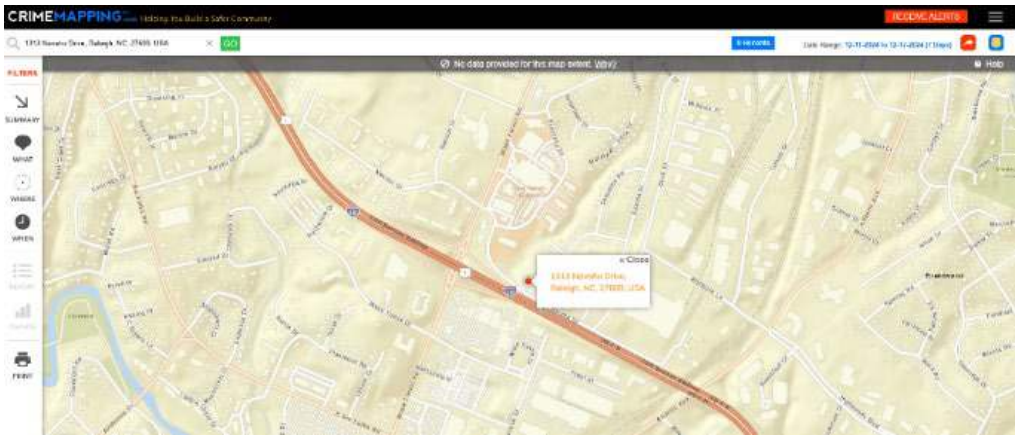
CRIMINAL ACTIVITY: MATERIAL FACT

If an occupant participated in criminal activity at a property, is the criminal activity considered a material fact?

It depends. According to N.C.G.S.§39-50, in offering real property for sale, it shall not be deemed a material fact that the real property was occupied previously by a person who died or had a serious illness while occupying the property or that a person convicted of any crime for which registration is required by Article 27A of Chapter 14 of the General Statutes occupies, occupied, or resides near the property; provided, however, that no seller may knowingly make a false statement regarding any such fact. Brokers are also prohibited from making a false statement regarding such situations.

It is plausible for clients and customers to inquire about local crime statistics when deciding to purchase or rent a property. However, brokers responding to questions about crime statistics should be cognizant that the Fair Housing Act prohibits statements that could indicate a preference/bias based on protected classes.

The *North Carolina Real Estate Manual* defines steering as the illegal practice of guiding prospective buyers or renters of a fair housing protected class to areas occupied mainly by members of the prospect's protected class and away from areas occupied by others not in the prospect's protected class.



Therefore, to avoid potential allegations of steering, brokers should direct clients to publicly available resources for crime data in lieu of providing their own interpretation of the information.

A reliable source for this information is [crimemapping.com.](crimemapping.com)

However, if a broker knows or reasonably should have known that a property was being used as a "meth" lab, they are required to disclose this information. Properties that have been used as "meth" labs may have potentially lingering health consequences and responsible parties must undertake and adhere to legislation requiring decontamination.

For clarity, the Commission does not require brokers to check with the county health department, local law enforcement officials, and the State Bureau of Investigation (SBI) prior to listing a property. However, if brokers encounter properties they know or should know were formerly operated as "meth" labs, the broker should make inquiries to determine the status of the property. Brokers can discover whether a property has been used as a "meth" lab by contacting the local law enforcement agency in the area to see if the property was categorized as a "lab" that was seized. Also, each county's health department maintains a list of seized properties.

Moreover, the Drug Enforcement Agency has maintained a Clandestine Drug Lab Registry.

N.C.G.S.§ 130A-284 indicates the procedures for decontaminating a property. If the decontamination of a property is needed, property owners must submit a Pre-Decontamination Assessment to the local health department and use the assessment to develop a decontamination plan, which may include the following:

- disposal of appliances (e.g., refrigerators, stoves, hot plates, microwaves, etc.);
- removal of excessively stained plumbing fixtures;
- disposal of non-machine washable porous materials, such as upholstered furniture and mattress;
- removal of all carpet and padding; and/or
- cleaning, painting, and/or removal of non-porous materials (e.g., walls, ceiling, and floors).

Further, property owners must also provide documentation, receipts, photographs, contractor verification etc. to the local health department upon completion of the decontamination procedures.

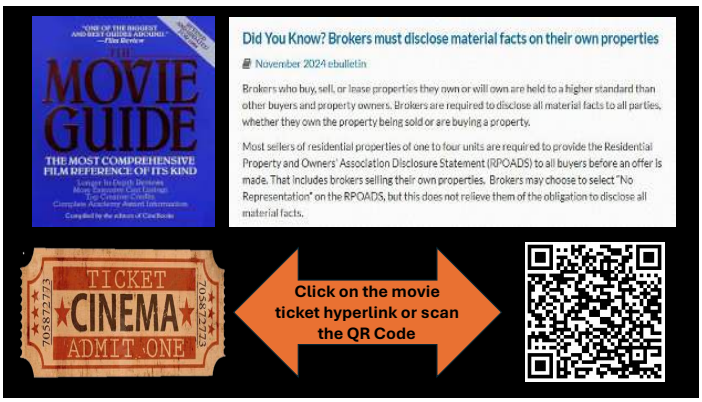
If the inquiry reveals that decontamination is complete, no disclosure is required if the decontamination has been properly documented in adherence to the law.

You can read more information about the decontamination of property in the FAQ for NC Property Owners.

BROKERS: SELLING THEIR OWN HOMES

Does a broker have to disclose they are licensed when selling their own property?

No. License Law and Commission rules do not require brokers that are buying or selling their own property to disclose they have a NC real estate license. Although License Law and Commission rules do not require this disclosure, the Commission recommends brokers disclose their license status because having a license may give the broker an advantage during negotiations. Further, the recommended disclosure may either be verbally or in writing. However, if a broker is a member of NCAR®, the Code of Ethics requires the broker to disclose they have a real estate license.



For clarity, brokers should review the information in the article, *"Did You Know? Brokers must disclose material facts on their own properties."* In the article, the Commission explains that brokers who buy, sell, or lease properties they own or will own are held to a higher standard than other buyers and property owners.

Moreover, every real estate broker selling their own home, provided it is a residential dwelling of four or fewer units, is required to complete the *Residential Property and Owners' Association Disclosure Statement (RPOADS)*. Brokers have the same options as any seller in completing the form and may select "Yes," "No," or "No Representation" for any or all questions on the disclosure. However, despite their selections on the *RPOADS*, brokers are obligated to discover and disclose material facts about the property to all parties in the transaction.

In addition to disclosure of material facts, a broker selling their own residential property may not represent the buyer in the transaction. According to Commission Rule 58A .0104(o), brokers selling their own commercial property may represent a buyer, if the broker's ownership interest is less than 25% and the buyer consents to the representation after full written disclosure of the broker's ownership interest.

NOTE: Under General Statute 93A-6(b)(3), the Commission has the power to discipline a broker who violates License Law and Commission rules, even when selling their own property.

The article, *You are a Broker and Selling Your Own Home* provides additional information for brokers to consider prior to selling their personally-owned property.

SAFEGUARDING PROPERTY: KEYS

Does safeguarding the property of others include keys?

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

A fiduciary must:

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

When a seller lists their property with a broker, they trust that the broker will act responsibly and take reasonable precautions to protect their home. Therefore, brokers should exercise reasonable skill, care, and diligence to ensure the seller's property is not damaged, misplaced, or stolen. Further, a real estate broker in an agency relationship is obligated to safeguard the property (e.g., money, deeds, documents, keys, etc.) that relates to the client's transaction.

Brokers who represent buyers also have a duty to safeguard properties that are listed for sale. A buyer agent is prohibited from giving property keys or access to a buyer prior to the recordation of a deed without first obtaining the seller's express, written permission. This prohibition would also not allow buyers to begin moving their personal items into the property until after recordation unless the seller has given written permission.

NOTE: Brokers who prioritize fulfilling their fiduciary responsibilities are more likely to comply with License Law and Commission rules while also effectively meeting the needs of their clients.

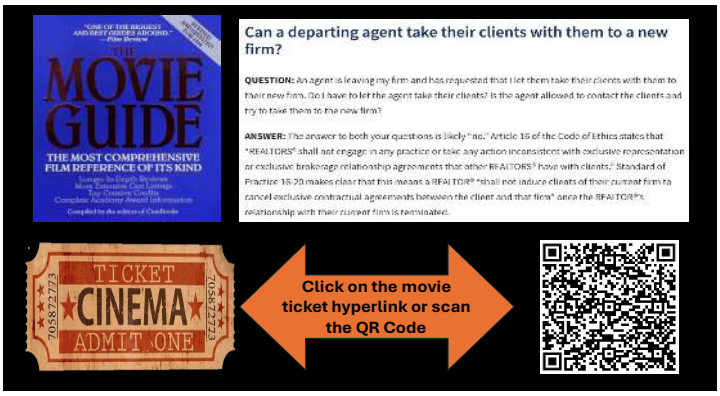
TERMINATING AFFILIATION: CLIENTS

I am terminating my affiliation with XYZ Realty. Can I take the clients with me to my new brokerage?

It depends. According to Working With Real Estate Agents, an agency agreement is a contract that establishes a professional relationship between a real estate brokerage and a client. Essentially, the agreement grants the brokerage and its agents the authority to represent the client.

For sellers, this agreement is typically called a "Listing Agreement." It is referred to as an "Exclusive or Non-Exclusive Buyer Agency Agreement" for buyers. Both agreements outline the brokerage's duties and the services it is obligated to provide under the contract.

Under the agency agreement, the client has a formal relationship with the brokerage, not with the individual broker or agent. If a broker terminates their affiliation with the brokerage, the client remains the brokerage's principal. However, if the brokerage's policies or the Broker-in-Charge allow the broker to transfer clients to a new brokerage, and if the clients consent, it is permissible for the broker to do so. This would require the termination of the agency agreement with the first brokerage and the creation of a new agency agreement with the new brokerage.



Additionally, brokers who are REALTORS® must adhere to Article 16 of the Code of Ethics. In the article, "Can a departing agent take their clients with them to a new firm?," NCAR® has indicated that the departing agent may only take those contracts to the new firm if:

- the departing agent, and the client consent to the transfer; or
- the independent contractor agreement or policy manual states that the departing agent can take their business with them upon termination with the client's consent.

Further, for clarity, the Code of Ethics does not specifically bar an agent that is leaving from informing their current clients of their new brokerage; however, the information the agent provides should be for that narrow purpose to avoid violating Standards of Practice 16-20.

LISTING PROPERTIES WITH MEDICAID LIENS

Is a property encumbered by a Medicaid lien a material fact?

Yes. A property encumbered by a Medicaid lien is considered a material fact. According to the Commission, brokers must actively attempt to disclose any material fact that may affect a reasonable person's decision to buy, sell, or lease in a real estate transaction. A Medicaid lien, which arises when the state seeks to recover costs for long-term care provided to a Medicaid recipient, can significantly impact or delay the sale or transfer of a property.

These delays, combined with the financial burden of satisfying the lien, make it an issue that buyers, sellers, and brokers must address proactively. Also, this lien must be satisfied in full with the North Carolina Department of Health and Human Services (DHHS) before the property can be voluntarily sold, making it a critical consideration for potential buyers and sellers.

Although a primary residence is generally an exempt asset for Medicaid eligibility, it does not mean the home is free of financial obligations. Medicaid can place a lien on the property to recover expenses for care, often amounting to thousands of dollars per month. While certain protections prevent foreclosure under specific conditions, such as when a spouse or qualifying child resides in the property, these protections do not negate the lien's presence. Sellers and their families may mistakenly believe the

property is exempt, only to discover that the lien affects their ability to transfer ownership.

Thus, the existence of the Medicaid lien may introduce some complexities and extend the time period for the transaction. For example, the lien amount must be determined and approval from the government must be secured prior to proceeding with the sale of the property, which can delay the sales transaction.

NOTE: Brokers are obligated to attempt to discover potential Medicaid liens and disclose their existence to all parties involved in the transaction. Prudent brokers should add this to their listing checklist as a reminder.

The Commission has also published the following article, Medicaid Liens on Real Property, to assist brokers with understanding the affect a Medicaid lien may have on a property being conveyed during a sales transaction.

ON-SITE AGENTS: WWREA DISCLOSURE

Do sales representatives in new home subdivisions need to provide the Working With Real Estate Agent Disclosure (WWREA) to prospective buyers?

It depends. If the sales representative in a new home subdivision is a licensed broker, they are required by Commission Rule 58A .0104(c) to provide the Working With Real Estate Agents (WWREA) Disclosure at first substantial contact with the prospective buyer.

The WWREA Disclosure, revised in 2021, is a concise, one-page, double-sided document that simplifies the explanation of agency relationships. Brokers are mandated to use the WWREA disclosure to inform buyers and sellers about their rights and the nature of the broker's representation. Further, the disclosure serves as an essential tool to initiate discussions about agency relationships, payment, and the roles brokers assume throughout the transaction process. If a licensed real estate broker fails to provide the WWREA disclosure when required, they may be subject to disciplinary action.

However, if the sales representative is not a licensed real estate broker, the rules governing the WWREA disclosure do not apply. For instance, according to N.C.G.S. §93A-2(c), business entities engaged in selling or leasing their ***own*** real estate while conducting acts within the regular course of or incident to the management of that real estate, the person or business entity is not required to have a real estate license.

Individuals who are not licensed real estate brokers are not subject to the Commission's regulatory requirements; thus, they are not obligated to provide the disclosure. Brokers engaging with sales representatives who are not licensed, should be aware that the sales representatives do not have to adhere to License Law and Commission rules.

NOTE: Brokers can review the 2021-2022 Update Course Section, "The New WWREA Disclosure Form," for explanations of agency relationships and diagrams.

BUILDER COMMISSION: NON-EXISTENCE OF FORM 220

Must a seller or listing agent offer buyer agent compensation?

No. In real estate transactions, it is important to understand that the payment of buyer agent commission is not a requirement imposed on the seller or listing agent. Instead, it is a matter negotiated between the buyer agent and their client. While buyer agents may attempt to secure payment from the seller as part of the transaction, the buyer client ultimately is responsible for compensating their agent for the services rendered. This agreement underscores the principle that agency relationships and compensation are flexible and subject to mutual agreement between the parties involved.

The Commission addresses these dynamics through mandatory disclosures designed to promote clarity and transparency. Commission Rule 58A. 0104(c) mandates that brokers provide and review the Working With Real Estate Agents (WWREA) Disclosure at first substantial contact with prospective buyers and sellers.

Revised in 2021, this one-page document and the companion Q&A brochure educate consumers on the different types of available agency relationships, including buyer agency, and clarifies expectations regarding compensation and agency roles. By initiating these conversations early, brokers ensure their clients are informed about potential payment structures and the buyer's responsibility in compensating their agent.

Further, reinforcing these requirements, Commission Rule 58A .0104(a) requires written buyer agency agreements to formalize the relationship and define terms, including payment obligations. The Commission emphasizes that brokerage commissions are negotiable between brokers and their clients and does not arbitrate disputes when/if they arise.

The Commission article, "Disclosing Compensation, When, Why, and How" also provides brokers with more information on disclosing and discussing compensation with their clients. Further, Commission Rule 58A .0109(c), states:

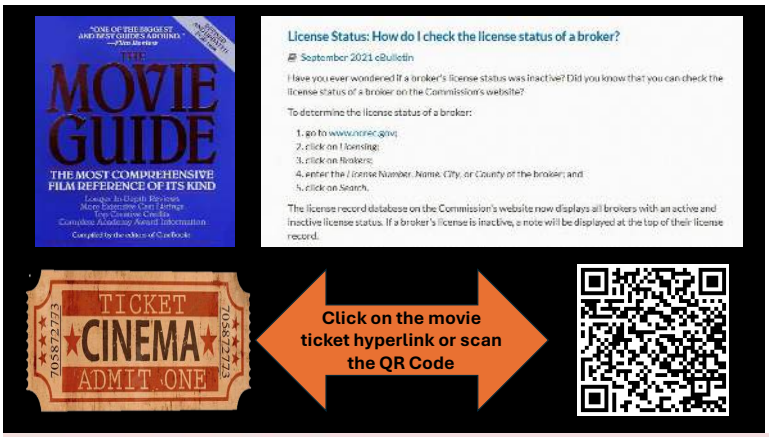
> *In a real estate transaction, a broker shall not receive any compensation, incentive, bonus, rebate, or other consideration of more than nominal value: (1) from his principal unless the compensation, incentive, bonus, rebate, or other consideration is provided for in a written agency contract prepared in conformity with the requirements of 21 NCAC 58A .0104.*

VERIFICATION OF BROKER'S LICENSE STATUS

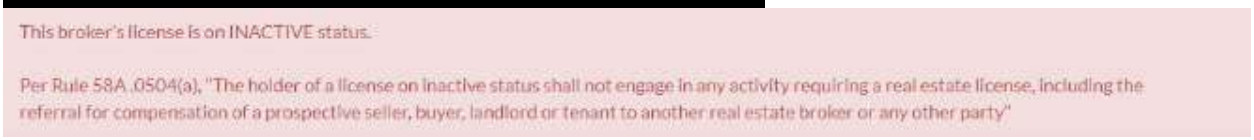
I am verifying the accuracy of a broker's license status prior to hiring them for brokerage services. Is the information on the Commission's website accurate?

Yes. Conducting online research is an effective tool in completing your decision-making process.

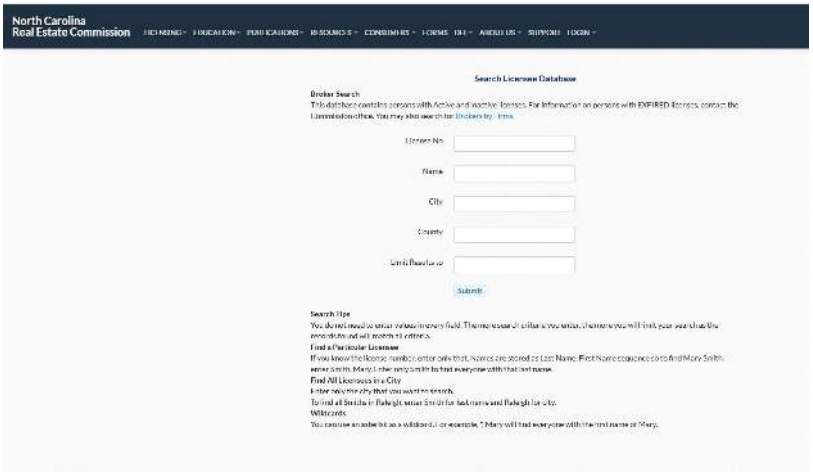
Therefore, you may use the Commission's Licensee Database Search Tool to assist you because the information on the Commission's website regarding the license status of a real estate broker or firm is accurate, real-time data.



The article, *"How do I check the license status of a broker?"* provides a step-by-step guide on how to check the license status of a broker on the Commission's website. The license record database now displays all brokers with an active and inactive license statuses.



If a broker's license status is inactive, a note will be displayed at their top of their license record.



However, the license record for a broker who has submitted License Activation and Broker Affiliation (Form 2.08) will not immediately display an "active" license status on the Commission's website upon the submission of the form. Although Rule 58A .0504(d) and .0506(c) indicate upon the mailing or delivery of the form, the broker's status will be considered active, the form has to be processed before the status will update on the website. Theoretically, the broker has a temporary "active" status. If neither the broker nor their affiliated Broker-in-Charge receive from the Commission a written acknowledgement of the license activation within 30 days of the date shown on the form, the broker shall immediately terminate their brokerage activities pending receipt of written acknowledgement from the Commission.

So, if a broker needs evidence for the Multiple Listing Services (MLS) that they have an "active" status for MLS access, they will need to provide their submission of the License Activation and Broker Affiliation (Form 2.08) and the Rule as a reference, until the status is displayed on the Commission's website.

SUMMARY OF IMPORTANT POINTS

- The North Carolina Real Estate Commission offers brokers multiple, convenient communication options to effectively connect with staff. Brokers can choose from the following options:
    - Telephone;
        - Staff is available to accept calls Monday through Friday, from 8:30AM-5:00PM.
    - email; and/or
        - Brokers can send an inquiry to staff via individual staff email addresses or generic division email addresses provided on the website.
    - website.
        - The Commission's website features a Chatbot named Alfred, which provides an interactive platform for quick assistance.
- When the Commission requests your license number, it is used to:
    - review your license record and ensure the accuracy of the response;
    - create a record of the call and enhance the Commission's services; and
    - document the conversation to protect the broker.
- As of July 1, 2021, all affiliated brokers, both provisional and "full," must receive their commission and/or referral fees *exclusively* from their current BIC or the BIC who oversaw them at the time of the real estate transaction.
- Most importantly, a BIC cannot authorize an affiliated broker to receive compensation from any other individual.

- An unaffiliated full broker may be paid a commission/referral fee directly for their brokerage services. Although unaffiliated "full" brokers may be paid directly, they need to understand the brokerage activities they are permitted to conduct is limited if they do not affiliate with a BIC or designate themselves as BIC.
- The permissible activities of an unaffiliated active "full" broker are limited primarily to the following:
    - receiving referral fees from another broker or brokerage company;
    - selling, buying, or leasing property for themselves;
    - representing someone as a buyer or tenant broker, so long as the broker did not actively solicit the business.
- The unpermitted section within a property should be disclosed to all of the parties in writing.
    - A listing agent should disclose this information in writing to ensure they are not misrepresenting the property and/or misleading the buyer.
    - The buyer should be made aware of the unpermitted section's size and location as well. Brokers should clearly identify unpermitted space within a property.
- An unlicensed host cannot be paid for bookings, advertise on websites, or enter into Property Management Agreements with an owner of a rental property.
- Unlicensed individuals cannot pay or be paid referral or finder fees for referring potential tenants or owners.
- According to N.C.G.S.§39-50, in offering real property for sale, it shall not be deemed a material fact that the real property was occupied previously by a person who died or had a serious illness while occupying the property or that a person convicted of any crime for which registration is required by Article 27A of Chapter 14 of the General Statutes occupies, occupied, or resides near the property; provided, however, that no seller may knowingly make a false statement regarding any such fact.
- License Law and Commission rules do not require brokers that are buying or selling their own property to disclose they have a NC real estate license. Although License Law and Commission rules do not require this disclosure, the Commission recommends brokers disclose their license status because having a license may give the broker an advantage during negotiations.
    - The recommended disclosure may either be verbally or in writing.
    - If a broker is a member of NCAR®, the Code of Ethics requires the broker to disclose they have a real estate license.
- Brokers should exercise reasonable skill, care, and diligence to ensure the seller's property is not damaged, misplaced, or stolen.
    - A real estate broker in an agency relationship is obligated to safeguard the property (e.g., money, deeds, documents, keys, etc.) that relates to the client's transaction.

- Under the agency agreement, the client has a formal relationship with the brokerage, not with the individual broker or agent. If a broker terminated their affiliation with the brokerage, the client remains the brokerage's principal.
- A property encumbered by a Medicaid lien is considered a material fact.
    - A Medicaid lien, which arises when the state seeks to recover costs for long-term care provided to a Medicaid recipient, can significantly impact or delay the sale or transfer of a property.
- If the sales representative in a new home subdivision is a licensed broker, they are required by License Law and Commission Rule 58A .0104(c) to provide the Working With Real Estate Agents (WWREA) Disclosure at first substantial contact with the prospective buyer.
- In real estate transactions, it is important to understand that the payment of buyer agent commission is not a requirement imposed on the seller or listing agent. Instead, it is a matter negotiated between the buyer agent and their client.
- The article, *"How do I check the license status of a broker?"* provides a step-by-step guide on how to check the license status of a broker on the Commission's website.
    - The license record database now displays all brokers with an active and inactive license statuses.

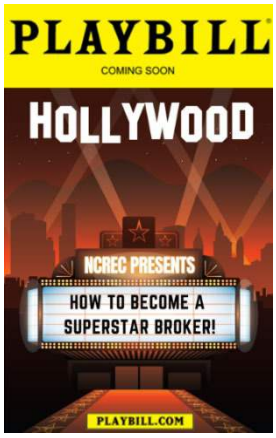
Act III

Fair Housing:
Fairness & Equality
Getting the BIG Picture

LEARNING OBJECTIVES

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

- explain changes in FHA loan limits;
- describe HUD's guidance for screening residential rental applicants; and
- discuss recent fair housing cases.



TERMINOLOGY

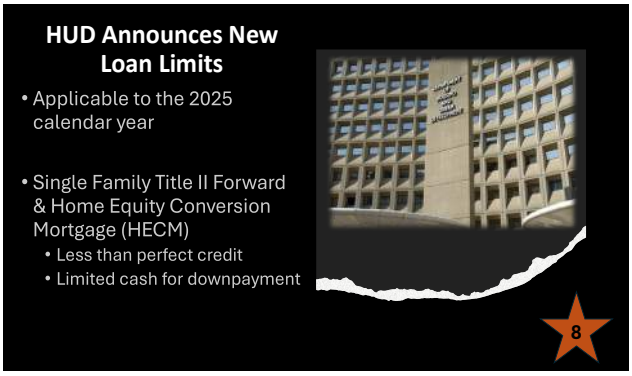
***Fair Housing Act*:** A group of laws that forbid discrimination in housing based on race, color, national origin, religion, sex, familial status, and disability. There is a federal Fair Housing Act and a North Carolina ("State") Fair Housing Act.

***North Carolina Human Relations Commission*:** In North Carolina, the North Carolina Human Relations Commission is the primary state agency responsible for enforcing the state's Fair Housing Act.

***The Department of Housing and Urban Development (HUD)*:** The Department of Housing and Urban Development (HUD) is the federal agency responsible for national policy and programs that address America's housing need, that improve and develop the Nation's communities, and that enforce fair housing laws.

FHA LOAN LIMITS

On November 26, 2024, the U.S. Department of Housing and Urban Development's (HUD) Federal Housing Administration (FHA) announced new loan limits for the 2025 calendar year for its Single-Family Title II Forward and Home Equity Conversion Mortgage (HECM) mortgage insurance programs. Title II is a type of mortgage insured by the FHA under Title II of the National Housing Act of 1934. These loans are low-risk propositions for mortgage lenders and have favorable conditions for consumers with less-than-perfect credit histories.



Further, they are designed for borrowers who may not have enough cash for a traditional down payment.

NOTE: HUD is anticipating that mortgage limits across the county will increase this year due to the continued appreciation of home prices.

Mortgage Loan Limits

The new mortgage loan limits in the table below are effective for FHA case numbers assigned on or after January 1, 2025. The maximum loan limits for FHA Forward mortgages will rise in 3,151 counties.

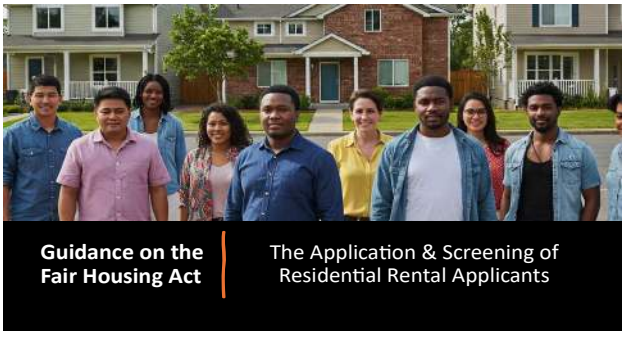
Property Size	Low-Cost Area "Floor"	High-Cost Area "Ceiling"	Alaska, Hawaii, Guam, and U.S. Virgin Islands "Ceiling"[1]
One Unit	$524,225	$1,209,750	$1,814,625
Two Units	$671,200	$1,548,975	$2,323,450
Three Units	$811,275	$1,872,225	$2,808,325
Four Units	$1,008,300	$2,326,875	$3,490,300

NOTE: Mortgage limits for the special exception areas of Alaska, Hawaii, and the U.S. Virgin Islands are adjusted by FHA to account for higher costs of construction. Brokers can use the following resource to review the loan limits for various counties:

https://entp.hud.gov/idapp/html/hicostlook.cfm.

GUIDANCE ON APPLICATION OF THE FAIR HOUSING ACT WHEN SCREENING RENTAL APPLICANTS

1. ***Nonlicensees and investors are exempt from fair housing laws when they are making available personally owned properties.***
2. ***Brokers are exempt from discipline for fair housing violations when they are making available personally owned rental properties.***
3. ***Violations of fair housing laws can result in criminal charges and imprisonment.***
4. ***Brokers should rely on screening companies for tenants to get immunity from fair housing violations.***
5. ***NCREC has full authority to investigate and discipline fair housing violations.***



Are housing providers liable for the screening criteria used by tenant screening companies?

In April of 2024, HUD's Office of Fair Housing and Equal Opportunity released updated guidance on applying the Fair Housing Act to tenant screening practices. The guidance provides a process for housing providers/tenant screening companies to identify:

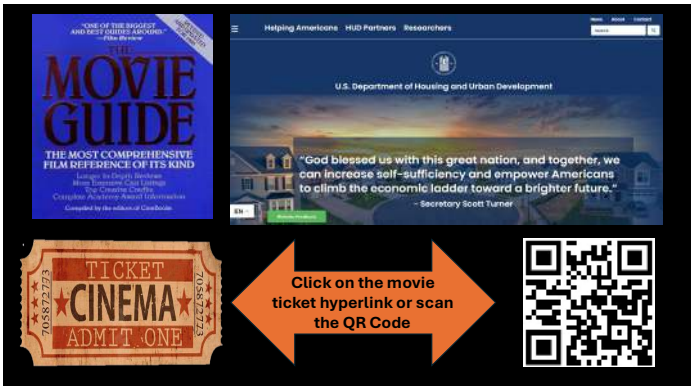
- best practices for ensuring compliance with the Fair Housing Act; and
- instances for applicants to ascertain when they may have been unlawfully denied housing.

HUD is aware that housing providers have a valid interest in choosing tenants who will pay rent and adhere to the terms of their lease. However, certain tenant screening practices fail to ensure non-discriminatory screening criteria is utilized. For instance, screening methods that rely on vague or overly broad criteria may unjustly exclude individuals from housing opportunities which may lead to discriminatory outcomes.

Moreover, it is important for individuals to comprehend that the Fair Housing Act applies to housing decisions, regardless of the technology that is used to screen the applicants. Essentially, housing providers and tenant screening companies are both responsible for ensuring that tenant screening applications are consistently used in a non-discriminatory manner. Therefore, the screening of rental applications should be based upon relevant information. Data such as:

- eviction from job loss,
- minimum income requirements when the rent will be paid by another individual,
- using old data instead of recent, relevant information,
- including data with a negative outcome, and
- failing to include other sources of income, such as housing choice vouchers

should be excluded from the screening criteria because this information will not assist housing providers with determining if someone will be a successful tenant.



HUD's Guidance on Application of the Fair Housing Act to the Screening of Applicants for Rental Housing begins by:

- offering an overview of tenant screening companies;
- explains how housing providers and tenant screening companies must comply with the Fair Housing Act;
- highlights fair housing concerns; and
- provides recommendations to prevent discriminatory screening practices.

This guidance also addresses screening methods with different degrees of human involvement and automation, including the usage of screening platforms tools designed with artificial intelligence.

Tenant Screening Companies

According to HUD, tenant screening companies collect and analyze applicant data from various sources to create reports and recommendations on whether a housing provider should approve an applicant. Housing providers customarily use these reports to decide whether to accept, deny, or impose additional conditions on applicants. Additionally, some housing providers utilize the information in the reports to decide whether to renew the leases of current tenants.

Tenant screening companies use tools to market their services for identifying potentially problematic tenants. They often encourage housing providers to evaluate applicants based upon their credit history, criminal background, etc.

Tenant Screening Reports

What information is used in tenant screening reports to determine whether an individual would be a successful tenant?

The data in the screening reports vary. However, reports usually contain information like credit history, eviction records, and criminal background records. Depending upon the software that a housing provider uses to screen applicants, information regarding debt, foreclosures, and telephone numbers may also be provided. Additionally, some reports may provide the housing providers a "pass" or "fail" recommendation or a numerical score based upon how the platform compiles the data and calculates the probability of the tenant meeting the financial ability to pay the rent.

A sample redacted tenant screening report from a tenant screening company provided through public reporting.

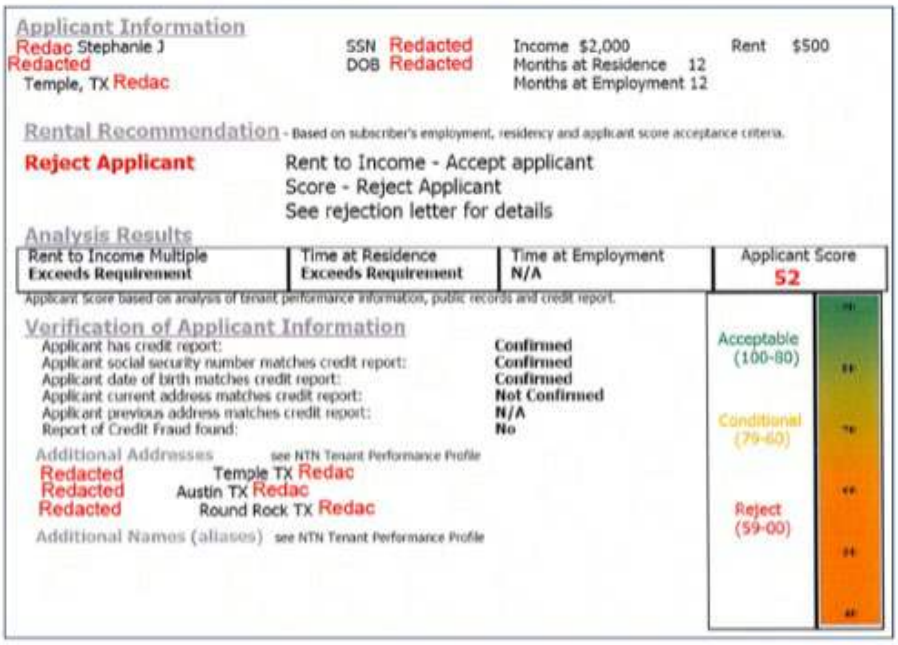
Rental Report for [redacted]

Overall Recommendation	
DECLINE	This application does not meet one or more of your requirements that is set to "Pass/Fail". This recommendation has been automatically set to Decline. The Overall Recommendation was derived solely from your community's leasing criteria. On-Site makes no independent assessment of an applicant's qualifications.

Score for [redacted]: 538

		Importance	Result
AI Score		Pass/Conditional	
Monthly income to rent ratio exceeds 1.0		Pass/Fail	
May have been through a bankruptcy		Pass/Fail	
No unpaid property collections in the last 7 years		Pass/Fail	
No Landlord Tenant Court records in the last 7 years		Pass/Fail	
Criminal History: Felony Convictions		Pass/Fail	
Total Considered Felony Convictions	-	Not Considered	N/A
Alcohol	None ever	Pass/Fail	
Bad Check	None ever	Pass/Fail	
Criminal Other	None ever	Pass/Fail	
Drug Manufacture Distribution	None ever	Pass/Fail	
Drug Marijuana Use	None ever	Pass/Fail	
Drug Meth Manufacture	None ever	Pass/Fail	
Drug Use	None ever	Pass/Fail	
Fraud	None ever	Pass/Fail	

A redacted tenant screening report included in a legal complaint by an applicant suing a tenant background screening company and provided through public reporting.



Applicant Information
Redac Stephanie J
Redacted
Temple, TX Redac
SSN Redacted
DOB Redacted
Income $2,000
Months at Residence 12
Months at Employment 12
Rent $500

Rental Recommendation - Based on subscriber's employment, residency and applicant score acceptance criteria.
Reject Applicant
Rent to Income - Accept applicant
Score - Reject Applicant
See rejection letter for details

Analysis Results

Rent to Income Multiple	Time at Residence	Time at Employment	Applicant Score
Exceeds Requirement	Exceeds Requirement	N/A	52

Applicant Score based on analysis of tenant performance information, public records and credit report.

Verification of Applicant Information

Applicant has credit report:	Confirmed
Applicant social security number matches credit report:	Confirmed
Applicant date of birth matches credit report:	Confirmed
Applicant current address matches credit report:	Not Confirmed
Applicant previous address matches credit report:	N/A
Report of Credit Fraud found:	No

Additional Addresses see NTN Tenant Performance Profile
Redacted Temple TX Redac
Redacted Austin TX Redac
Redacted Round Rock TX Redac

Additional Names (aliases) see NTN Tenant Performance Profile

Acceptable (100-80)
Conditional (79-60)
Reject (59-00)

Most of the reports are compiled by using public and purchased data, and it is not uncommon for purchased data sets to include outdated information, such as evictions or criminal histories that have since been dismissed or corrected.

Housing providers and/or screening companies can estimate the credit score requirements for rental applicants. Some companies employ artificial intelligence to analyze data and predict which applicants might pose a risk. However, the metrics used to determine the risk and/or how the technology is used is undisclosed. Due to the metrics being undisclosed, discriminatory outcomes may be possible and disparately impact a protected class of people.

Role of Housing Providers

Should housing providers allow rental applicants to dispute the inaccurate information from a tenant screening company?

Housing providers remain responsible for ensuring that their housing decisions are non-discriminatory, even when using tenant screening companies. Providers should:

- develop clear policies;
    - Establish transparent, detailed, and publicly available screening policies.
    - Consistently apply their policies to all tenants equally.
    - Use screening services/companies that adhere with your policies.
- customize criteria;
    - Avoid “off-the-shelf” screening tools by customizing criteria to reflect your application requirements.

- evaluate denial recommendations; and
    - Independently assess whether denial recommendations from screening reports align with your policies.
    - If the data does not justify a denial, the housing provider should consider accepting the applicant and request the screening company to adjust its recommendations.
- allow disputes of inaccurate information.
    - Offer applicants the opportunity to dispute inaccurate/irrelevant negative information, regardless of how the information was obtained.

It is also imperative that housing providers choose a screening company that allows:

- customizable tools,
- regular updates to data/software programs,
- monitoring for discriminatory effects,
- clear reasons for denials,
- applicants to correct inaccuracies,
- key details about its screening systems to be disclosed, and
- for compliance with all relevant laws and regulations.

Additionally, these measures may assist housing providers with upholding fair housing laws/regulations while screening applicants.

Role of Tenant Screening Companies

Technology is always evolving; therefore, tenant screening companies must ensure their screening models comply with the Fair Housing Act.

What information do you think screening companies should disclose to housing providers about their services?

Screening companies should disclose the following information to housing providers:

- technology they use, their functions, and applicable safeguards;
- data sources and methods for ensuring records are accurate and complete; and
- criteria, standards, and the weight given to specific data.

Housing providers should evaluate whether the platform tenant screening companies utilized provide the following prior to contracting their services:

- civil rights monitoring,
    - Tenant screening companies should routinely monitor their platforms for compliance with fair housing laws similar to practices in the mortgage industry. This includes checking inputs for protected characteristics to prevent discriminatory effects, evaluating outputs to ensure platform doesn’t produce unjustified discriminatory outcomes, and ensuring datasets are accurate and complete across all groups.

- interpretability of fair housing laws,
    - Screening models should be able to identify and correct any fair housing issues.
- support for housing providers,
    - Screening companies should assist, not dictate, housing provider policies by offering customizable criteria and standards. They should avoid options likely to raise fair housing concerns, like lifetime criminal record background checks.
- detailed transparent reports, and
    - Screening reports should clearly explain denial recommendations, including relevant details like dates, case numbers, and dispositions. Reports should also list all data sources and specify the criteria needed for approval in plain language.
- dispute mechanisms.
    - As required by the Fair Credit Reporting Act, companies must allow applicants to dispute inaccuracies.
    - They should also allow applicants the ability to challenge the inclusion of accurate records, such as evictions tied to domestic violence to ensure compliance with fair housing laws.
    - Further, corrected reports should be promptly sent to both housing providers and applicants, with updates applied to future screenings for the individual.

NOTE: By implementing these best practices, tenant screening companies can promote fairness, accuracy, and compliance in the housing process.

Best Practices and Guiding Principles for an Ovation on Non-discriminatory Screening

What guidelines should housing providers implement to ensure screening criteria is in compliance with the Fair Housing Act?

The following guidelines can be used by tenant screening companies and housing providers to assist them in complying with the Fair Housing Act while screening applicants for rental housing.

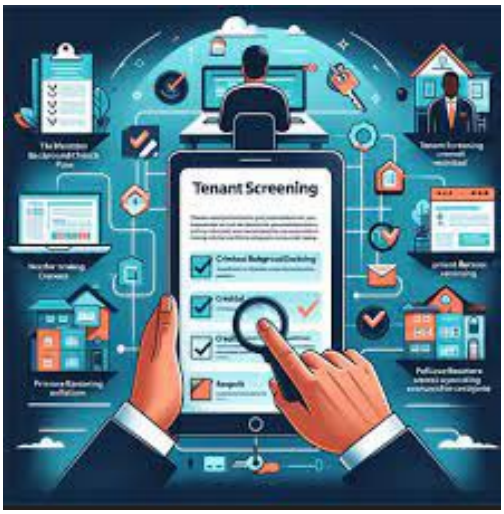
- ***Choose Relevant Screening Criteria***
  - Applicants should only be screened for factors that relate directly to their ability to meet tenancy obligations. Criteria that may disproportionately exclude specific groups, like race or other protected classes, should be avoided. Screening practices should focus on recent and relevant information and waive criteria when it is not applicable (e.g., income requirements for applicants with third-party rent assistance). Also, records should be prioritized, and decisions should not be based on incidences and/or circumstances that do not have the probability to occur in the future.

- ***Use Only Accurate Data***
  - Records should be current, accurate, and attributed to the correct individual. Errors due to mismatched names or missing identifiers should be consistently monitored to prevent inaccurate information. Lastly, detailed searches should be employed using various identifying factors to reduce mistakes and disregard incomplete or unclear records.

- ***Follow the Applicable Screening Policy***
  - Housing providers and tenant screening companies should use the criteria that is outlined in their policy. Also, records that incorporate criteria that is outside the guidelines of the policy should not be considered. For example, an applicant's misdemeanor conviction should not be considered if there are specific criteria to flag felony convictions. Basically, tenant screening companies and housing providers should avoid asking applicants about their criminal/financial history that is irrelevant to their policy.

- ***Be Transparent with Applicants***
  - Applicants should be provided clear, complete information about the screening criteria and processes before they decide to apply for rental housing. The criteria, policies, instructions for addressing inaccuracies, and requesting accommodations should be disclosed in writing and included in the application packet. If an application is denied, the prospective tenant should receive a denial letter that includes the rationale for the denial with specifics including supplemental documents like the records used to formulate the decision. Additionally, the denial letter should outline the steps to appeal the decision.

- ***Allow Applicants to Challenge Negative Information***
  - Applicants should have the opportunity to correct and/or explain negative records. This may include providing documentation outlining mitigating circumstances, like changes in behavior or financial stability.
- ***Design and Test Complex Models for Fair Housing Compliance***



  - The models used for screening applicants should be transparent and fair. Therefore, models should be programmed on representative data to avoid bias and adjust for historical discrimination. Most importantly, models should be monitored and validated to ensure they predict tenant behavior fairly and equitably across all demographic groups.

NOTE: When implemented, these steps can help tenant screening companies and housing providers comply with the Fair Housing Act while creating a non-discriminatory and more inclusive application process.

Guidance on Usage of Credit Scores

HUD does not require tenant screening platforms to use credit scores. Quite frankly, the guidance issued by HUD discourages the evaluation of credit scores when a government entity is guaranteeing a significant portion of the applicant's incomes. Basically, when an individual participates in an assisted housing program, the program has already determined the rent is affordable based upon the applicant's income. Moreover, HUD would also like housing providers to consider other circumstances that may make the applicant's credit history irrelevant, such as a/an:

- applicant has a co-signer who satisfies the financial requirement;
- negative credit history may be due to an event that is unlikely to occur in the future (e.g., medical or family emergency);
- household member meets the financial requirements, there is no reason why another household member's credit history needs to be evaluated; and
- minimal and/or poor credit history may be related to domestic violence, dating violence, sexual assault, or stalking etc.

Both housing providers and tenant screening companies have a vital responsibility to ensure that tenant screenings are transparent, accurate, and fair, even when utilizing advanced technology like software platforms and artificial intelligence. By upholding

these standards, housing providers/tenant screening companies not only comply with the Fair Housing Act but also foster a more equitable evaluation process for rental applicants based on their individual merits while providing they have equal access to housing.

NOTE: HUD indicates that waiving/adjusting credit screening practices of an applicant may be required as a reasonable accommodation if the applicant has poor credit history due to their disability.

FAIR HOUSING CASE STUDY

How many of the reported housing discrimination cases are related to sales transactions?

In 2023, **real estate sales** complaints made up 2.24% of all reported housing discrimination cases, totaling 766 complaints. This was a decrease from 917 complaints in 2022 and marked the second consecutive year of declining sales complaints. This is likely influenced by a continued slowdown in the real estate market due to limited housing supply and sharply rising mortgage interest rates.

	Rental	Sales	Lending	Insurance	Harassment	Appraisal	Advertising	HOA/Condo	Other	Total
NFHA Members	22,925	292	182	14	1,502	24	191	129	371	**25,630**
HUD	1,105	83	47	0	0	31	0	0	523	**1,742**
FHAPs	4,289	391	60	1	0	32	0	0	1,865	**6,577**
DOJ	24	0	5	0	0	0	0	1	12	**42**
Total	**28,343**	**766**	**294**	**15**	**1,502**	**87**	**191**	**130**	**2,771**	**33,991**
Percent of Total	83.38%	2.25%	0.86%	0.04%	4.42%	0.26%	0.56%	0.38%	8.15%	

Did the Plaintiff have standing to sue Facebook based upon the allegations that Facebook's targeted ads violated the Fair Housing Act.

At the Movies: Vargas v. Facebook, Inc.

Facts: Rosemarie Vargas, a Hispanic woman with a disability and the mother of two minor children, initiated a lawsuit against Facebook after experiencing what she alleged to be discriminatory outcomes in Facebook's housing advertisement system. In 2019, while conducting searches for housing in Manhattan on Facebook, Vargas claimed that her searches produced no ads for housing in Manhattan.

However, when a white friend used the same search criteria while sitting beside her, the friend received advertisements for housing in desirable locations.

The plaintiffs argued that Facebook's advertising tools allowed advertisers to select their target audience, effectively steering housing advertisements away from users in protected classes. This practice, according to the plaintiffs, created a segregated marketplace, depriving individuals in protected classes of equal housing opportunities.

Procedural History: The case was initially dismissed by the district court, which ruled that the plaintiffs had not demonstrated a concrete injury sufficient to establish standing under Article III of the Constitution. The district court also held that the plaintiffs failed to identify specific advertisements that caused harm and determined that Facebook was immune from liability under Section 230 of the Communications Decency Act (CDA).

Critic's Review: Do social media and tech platforms have immunity?

Ninth Circuit Decision: The Ninth Circuit reversed the district court's decision in a memorandum opinion, addressing several key points:

1. **Standing and Injury:**
   The appellate panel concluded that the plaintiffs had sufficiently alleged a concrete injury. The court emphasized that the essence of the plaintiffs' claim was that Facebook's practices actively concealed housing opportunities from users in protected classes, making it unnecessary to identify specific advertisements.

2. **Scope of Targeting Methods:**
   The Ninth Circuit rejected the district court's reasoning that the plaintiffs lacked standing because only paid advertisements used Facebook's targeting methods, and the plaintiffs had not clarified whether the ads seen by Vargas's white friend were paid. The panel found this distinction irrelevant to the broader claim that Facebook's system facilitated discriminatory practices.

3. **Section 230 Immunity:**
   The court addressed Facebook's assertion of immunity under Section 230 of the CDA, which shields platforms from liability for content created by third parties. The panel ruled that Section 230 did not apply in this case because the plaintiffs' claims targeted Facebook's role as a co-developer of discriminatory content, not merely as a publisher of third-party content. By enabling advertisers to exclude users based on protected characteristics, Facebook's conduct went beyond the protections afforded by the CDA.

This decision establishes that tech platforms may face liability when their tools or algorithms contribute to discriminatory outcomes, even if those outcomes stem from user-generated content. The Ninth Circuit's ruling reflects broader concerns about the intersection of civil rights and digital technology. It also paves the way for heightened scrutiny of discriminatory practices in online platforms, particularly in housing and other essential services.

DEPARTMENT OF JUSTICE CASE HIGHLIGHTS

In 2023, the Department of Justice (DOJ) secured 43 settlements and judgments, resulting in $56 million in monetary relief. Let's discuss some of the most notable cases that exemplify the Department of Justice's (DOJ) commitment to enforce fair housing laws and ensure equal access to housing for all.

At the Movies: United States v. Dos Santos (D. Mass.)

In *United States v. Dos Santos* (D. Mass.), the DOJ alleged that a property manager in Chicopee, Massachusetts, had been sexually harassing female tenants since at least 2008. The court also held two family trusts owning the properties accountable for the property manager's actions.

Critic's Review: Can owners be held liable for the actions of their property managers?

The consent decree required the defendants to:

- pay $425,000 in damages to six victims and a $25,000 civil penalty to the United States;
- implement measures to prevent further discrimination, including transferring property management duties to an independent manager;
- establish a sexual harassment policy, a complaint procedure, and provide Fair Housing Act training to property management staff; and
- permanently bar Dos Santos from property management roles in any residential rental property transactions.

At the Movies: United States v. SSM Properties, LLC (S.D. Miss.)

In *United States v. SSM Properties, LLC* (S.D. Miss.), the DOJ alleged that the owners and manager of three apartment complexes in Pearl, Mississippi, violated the Fair Housing Act by steering Black testers to one complex and falsely claiming no vacancies at the other two. The consent decree requires the defendants to pay $110,000 in damages and attorneys' fees plus $13,000 in civil penalties.

In *United States v. City of Hesperia, et al.* (C.D. Cal.), the DOJ alleged that the City of Hesperia and the San Bernardino County Sheriff's Department engaged in a pattern of discrimination against Black and Hispanic individuals through a "crime-free" rental housing program. The ordinance required landlords to submit prospective tenants' names to the Sheriff for background checks so they could essentially deny housing to anyone with a criminal record.

Further, the Sheriff would also notify landlords if a current tenant had been in trouble, regardless of whether they had been arrested or convicted of a crime. Basically, law enforcement pressured property managers to evict people who had interactions with them.

Critic's Review: How important should arrest record be in making housing decisions?

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The resolution consented to by SSM Properties, LLC and the DOJ repealed the "crime-free" ordinance and established a $670,000 settlement fund to compensate individuals harmed by the program. Defendants also paid:

- $100,000 in civil penalties,
- $95,000 for affirmative marketing to promote fair housing in Hesperia, and
- $85,000 to support partnerships with community-based organizations.

At the Movies: United States v. Albright Care Services, et al. (M.D. Pa.)

In United States v. Albright Care Services, et al. (M.D. Pa.), The defendants allegedly refused a reasonable accommodation for a resident's son to live as her aide.

Critic's Review: What is a reasonable accommodation?

_____

The consent order required them to pay $215,000 in damages and adopt reasonable accommodation policies across their facilities in Pennsylvania, Maryland, and Tennessee.

In United States v. Eilman, et al. (E.D. Wis.), The defendants allegedly denied a reasonable accommodation for a prospective tenant to live with her assistance animal. The settlement required payment of $33,250 to the complainant and the adoption of a reasonable accommodation policy.

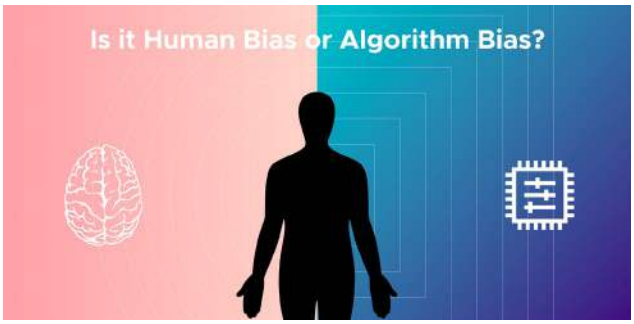
ALGORITHIM BIAS

Is it possible for Artificial Intelligence (AI) generated platforms to violate the Fair Housing Act?

The National Fair Housing Alliance (NFHA) has long addressed the harms associated with automated systems and AI, particularly in housing and financial services. Since its founding in 1988, NFHA has focused on combating discriminatory practices in credit and insurance scoring, underwriting, and pricing models. Recognizing the growing role of technology in civil and human rights, NFHA established its Responsible AI division to lead efforts in advancing Tech Equity. This division has contributed to significant initiatives, including the White House's AI Bill of Rights and the development of frameworks for auditing algorithmic systems.

The NFHA is committed to addressing the intersection of technology and civil rights. The intersection of civil rights and technology exists in platforms because algorithms are written by people; therefore, the platform is susceptible to bias, implicit or explicit. Basically, AI systems are programmed by humans and the biases may not be intentional. Regardless, lacking the intent to be biased does not excuse the lack of compliance with fair housing laws.

Further, if these algorithms are adopted and utilized to assist with making housing decisions, individuals may be disparately impacted because of race, national origin, or any other protected class characteristic. Therefore, NFHA conducted a survey to evaluate an organizations awareness regarding the risks/benefits of using AI systems in housing.



The survey revealed varying levels of awareness among organizations regarding the risks and benefits of automated systems in housing, underscoring the need for greater education within the fair housing community. NFHA's Responsible AI Team plans to enhance AI literacy, focusing on equipping its members to identify and address instances of technology and AI bias. By fostering a deeper understanding of how these biases intersect with fair housing issues, NFHA aims to empower fair housing groups to educate consumers, investigate cases, and engage in enforcement actions effectively.

NOTE: If you would like additional information regarding algorithm bias or the effect that artificial intelligence may have on fair housing, visit the NFHA website at: https://nationalfairhousing.org/.

SUMMARY OF IMPORTANT POINTS

- On November 26, 2024, the U.S. Department of Housing and Urban Development's (HUD) Federal Housing Administration (FHA) announced new loan limits for the 2025 calendar year for its Single-Family Title II Forward and Home Equity Conversion Mortgage (HECM) mortgage insurance programs.
- Title II is a type of mortgage insured by the FHA under Title II of the National Housing Act of 1934.
    - These loans are low-risk propositions for mortgage lenders and have favorable conditions for consumers with less-than-perfect credit histories.
- In April of 2024, HUD's Office of Fair Housing and Equal Opportunity released updated guidance on applying the Fair Housing Act to tenant screening practices. The guidance provides a process for housing providers/tenant screening companies to identify:
    - best practices for ensuring compliance with the Fair Housing Act; and
    - instances for applicants to ascertain when they may have been unlawfully denied housing.
- It is important for individuals to comprehend that the Fair Housing Act applies to housing decisions, regardless of the technology that is used to screen the applicants.
- The screening of rental applications should be based upon relevant information. Data such as:
    - eviction from job loss,

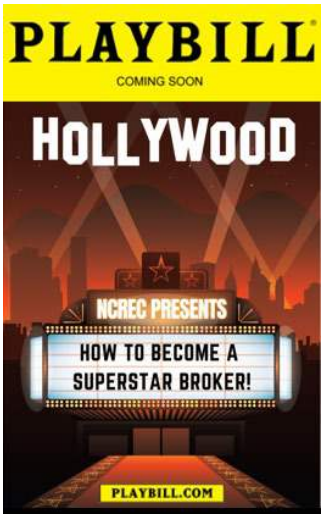
    - minimum income requirements when the rent will be paid by another individual,
    - using old data instead of recent, relevant information,
    - including data with a negative outcome, and
    - failing to include other sources of income, such as housing choice vouchers should be excluded from the screening criteria because this information will not assist housing providers with determining if someone will be a successful tenant.
- According to HUD, tenant screening companies collect and analyze applicant data from various sources to create reports and recommendations on whether a housing provider should approve an applicant.
- The data in the screening reports vary. However, reports usually contain information like credit history, eviction records, and criminal background records.
- It is also imperative that housing providers choose a screening company that allows:
    - customizable tools,
    - regular updates to data/software programs,
    - monitoring for discriminatory effects,
    - clear reasons for denials,
    - applicants to correct inaccuracies,
    - key details about its screening systems to be disclosed, and
    - for compliance with all relevant laws and regulations.
- The NFHA is committed to addressing the intersection of technology and civil rights. The intersection of civil rights and technology exists in platforms because algorithms are written by people; therefore, the platform is susceptible to bias, implicit or explicit. Basically, AI systems are programmed by humans and the biases may not be intentional. Regardless, lacking the intent to be biased does not excuse the lack of compliance with fair housing laws.
- Further, if these algorithms are adopted and utilized to assist with making housing decisions, individuals may be disparately impacted because of race, national origin, or any other protected class characteristic. Therefore, NFHA conducted a survey to evaluate an organization's awareness regarding the risks/benefits of using AI systems in housing.

Act IV

Licensing & Education:
The NCREC Director's Cut

LEARNING OBJECTIVES

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



- describe when a broker, qualifying broker, and BIC must renew their license; and
- explain the differences between an expired and an inactive license.

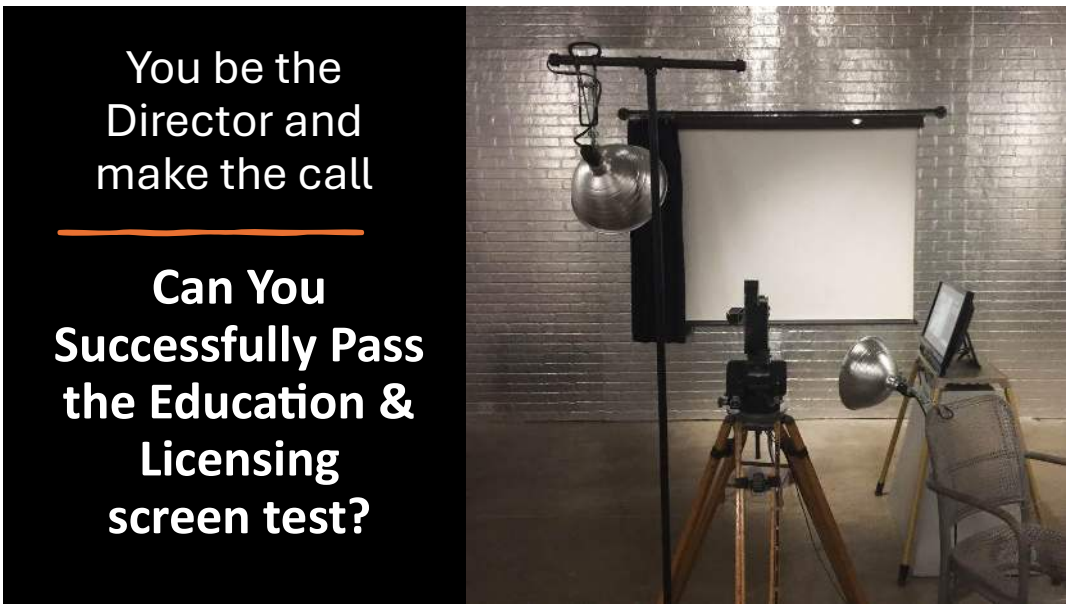
LICENSE RENEWALS

Brokers and firms must renew their real estate license each year during the statutory 45-day renewal period of May 15-June 30. The annual renewal fee is $45.00 and must be:

- paid online via the Commission's website, and
- received by the Commission by 11:59:59 pm on June 30.

The Commission regularly receives inquiries from brokers regarding the license renewal process. Therefore, let's discuss some of the most common misunderstandings.

NOTE: Don't wait until the last minute on June 30 to renew your license. If the Commission's website is down, your Internet or power is down, or something else prevents you from completing the renewal process, then your license will expire and you will have to deal with the consequences that result from your failure to renew in a timely manner, no later than June 30.



1. ***Can I renew my license before completing my annual continuing education courses?***

   YES. The annual license renewal period is May 15-June 30. License renewal is **not** contingent upon a broker completing their continuing education requirements. Therefore, a broker may choose to renew their license on inactive status or ***prior*** to completing continuing education courses.

   There is not a License Law or Commission rule that requires a broker to complete continuing education courses prior to renewing their license. Theoretically, a broker wishing to maintain an active license could renew their license on May 15 and then complete their required continuing education no later than June 10.

   NOTE: The Commission strongly encourages brokers to complete their required continuing education courses earlier in the license year to maximize the benefit of the information and avoid a rush in May and early June.

2. ***Are there advantages to completing continuing education courses prior to renewing my license?***

   YES. An advantage of a broker completing continuing education (CE) prior to renewing their license is obtaining knowledge and becoming more informed on the Commission's policies early in the license year. Thus, the broker is made aware of law and rule changes and reminded of their duties and obligations to protect the public as soon as possible. The Commission does not require a broker to renew their license prior to completing continuing education nor mandate completion of continuing education courses prior to submitting a license renewal. It is up to the broker to decide when to take CE and renew their license. However, to maintain an active license status, a broker must complete CE courses by June 10 **and** renew their license online during the annual May 15-June 30 renewal period.

3. ***I am the Broker-in-Charge / Qualifying Broker of my firm. Must I renew both my individual license and firm license?***

   YES. A broker who is both Broker-in-Charge (BIC) and Qualifying Broker (QB) of a firm is responsible for renewing **both** their individual broker license and the firm license during the annual May 15-June 30 renewal period.

   - As designated BIC of the firm, if the broker fails to renew their individual broker license:
     - they are removed as BIC, and all affiliated brokers will be unaffiliated:
       - all previously affiliated full brokers will maintain active license status at their home address;
       - the licenses of all previously affiliated provisional brokers will go inactive without a supervising BIC;

- the firm license will remain active, but no brokerage activities can be performed in the name of the firm until:
  - a new BIC is designated; and
  - all broker affiliations and agency agreements will have to be reestablished under a new BIC.

- As QB of the firm, if the broker fails to renew their individual broker license:
  - the firm license will go to inactive status;
  - the BIC is removed, and all affiliated brokers will be unaffiliated;
    - all previously affiliated full brokers will maintain active license status at their home address;
    - the licenses of all previously affiliated provisional brokers will go inactive; and
  - all brokerage activity on behalf of the firm would cease until:
    - a new QB is named,
    - a new BIC is designated, and
    - all broker affiliations and agency agreements are reestablished.

- The QB broker renews their individual license, but fails to renew the firm license:
  - the firm license expires;
  - the BIC is removed, and all affiliated brokers will be unaffiliated;
    - all previously affiliated full brokers will maintain active license status at their home address;
    - the licenses of all previously affiliated provisional brokers will go inactive;
  - all brokerage activity on behalf of the firm would cease until a new firm application is approved; and
    - a new BIC is designated; and
    - all broker affiliations and agency agreements must be reestablished prior to performing any brokerage activity on behalf of the reinstated firm.

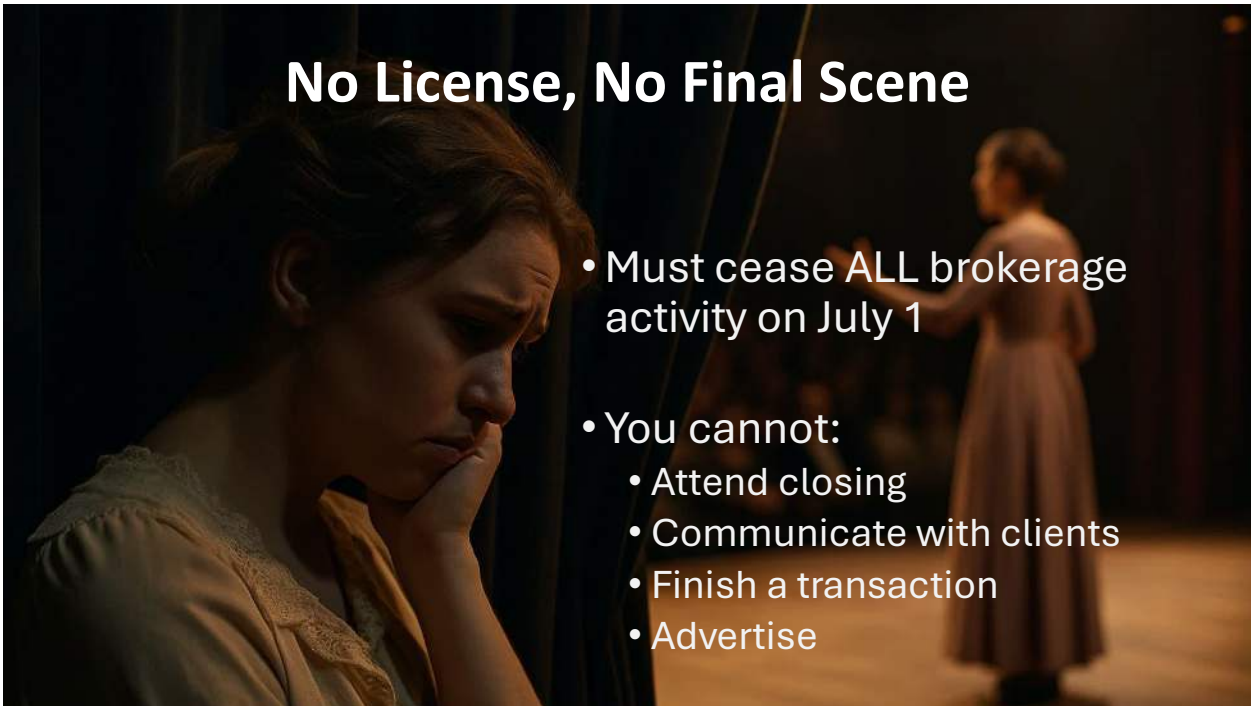
4. ***Do I have to renew my license if it is inactive?***

YES. Although a broker may intentionally place their license on inactive status, if they do not renew the inactive license, it will expire; thus, requiring them to requalify for licensure if they ever wish to practice real estate brokerage again. If a broker wants to activate their inactive license, the broker would need to meet the educational requirements under Rules 58A .0504(d) and .1702(a)-(b), respectively.

5. ***Can I legally complete pending transactions with an expired license?***

   NO. If a broker's license expires on June 30 due to non-renewal, that broker cannot engage in **any** brokerage activities beginning July 1. This includes attending a closing for a client's transaction that was pending before the license expired; the brokerage company with which the expired broker is affiliated would have to send another affiliated broker to represent the company's client. The broker may not resume brokerage practice until their license is reinstated, placed back on active status, and affiliated with a BIC.

   NOTE: Brokers who serve in the military **and** are on active deployment during the renewal period may be granted special consideration under federal law.



EXPIRED AND INACTIVE LICENSURE

To lawfully engage in brokerage activity, an individual or entity must have a CURRENT real estate broker license on ACTIVE STATUS at the time the broker provides the brokerage services.

6. ***While my license is on inactive status, may I place a referral to receive referral fees?***

   NO. A broker must have a current, active license at the time of performing brokerage activity. This includes placing a referral in order to legally receive **any** referral fees because that is a brokerage activity. A broker who has an active license has completed the appropriate 8 hours of continuing education by June 10 each year and has timely renewed their broker license by June 30.

7. ***I am a provisional broker licensed in February 2025. Do I have to take my first CE by June 2026?***

YES. Rule 58A .1702(c) indicates that, to maintain eligibility for an active license, annual CE courses shall be completed upon the second renewal following the initial licensure and upon each subsequent annual renewal. In the scenario above, the broker who was licensed in February 2025 would renew their broker license for the first time by June 30, 2025; no CE is required for the 1st renewal. The second renewal of their license would occur on or before June 30, 2026, and, therefore, the broker must complete CE prior to June 10, 2026, to maintain eligibility for an active license. If the broker does not complete the required 8 hours of CE by June 10, the license would renew on inactive status.

NOTE: Provisional brokers (PBs) must also timely complete Postlicensing education based on date of initial licensure and be affiliated with a BIC to maintain eligibility for active license status.

Required Continuing Education

Provisional Brokers and non-BIC Eligible Brokers	**Brokers with BIC Eligible status/BIC Designation**
GenUp (General Update) AND ONE Commission-approved Elective Between July 1 – June 10	BICUP (Broker-in-Charge Update) AND ONE Commission-approved Elective Between July 1 – June 10

8. ***As a provisional broker (PB), am I required to take Postlicensing education and CE if I haven't affiliated with a BIC?***

YES. Per Rule 58A .1902(b), a PB must complete their Postlicensing education within 18 months of initial licensure (not date of license activation) to remove the provisional status from their license record. To achieve and maintain active license status, a PB must be supervised by a BIC and timely complete all Postlicensing courses. However, if a PB chooses to remain on inactive status, they should be strongly encouraged to complete their Postlicensing education and annual CE courses to be eligible to easily activate their license. Although CE is not required to renew a license on inactive status, activation requirements, per Rule 58A .1703, of a broker's license with a CE delinquency are quite stringent.

9. ***Can I take CE with an inactive license?***

   YES. Rule 58A .1702(e) indicates a broker is not required to take CE while their license is on inactive status. However, a broker is well advised to take CE while their license is on inactive status in preparation for easy license activation under Rule 58A .1703.

10. ***Will I receive CE credit for successfully completing a Postlicensing course?***

    NO. Postlicensing courses do not provide CE credit, per Rule 58A .1704.

11. ***As a broker, can I get equivalent CE credit for courses not approved by the Commission?***

    NO. Courses taken by brokers to satisfy education requirements for other states or other license types, such as appraisal or home inspection, cannot be submitted for equivalent real estate CE credit in NC. According to amended Rule 58A .1708, the Commission limits CE equivalent waivers to approved real estate educators. An approved instructor may receive CE equivalent credit for teaching a Commission Update Course, teaching a Commission-approved CE elective for the first time, or developing a CE course that is approved by the Commission. Instructors must submit a complete waiver application prior to June 17 specifying how they meet the requirements under this Rule, with an application fee of $50 for the new course approval option.

12. ***Can I automatically get a waiver for Postlicensing courses?***

    NO. Rule 58A .1905 provides the requirements for the Commission to issue a waiver for Postlicensing education. A broker may apply for a waiver of one or more of the three 30-hour Postlicensing courses in the following circumstances:

    - *the broker has obtained equivalent education to the Commission's Postlicensing courses pursuant to Rule 58A .1902;*
    - *the broker has obtained experience equivalent to 40 hours per week as a licensed broker or salesperson in another state for a least 5 of the 7 years immediately prior to waiver request; or*
    - *the broker has worked 40 hours per week as a licensed North Carolina attorney practicing real estate matters for two years preceding waiver request*.

    The broker must meet the requirements set forth under this Rule and include supporting documentation in their application for a Postlicensing education waiver.

    Per Rule 58A .1905(c), a broker is not eligible for a waiver of any NC Postlicensing education, if the broker was issued an NC real estate license without passing the NC license examination.

13. ***Can I renew the firm license on active status even if the Qualifying Broker's license is expired?***

    NO. The firm must have a QB whose license is on active status. As long as the firm has an actively licensed QB and the firm's license is timely renewed, the firm license will remain active. If the QB's license expires or becomes inactive on July 1, the firm's license will also be inactive, meaning no brokers may engage in brokerage under the firm's name. While losing an actively licensed BIC only takes an individual office down, ***losing an actively licensed QB takes the entire firm down***.

    In such case, the firm license cannot be activated until either the QB's license has returned to active status, or the firm appoints a new actively licensed QB. Note that even if the firm license is active, the firm cannot legally perform brokerage at any office location without a designated BIC.

14. ***Do I, as a Qualifying Broker, have to complete CE even if I am not actively practicing brokerage?***

    YES. For a broker to remain a QB for a firm, the broker must maintain an active license. Every broker who wishes to maintain active license status must pay their license renewal fee during the May 15-June 30 renewal period each license year and complete the appropriate CE by June 10. If the QB failed to complete the appropriate CE course by June 10, the firm could appoint a new actively licensed QB by June 30 to avoid having the firm license go inactive on July 1.

    NOTE: Please review the Guide below for how to reinstate an expired broker license and/or activate an inactive license.

Broker License Reinstatement / Reactivation Guide

Many licensees contact the Commission, education providers, and instructors with questions about how to get their real estate license "up to date." The correct answer requires properly determining 3 things:

- Is the license currently inactive or expired?
- What caused the inactivity or expiration?
- How long has the license been inactive or expired?

Distinguishing Between Inactive or Expired

NCREC strongly recommends that when licensees have questions about their license status, they contact a Commission License Service Specialist. The License Services Specialist can examine the licensee's record and properly advise them of the process necessary to achieve their goals.

Whether a licensee is attempting to remove an expired status or inactive status, every single action requires the licensee to first cure any CE deficiency that may exist in their license record.

When the Broker License is Expired

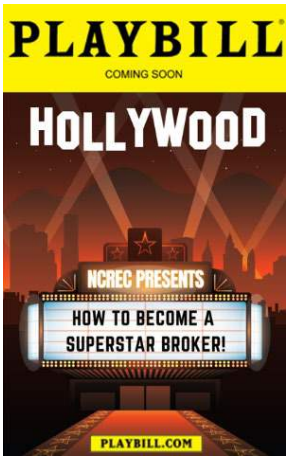
Cause of the Expiration	Length of Expiration	Process Required Per Rule 58A .0505
The only cause of an expired status is failing to renew or failing to pay the $45 renewal fee each year on or before June 30th.	Less than 6 months	• Pay a $90 reinstatement fee • Disclose any convictions or disciplinary actions • File a Form 2.08 - License Activation and Broker Affiliation
	For 6 months but not more than 2 years	• Within 6 months prior to reinstatement, complete one 30-hour Postlicensing course OR pass the National and State license exam sections* • File a License Reinstatement Application with $90 fee * Individuals with an active license in another state may choose to pass the state portion of the license examination in lieu of completing the Postlicensing course
	More than 2 years	• Must be relicensed as if they never possessed a license: ➢ Complete a Prelicensing course ➢ Pass the National & State sections of the license exam ➢ Submit a new license application with fee

When the Broker License is Inactive

Cause of the Inactivity	Length of Inactivity	Process Required Per Rule
Provisional Broker inactive due ONLY to non-affiliation	Any length of time	**Per Rule 58A .0506** • File Form 2.08 – License Activation and Broker Affiliation
Provisional Broker inactive due to failing to complete Post within 18 months	Any length of time	**Per Rule 58A .1902** • Complete all three 30-hour Postlicensing courses within 2 years of filing the License Activation and Broker Affiliation form • File Form 2.08 – License Activation and Broker Affiliation
Broker inactive due to a CE deficiency	2 years or less	**Per Rule 58A .1703** • Make up any deficiency in the previous year with CE electives • Complete the required current year CE consisting of an Update course and an elective course • File Form 2.08 – License Activation and Broker Affiliation
	More than 2 years	**Per Rule 58A .1703** • Complete the current year CE consisting of an Update course and an elective course • Complete 2 Postlicensing courses no more than 6 months prior to filing the License Activation and Broker Affiliation form • File Form 2.08 – License Activation and Broker Affiliation

Act V
Law and Rules: Scriptwriting

LEARNING OBJECTIVES



By the end of this Section, you should be able to describe updates to License Law and Commission rules that became effective on July 1, 2025.

TERMINOLOGY

***Office of Administrative Hearings (OAH)*:** The Office of Administrative Hearings is an independent quasi-judicial agency that was established to ensure that the functions of rulemaking, investigation, advocacy, and adjudication are not combined in the administrative process. OAH performs legal analysis and administrative and technical work in the review, compilation, and publication of the NC Register and the NC Administrative Code. It also provides administrative support and legal counsel to the Rules Review Commission.

Public Comment Period: The time period after proposed rule text is published that affords interested parties an opportunity to express support or opposition for the proposed rule. The comments can be submitted to the Commission during a 60-day comment period, or at a public hearing held shortly after the proposed rule text is published.

***Rule*:** A rule is adopted by administrative agencies to clarify laws and the processes for compliance. Rules have the effect of law. The North Carolina Real Estate Commission rules are published in the North Carolina Administrative Code which is the official publication of the rules that govern the state's agencies, boards, and commissions.

***Rules Review Commission (RRC)*:** The executive agency created by the General Assembly in 1986 charged with reviewing and approving rules adopted by state agencies. The RRC's substantive review procedures are set by the General Assembly and are codified in the Administrative Procedure Act, Chapter 150B, Articles 1 and 2A.

***Statute*:** Statutes are laws which are passed by the North Carolina General Assembly. The General Assembly consists of the Senate and House of Representatives.

THE RULEMAKING PROCESS

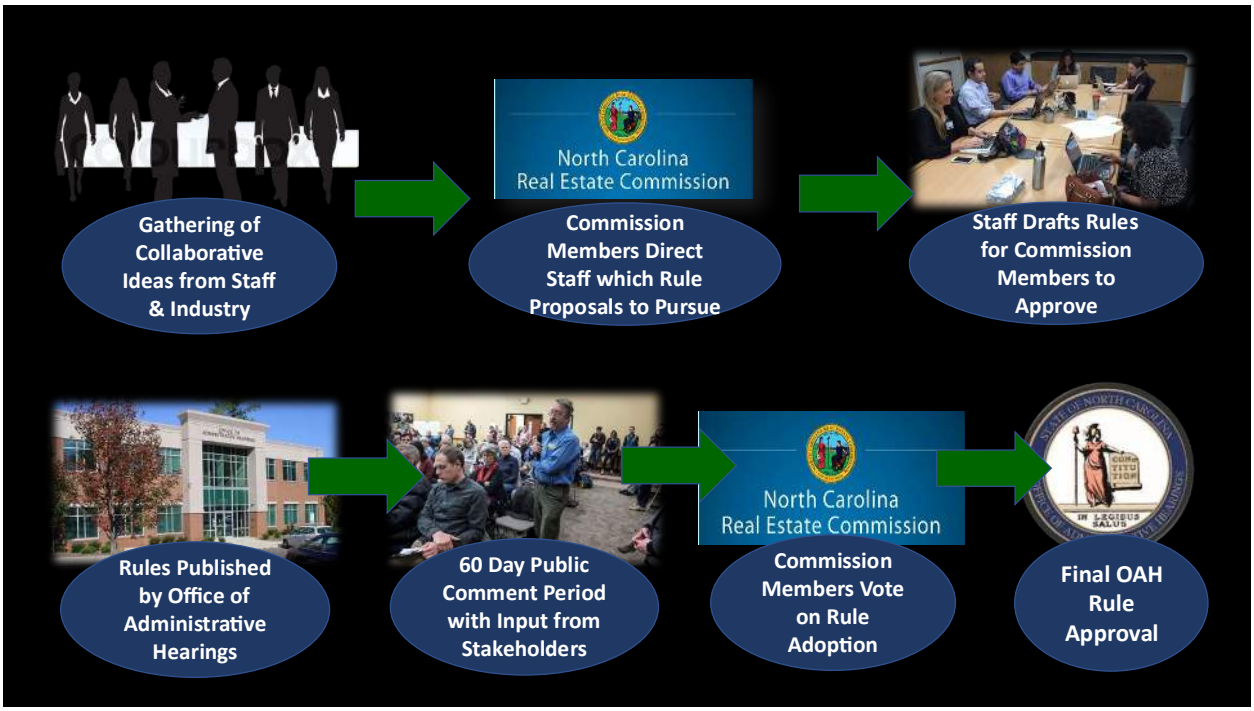
Rulemaking is the process by which the Commission clarifies laws through the adoption, amendment, or repealing of rules. During permanent rulemaking, the Commission proposes rule language and sends it to the Office of Administrative Hearings *(hereafter known as "**OAH**")*. OAH publishes the proposed rule text in the North Carolina Register which provides notice to interested parties that the Commission has started the process to amend, adopt, or repeal a rule.

Once the text is published, interested parties have two opportunities to comment on the proposed language. The first opportunity is the public comment period. Public comments can be submitted to the Commission during a 60-day comment period. Comments in support or opposition of the proposed rule can be submitted to the Commission in writing to the Rulemaking Coordinator during the 60-day comment period. The second opportunity is during a public hearing that is held shortly after the proposed rule text is published. During the public comment period or public hearing, interested parties have the opportunity to express support or opposition for the proposed rule.

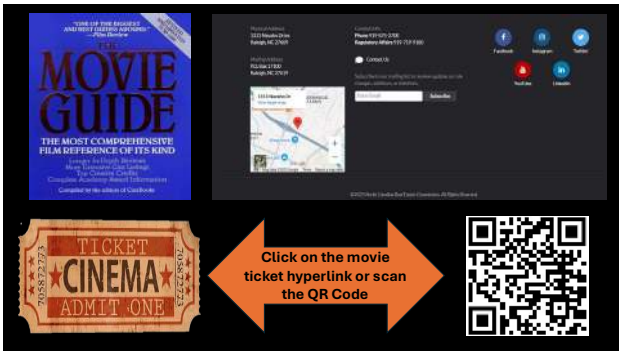
Once the comment period and public hearing have passed, the Commission must consider all of the comments and decide whether to reject, amend, or adopt the rule text. If the Commission rejects the rule text, the rulemaking process will end. However, if the Commission makes a substantial change to the rule text based upon the comments, then the revised proposed rule text is republished, and another 60-day comment period begins. Further, if the Commission adopts the rule text as written, the proposed rule is sent to the Rules Review Commission (hereafter known as **"*RRC*"**).

Once *RRC* is in receipt of the proposed rules, the proposed rules are reviewed to ensure the Commission has followed the rulemaking requirements, the rule text establishes a purpose with clear language, and the Commission has the legal authority to make the rule. During the review, *RRC* can either approve or object to the rule(s). If *RRC* objects to the rule(s), the Commission must amend the proposed rule. However, if *RRC* approves a proposed Commission rule, it is entered in the North Carolina Administrative Code. Th newly approved rule(s) may become effective immediately upon approval or at some specified date in the future.

Basically, the permanent rulemaking process takes several months. The Commission has to ensure that rulemaking adheres to the rules required by *OAH*, analyze all of the comments received during the public comment period/public hearing, and evaluate how the amendment, adoption, or repealing of rule text will affect stakeholders (i.e., brokers, brokerages, education providers, and instructors) prior to the *RRC* approving the rule.



BEST PRACTICE: For clarity, once the Commission proposes an amendment or revision to an existing rule, *OAH* has the authority to review the entire rule and request Commission staff to address any concerns and/or provide clarity on existing rule language.

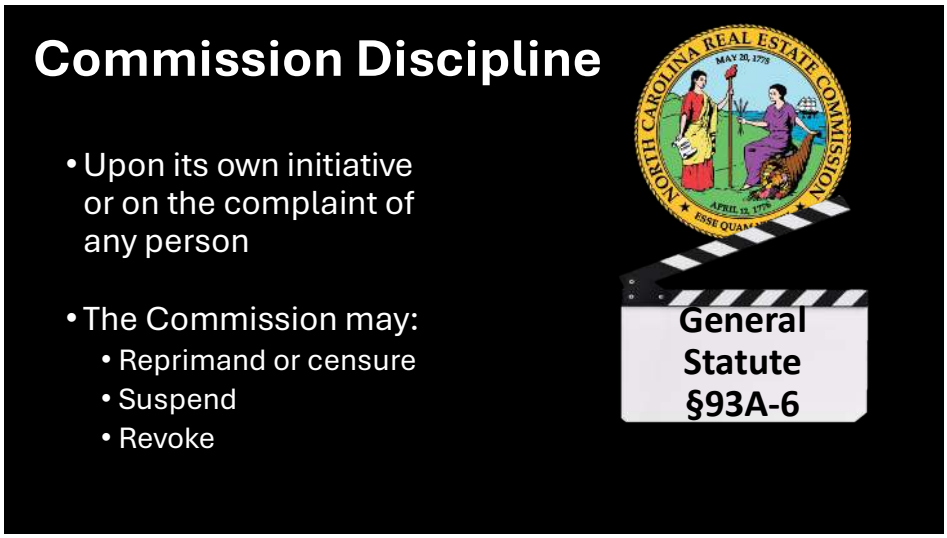


Brokers can subscribe to the Commission's mailing list to receive notice of rulemaking at https://www.ncrec.gov/Home/Subscribe

FINES AND RESTITUTION

The North Carolina Real Estate Commission has a pivotal role in regulating the conduct of real estate brokers across the state. It is also essential to understand the limitations the Commission has regarding the ability to authorize fines and the payment of restitution.

Pursuant to N.C.G.S.§93A-6, the Commission may investigate the actions of any person or entity licensed under this Chapter, or any other person or entity who shall assume to act in such capacity upon its own initiative, or the complaint of any person. Under this Statute, the Commission has the power to suspend or revoke at any time a license issued under the provisions of this Chapter, or to reprimand or censure any licensee.



With limited exceptions under the North Carolina General Statutes, the Commission is prohibited from imposing fines or ordering restitution for payment of monetary damages to consumers. However, its focus remains on ensuring consumer protection while still considering that the economic losses of consumers are important as well.

While the North Carolina Real Estate Commission cannot independently order brokers to pay restitution, brokers may agree to pay such amounts as part of a negotiated settlement. In some cases, a broker may consent to a settlement agreement, in which they voluntarily agree to pay money to a consumer. This often occurs when the Commission offers the broker an opportunity to resolve a disciplinary matter with reduced sanctions in exchange for accepting responsibility and providing financial compensation. If a broker decides to enter into a settlement agreement, it may allow for a more efficient resolution of complaints while also addressing the consumer's economic loss.

COMMISSION RULE CHANGES EFFECTIVE JULY 1, 2025

The Commission revised several rules in Chapters 58A and 58H with an effective date of July 1, 2025. The changes that directly impact brokers will be summarized in this Section.

All revised rules can be viewed on the Commission’s website.

Rule 58A .0106: Delivery of Instruments

At the Movies: The Case of the Misplaced Lease

Emily, a vacation rental tenant, rented a property six months ago in Emerald Isle that was managed by XYZ Realty. Emily misplaced her vacation rental agreement and asked for Susan, the Broker-in-Charge and property manager at XYZ Realty, to email her a new copy. Susan indicated that she would send her a copy within seven business days.

Critic's Review: Has Susan complied with License Law and Commission rules?

Historically, brokers were required to provide clients and customers with a copy of any written agency agreement, contract, offer, lease, rental agreement, option, or other transaction-related document within three days of *receiving* the executed document. This longstanding requirement ensured timely communication and transparency in real estate transactions.

However, Rule 58.0106 was amended in part to also require brokers to deliver a copy of any written agency agreement, contract, offer, lease, rental agreement, option, or other related transaction document to their customer or client within three days of *receipt of a request by the customer or client*.

The amendment to the Rule expands this responsibility slightly by requiring brokers to also provide copies of such documents within three days of receiving a specific request from a customer or client. This change allows clients and customers to request copies at any time, not just at the point of initial execution.

Brokers who are already compliant with the three-day document delivery rule will find that the amendment does not fundamentally alter their current practices. The only new requirement is to ensure that they respond promptly to customer or client requests for documents.

Effective July 1, 2025, Rule 58A .0106 states:

> *(a) Except as provided in Paragraph (b) of this Rule, every broker shall deliver a copy of any written agency agreement, contract, offer, lease, rental agreement, option, or other related transaction document to their customer or client within three days of the broker's receipt of the executed document. A broker shall also deliver a copy of said documents within three days of receipt of a request by the customer or client.*
>
> *(b) A broker may be relieved of the duty to deliver copies of leases or rental agreements to a property owner pursuant to Paragraph (a) of this Rule if the broker:*
>
> > *(1) obtains the prior written authority of the property owner to enter into and retain copies of leases or rental agreements on behalf of the property owner;*
> >
> > *(2) executes the lease or rental agreement on a pre-printed form, the material terms of which may not be changed by the broker without prior approval by the property owner, except as may be required by law;*
> >
> > *(3) Delivers to the property owner an accounting within 45 days following the date of execution of the lease or rental agreement that identifies:*
> >
> > > *(a) the leased property;*
> > >
> > > *(b) the name, phone number, and home address of each tenant, and*
> > >
> > > *(c) the rental rates and rents collected.*
>
> *(c) Paragraph (b) of this Rule notwithstanding, upon the request of a property owner, a broker shall deliver a copy of any lease or rental agreement within three days.*

Anticipated Impact to Brokers

The primary anticipated impact for brokers is the need to adjust their workflows slightly to accommodate client-initiated document requests. However, this adjustment should be straightforward, especially for brokers who already maintain an organized and responsive document management system.

Best Practices for Compliance

As a best practice, brokers may wish to review Rule 58A .0108, Retention of Records, and adopt the following best practices:

- utilize effective record keeping, digitally or physically, so documents can be retrieved and delivered within three days of receipt by the broker or receipt of the request by the customer ***or*** client for the transaction documents;
- educate customers and clients regarding their right to request documents at any time and the brokers' duty to deliver copies of the documents pursuant to the Rule;
- implement workflow solutions to streamline the sharing of documents and track deadlines with customers and clients; and
- edit written office policies to ensure all affiliated brokers are complying with their responsibilities to timely deliver instruments to customers and clients.

Rule 58A .0302: License Application and Fee

At the Movies: The Case of the Persistent Applicant

Mark filed a license application with the North Carolina Real Estate Commission to obtain a broker license. Upon review of his application, the Commission informed him that his application was deferred due to some criminal convictions on his record. Mark requested a hearing, and Regulatory Affairs issued a Notice of Hearing for August 17. Prior to his opening statement, Mark, who was unrepresented, withdrew his license application.

Critic's Review: Will Mark be able to apply for a NC real estate license in the future? If so, when?

_____

Rule 58A .0302 was revised to prevent applicants from reapplying for a NC real estate license for up to two years if they withdraw their application after a Notice of Hearing has been issued or if their application is denied following a hearing.

This amendment to the Rule aims to deter the misuse of the application process, encourage applicants to approach it with seriousness, and provide adequate time to address any issues relating to the possible denial or withdrawal of the application before a new application is submitted.

Furthermore, it helps reduce the administrative burden associated with reviewing repeat applications that are submitted.

Prior to July 1, 2025, an applicant could withdraw their application on the day of their hearing and/or refile an application immediately following the conclusion of a hearing. These actions taken by licensee candidates increased the administrative costs associated with reviewing the applications by Commission staff.

Effective July 1, 2025, the Rule now states:

> *(a) The fee for an original application of a broker or firm license shall be one hundred dollars ($100.00).*
>
> *(b) An applicant shall update information provided in connection with a license application in writing to the Commission or submit a new application form that includes the updated information without request by the Commission to ensure that the information provided in the application is current and accurate. Upon the request of the Commission, an applicant shall submit updated information or provide additional information necessary to complete the application within 45 days of the request or the license application shall be canceled.*
>
> *(c) The license application of an individual shall be canceled if the applicant fails to:*
>
> > *(1) pass a scheduled license examination within 180 days of filing a complete application pursuant to Rule .0301 of this Section; or*
> >
> > *(2) appear for and take any scheduled examination without having the applicant's examination postponed or absence excused pursuant to Rule .0401 of this Subchapter.*
>
> *(d) If an applicant seeks to withdraw their application for licensure after a Notice of Hearing is issued by Commission staff, an applicant shall file*

a Motion to Withdraw with the Commission that states the applicant's reason for withdrawal. The Commission shall issue an Order of Withdrawal and may prohibit the applicant from re-applying for licensure for a period of up to two years from the date of the Order if the applicant fails to show good cause for the withdrawal. For purposes of this Rule, good cause may include:

(1) an incapacitating illness of the applicant or applicant's attorney;

(2) A naturally occurring disaster; or

(3) An undue hardship on the applicant.

(e) If an applicant is denied licensure following a hearing, the Commission shall order that the applicant be prohibited from re-applying for licensure for a period of up to two years from the date of the application.

Anticipated Impact to Brokers

The impact of the rule change is expected to be minimal, as it applies only to a specific subset of individuals involved in the licensing process. Licensed brokers who are already actively practicing will not be affected by this amendment. However, the change specifically impacts applicants for licensure, particularly those who attempt to withdraw their application after a Notice of Hearing has been issued or whose applications have been denied following a hearing.

This amendment does not disrupt the current licensing process but reinforces integrity and fairness. It also encourages applicants to evaluate whether they truly meet the licensing requirements prior to submitting a license application. This Rule focuses on withdrawing an application after a Notice of Hearing is issued and denial of application after a hearing; therefore; it is narrowly focused on applicants who need to ensure they review the licensing requirements before reapplying.

As a result, this amendment should not have any adverse effect on licensed real estate brokers.

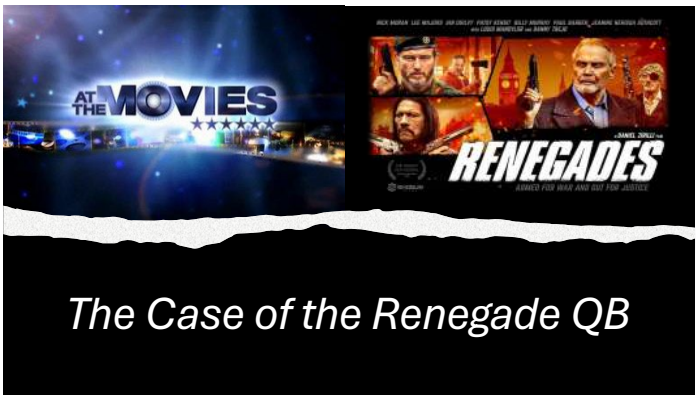
Best Practices for an Ovation for Compliance

Although this change is minimal, individuals who wish to apply for a North Carolina real estate license should adhere to the following best practices:

- review the requirements for licensure prior to submission of your real estate license application;
- submit a petition for predetermination if you would like for the Commission to issue an opinion on the probability that you may be issued a license based upon your criminal background;
- proofread your real estate license application for accuracy and truthfulness prior to submission;
    - Periodically update the license application to ensure that the information remains accurate.
- disclose criminal convictions and disciplinary actions proactively and include supporting documentation; and
- respond to inquiries promptly and remain responsive/cooperative with Commission staff during the character and fitness review process.

Rule 58A .0502: Firm Licensing

At the Movies: The Case of the Renegade QB



David, a non-provisional broker, has created and registered ABC Realty with the NC Secretary of State. He submits a firm license application for ABC Realty and has indicated that he has created this entity for compensation purposes only. In the firm license application, David indicated he would be the Qualifying Broker and does not need to designate a Broker-in-Charge under License Law and Commission rules.

A complaint was filed against David in March by a previous buyer client alleging he failed to disclose material facts in a transaction. The Commission found probable cause against David in May.

Critic's Review: Will the Commission issue a firm license to ABC Realty?

The purpose of the rule change prohibits a business entity from applying for a firm license if a principal of the entity has a pending disciplinary case where probable cause has been found by the Commission. These changes protect the consumer by preventing principals of firms with unresolved disciplinary cases from entering the marketplace.

Prior to July 1, 2025, the Commission allowed business entities to apply for a firm license under Rule 58A .0502(a) when their principals had pending disciplinary cases, and probable cause had been found.

Effective July 1, 2025, the Rule 58A .0502(a) states:

> *Every business entity other than a sole proprietorship shall apply for and obtain from the Commission a firm license prior to engaging in business as a real estate broker. A business entity shall not be permitted to apply for or obtain a firm license when a principal of the firm has a pending disciplinary case where probable cause has been found by the Commission.*

Under the amended Rule, a principal must set forth in the firm license application whether there are any pending or previous professional license disciplinary action against the firm, its principals, or any proposed broker-in-charge (BIC). Therefore, the Commission is requiring the principals of business entities to resolve their disciplinary actions before applying for a firm license to prevent principals from trying to circumvent License Law and Commission rules.

Essentially, this amendment ensures that the Commission can make an informed decision about the applicant's character and fitness to be a principal and/or as a designated BIC of a firm. Effective July 1, 2025, Rule 58A .0502 (c)(11) states:

> *Firm license application forms shall be available on the Commission's website or upon request to the Commission and shall require the applicant to set forth any pending or previous professional license disciplinary action against the firm, its principals, or any proposed broker-in-charge.*

Anticipated Impact to Brokers

The anticipated impact of this Rule is expected to be minimal.

The primary impact for brokers is the prohibition of an entity receiving a firm license if the principal has a pending disciplinary action where probable cause has been found. Additionally, brokers, the firm, or the proposed BIC who have/had a pending or previous disciplinary action of a professional license must disclose this information at the time they are applying for a firm license.

Brokers should remember the following when applying for a firm license:

- a firm license will not be granted if a principal has a pending disciplinary action where probable cause has been found; and
- disclosure of a pending or previous disciplinary action of a professional license of a principal, the firm, or proposed BIC is mandatory and failing to disclose this information may result in the denial of a firm license application or other disciplinary action as determined by G.S. 93A-6(a).

Best Practices for an Ovation for Compliance

Brokers who would like to obtain a firm license, should ensure they adhere to the following best practices prior to submitting a firm license application to the Commission:

- resolve any disciplinary actions prior to submission of the firm license application, and
- fully disclose all pending and/or previous disciplinary actions against the principals, firm, and/or proposed BICs while completing the firm license application.

If brokers follow these best practices, they can avoid unnecessary delays and ensure adherence to License Law and Commission rules.

NOTE: The Firm License Application (Form 1.72) has been updated to allow brokers to input data about past and/or pending disciplinary actions.

Other Script Changes

- The remaining rule changes all had to do with education rules
- Those rules are all found in Section 58H of the Administrative Code (Commission Rules)

Rule 58H .0204: Policies and Procedures Disclosure

Lisa, a prospective Prelicensing student, registers for a Prelicensing course with XYZ Realty School of Real Estate based upon their Google and Yelp reviews from former students. After registering for the course, Lisa receives the Policies and Procedures Disclosure (PPD) from the education provider.

After reviewing the PPD, Lisa is frustrated because her work schedule will not permit her to adhere to the attendance requirements set forth by the education provider. Lisa requests a refund for the course. However, the Education Director, advises Lisa that the education provider does not issue any refunds.

Has XYZ Realty School of Real Estate complied with License Law and Commission rules? _____

The purpose of this rule change highlights two important changes that enhance transparency and accountability among education providers. The first change clarifies that education providers must publish a Policies and Procedures Disclosure (hereafter "PPD") to prospective students. Basically, this requires education providers (hereafter "EPs") to make this information available prior to a student registering for a course.

Historically, an EP had to publish and provide a PPD to all students upon enrollment. However, with this new rule change, furnishing a PPD prior to enrollment ensures that prospective students have a clear understanding of important policies, expectations, and course requirements before registering for a course with the certified EP. Requiring this disclosure promotes informed decision-making and lessens the potential for misunderstandings regarding polices between students and EPs.

Effective July 1, 2025, Rule 58A .0204 states,

a) *An education provider shall publish a Policies and Procedures Disclosure for prospective students.*
b) *In addition to the information required by G.S. 93A-34(c)(5), an education provider's Policies and Procedures Disclosure shall include:*
    1) *the name and address of the Commission, along with a statement that any complaints concerning the education provider or its instructors should be directed to the Commission;*
    2) *a statement that the education provider shall not discriminate in its admissions policy or practice against any person on the basis of age, sex, race, color, national origin, familial status, handicap status, or religion;*
    3) *the education provider's most recent annual License Examination Performance Record and the Annual Summary Report data as published by the Commission;*
    4) *the all-inclusive tuition and fees for each particular course;*
    5) *a written course cancellation and refund policy;*
    6) *a list of all course and reference materials required;*
    7) *the course completion requirements pursuant to Rule .0207 of this Section and 21 NCAC 58A. 1705;*
    8) *a statement referring the student to the Commission's website for the education provider's pass rate; and*
    9) *a signed certification acknowledging the student's receipt of the Policies and Procedures Disclosure prior to payment of any portion of tuition or registration fee without the right to a full refund.*

c) In addition to the information required in Paragraph (b) of this Rule and G.S. 93A-34(c)(5), an education provider offering distance education, synchronous distance learning, or blended learning courses shall include:

(1) a list of hardware and software or equipment necessary to offer and complete the course;

(2) The contact information for technical support;

(3) A description of how the end-of course examination shall be administered to the student.

Additionally, the previous rule language only allowed for EPs to publish static annual exam pass rates that were published on the Commission's website. Advances in technology and data collection/processing now make access to real-time data possible.

The purpose of this rule change is to ensure students have access to accurate, up-to-date information. Also, the Commission wants to maintain consistency in how exam pass rates are displayed and advertised to the public. Basically, this change reinforces consumer protection and provides consumers with current, up-to-date information so they can make an informed choice regarding an education provider. This requires EPs to direct students to the official License Examination statistics that are available on the North Carolina Real Estate Commission's website. This Rule provision also prevents education providers from advertising potentially misleading or outdated pass rates to consumers.

Anticipated Impact to Brokers

This rule change has minimal impact to brokers who are not Education Directors and/or EPs. Education Directors will need to ensure they revise their PPD to remove any data about its specific license examination pass rate and direct students/consumers to the Commission's website.

This change will ensure that the public has unbiased pass rate statistics rather than static or selectively presented data from individual education providers.

Moreover, it helps to prevent misleading advertisements and allows for a fair representation of the how the EPs perform in preparing students for the North Carolina Real Estate license exam.

Best Practices for an Ovation for Compliance

Education Directors/EPs should implement the following best practices to ensure compliance with Rule 58H .0204 and maintain transparency regarding the examination pass rate statistics for consumers:

- ensure their PPD is published for all prospective students, and
  - Implement a standardized distribution process, such as including the document in enrollment packets, providing a digital version on the EP's website, and/or requiring an acknowledgment form to confirm receipt, and
  - train staff/instructors to verify that all prospective students/enrolled students are in receipt of PPD.
- modify the PPD to remove any specific exam pass rates and provide a direct link to students to review the up-to-date exam pass rates on the North Carolina Real Estate Commission's website.

NOTE: Education Directors should periodically review all disclosures and advertising materials for the EP to ensure continued compliance with License Law and Commission rules and the protection of consumers/students.

Rule 58H .0206: Advertising and Recruitment Activities

Purpose of the Rule Change

Critic's Review: What statistics can an EP advertise and/or promote in marketing materials?

Historically, License Law and Commission rules allowed EPs to advertise and provide their License Examination Performance Record or Annual Summary Report as long as it was the most recent examination pass rates published by the Commission and not advertised/provided in a misleading manner. The Commission has implemented this rule change to promote more up-to-date transparency and accuracy of educational statistics. EPs and instructors may no longer advertise or make available any License Examination Performance Record or license examination pass rates or course completion rates nor reference or publish the past rates of other EPs or instructors except as published by the Commission.

Further, this Rule ensures that all students receive unbiased, verified data from a single source, the Commission's website. Also, prospective licensees will be able to make informed decisions based on verifiable real-time data and not promotional messaging.

Effective July 1, 2025, Rule 58H .0206 states:

> *(a) An education provider or instructor shall not advertise or otherwise make available any License Examination Performance Record or license examination pass rates or completion rates, nor reference or publish the pass rates of other education providers or instructors except as published on the Commission's website or as provided by this Subchapter.*

Anticipated Impact to Brokers

This rule change will have minimal impact to brokers unless they serve as education providers and/or instructors. Brokers who operate real estate EPs will need to modify their advertising and marketing to ensure compliance with 58H .0206. For EPs and instructors, the greatest impact would be utilizing the License Examination Performance Record or license examination pass rates or course completion rates that are on the Commission's website in their promotional/marketing materials. These materials may include all or some of the following:

- website,
- brochures/flyers,
- social media ads, and
- emails/newsletters.

Further, education providers and instructors will need to modify how they respond to prospective student inquiries regarding their license examination pass rates. For example, education providers/instructors should not reference information that is not published by the Commission. Instead, they should direct the student to the Commission's website to retrieve the accurate information.

Best Practices for Compliance

To ensure adherence to Rule 58H .0206, EPs and instructors should implement the following best practices:

- perform a comprehensive review of advertising materials;
- remove any references to License Examination Performance Record or completion rates; and
- edit/update student course materials periodically to reflect the information that is displayed on the Commission's website for accuracy.

This Rule allows the Commission to continue to protect the public and prospective students by preventing the advertising of static data. Using the data on the Commission's website will allow the students to review accurate, up-to-date, verified data.

Rule 58H .0209: Renewal and Expiration of Education Provider Certification

Purpose of the Rule Change

Rule 58H .0209 has been revised to improve clarity and organization by making some key changes such as:

- revising the title for consistency;
- moving references to course renewal fees to another rule; and
- elimination of subsection (k).

The first revision reordered the title of the Rule title from Expiration and Renewal of Education Provider Certification to Renewal and Expiration of Education Provider Certification. This minor revision ensures that the Rule title is consistent with the provisions contained within it.

The second revision removed the following course renewal fees from Rule 58H .0209.

(e) ($25.00) per Prelicensing or Postlicensing course for each location;

(f) ($50.00) renewal fee for each approved CE course; and

(g) ($100.00) materials fee to renew an Update course.

These references to course renewal fees were moved to Rule 58H .0416, Renewal and Expiration of Course Approval to avoid duplication of information in License Law and Commission rules. Therefore, the remaining subsections in 58H .0209 have been renumbered to account for the deletions.

The third revision involved removing the following language from the Rule:

(k) On or before July 1, 2021, all education providers shall modify approved courses to comply with this Subchapter.

Since July 1, 2021, has passed, the subsection is obsolete. This change helps ensure that the Rule remains current and relevant without referencing past rule requirements that are no longer applicable.

Anticipated Impact to Brokers

The revisions to this Rule impact education providers. Brokers who are not education providers do not need to take any action based upon this rule change.

If a broker is an EP, the impact is minimal. The revision of the title, relocating course renewal fees to Rule 58H .0416, and deleting obsolete rule language does not impact/change the renewal process and requirements for education providers. The only difference is the rule reference for course renewal fees.

Best Practices for an Ovation for Compliance

Education Providers may want to consider implementing the following best practices to adhere to Rule 58H. 0209:

- extensively review Rules 58H .0209 and .0416; and
- modify renewal checklists, staff policies and procedures, and administrative handbooks to incorporate the current License Law and Commission rule requirements.

Rule 58H .0302: Application and Criteria for Instructor Approval

Prior to attending the New Instructor Seminar (NIS), Rule 58H .0302 was amended to allow for the testing of instructor applicants. This rule change ensures that instructor applicants have a comprehensive understanding of License Law and Commission rules and can contribute quality instruction to real estate education.

Prior to July 1, 2025, instructor applicants were not required to take an examination pursuant to Rule 58H .0302.

Effective July 1, 2025, the following subsection was added to Rule 58H .0302:

(b) An instructor applicant shall have:

(6) passed an instructor approval examination created by the Commission and based on the North Carolina License Law and Commission rules prior to registering for the New Instructor Seminar.

Additionally, subsection (d) indicates that an instructor must ***complete*** the Commission's annual Update Instructor Seminar for the current license period prior to teaching any Update Course.

Anticipated Impact to Brokers

This rule change does not have an impact on brokers unless they wish to become an approved real estate instructor in North Carolina. Brokers who plan to apply for instructor approval must meet all the requirements specified in Rule 58H .0302, including successfully passing an instructor approval examination prior to registering for the New Instructor Seminar.

Best Practices for an Ovation for Compliance

Brokers who wish to apply to become an approved real estate instructor should take steps to ensure they meet the new requirements of the Rule to prevent a delay in obtaining approval. The following best practices may assist instructor applicants in adhering to the Rule:

- review the requirements to become an instructor in Rule 58H .0302;
- review North Carolina License Law and Commission Rules and License Law and Rule Comments thoroughly;
- schedule and take the instructor exam prior to enrolling for the New Instructor Seminar; and
- adhere to all additional instructor requirements such as:
    - completing at least 6 hours of real estate instructor program each license year and successfully completing the Update Instructor Seminar annually, and prior to teaching the Commission's Update Course.

The inclusion of an instructor approval examination to Rule 58H .0302 provides an opportunity for instructor applicants to demonstrate their knowledge in License Law and Commission rules and ability to effectively teach real estate courses. Brokers who aspire to become approved instructors should plan ahead, study, and schedule the instructor approval examination prior to registering for the New Instructor Seminar.

Rule 58H .0416: Renewal and Expiration of Course Approval

Purpose of the Rule Change

XYZ School of Real Estate wrote the continuing education course, "There Goes the Sale." Each year, they license specific education providers to also use/offer/teach this course content/materials. However, the course materials expired on June 30, 2025. XYZ School of Real Estate renewed its course materials for the license year 2025-2026 but did not reissue approval for other education providers to offer this course.

Lightswitch School of Real Estate renewed the course, "There Goes the Sale," that was created by XYZ School of Real Estate for license year 2025-2026. The Education Director included the approval they received from XYZ School of Real Estate on July 1, 2024, with the course renewal application.

Critic's Review: Will the Commission approve Lightswitch School of Real Estate's 2025-2026 offering of the continuing education course, "There Goes the Sale"?

Rule 58H .0416 has been adopted to outline the renewal and expiration requirements for course renewal. Specifically, the Rule indicates the annual expiration date of June 30 for all courses following initial course approval, certification of course ownership or permission to use the course from the course owner, mandated course renewal fees, and submission of an original course approval pursuant to Rule .0401 if the course has not been renewed or has been renewed twice since initial approval.

This Rule mandates that all real estate education course approvals expire annually on June 30th following their initial approval. This ensures that courses remain relevant, up-to-date, and compliant with real estate laws and brokerage practices. Additionally, the implementation of this Rule enforces stricter policies regarding course ownership or permission to use course materials. Requiring certification of course ownership and/or written permission prevents the renewal and unauthorized use of materials and ultimately maintaining the integrity of educational content.

The Rule also formalizes course renewal fees and limits the number of times a course may be renewed before requiring a full review and reapproval process. These updates promote the quality and integrity of real estate education by preventing outdated or ineffective courses from remaining in circulation indefinitely.

Effective July 1, 2025, the Rule states:

(a) Approval of real estate education courses shall expire annually on June 30 following initial course approval.

(b) An education provider or public education provider seeking to renew course approval shall certify that they are the owner of the course material, or if not the course owner, submit written permission to use the course materials. Written permission of the course owner shall be signed and dated by the course owner no earlier than six months prior to the submission of the course renewal.

(c) The fee for an education provider to renew a course approval shall be:

(1) twenty-five dollars ($25.00) per Prelicensing or Postlicensing Course:

(2) fifty dollars ($50.00) per continuing education elective course; and

(3) one hundred dollars ($100.00) materials fee to offer the Update Course.

(d) An education provider or public education provider shall submit an application for original course approval pursuant to Rule .0401 of this Subchapter if the course approval:

(1) fails to renew pursuant to this Rule; or

(2) has renewed twice since the initial course approval.

Anticipated Impact to Brokers

This Rule impacts education providers and the real estate education courses they offer to students and brokers. The following are some key changes that education providers will experience under Rule 58H .0416:

- annual expiration of course approvals on June 30th following initial course approval;
- course ownership or permission certification requirement;
    - To renew a course approval, education providers must either certify that they are the owner of the course materials, or provide written permission from the course owner, signed and dated within six months prior to submission of the course renewal.
- renewal fees for course approval; and
- submission of an application of original course approval.
    - An education provider must submit a new course approval application if a course approval fails to renew, or the course has been renewed twice since its initial approval.

This Rule ensures that courses contain current, accurate information. Additionally, brokers will benefit by receiving updated course content that is reflective of License Law and Commission rules and the brokerage industry.

Best Practices for an Ovation for Compliance

Education providers should implement the following best practices to ensure compliance with Rule 58H .0416:

- monitor course renewal status;
  - Implement a tracking system to determine how many times a course has been renewed.
  - Identify courses that must go through original course approval plan accordingly.
- submit course renewals on time; and
  - Renew courses before June 30th each year to prevent expiration.
  - Ensure that all required documentation (ownership certification/ permission from course owners) is signed and dated by the course owner no earlier than six months prior to the submission of the course renewal.
- prepare to submit an application for original course approval.
  - Anticipate the need for a full application if the course approval:
    - Fails to renew, and/or
    - Has renewed twice since the initial course approval.

Rule 58H .0416 enhances the quality of education brokers will receive due to the courses being thoroughly reviewed for accuracy every three years. By following these best practices, education providers can ensure uninterrupted course availability while meeting regulatory requirements. This Rule adoption reinforces the Commission's commitment to delivering high-quality real estate education and protects the integrity of course materials.

LICENSE LAW AND COMMISSION RULES

Brokers may retrieve the most current License Law and Commission rules by accessing the Commission's website using the following instructions:

1) go to www.ncrec.gov;
2) click on *Resources*;
3) click *License Law/Rules*;
4) click *Chapter 58* under Rules; and
5) review Real Estate Commission rules in Chapter 58.

SUMMARY OF IMPORTANT POINTS

- Rulemaking is the process by which the Commission clarifies laws through the adoption, amendment, or repealing of rules.
- OAH publishes the proposed rule text in the North Carolina Register which provides notice to interested parties that the Commission has started the process to amend, adopt, or repeal a rule.
- With limited exceptions under the North Carolina General Statutes, the Commission is prohibited from imposing fines or ordering restitution for payment of monetary damages to consumers.
- While the North Carolina Real Estate Commission cannot independently order brokers to pay restitution, brokers may agree to pay such amounts as part of a negotiated settlement.
- Rule 58.0106 was amended in part to require brokers to deliver a copy of any written agency agreement, contract, offer, lease, rental agreement, option, or other related transaction document to their customer or client within three days of *receipt of a request by the customer or client*.
    - The amendment to the Rule expands this responsibility slightly by requiring brokers to also provide copies of such documents within three days of receiving a specific request from a customer or client.
    - As a best practice, brokers may wish to review Rule 58A .0108, Retention of Records, and adopt the following best practices:
        - utilize effective record keeping, digitally or physically, so documents can be retrieved and delivered within three days of

receipt by the broker or receipt of the request by the customer ***or*** client for the transaction documents;
        - educate customers and clients regarding their right to request documents at any time and the brokers' duty to deliver copies of the documents pursuant to the Rule;
        - implement workflow solutions to streamline the sharing of documents and track deadlines with customers and clients; and
        - edit written office policies to ensure all affiliated brokers are complying with their responsibilities to timely deliver instruments to customers and clients.
- Rule 58A .0302 was revised to prevent applicants from reapplying for a NC real estate license for up to two years if they withdraw their application after a Notice of Hearing has been issued or if their application is denied following a hearing.
    - This amendment to the Rule aims to deter the misuse of the application process, encourage applicants to approach it with seriousness, and provide adequate time to address any issues relating to the possible denial or withdrawal of the application before a new application is submitted.
- A business entity may not apply for a firm license if a principal of the entity has a pending disciplinary case where probable cause has been found by the Commission.
    - These changes protect the consumer by preventing principals of firms with unresolved disciplinary cases from entering the marketplace.
- Education providers must publish a Policies and Procedures Disclosure (hereafter "PPD") to prospective students. Basically, this requires education providers (hereafter "EPs") to make this information available prior to a student registering for a course.
- EPs are required to direct students to the official License Examination statistics that are available on the North Carolina Real Estate Commission's website.
- EPs and instructors may no longer advertise or make available any License Examination Performance Record or license examination pass rates or course completion rates nor reference or publish the past rates of other EPs or instructors except as published by the Commission.
    - This Rule ensures that all students receive unbiased, verified data from a single source, the Commission's website.
- Rule 58H .0209 has been revised to improve clarity and organization by making some key changes such as:
    - revising the title for consistency,
    - moving references to course renewal fees to another rule, and
    - elimination of subsection (k).

- Effective July 1, 2025, the following subsection was added to Rule 58H .0302:
    - *(b) An instructor applicant shall have:*
      (6) passed an instructor approval examination created by the Commission and based on the North Carolina License Law and Commission rules prior to registering for the New Instructor Seminar.
- Rule 58H .0416 indicates the annual expiration date of June 30 for all courses following initial course approval, certification of course ownership or permission to use the course from the course owner, mandated course renewal fees, and submission of an original course approval pursuant to Rule .0401 if the course has not been renewed or has been renewed twice since initial approval.

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