

# ***Inspector Gadget***

## ***(Home & Commercial Inspections)***



## **Student Manual**



# START

School of Real Estate

## READ IMMEDIATELY UPON CHECKING IN

### Basic CE Requirement (21 NCAC 58A.1702)

The CE requirement to maintain a license on active status is **eight (8) classroom hours per year** (each license period) consisting of the annual four (4) hour Real Estate Update course (mandatory for all Brokers) and a four (4) hour elective each license year.

### Important Points to Note

- Newly licensed Brokers do NOT need to take any CE prior to their **first license renewal** but must satisfy the CE requirement prior to their **second license renewal**.
- A course may not be taken for CE credit twice in the same license period. Make sure you have not already taken this course during the current license period.
- If your license is **inactive**, you should check with the Commission to ascertain the amount of CE you need to activate your license.

### Attendance Requirement

In order to receive CE credit for a course, students must attend the entire scheduled class session. Education Providers and instructors may, on an individual basis, excuse a student for good reason for up to 10% of the scheduled class session (20 minutes for a 4-hour class); however, a student must attend a minimum of 90% of the scheduled class in order to receive a course completion certificate and CE credit. No exceptions to the 90% attendance requirement are permitted for any reason. **However**, a student may not miss any of the last 20 minutes of any 4-hour CE course session.

### Student Participation Requirement

To assure the mandatory continuing education program will be of high quality, students must comply with the following participation standards:

A student shall direct his active attention to the instruction being provided and refrain from engaging in activities unrelated to the instruction which are distracting to other students or the instructor, or which otherwise disrupt the orderly conduct of a class.

**Examples of Prohibited Conduct:** Sleeping; reading a newspaper or book; performing office work; carrying on a conversation with another student; making or receiving a phone call on a cellular phone; receiving a page on a pager that makes a noise; loudly rattling or shifting papers; or repeatedly interrupting and/or challenging the instructor in a manner that disrupts the teaching of the course.

Education Providers and instructors will enforce student participation standards. Education Providers will NOT issue a course completion certificate to Broker who violates the standards and will report inappropriate behavior to the Commission.

### **Course Completion Reporting**

Education Providers are responsible for reporting course completion information to the Commission via the Internet within **7 days of course completion**. Brokers are responsible for assuring that the real estate license number that they provide to the course sponsor is correct.

Address comments/complaints on courses, instructors, and/or sponsors to:

**Education Officer**

North Carolina Real Estate Commission

P.O. Box 17100

Raleigh, North Carolina 27619-7100

(919) 875-3700

### **Certificates of Course Completion**

Education Providers will provide each Broker who satisfactorily completes an approved CE course a Certificate of Completion on a form prescribed by the Commission. The certificate should be retained as the Broker's personal record of course completion. **It should not be submitted to the Commission unless the Commission specifically requests it.**

**Check the Label on Your NCREC Bulletin/Newsletter**

The number of continuing education credit hours credited by the Commission to your Broker record for the current license period as of a stated date will appear on the mailing label of each edition of the Commission's newsletter. You may also check your **current year's** CE credits online at the Commission's website: [www.ncrec.state.nc.us](http://www.ncrec.state.nc.us). You will need to log in under Broker Login using your license number and pin number. If you are unsure of your pin number, please follow the instructions on their website.

**Please avoid calling the Commission office to verify the crediting of continuing education credit hours to your license record unless you believe that an error has been made.** Please verify that your credit hours have been reported. Your cooperation in this regard will be especially needed during the May 15 – June 30 License Renewal period each year.

## About the Authors



### Everett “Vic” Knight

Vic Knight has been a NC licensed real estate Broker since 1983, a NC Certified General Appraiser, Past-President of the NC Association of REALTORS®, a Past-Chair of the National Association of REALTORS® Appraisal Committee, and vice-chair as a member of the Board of Trustees of The Appraisal Foundation. Vic’s 40+ years in the real estate business includes owning and managing a Century 21 residential and commercial brokerage firm, extensive residential and commercial development, owning and managing a residential or commercial property management company and currently is owner of Appraizr.com, a real estate consulting and full service residential and commercial appraisal firm.

Vic is a “Certified” Instructor and a graduate of (ITI) the Instructor Training Institute and a DREI Candidate. Vic has authored and taught numerous real estate brokerage CE courses since 1998 and also teaches Pre-licensing and Post-licensing classes.

Vic holds a BS in Civil Engineering from NC State University and was a practicing professional engineer with the Bechtel Corporation, prior to entering the real estate industry.

Vic was a Governors appointee to the NC Real Estate Commission in 2009 and served as Chairman from 2013 through 2014. Vic currently serves on the NC State Bar’s Board or Legal Specialization.



**John B. Walker**

John B. Walker is a speaker, author, entrepreneur, and consultant.

He is a graduate of the University of North Carolina, Chapel Hill with a degree in Advertising from the School of Journalism & Mass Communication. He is also a Fellow with the E.A. Morris Fellowship for Emerging Leaders, Class of 2008.

John has been a North Carolina licensed real estate Broker since 2004, and a North Carolina licensed real estate Instructor since 2015. He co-owns RE/MAX Diamond Realty in Mebane, NC, and co-founded START School of Real Estate in 2022.

John began his speaking career in 2010 as a business, sales, and personal development trainer. He became a real estate instructor in 2015 and was the youngest individual to be awarded the Distinguished Real Estate Instructor (DREI) designation by the Real Estate Educators Association in 2017. He was also the recipient of REEA's Rising Star Award in 2020.

He authored ***Real Estate Realism*** in 2022, a book designed to help new licensees find their footing in the real estate industry after attaining their license.

John currently serves as a Board Member and Senior Advisor for several companies, organizations, and public figures. He and his wife have two children.

# How to Get the Most from this Course

- 1) **ASK QUESTIONS.** If you have a question, ask away! If you have an in-depth situation or issue, you would like to discuss, please approach the instructor during breaks or after the course. Even though your instructor has a substantial amount of subject knowledge, he is limited to presenting the course information in the course time allotted. So, be respectful of his time and your fellow student's time when asking questions.
- 2) **TAKE NOTES.** Why let even one good idea get away? Taking notes will help you concentrate and organize your thoughts. Plus, they will allow you to take a "refresher" anytime in the future. **Hint:** The course materials are YOURS; make your notes clear as you write them. Few people ever have the luxury of rewriting their notes, no matter how good their intentions.
- 3) **RELATE WHAT YOU LEARN TO YOURSELF.** Do not settle for "abstract" knowledge. Have your current problems, conflicts, and interests foremost in your mind. As you learn new approaches and techniques, relate them to your own situation. Apply Real Estate License Law, and NC Real Estate Commission Rules to your everyday brokerage service.
- 4) **MAKE A COMMITMENT TO REVIEW YOUR NOTES.** Take the time to review the notes you took. Concern yourself with what you can learn to improve your effectiveness in applying your newly found knowledge to every residence you list, sell, or lease from now on.
- 5) **BE PREPARED.** When preparing yourself or the properties you and your firm represent, be careful to note the appropriate details of the property by inspecting the property carefully. Assemble a comprehensive list of questions to ask the buyers, sellers, landlords and tenants about the relevant issues that will help facilitate a thoughtful transaction that benefit your clients and customers in the normal course of your real estate brokerage practice.

**NOTE:** In brokerage practice, the necessary inspections in every transaction is likely key to a timely and successful transaction and the near-term and long-term relationship with the Client or Customer that is involved.

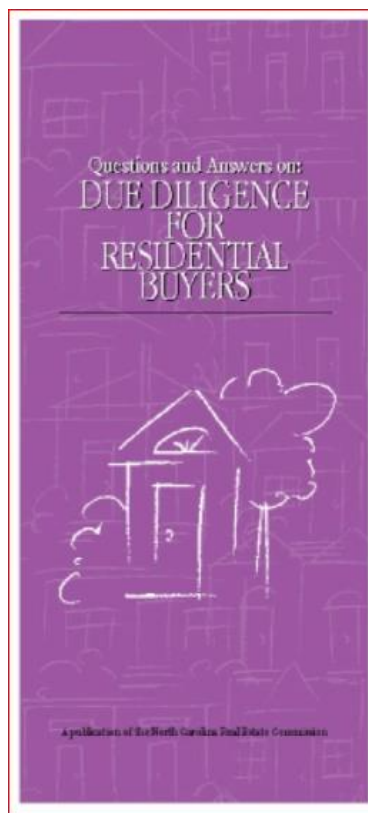
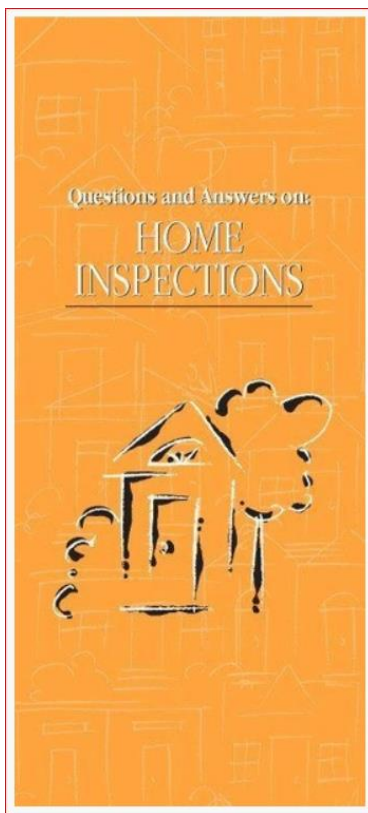


## Introduction:

This Course will assist Brokers with a broader understanding of how the NC Real Estate Commission interprets a Broker's responsibilities and duties related to the inspection of residential and commercial property when acting as a buyer's agent or a seller's agent under NC License Law and NC Real Estate Commission Rules, including what duties Brokers have to discover and disclose what a Brokers knows or reasonable should know about inspecting a residential or commercial properties or when recommending an inspection on a residential or commercial property.

Interpreted under the legal principle of **“what a reasonable and prudent broker should do”** under any circumstance, regardless of the agents transaction position.

Utilize these NCREC Brochures in your Daily Brokerage Practice:



**NOTE to Property Managers:** NC Landlord Tenant Law requires a broker who is practicing residential or commercial property management (as an agent or as the landlord), that brokers have a continuous legal responsibility to provide a tenant with a “Fit and Habitable Residence” at all times.



# Table of Contents / Course Outline

<b>Introduction</b>	<b>8</b>
<b>Course Purpose, Objectives &amp; Overview</b>	<b>13</b>
How to get the Most out of this Course	
Understanding the Concept of “Material Fact”	
<b>Section 1 – Initial Intel Report</b>	<b>15</b>
<b>Inspection Guidelines for Brokers</b>	<b>15</b>
Observed & Verify (A Brokers Duty)	
Broker Presence	
Due Diligence Period	
Owner Inspections	
Confidential Report	
Post Closing Repairs	
Professional Services Disclosure and Election	
No Substitute of Inspections	
<b>Terminology and Definitions</b>	<b>18</b>
Home Inspection	
Home Inspection Report	
Summary Page	
Brokers Duties	
Brokers Responsibility	
Responsibilities If Contract Terminated	

## Section 2 – Material Fact Pattern

19

### Material Facts - MUST be Disclosed

Four categories which define a Material Fact

Misrepresentation & Omission

Legal Basis to Discover & Disclose Material Facts

Duties to Clients (Principals) and Customers (3<sup>rd</sup> Parties)

The Residential Property Disclosure Statement (RPOADS)

Brokers Duty to Disclose When a Party/Principal

Brokers Duty to Discover & Disclose Material Facts

Listing Agents & Buyers Agents Duty to Discover and Disclose

### Material Facts (Facts about the Property)

Manufactured Homes (vs) Manufactured Buildings

Polybutylene Pipes

Square Footage

### Material Facts (Matters Affecting the Property)

Subdivision Streets

Zoning Issues

Flood Plains

Permitting Regulations

On-Site Septic Systems

“Straight-Piping”

### Matters Affecting a Party's Ability to Perform

Foreclosure

“Short Sales”

Failure to Qualify for a Loan

Exterior Siding

Synthetic Stucco

Hardboard

Pressure Treated Lumber

Radon Gas

Lead Paint Disclosure

“Meth Houses”

### **Miscellaneous Material Fact Issues (Special Importance)**

Death or Serious Illness

Presence of Registered Sex Offenders

Gravesites on Property

Lack of Homeowners Insurance

Unpermitted Additions/Improvements

Partial Destruction of a Property

Other Material Facts (which **MIGHT** need to be DISCLOSED)

### **Section 3 – Inspection Types (There’s A Lot)**

**27**

Home/Commercial Inspections

RPOADS & MOG

Antique Houses

Wood-Destroying Insects

Radon

Survey

Legal Inspections

Appraisal

Lead-Based Paint

Mold vs Mildew

Gas Appliances & Systems

Systems on the Property

Fireplace/Chimney  
Moisture  
Structural Components  
Septic Systems  
Wells  
Public Water/Sewer  
Community Water/Sewer  
Building Permits  
Underground Storage Tanks  
Flood Prone Areas  
HOA/POA Documents  
Lots & Acreage  
REALTOR® Code-of-Ethics

## Section 4 – Case Studies

## Section 5 – Resources & Conclusion

**NOTE:** Sources utilized in this course include the *North Carolina Real Estate Commission Real Estate Manual*, The North Carolina Real Estate Commission publication *License Law and Commission Rules*, the North Carolina Real Estate Commission *Real Estate Bulletins* and Mandatory Update courses, and the North Carolina Association of REALTORS® Legal Hotline & Manuals, and NAR's REALTOR® Magazine articles.

**Course Purpose:**

The purpose is to provide brokers with a broader understanding of what their legal responsibilities and duties are when acting as a buyer's agent or a seller's agent in a residential or commercial real estate transaction. This course is specifically designed to assist brokers being in compliance with all regulatory and legal responsibilities when advising a client or customer with the impact on their decisions to inspect a residential or commercial property or hire a 3<sup>rd</sup> party professions to inspect a residential or commercial property and the consequences when they elect not to have the property inspected including by a 3<sup>rd</sup> party professional coupled with compliance with the NCREC License Law & Rules.

**COURSE OBJECTIVES:**

The primary objective of this course is to prepare brokers with the knowledge, skill, and competency to better interpret their legal responsibilities related to any inspections on a property which their client has interest in. Brokers will be better prepared in their brokerage practice to properly protect the consuming public through their actions related to inspections on residential and commercial properties.

Furthermore, it is intended that Brokers will better understand their duties and responsibilities related to the inspections on residential and commercial properties and any disclosures they might be responsible to provide.

**COURSE Overview:**

This course is based on brief summaries of typical questions that are brought before attorneys & the NCREC from practicing brokers in their daily brokerage practice.

Brokers are required by NC General Statute 93A (Real Estate License Law) to comply with all NC Real Estate License Laws and NC Real Estate Commission Rules. Under the broad topic of this CE Course that require brokers to abide by G.S. 93A-6(a) 1 (Brokers can't misrepresent or omit disclosing material facts to all parties in a transaction). Violation of G.S. 93A and/or NC Real Estate Commission Rules may subject a broker to disciplinary action for failure to comply accordingly. It must also be noted that violating any NC Real Estate Commission Rule is also violating NC Real Estate Commission Law: [G.S. 93A-6(a)(15)].

An additional concept that brokers must understand is that of Improper Dealing [G.S. 93A-6(a)(10)]. This broad provision prohibits a real estate licensee from engaging in “and other conduct which constitutes improper, fraudulent or dishonest dealings.” The determination as to whether particular conduct constitutes “improper, fraudulent or dishonest dealings” is made by the NC Real Estate Commission on a case-by-case basis. Therefore, a broad range of conduct might be found objectionable under this provision, depending on the facts of the case. One category of conduct which violates this provision is any breach of the duty to exercise skill, care, and diligence on behalf of a client under the Law of Agency, and brokers are required to fulfill their fiduciary duties to their clients.

### Understanding the Concept of “Material Fact”

(An excerpt from Appendix B [Definitions], and Chapter 8 of the North Carolina Real Estate Manual, describing the factors the NC Real Estate Commission considers in determining whether certain information constitutes a “Material Fact”):

One of the most difficult concepts for many real estate agents to grasp is that of “Material Facts”. The primary problem comes in trying to define the term; any definition necessarily will be somewhat vague because the concept is intended to have a broad application, thereby defying specific definition. This is complicated by the fact that a given fact may be considered “material” and require disclosure in one context, but not another. In its broadest sense, a “material fact” may be said to be any fact that is important or relevant to the issue at hand. Because such a broad definition is not helpful to real estate agents, the NC Real Estate Commission has provided some guidelines regarding what facts the Commission generally will consider to “material” in most real estate transactions.

**Material Fact** – In its broadest sense, is any fact of substance relating to a property or a real estate sale (or rental) transaction that might affect a prospective purchaser’s (or tenant’s) decision to buy (or rent) the property or an owner’s decision to sell (or rent).

**NOTE:** In brokerage practice, the necessary inspections in every transaction are likely keyed on how the broker incorporated those inspections into the conclusion of a successful transaction.

# Section 1

## The initial Intel Report (Guidelines, Terminology & Definitions)

### Learning Objective:

By the end of this Section – Brokers will be able to competently:

- Identify which Inspections best inform their clients & customers of property condition.
- Understand their duties and responsibilities related to property inspections.
- Identify in an Inspection report the important points clients & customers need to know.

### Inspection Guidelines for Brokers:

According to N.C.G.S. §43-151.45, a residential inspection consists of a written evaluation of two or more of the following components of a residential: heating system, cooling system, plumbing system, electrical system, structural components, foundation, roof, masonry structure, exterior, and interior components, or any other related residential component.

For most people, purchasing a home is the largest investment they will ever make. It is no wonder then that many homebuyers employ professionals to inspect the structural and mechanical systems of the home and report on their condition.

The home inspection gives a potential homebuyer a preliminary understanding of the condition of the home. A home inspection evaluates the condition of the home on the day it is inspected, but it does not guarantee compliance with building codes, nor does it guarantee that systems within the home will not fail in the future.



An inspection is not exhaustive or conclusive. Inspections serve as preliminary information for a potential homebuyer to make a determination to proceed with the purchase of a home or terminate the contract based on the inspection findings.

The North Carolina Home Inspector Licensure Board and the North Carolina Real Estate Commission published a joint publication entitled “Home Inspections”. It is designed to give consumers a better understanding of the home inspection process, what a home inspection is, who can perform an inspection and what to expect.

If you have further questions regarding home inspections and home inspectors, contact the North Carolina Home Inspector Licensure Board, 322 Chapanoke Road, Suite 115, Raleigh, NC 27603, 919/662-4480, [www.ncdoi.com/OSFM/](http://www.ncdoi.com/OSFM/) or [www.nchilb.com](http://www.nchilb.com).

### Observe & Verify - A Brokers Duty:

A broker has a fiduciary duty to ensure they represent their clients’ interests at all times, including during the inspection period. A broker who represents a prospective buyer should encourage that client to conduct a home inspection **even if** the home is a new construction, or the seller indicates they are selling the home “As Is,” or a seller performed a prelisting inspection.

**NOTE:** If a broker advises a client (Buyer or Seller) to conduct a home inspection and the client declines, a **prudent broker** would **document** the fact the client chose NOT to have one completed and **put it in the file**.

Brokers need to Remember:

- 1) A Broker should attend the home inspection with their client (Buyer or Seller),
- 2) Brokers must inform their client what the Due Diligence Period is, what it is for, and when it will contractually end,
- 3) A broker should assist the client in evaluating the results of the inspection (thoroughly review it with their client),
- 4) Brokers who are working with a Seller Client should recommend a Pre-Listing Home Inspection (acting as a reasonable and prudent broker),
- 5) Brokers need to remember that the “Home Inspection Report” (the whole report) is **CONFIDENTIAL** (unless the Client makes it otherwise public), but the “**Summary**” portion of the report is **NOT Confidential** and most likely contains

significant Material Fact information which MUST be Disclosed to all parties in the transaction.

- a. Follow the recommendations from the inspection report,
- b. Assist the client in identifying & scheduling 3<sup>rd</sup> party professionals,
- c. Assist & explain to the client, the Due Diligence Repair Request form,
- d. Brokers have a duty to properly communicate with all parties in the transaction,
- e. Advise the client the contractual timeframe for the Due Diligence Period,
- f. Negotiate repairs on behalf of the client including termination of extensions

**NOTE:** There is NO substitute for an inspection when an inspection is known to be needed. The unknown need for an inspection is the reason to hire a licensed 3<sup>rd</sup> party professional to help identify those unknowns before there is a problem. Brokers are held to a higher standard to know when an inspection is warranted.

## Terminology and Definitions:

**Home Inspection:** An evaluation of the visible and accessible systems and components of a home which provides an understanding of the condition of the home.

**Home Inspection Report:** A written evaluation that describes the condition of the functioning and malfunctioning systems within the home.

**Summary Page:** This page describes any system or component that does not appear to function as intended, based upon documented tangible evidence, and that requires either subsequent examination or further investigation by a specialist

**Broker's Duty with Inspection Reports:** A broker has an affirmative duty to disclose ALL Material Facts to clients and customers of everything they know and everything they should know, even if their client instructs them otherwise.

**Broker Prohibitions:** Brokers should not attempt to step outside their area of expertise by interpreting the condition of the residence or over interpreting the facts stated in the inspection report.

Don't practice law without a law license - (Don't draft any addendum to a contract).

Don't give tax or financial advice – (Send clients and customers to accountants, or a lender)

**Broker's Responsibility if a Contract is Terminated and an Inspection Report Exists:** The findings in the home inspection report and the information on the summary page are not considered confidential. However, once the client shares or disseminates this information to other parties in the transaction, the report is no longer confidential.

If a client decides to terminate the contract, the Material Fact findings of the home inspection report must be disclosed to all parties (current and future), because North Carolina License Law and Commission Rules require material facts to be disclosed. Therefore, the listing agent must disclose all the material facts to the buyer's agents and/or buyers interested in the home even if the seller opposes this disclosure.

# Section 2

## Material Fact Pattern

### Learning Objective:

By the end of this Section – Brokers will be able to competently:

- Identify the four categories which define a material fact.
- Be better prepared to properly disclose material facts to all parties in a transaction.
- Be better prepared to avoid misrepresentation or omission of a material fact.

### Material Facts – MUST be Disclosed:

#### The Four Categories which Define a Material Fact

**Facts about the property itself.** Any significant property defect or abnormality. *Examples:* A structural defect, a malfunctioning system, a leaking roof, or a drainage or flooding problem.

**Facts that relate directly to the property.** These are typically external factors that affect the use, desirability, or value of a property. *Examples:* A pending zoning change, the existence of restrictive covenants, plans to widen an adjacent street, or plans to build a shopping center on an adjacent property.

**Facts that relate directly to the ability of a principal to complete the transaction.** Any fact that might adversely affect the ability of a principal party to the transaction (seller or buyer) to consummate the transaction. *Examples:* A buyer's inability to qualify for a loan and to close on a home purchase without first selling his or her currently owned home; a seller's inability to convey clear title due to the commencement of a foreclosure proceeding (posting of a notice of sale) against the seller. [Note, however, that the fact that a seller is behind in making mortgage payments is not a material fact until the foreclosure process has officially been started by posting a notice of foreclosure sale.]

**Facts that are known to be of special importance to a party.** There are many facts relating in some way to a property which normally would not inherently be considered as “material,” but because they are known to be of special interest or importance to a party, they become a material fact that the agent must discover and disclose. *Example:* The fact that a residential property may not be used for a home business due to zoning or restrictive covenants normally would not be a material fact that an agent must specifically discover and disclose. However, if an agent working with a buyer knows that the buyer wants to operate a particular home business from his or her home, then the issue of whether the house being considered can be used for that purpose becomes a material fact which the agent must investigate and, if the proposed home business is found to be prohibited, the agent must disclose this fact to his client buyer prior to the buyer making an offer.

### Misrepresentation

A misrepresentation is *an assertion of alleged fact which ultimately is false*. A **negligent misrepresentation** is also called an unintentional misrepresentation, as it is one made without actual knowledge of its falsity. With a **willful** or intentional **misrepresentation**, the individual either has actual knowledge of the falsity or acts without regard to the truth or accuracy of the matter being stated.

### Omission

While one might misrepresent a material fact, more often than not, the violation is **willful or negligent omission** of material fact, that is, *failure to disclose when there is a duty to disclose*. Understand as well that the duty of Brokers to disclose arises under both the common law of agency, as well as under License Law, but neither of these binds principals nor individuals who do not have a real estate license.

**NOTE:** The courts have elevated the responsibilities of brokers well above the responsibilities of the typical consumer in a real estate transaction. Therefore, when a broker misrepresents or omits material facts to a transaction, then the failure of the duty of agency has been magnified substantially, and the responsibility under agency forsaken even if by error or lack of knowledge. Additionally, when such acts of misrepresentation or omission are willfully entered into by a broker, then the protections owed the consumer under the duty of agency have been intentionally trampled and the consumer’s interest has been completely ignored for the benefit of someone else and the courts have consistently found disfavor with brokers who participate under such actions.

## Legal Basis that require Discovery and Disclosure of Material Facts

**Brokers have a Fiduciary Duty to discover and disclose all material facts to all parties to the transaction of everything they know and everything they should know, even if their principal instructs otherwise.**

**The North Carolina Real Estate License Law** — more specifically, N.C. General Statutes 93A-6(a)(1) & (8)

**G.S. 93A-6(a)(1)** of the Real Estate License Law deals with **misrepresentation and omission** and prohibits real estate Brokers from “.....Making any willful or negligent misrepresentation or any willful or negligent omission of material fact.....”

This statutory provision creates a duty on the part of real estate Brokers to avoid making any misrepresentation, either willfully or negligently, to others regarding a material fact. This means that, when a Broker makes a representation, directly or indirectly, to a party to a real estate transaction regarding a matter that may be important to that party (e.g., square footage), then the Broker is obligated to make certain that he/she does not provide incorrect information, either intentionally or negligently.

**G.S. 93A-6(a)(8)** of the Real Estate License Law deals with Broker **incompetence or unworthiness** and, among other things, has the effect of requiring Brokers to possess the minimum competence necessary to serve real estate consumers in accordance with the law. Brokers are expected to possess the knowledge and skills necessary to discover and disclose Material Facts.

**The Common Law of Agency** imposes on any real estate Broker in an agency relationship certain duties that the Broker-agent owes to his/her principal (property owner, buyer, or tenant) as well as to third parties with whom they do business on behalf of the principal.

**The Common Law of Torts** provides for a civil cause of action against a party who commits *fraud or misrepresentation* in his/her dealings with others.

**(Negligent or Willful)**

**1. Negligent Misrepresentation:**

(You told half the truth)

**2. Willful Misrepresentation:**

(You flat out lied)

**3. Negligent Omission:**

(You discovered half the truth)

**4. Willful Omission:**

(You are intentionally Lazy, untrustworthy, and unprofessional)

**Duties to Clients (Principals) and Customers (3<sup>rd</sup> Parties)**

**Brokers have a Fiduciary Duty to discover and disclose all material facts to all parties to the transaction of everything they know and everything they should know, even if their principal instructs otherwise.**



## The Residential Property Disclosure Statement (RPOADS)



Although not an inspection, brokers cannot ignore the disclosures contained in The Residential Property Disclosure Statement from the Seller of a residential property. North Carolina law N.C.G.S. 47E requires residential property owners to complete this Disclosure Statement and provide it to the buyer prior to any offer to purchase. An owner is required to provide a response to every question by selecting Yes (Y), No (N), No Representation (NR), or Not Applicable (NA). An owner is not required to disclose any of the material facts that have a NR option, even if they have knowledge of them.

However, failure to disclose latent (hidden) defects may result in civil liability. Remember, the disclosures made in this Disclosure Statement are those of the owner(s), not the owner's broker.

### Brokers Duty to Discover & Disclose

#### Listing Agent's Duty to Discover and Disclose

In a *Real Estate Bulletin* article from more than two decades ago (which may be found on the Commission's website), the Commission cited a California appellate court decision as accurately reflecting the Commission's position regarding *negligent omission of material fact*. In ***Easton v. Strassburger***, 152 C.A. 3d 90 (1984), the buyers of a single-family home learned within months after closing that there had been two landslides on the property within the three years immediately preceding the sale, and that the sellers had taken corrective action to prevent further subsurface movement but failed to disclose this either to their listing agent or to the buyers. The value of the property was virtually destroyed due to another landslide shortly after purchase. The buyers sued the sellers, the listing company, and the listing agent. While the listing company and agent argued that they had no knowledge of the previous landslides nor the sellers' corrective actions, the jury nonetheless held them liable under a negligence theory. One of the instructions to the jury was:

“A real estate broker is a licensed person or entity who holds himself out to the public as having particular skills and knowledge in the real estate field. He is under a duty to disclose facts materially affecting the value or desirability of the property that are known to him or *which through reasonable diligence should be known to him.*” (Italics added)

The jury found that the listing agent had inspected the property several times during the listing period and that there was evidence that the agents “were aware of certain red flags” which should have indicated soil problems which they chose to ignore and failed to inquire or investigate further. In affirming the trial court’s instructions to the jury as to an agent’s duty to discover, the appellate court opined:

If a broker were required to disclose only known defects, but not also those that are reasonably discoverable, he would be shielded by his ignorance of that which he holds himself out to know. The rule thus narrowly construed would have results contrary to the policy upon which it is based. Such a construction would not only reward the unskilled broker for his incompetence but might provide the unscrupulous broker the unilateral ability to protect himself at the expense of the inexperienced and unwary who rely upon him.

One question left unanswered by this case was what, if any, duty to discover did the *selling agent* have, and for whatever reason, the buyers did not name the selling agent as a defendant in the lawsuit. The conjecture was that if the “red flags” were reasonably obvious, at least to any broker, who did a careful walk-through of both the structure and the property itself, then the selling agent may well have had a duty at least to advise the buyers to hire a professional to investigate further before proceeding to close.

Similarly, a Real Estate *Bulletin* article from 1992 cautioned Brokers against accepting their property owners’ assertion that there were hardwood floors throughout the structure under the wall-to-wall carpet. The article noted that Brokers have a duty to confirm this information themselves by either looking under the carpet at the floor vents or looking inside a closet which may not be fully carpeted or prying underneath a carpet in a corner of each room. If for whatever reasons the Broker cannot personally verify the accuracy of the statement, then s/he may wish to be cautious of the assertions s/he makes in his/her advertising. The general MLS disclaimer that the information presented is thought to be correct but should be verified by the

buyer and does not absolve the Broker of responsibility for his/her statements. The more accurate representation might be “Per seller - hardwoods under carpet.”

Brokers who seek additional instruction and examples regarding their duty to discover and issues of misrepresentation and omission should consult Chapter 8 of the *North Carolina Real Estate Manual* as well as the License Law and Rule Comments found both in Appendix C of the *Manual* and in the Commission’s publication *North Carolina Real Estate License Law and Commission Rules*, hard copies currently cost \$6.50, and either publication may be ordered from the Commission’s website.

### **Broker’s Duty (As a Buyer’s Agent) to Discover and Disclose Material Facts**

While *caveat emptor* (let the buyer beware) may be alive and well in North Carolina as to most property owners, *Brokers, particularly those acting as agents of the property owner (i.e., listing agents or leasing agents/property managers), have an independent duty to discover and disclose material facts.* Listing agents, as agents of the property owners and the persons making the initial representations in advertising the property, including information submitted to cooperative listing services, bear the primary responsibility for assuring that their statements concerning the property are accurate. However, all Brokers will be responsible for all representations/assertions they make and will also be accountable for failure to disclose those matters which are deemed “material facts.” A prudent listing agent will inform the property owner early in the relationship of his/her duties as a Broker and the obligation to disclose material facts to avoid problems later when the property owner wants his/her agent to keep something which otherwise is a material fact “secret.”

It rarely is a successful defense for an agent of the property owner to argue that s/he merely relied on what his/her property owner told him/her. *A Broker who undertakes to make statements to the public about a property is expected to have personally visited and inspected the property and will be held accountable for his/her representations/statements regardless. A buyer/tenant agent may rely on the property owner agent’s assertions where it is reasonable to do so but is not absolved from discovery obligations where there are “red flags,” i.e., factors which might indicate that a representation may not be true, warranting further investigation, or where there are issues of particular interest or importance to his/her buyer/tenant client.*

# Section 3

## Types of Inspections

### (There are a LOT)

### Learning Objective:

By the end of this Section – Brokers will be better prepared to:

- Explain the importance of employing 3<sup>rd</sup> party professional inspectors.
- Explain the benefits consumers obtain from 3<sup>rd</sup> party professional inspectors.
- Benefit from the knowledge, skill, and competence they will obtain from this course.

### What should Brokers Recommend, why & what to look for - (Discussions Items):

Inspections (Home/Commercial)	Pre-Listing & Post Contract
RPOADS & MOG -	Although not an inspection, brokers cannot ignore the disclosures contained in The Residential Property Disclosure Statement from the Seller of a residential property.
Antique Houses –	One Definition is when a home was built prior to 1970 - (the last time there was a major change in the NC Building Code).
Wood-Destroying Insects	An inspection may be required by Lenders, but it is always a good idea to recommend as an inspection.
Radon	The NCREC strongly recommends that Brokers recommend this inspection on all residential transactions. Remember 4.0 pCi/L (picocuries per liter) is the measure considered to be a Material Fact.

## INSPECTIONS

Survey	An inspection by a licensed Land Surveyor that can discover encroachments, easements, R/W, boundaries, foundations, and other issues.
Legal Inspections	To discover Legal Title issues, Public & Private Streets, Sellers, Liens, Easements, Encroachments, and other legal issues on properties
Appraisal – <b>NOTE: FHA &amp; VA</b>	A valuation service that can assist in discovering the value of real estate as of a date certain
Lead-Based Paint	An inspection to discover if Lead-Based Paint is present on a residential or commercial property which is a significant health risk to children and adults and is also a Material Fact
Mold vs Mildew	An Inspection for Toxic Environmental Health Conditions that can only be discovered by testing by a 3 <sup>rd</sup> party professional
Gas Appliances & Systems	A service by 3 <sup>rd</sup> party professionals for residential or commercial systems, including HVAC, Plumbing, Electrical, etc., to determine if such systems are functioning properly
Systems on the Property	Inspections of systems on residential or commercial property of Pools, Hot-Tub, Irrigation, Invisible Fence, etc. to ensure proper functionality
Fireplace/Chimney	An Inspection to determine if the chimney and fireplace are property functioning and are not a fire hazard.
Moisture	An Inspection mostly dedicated to crawl space areas, but it might include exterior walls (above-grade & below-grade areas) & roofs/attics to determine moisture content in structural components

Structural components	An inspection specifically to determine if the structural skeleton of a residence is performing properly including Foundations and foundation Cracks, foundation settling, wood & steel framing and if damaged by fire or other causes needs repair of modifications and might include driveways and patios
Septic Systems	Usually provided by the county department of environmental health to determine the proper performance of on-site systems which are properly providing a healthy waste disposal and not in need of repair or expansion to support the number of BR's in the residence
Wells	An inspection of on-site potable water which meets all health safety and health regulations to properly support a residence
Community Water/Sewer	Such systems are not public systems and their existence is a Material Fact which also must be monitored and maintained by 3 <sup>rd</sup> party professionals
Public Water/Sewer	Are not a Material Fact if confirmed by the local municipality
Building Permits & CO	Regulatorily required inspection & documentation of all structural, electrical, plumbing and HVAC systems in residential and commercial improvements including additions & modifications ( <b>NOTE:</b> could include previous repairs)
Underground Storage Tank	An inspection by a licensed 3 <sup>rd</sup> party professional to determine if the property (or nearby properties) are contaminated by petroleum or other toxic substances which might create significant long-term health problems including in wells and other seepages on the property ( <b>NOTE:</b> is usually performed as an EPA "Phase 1" set of tests & inspections to meet regulations).

HOA/POA Documents	A disclosure requirement by the seller to provide prospective purchasers with current and proper documentation on the fiscal and functional health of the Homeowners Association who governs the properties in a specific neighborhood which would minimally include a current copy of the HOA's Balance Sheet & Budget
Flood Prone Area's	Usually determined by a licensed land surveyor but can be provided by a certification specifically issued by the Federal Emergency and Management Authority (FEMA) on a specifically identified property to determine the flood risk to that property and its improvements
Land, Lots & Acreage	<p>The inspections for purchasers of this type of property vary widely but might include surveys, soil analysis, vegetation analysis, watersheds, riparian rights, drainage, sedimentation, and pollution challenges (among many other site-specific issues).</p> <p><b>NOTE:</b> Brokerage in Land, Lots and Acreage is the MOST complicated of all types of brokerage transactions and clients should be represented by well trained and experienced brokers.</p>



While the Code of Ethics establishes obligations that may be higher than those mandated by law, the Code recognizes the obligation REALTORS® have to clients, customers, the public, and each other REALTORS®, by continuously striving to eliminate practices which may damage the

public or which might discredit or bring dishonor to the real estate profession.

REALTORS® pledge to observe the spirit of the “Golden Rule” in all of their activities and to conduct their business in accordance with Articles 1, 2, 3, 5, 6, 9, 10, 11, 12, & 16 describe obligations REALTORS® have to disclose certain issues, conditions, & facts, and REALTORS® should follow them.



# Section 4

## Case Studies

### Learning Objective:

Brokers will be able to relate these case studies to their daily brokerage practice to better serve their customers and clients more competently.

### Review of NCREC articles:

**Handling Inspections: Guidelines for Brokers**

<https://bulletins.ncrec.gov/handling-inspections-guidelines-for-brokers/>

&

**Inspections: Varied Tests, Verifications, Property Evaluations**

<https://bulletins.ncrec.gov/inspections-varied-tests-verifications-property-evaluations-offer-many-choices-for-prospective-homebuyers/>

# Section 5

## Inspection Resources

[7 Great Reasons to Own a Home](#)

[Finance a Home, Creatively](#)

[7 Principles for Homebuyer Success](#)

[How to Prepare to Finance a Home](#)

[Questions - When Choosing a RE Agent](#)

[Vocabulary: Loans & Lending Terms](#)

[Worksheet: Track Your Budget](#)

[Questions to Ask About Property Tax](#)

[Questions to Ask the Condo Board](#)

[Green Home Programs](#)

[What to Know About the Appraisal Process](#)

[Worksheet: Define Your Dream Home](#)

[Checklist: Your Final Walk-Through](#)

[How To Buy in a Tight Market](#)

[Vocabulary: Transaction Documents](#)

[What to Know About Title Insurance](#)

[Worksheet: Track Closing Costs](#)

[7 Reasons to Work With a REALTOR®](#)

[How to Improve Your Credit](#)

[How to Prepare to Buy a Home](#)

[Questions - When Choosing a Lender](#)

[Agency & Agency Relationships](#)

[What to Know About Credit Scores](#)

[Questions to Ask a Home Inspector](#)

[What About the Neighborhood](#)

[Questions – to Consider on a Condo](#)

[What to Know About Home Hazards](#)

[What to Know - Home Inspection](#)

[Before Making a Short Sale Offer](#)

[Checklist: Your Mortgage Application](#)

[Homeowners Insurance Costs](#)

[Homeowners Insurance](#)

[Worksheet: Service Provider Contacts](#)

[Your Short Sale Purchase Team](#)

**NC Home Inspector License Board** ([www.ncdoi.com/OSFM/](http://www.ncdoi.com/OSFM/) or [www.nchilb.com](http://www.nchilb.com))

### NAR Articles:

**Consumers Guide to Home Inspections (PDF):**

(<https://www.nar.realtor/sites/default/files/2024-12/consumer-guide-home-inspections-2024-12-17.pdf>)

**What to know about Home Hazards (PDF):**

(<https://www.nar.realtor/magazine/tools/client-education/handouts-for-buyers/what-to-know-about-home-hazards>)

This course was developed by Everett “Vic” Knight & John Walker, whose combined 60+ years’ of experience as NC Real Estate Brokers is providing this experience based on the many unique Observations of other brokers who either elect to recommend inspections or not on residential and commercial properties. These many observations precipitated an awareness of the need to better prepare all real estate professionals with greater knowledge & skills for properly communicating the importance of inspections on residential and commercial properties regardless if the transaction is for occupancy or as an income stream. Real estate professionals will benefit from the suggestions and strategies contained in this course.

Among other things, this course not only provides a review of some of the most challenging inspection considerations but will also precipitate legitimate reasons for inspections to best protect clients and the firm the broker is affiliated with. This course also offers suggestions and recommendations of how to be more pro-active in their disclosures to help eliminate the potential for misrepresentations or omissions related to inspections and the stress it brings to all parties.

This course is intended to assist Brokers in a more pro-active way about the art of encouraging inspections and when necessary, disclosing, early and often, the results of those inspections in their real estate transactions. With a more thorough understanding of these practices, Brokers will be better prepared with acceptable inspection methods which require disclosures and those that don’t.

Strategies covered in this course will assist brokers in how to prepare clients and customers about potential inspections and help them properly manage their expectations related to the knowledge of the existence of the results from those inspections, and the potential liability for lack of such inspections and their disclosures. This course will also address the responsibilities of Brokers who are also REALTORS® of their “Pledge” to the adherence of the REALTOR® Code of Ethics, as it relates to discovery and disclosure of Material Fact in real estate transactions.



**All materials Copyright © 2025 by Everett V. Knight**