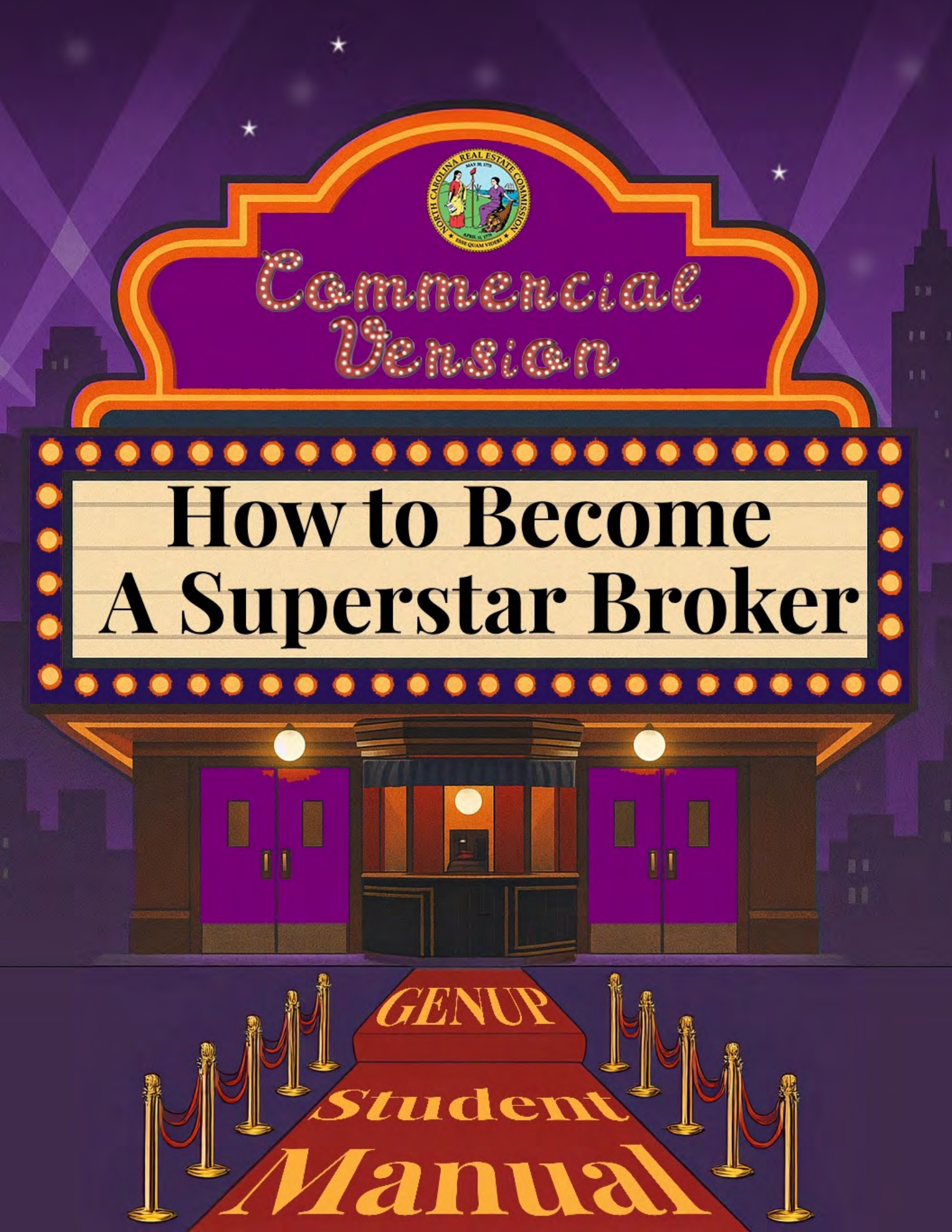

NORTH CAROLINA REAL ESTATE COMMISSION
Commercial Version
How to Become
A Superstar Broker
GENUP
Student
Manual

Welcome to the 2025–2026 Mandatory Update Commercial Version

The North Carolina Real Estate Commission (Commission) is honored and excited to bring you the General Update (GENUP) and GENUP Commercial Version courses for the 2025–2026 season.

The Commission realizes that the Update courses form the core of continuing education (CE) for North Carolina brokers every year. They are the product of months of work, decades of experience, and require the time, energy, and effort of many people throughout the Education and Licensing Division and the Regulatory Affairs Division.

Beginning each fall the Commission relies on input from brokers, instructors, surveys, and staff to identify potential topics. The topics chosen by the Commission provide current information about License Law and changes to Commission Rules, areas of disciplinary concern, and evolving brokerage practices that affect compliance.

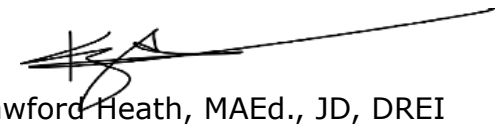
Months of research and authorship are involved in drafting the courses. Every word is reviewed and refined multiple times. The goal is for the Education and Licensing Division and Regulatory Affairs Division to provide consistent, accurate information to consumers and brokers in a unified voice. This year's voice 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. This approach maximizes engagement and encourages interaction between instructors and students. We know students learn best when they are engaged and having fun. We have also integrated AI tools into this year's Update courses to produce higher-quality videos and convey information more innovatively. Numerous resources are provided in the courses.

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

The Commission thanks Cindy Chandler and Scotty Beal for their work on this year's Commercial Versions.

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



Kizzy Crawford Heath, MAEd., JD, DREI
Assistant Director of Education & Licensing

INTRODUCTION

The 2025–2026 GENUP courses are four-hour courses that must be completed by all licensees other than designated BICs and those with BIC-Eligible license status who wish to renew their licenses on active status for the 2026–2027 license year (effective July 1, 2026).

BICs and brokers with BIC-Eligible status must take a BICUP each year to satisfy the Update course requirement and to maintain BIC-Eligible status, as prescribed by Title 21, Chapter 58, of the North Carolina Administrative Code Subchapter A, Sections .1702 and .0110. References to this chapter of the Administrative Code will hereinafter be cited in this manual simply as "Rule" followed by the section number (e.g., **Rule § 58A .1702** and **Rule § 58A .0110**) with hyperlinks provided for quick access.

DEVELOPMENT AND DELIVERY

This Commercial Update course was developed and approved by the staff of the Commission and is delivered exclusively by certified education providers (EPs) and certified instructors, with written approval from Cindy Chandler and Scotty Beal.

Per **Rule § 58H .0101(7)**, an "instructional hour" means fifty minutes of instruction and ten minutes of break time.

Per **Rule § 58H .0403(d)**, EPs shall use the Commission-developed course materials to conduct Update courses. EPs shall provide a copy to each licensee taking an Update course.

According to **Rule § 58H .0207(d-e)**, for each CE course taught, an EP shall provide a course completion certificate signed by the education director (ED) to each student who meets the requirements of **Rule § 58A .1705**. The course completion certificate shall identify the course, date of completion, student, and instructor.

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 ninety percent (90%) 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;

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

(b) With the instructor or the education provider's permission, a ten percent (10%) absence allowance may be permitted at any time during the course, except that it may not be used to skip the last ten percent (10%) 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) an act of God.

COMMENTS AND COMPLAINTS

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

North Carolina Real Estate Commission
Education and Licensing Division
PO Box 17100
Raleigh, NC 27619-7100
educ@ncrec.gov

CONTENTS

ACT 1

AGENCY — PLAYING THE RIGHT ROLE

LEARNING OBJECTIVES

After completing this Section, you should be able to do the following:

- Define key terms related to agency and fiduciary duties.
- Explain the basic requirements of **Rule § 58A .0104**.
- Explain the broker's fiduciary responsibilities to clients.
- 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 a principal, within the bounds of the authority granted by the principal, and who owes fiduciary (legal) duties to the principal.

Fiduciary

A fiduciary is an agent who owes a principal the duties of utmost good faith, trust, confidence, honesty, and loyalty, and who must act solely in the principal's best interests.

Principal (Client)

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

Brokerage Subagency

An agency relationship where the brokerage and all affiliated brokers within the same brokerage of the broker representing the seller act as subagents of the seller. This means that the brokerage, acting through its affiliated brokers, represents 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.

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.

Sole Proprietorship

A sole proprietorship is a business 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. The legal framework that developed around this concept is known as the "common law of agency." Historically, this was based entirely on custom and judicial decisions, rather than written statutes. Today, the common law of agency fills in gaps where statutes are silent, and interprets statutory application in specific circumstances.

These centuries of common law, coupled

with today's statutes, have provided us with a working definition of agency. Specifically, agency is a relationship that authorizes an agent to act on behalf of their principal, where the relationship places certain obligations and benefits on each party.

TYPES OF AGENCY

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 which are outside the agent's authority unless the principal ratifies the act or it reasonably appears to a third party that the agent had such authority.

AGENCY AND FIDUCIARY DUTIES IN NORTH CAROLINA

As defined above, an agent who is a fiduciary has heightened duties to the principal. While not all agents are fiduciaries, in North Carolina, real estate brokers, generally speaking, are considered fiduciaries. Generally, in certain agency relationships in North Carolina, a broker's fiduciary duties are limited, such as when acting as a dual agent.

Absent such a special relationship, brokers have fiduciary duties and must fulfill their responsibilities to their principals while performing brokerage activities.

The fiduciary duties an agent owes to a principal are as follows:

- obedience
- loyalty
- disclosure
- confidentiality
- accounting
- reasonable skill, care, and diligence

There is no specific License Law or Commission Rule that expressly states that brokers owe fiduciary duties to their principals. Rather, these duties are implied from statutes such as Chapter 93A of the North Carolina General Statutes (N.C.G.S.) Section six **N.C.G.S. § 93A-6** and **Rule § 58A .0104** along with the application of common law. References to this chapter

of the General Statutes will hereinafter be cited in this manual simply as "N.C.G.S. § 93A" followed by the section number (e.g., N.C.G.S. § 93A-6) with hyperlinks provided for quick access. Together, they form the foundation that requires brokers to act in good faith to promote the principal's interest. Let's now take a look at each duty in some detail.

Loyalty and Obedience

In an agency relationship, the broker (acting as the agent in the relationship) must act in the best interests of the principal and place the principal's interests ahead of the broker's personal, business, or family interests. The broker must offer absolute loyalty and obedience to the principal and refrain from activities that might conflict with the principal's interests.

The broker must avoid any activities that could compromise the broker's loyalty to the principal or create conflicts with the principal's interests.

Moreover, the agent is bound to follow all lawful instructions provided by the principal so long as they are consistent with the agency agreement. However, it is crucial to note that an agent should not follow any unlawful instructions, regardless of the principal's directions.

Disclosure of Relevant Information

An agent's fiduciary role also mandates acting in good faith and diligently disclosing any information (not otherwise protected by law) that could affect the principal's rights and interests or influence their decisions in the transaction. Relevant information that a broker, acting as an agent, must disclose to their principal includes the following:

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

Brokers must be cognizant of the breadth of this duty. "***Any***" piece of information that could influence the principal's decisions requires great attention to detail. This in turn mandates:

- maintain consistent communication to understand the principal's specific needs; and

- recognize that the appropriateness of disclosure changes as circumstances change.

Confidentiality

The duty of confidentiality requires a broker to carefully balance two competing needs. First, a broker must protect all personal and confidential information of the principal. However, this must be balanced against the broker's duty to discover and disclose all material facts to all parties in the transaction, as well as the requirements of law regarding disclosure. Regardless of the principal's desire to keep a piece of information confidential, the broker must determine whether the information rises to the level of a material fact, or is otherwise required by law to be disclosed. If so, the broker must explain to the principal the duty to disclose despite the principal's preference for confidentiality. Direct and straightforward communication in these instances is the key to successfully balancing the opposing interests concerning confidential information.

Accounting

Brokers must maintain meticulous records and be accountable for their principal's property. This includes safeguarding all real and personal property related to the client's transaction, such as funds, deeds, keys, and documents.

Skill, Care, and Diligence

Brokers 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 may 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
- violation of License Law and Commission Rules.

The agent may be liable to the principal for all damages that are the direct, or "proximate" consequence of 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 real estate transactions, you can review the ***2021-2022 General Update Course Section, "Broker Fiduciary Duties***."

SCREEN TEST QUESTIONS

BROKER SCREEN TEST - CAN YOU MAKE THE CUT?

Fulfilled or Breached?

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.

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

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

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

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

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

PLEASE 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.

BEST PRACTICES FOR AN OVATION ON 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 and 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.
- Account for all the principal's funds and property.

A broker is NOT authorized to:

- give legal advice, draft legal documents to which the broker 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 **Rule § 58A .0104(c)** at or before first substantial contact. This Rule requires that brokers complete the following:

- Provide and review the ***Working with Real Estate Agents*** (WWREA) disclosure form with a prospective buyer or seller at first substantial contact in a real estate sales transaction.
- 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.

After the broker reviews the ***WWREA*** with the consumer, that individual can then decide whether to enter into an agency relationship with the brokerage. If that individual declines, the broker does not owe any fiduciary duties. Moreover, any personal information the broker learned through communications with the consumer is not considered confidential.

Rule § 58A .0104(a) mandates that brokers formalize their relationships with clients through written agency agreements, such as listing and buyer agency agreements, so that all parties clearly understand their contractual obligations.

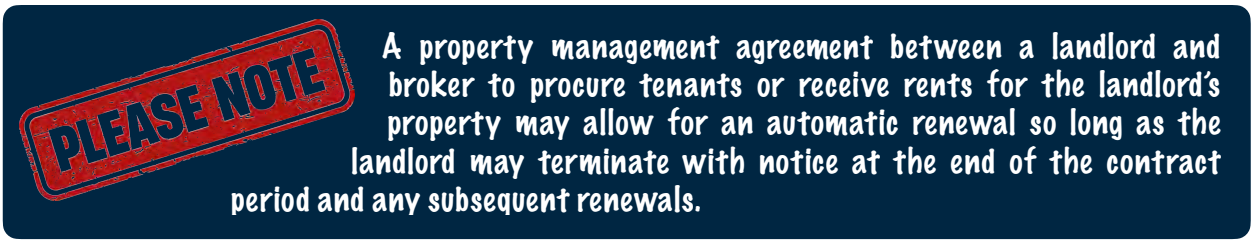
TYPES OF AGENCY AGREEMENTS

Generally speaking, North Carolina brokers deal with two different types of agency agreements, those that are oral and those that are written. As brokers, it is critical that you understand the requirements for each. Equally important is the concept of "express agreements." This is especially true when dealing with oral agency agreements.

EXPRESS AGREEMENTS

The first concept to appreciate is that both oral agreements and written agreements are express agreements. Black's Law Dictionary defines an express agreement as one where the terms and conditions are explicitly stated, either orally or in writing, at the time the agreement is made. In other words, an express agreement requires that both parties have a mutual intent to be bound by the stated terms, and this intent must be clear and understandable.

Obviously this is easily understood in a written agreement, as the terms are expressly stated in writing. Where difficulty may arise, however, is in oral agency agreements.



Brokers ***must*** understand that an oral agreement is a valid contract, but only as to the terms expressly stated. Any term not specifically articulated at the time of agreement is not part of the contract. A broker's best practice when entering into an oral agreement is to have a checklist of all the necessary terms handy during the discussion, and to confirm the agreement in writing as soon as possible thereafter.

ORAL BUYER/TENANT AGENCY AGREEMENTS

Rule § 58A .0104 governs the formation of oral and buyer/tenant agency agreements. The Rule states in pertinent part:

> *(a) … 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. . . .*

While the Rule is stated in terms of when the agreement with a buyer must be reduced to writing, it also established the criteria for an oral agency agreement with a buyer or tenant. A thorough reading of this Rule reveals five requirements for oral buyer/tenant agreements:

- The Rule only allows oral agency agreements with buyers or tenants.
- All such oral agreements must be express.
- No such oral agreements may have a set term, meaning that either party may terminate the oral agreement at any time.
- No such oral agreements may be exclusive with a particular broker or brokerage, meaning that the buyer or tenant is free to work with as many brokers as they want during the oral agency agreement.
- All such oral agreements must end and be reduced to writing when the buyer/tenant wants the broker to submit an offer on a property.

When created properly, oral buyer/tenant agency agreements afford brokers with a great opportunity to display their market knowledge, communication skills, and overall professionalism. The key is to express all of the terms correctly at the outset and know when to reduce the agreement to writing.

WRITTEN AGENCY AGREEMENTS GENERALLY

Any *written* real estate agency agreement must:

- identify all parties to the agreement;
- be signed by each party to the agreement;
- include the broker's license number;
- contain the fair housing non-discrimination language as stated in **Rule § 58A .0104(b)**; and
- specify a definite termination date.

WRITTEN BUYER AGENCY AGREEMENTS

As stated previously, when dealing with buyers or tenants, you may be acting under an oral agency agreement, or you may have reduced the agency agreement to writing from the outset. There is no requirement that you enter into an oral agreement first. However, if a broker is working under an oral agreement, they must remain vigilant regarding when the agreement must be reduced to writing. **Rule § 58A .0104(a)** provides three instances when an oral agreement must become written:

- If the parties agree that the agency agreement will be exclusive.
- If the parties agree that the agency agreement will have a definite termination date.
- If the buyer or tenant wishes to make an offer to purchase, sell, rent, lease or exchange real estate to another, the agreement must be reduced to writing before the offer is made.

WRITTEN AGENCY AGREEMENTS WITH OWNERS & LESSORS

Rule § 58A .0104(a) 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.*

The true import of this Rule is how it pertains property owners. The second sentence in the section makes it clear that when dealing with property owners, the agreement must be reduced to writing from the outset of the agreement. 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 forfeit any right to receive compensation.

EXPLAINING AGENCY AGREEMENTS TO CONSUMERS

Agency relationships may be complex in nature, especially when one is not working within them on a regular basis. As such, they can be challenging to clearly explain to consumers. To assist in this endeavor, brokers may use the Commission publication, ***Questions and Answers on: Working With Real Estate Agents*** (WWREA-Q&A) when 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. Providing the brochure to your consumer early may help them understand the process more clearly. Let's review some of the typical scenarios that this brochure may help you address.

EXPLAINING TO SELLERS

I want to sell my convenience store. What do I need to know about working with real estate brokers?

Answer: *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 brokers to represent you as your listing broker in your dealings with prospective 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 brokers 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 a prospective buyer to know in a transaction.

Answer: *The listing broker/firm must:*

- *promote the buyer's best interests;*
- *be loyal to the buyer;*
- *follow the buyer's lawful instructions;*
- *provide provide the buyer with all material facts that could influence her decisions;*
- *use reasonable skill, care, and diligence; and*
- *account for all monies they handle on behalf of the buyer.*

Once seller has signed the listing agreement, the brokerage company and its affiliated brokers may not, during the agency relationship, disclose any confidential information about seller to prospective buyers or their brokers without seller's permission.

Answer: *To help you sell your property, a listing brokerage and its individual brokers will offer to perform a number of services for a sell. These may include:*

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

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.

EXPLAINING TO BUYERS

The ***Questions and Answers on: Working With Real Estate Agents*** brochure 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 and answers.

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

Answer: *When buying real estate, a buyer may have several choices as to how the real estate brokerage and its brokers work with the buyer. For example, a buyer may only want "exclusive" buyer agency representation. Or, the buyer may be willing to allow the broker to represent both the buyer and the seller at the same time (as a "dual agent"). Last, the buyer may allow the broker to represent only the seller (seller's agent or as a "subagent"). Some brokers will offer a buyer choice of these services, others may not.*

What are a buyer broker's duties to her buyer?

Answer: *If the real estate brokerage and its brokers represent a buyer, they must:*

- *promote the buyer's best interests*
- *be loyal to the buyer*
- *follow the buyer's lawful instructions*
- *provide the buyer with all material facts that could influence her decisions*
- *use reasonable skill, care, and diligence*
- *account for all monies they handle on behalf of the buyer*

Once you have agreed (either orally or in writing) for a brokerage company and its affiliated brokers to be your buyer agent, they may not give any

confidential information about the buyer to and seller or seller's broker during the agency relationship without the buyer's permission. But until a buyer makes an agreement with a broker, the buyer should be cautioned avoid telling the broker anything the buyer would not want a seller to know.

Must a buyer have a written agency agreement with the broker who represents the buyer?

Answer: *It depends! To assure that a buyer and the real estate brokerage have a clear understanding of what the relationship will be and what the brokerage will do for the buyer, a buyer may want to have a written agreement when first beginning to work with a broker. However, some brokerages may be willing to represent and assist a buyer initially as a buyer's broker without a written agreement. But if the buyer decides to make an offer to purchase a particular property, the buyer must enter into a written agency agreement with the broker. If the buyer does not enter into a written agency agreement, then the broker can no longer represent the buyer and is no longer required to keep the buyer's information confidential.*

NCREC VERSUS NAR: WHAT'S THE DIFFERENCE?

The Commission is an independent state agency that regulates real estate practice in North Carolina. Its mission is to protect consumers by educating, licensing, and regulating brokers. This is accomplished through the enforcement of License Law and Commission Rules, which together form the primary regulatory framework governing broker conduct in the state.

The National Association of REALTORS® (NAR) is a trade association for professionals in the real estate industry. All NAR members pledge to follow a Code of Ethics and adhere to established standards of practice. Like many professional associations, the NAR offers exclusive benefits to its members, including educational opportunities, professional designations, discounts, and access to membership in state associations and local multiple listing services (MLS). In North Carolina, just under 55,000 real estate licensees are members of NAR.

A key to understanding NAR's role in North Carolina is to remember that while **all REALTORS® are licensees, not all licensees are REALTORS®.**

LICENSE LAW & COMMISSION RULES VS. NAR STANDARDS

All licensees must understand that our License Law and Commission Rules define the practice of real estate brokerage in North Carolina. No association membership changes that fact. That said, however, a trade association, like the NAR, can create rules and standards by which its members must adhere.

The Concept of Floor Preemption

Floor preemption is a legal doctrine under which a higher level of government—typically the federal government—sets a minimum regulatory standard, or "floor," that lower levels of governmental regulation must meet or exceed. Subordinate governments, such as states, may not enact laws that are less protective than the federal baseline, but they are free to adopt more stringent regulations to address local needs or policy goals. [Think Federal & State Fair Housing laws].

Similarly, consistent with the same hierarchical framework, North Carolina may implement real estate laws set a minimum regulatory standard, thereby establishing the regulatory floor for licensees within the state. Separately, professional associations like NAR may impose their own rules —such as a Code of Ethics or MLS participation requirements—so long as they go beyond what state law mandates (more restrictive). Although these rules do not carry the force of law, they are binding on members and may significantly influence real estate practice by holding professionals to higher standards than those set by the state.

That said, however, if an association were to adopt a rule or standard that was less restrictive than the regulatory floor established by License Law and Commission Rules, licensees in North Carolina would have to follow

North Carolina's regulatory floor, despite their membership in the association.

NAR REFORMS FOLLOWING THE ANTITRUST SETTLEMENT

In March 2024, NAR proposed a landmark settlement to resolve several high-profile antitrust lawsuits. In August of 2024, in preparation for the settlement, NAR imposed widespread policy changes. The settlement was accepted in November 2024 and has since reshaped real estate practices for NAR members. These are two significant changes:

- Members must enter into written buyer representation agreements before showing properties.
- Members may no longer offer compensation in a MLS listing.

This is obviously a departure from how these matters were handled in the past in North Carolina. That said, however, ***these changes apply only to NAR members***. So if you are not a member of NAR, these changes have no effect on how you perform brokerage services.

Oral Buyer Agency Is Alive & Well in North Carolina

Bottom line, oral buyer agency agreements are still permitted in North Carolina. License Law and Commission Rules allow such agreements, when created pursuant to **Rule § 58A .0104(a)**, and reduced to writing before the buyer makes an offer.

NAR's requirement adds the requirement that any oral buyer agency agreement be reduced to a writing before any property is shown to the prospective buyer. This standard only applies to NAR members.

The Impact of NAR's Written Buyer Agreement Rule on Commercial Brokers

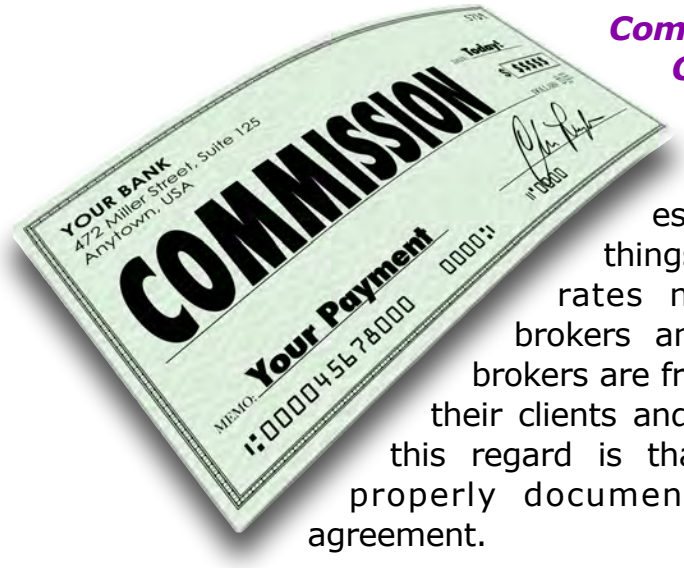
One of the major changes imposed by NAR is the requirement for written agreements with buyers before any property showings, including virtual tours. These agreements allow transparency and for the buyer to understand the services that the REALTOR® will provide the buyer and the amount that the REALTOR® will be compensated for their services.

Of note, however, is that this NAR requirement *only applies to NAR members involved in residential transactions.* **NAR Settlement FAQ #109** states as follows:

> *109. Does the requirement to use a written agreement before showings apply to commercial transactions?* ***ANSWER:*** *No. The settlement and the practice changes it requires are focused on residential transactions, not commercial transactions or leases.*

Thus, NAR members working on a commercial transaction need not be concerned with this NAR requirement, and need only focus on our License Law & Commission Rules as outlined above.

COMPENSATION RULES



Commission Has Few Rules Regarding Compensation

While License Law and Commission Rules define the practice of real estate brokerage in North Carolina, two things they do not address are commission rates nor commission disputes between brokers and brokerages. Thus, North Carolina brokers are free to negotiate commission terms with their clients and brokerages. The sole requirement in this regard is that brokers ensure transparency and properly document the terms of any commission agreement.

Further, there are Rules that pertain to advertising commissions and how commissions are paid. Rule § 58A .0120 mandates that affiliated brokers be paid commissions or referral fees by the affiliated broker's current BIC or their BIC at the time the transaction closed.

Compensation Terms No Longer Prohibited in Offers

As you may recall, Rule § 58A .0112(b)(1) prohibited brokers from including any terms regarding the commission to be paid in preprinted offers or sales contracts. Due to changes made in June 2025 by our General Assembly, the Commission is no longer enforcing this Rule.

NAR Reforms Regarding Broker Compensation

As part of the 2024 settlement, and as articulated in its Policy Statement 8.11, NAR has eliminated compensation offers on any MLS. Specifically:

> *The MLS must not accept any listing containing an offer of compensation in the MLS to other MLS Participants and Subscribers.*

> *Further, the MLS may not create, facilitate, or support any non-MLS mechanism (including by providing listing information to an internet aggregator's website for such purpose) for Participants, Subscribers, or sellers to make offers of compensation to buyer brokers or other buyer representatives.*

This is a seismic shift from how residential listing brokers used to advertise the payment of commission to potential buyer brokers. Residential brokers must use other means of communication to negotiate if and how a commission will be split between the listing broker and the buyer's broker.

Impact On Commercial Brokers in North Carolina

Generally speaking, NAR compensation reform *only applies to NAR members involved in residential transactions listed on an MLS.* As NAR explains in **NAR Settlement FAQ #107**:

> *107. What do these practice changes mean for commercial practitioners?* ***Answer:*** *The proposed settlement agreement . . . is focused on residential real estate transactions. That means most commercial transactions will not be affected….*

Many, if not most commercial brokers in North Carolina advertise listed properties through Commercial Information Exchanges (CIEs), rather than through an MLS. Further, many brokers also use commercial real estate marketplaces (e.g., LoopNet, Crexi, etc.) to advertise their listings. None of these are considered to be, nor operate as, an MLS, thus NAR's compensation rules do not apply to them. Further, and more importantly, CIEs nor commercial marketplaces contain any built-in compensation requirement. Commercial brokers for the buyer and seller communicate directly regarding any splitting of commissions on a given transaction.

There are commercial brokers in North Carolina that do not have access to a CIE through the area association. As such, their only alternative is to list commercial property in the MLS among all the residential listings. As the NAR compensation rule prohibits offers of compensation on an MLS, there is no impact on commercial brokers listing on an MLS either.

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 disclosures and written agency agreements ensuring brokers act in their clients' best interests.

AGENCY PITFALLS

As explained at the outset, licensees are fiduciaries in real estate transactions and are tasked with safeguarding the interests of their clients. Although brokers hold this fiduciary role, they may encounter pitfalls stemming from inadequate knowledge, which can lead to legal and ethical challenges. Among the most significant concerns are self-dealing by brokers and improperly acting as a seller subagent. Let's explore these issues and discuss how to recognize and avoid common pitfalls.

A DOCUMENTARY: ALL MINE, THE PERSONAL PORTFOLIO ENHANCER

After her grandfather's passing, Samantha inherited a commercial building in Cary, currently leased to an apothecary with only eighteen months remaining. After consultation, and upon learning of some needed improvements to the property, Samantha became eager to sell as quickly as possible. Brecca, a listing broker, listed Samantha's building for sale, subject to the lease agreement.

Brecca realized that the fully leased building on a commercial corner in Cary would be a great investment property for her own portfolio and believed that the value of the property would increase exponentially after some renovations. Brecca decided that she wanted to purchase the property herself.

Brecca approached Samantha with an offer and suggested that, given the property's current condition, Samantha should consider selling it to her directly. Brecca reassured Samantha that she was offering a fair price and a guarantee that she could close within thirty 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 fourteen days later.

Critic's Review:

Answer: No! 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.

There is a Commission Rule that specifically addresses this situation. **Rule § 58A .0104(p)** states:

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

Furthermore, **N.C.G.S. §§ 93A-6(a)(8), (10)** empower the Commission to take disciplinary action against brokers who are unworthy; who act incompetently in a manner that endangers the public interest; or who engage in improper, fraudulent, or dishonest conduct. There is a strong argument that Brecca's conduct could result in disciplinary action pursuant to these sections.

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. Any failure in this regard will likely result in discipline.

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 titled ***Self-Dealing vs. Fiduciary*** that compares and contrasts self-dealing and fiduciary duties. Brokers are encouraged to view and share this video with their clients.

A DOCUMENTARY: 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 ***WWREA*** 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 broker. Elvina tells the listing broker that Amy needs to move quickly but fails to disclose her pre-approval amount.

Answer: As will be explained below, Elvina failed to comply with License Law and Commission Rules by breaching her fiduciary duty of disclosure to her principal.

This raises the question: *How did the seller become Elvina's principal when the seller was represented by a different brokerage?* The answer lies in the definition and operation of "subagency."

Most Common Subagency Scenario

Neither the License Law nor the Commission Rules specifically define the term subagent. However, the ***Restatement (Third) of Agency § 3.15(1) (2006)*** provides the following definition:

> *A subagent is a person appointed by an agent to perform functions that the agent has consented to perform on behalf of the agent's principal and for whose conduct the appointing agent is responsible to the principal. The relationships between a subagent and the appointing agent and between the subagent and the appointing agent's principal are relationships of agency.*

A licensee that affiliates with a brokerage (affiliated agent) creates an agency relationship where the brokerage is the principal, and the affiliated agent is the agent, who in this context owes the same fiduciary obligations as they do to consumer-clients. So the act of affiliating with a brokerage creates an ***agency relationship***, not a subagency relationship.

Quite literally, a subagent is the agent of any agent. How does it typically arise when a broker is affiliated with a brokerage? Most often, it occurs when a brokerage becomes an agent for a seller. Remember, when a seller signs a listing agreement, they are entering into an agency agreement with the brokerage, not the individual broker.

Once the brokerage becomes an agent for a seller, all of the brokerage's affiliated brokers become subagents of the seller, in particular the affiliated broker that signed the listing agreement on behalf of the brokerage.

This aligns clearly with our definitions. The brokerage becomes an agent once a listing agreement is signed, thus, its affiliated brokers are automatically agents of an agent (the brokerage), and have fiduciary obligations to the principal (the seller). The affiliated broker/subagent is standing in the shoes of the brokerage as *agent* for the *seller/principal*.

Subagency and Unaffiliated Brokers

With this foundation, we can now consider Elvina's situation. Remember, the listing in our example is with ABC Brokerage and Elvina works for XYZ Realty. At this stage, she has no agency relationship with the ABC Brokerage or their seller.

Elvina then encounters Amy, an *unrepresented* prospective buyer. One can assume from this case study that Amy made it clear to Elvina that she did not want representation. At that point, if Elvina wanted to stay in the transaction, her only option was to act as a seller subagent, if that was

even allowed. Elvina contacted the listing broker, who confirmed that it was allowed under the listing agreement, and that Elvina could act as the seller's subagent. Note that at this point, Elvina owes all of the fiduciary duties to the *Seller* (e.g., loyalty, obedience, full disclosure, etc.) and has no fiduciary relationship with Amy.

With her role in the transaction secured, Elvina then, properly, reviews the ***WWREA*** with Amy and confirmed her representation of the seller. Elvina showed Amy the property, and despite Elvina's cautions about who she represented, Amy disclosed information that was important to any seller.

Elvina, after receipt of Amy's offer, presented it to the listing broker, and also informed the listing broker of what Amy said, but left out the amount of Amy's pre-approval. For obvious reasons, Elvina's failure to disclose Amy's pre-approval amount put the seller in a worse position than the seller would have been had Elvina properly disclosed the pre-approval.

Remember, Elvina owed all fiduciary duties to the seller and was required to communicate to the seller or the listing broker ***all*** confidential, financial, or motivational information provided by the unrepresented prospective buyer. In light of this failure, Elvina could be subject to discipline by the Commission for breach of her fiduciary obligations.

Consequences of Improper Seller Subagency

If a broker 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.

Potential Pitfalls of Allowing Seller Subagency

Subagency can lead to potential conflicts and misunderstandings. As such, it is critical for a listing broker, while explaining the listing agreement, to thoroughly explain what seller subagency means, and describe potential problems that may arise.

The section of the commercial listing agreements that address seller subagency is paragraph two, which states as follows:

> *2. BROKER COOPERATION/AGENCY RELATIONSHIPS: Firm has advised Client of Firm's general company policy regarding cooperating with subagents, buyer agents or dual agents. Client has received and read the "Working with Real Estate Agents Disclosure" and authorizes the Firm to (subject to Sections 7b.(i) and 7b.(ii)) cooperate with the following (Firm agrees to inquire of all agents at the time of initial contact as to their agency status): (CHECK ALL APPLICABLE AGENCIES)*
>
> □ *subagents of Client*
>
> □ *buyer agents*
>
> □ *dual agents representing both Client and the buyer in the same transaction (subject to the terms of Section 16).*
>
> *Any potential agreement between Firm and a cooperating agent to share compensation must be first approved by Client in writing. Forms 541 and 542, as applicable, may be used to document such cooperating compensation.*

This language regarding seller subagency anticipates that brokers will do the following prior to checking any of the above boxes:

- reference that seller has previously received and reviewed the ***WWREA***;
- explain that Firm is not required to compensate a buyer;
- advise seller of brokerage's policy regarding seller subagency; and
- explain how seller subagency works and the potential pitfalls associated with such authorization.

To assist in this regard, the Commission published the article, ***Getting Agency Representation Right: Clarifying the Practice of Seller Subagency*** which reenforces the concepts discussed and elaborates on when acting as a seller subagent is legally permissible, how disclosure must be made, and when fiduciary duties are owed.

Sellers should be made aware of the pros and cons of allowing seller subagency with unaffiliated brokers. Obviously the greatest benefit of seller subagency is that the seller's property may be seen by someone who might now otherwise have known about it.

This however, must be balanced against some of the pitfalls that can arise when seller subagency is allowed. Here are some of the more common issues that can arise during seller subagency.

- Increased Legal Exposure Through Vicarious Liability
  - The seller can be held liable for the acts and omissions of the subagent, even if the seller never met or interacted with the subagent.
  - If a subagent misrepresents a material fact or fails to disclose known defects, the seller may be legally responsible for that misconduct under agency principles.
- Limited Oversight of Subagents
  - Sellers typically have no direct supervision or control over the subagent, yet the subagent still owes fiduciary duties to the seller.
  - The listing firm may also lack sufficient oversight, particularly in large or loosely affiliated firms, increasing the risk of errors, negligence, or misconduct.
- Confusion for the Buyer
  - Buyers working with a subagent may mistakenly believe the subagent represents their interests.
  - This confusion can lead to undisclosed dual agency–like behavior, breach of fiduciary duties, and future claims of misrepresentation or unfair dealing.
- Risk of Dual Fiduciary Breaches
  - Subagents may be tempted to advocate for the buyer (especially when seeking to "make the deal happen") despite having a fiduciary duty only to the seller.
  - Such conduct—intended or not—can undermine the seller's negotiating position and expose the seller to claims of bad faith or failure to disclose.
- Loss of Confidentiality
  - Subagents who interact closely with buyers may inadvertently share confidential information about the seller (e.g., motivation, financial terms, urgency). Such disclosures can weaken the seller's leverage or expose them to unfavorable outcomes.

Because of these concerns, it often may be best for the unaffiliated broker to refer the buyer to the listing broker in exchange for a referral fee, as opposed to taking on the role of subagent.

For listing brokers, all of the above referenced potential pitfalls should be reviewed with the seller so that an informed decision can be made regarding seller subagency. Of equal import, is the need for the listing

broker to be fully aware of the brokerage's policies regarding seller subagency and for that matter to make certain the E&O coverage for the broker/brokerage covers seller subagency, as some do not.

PROPERTY SHOWING SERVICES

In today's dynamic real estate landscape, a notable trend has gained momentum, the hiring of unaffiliated brokers by both listing and buyer brokers to conduct property showings.

This trend is popular in residential real estate, but rarely used by commercial brokers.

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. As such, brokers should consider the following ten questions and answers prior to engaging such services.

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

If a showing broker hosts an open house for a brokerage with whom she is not affiliated, is she just representing potential buyers?

Answer: *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 potential buyers. 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 **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 **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.

Must a showing broker provide and review the WWREA disclosure form with potential buyers at first substantial contact?

Answer: *Under **Rule § 58A .0104(c)**, brokers are required to provide and review the **WWREA** 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 **WWREA** 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.

Can showing brokers be restricted from forming agency relationships with buyers?

Answer: *To safeguard their relationship with their buyer clients, some brokers that hire showing brokers require them to sign restrictive agreements that 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 **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. Thus, any attempt/effort by hiring broker to limit the ability of a buyer to be represented by other brokers (e.g., a showing broker) may be in direct violation of License Law and Commission Rules.

Answer: *Showing a property 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 retains 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.

May a showing broker be paid directly by the hiring broker?

Answer: *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 **Rule § 58A .0120(b)** which 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 showing broker's BIC to comply with the Rule.

The Commission does not care whether showing services companies are licensed.

Answer: ***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.

Does a seller have to consent to the payment and receipt of compensation for showing services?

Answer: *Yes! Showing fees are considered compensation for showing services. Therefore,* ***Rule § 58A .0109*** *requires full disclosure to, and consent from, the principals in the transaction.*

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.

Can the use of a showing service vitiate errors and omissions (E&O) coverage?

Answer: *It depends! Typically E&O policies do not extend coverage to brokers who are unaffiliated with the insured brokerage. Also, most E&O policies do not extend coverage to a broker acting outside the scope of their brokerage affiliation.*

Therefore, brokers and their BICs should carefully review their insurance policies to determine the risks and liabilities associated with hiring showing brokers from outside their brokerage.

May a provisional broker (PB) be restricted from acting for two brokerages at the same time?

Answer: *Yes! Rule § 58A .0506(a) requires PBs to be affiliated and directly supervised by a single BIC to maintain an active license status. However, the Rule provides an exception for PBs to be supervised by two BICs.*

The exception indicates that a PB 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. Essentially, this means that PBs cannot provide brokerage services without the supervision of their BIC.

May two brokers involved in the showing of a property affiliate with an unlicensed entity in order to provide brokerage services?

Answer: *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 **Rule § 58A .0502**.

FURTHER GUIDANCE

NAR has published ***Show Common Sense When Showing Property***, to assist their 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 NAR's Code of Ethics requires its members to "protect and promote the interests of their client," while **Standard of Practice 1-16** clarifies that NAR members 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.

- Agency is a relationship that authorizes an agent to act on behalf of their principal, essentially binding them legally in certain matters.
- An agent owes the principal the following fiduciary duties:
  - 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 all of the agent's interests.
  - disclosure
    - ✦ An agent must provide the principal with all relevant facts that could influence the principal's decision-making.
  - confidentiality
    - ✦ An agent must protect all of the principal's personal and confidential information. However, a broker-agent must discover and disclose all material facts to all parties in the transaction.
  - accounting
    - ✦ 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 in fulfilling their fiduciary duties, consistent with the professional standards of the community.

- In an agency relationship, the broker must not engage in activities that compromise loyalty to the principal or place other interests ahead of the principal's.
- An agent is bound to follow all lawful instructions of the principal, provided they are consistent with the terms of the agency agreement.
- An agent must not follow any unlawful instructions, regardless of the principal's directions.
- An agent must disclose the following relevant information to their principal:
  - 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
  - any other information that might affect the principal's rights and interests or influence the principal's decision in a transaction
- An agent must safeguard the principal's confidential information and may not disclose it to third parties without consent, unless required by law.
- An agent must maintain meticulous records and be accountable for their principal's property.
- The standard of exceptional skill, care, and diligence that brokers are expected to meet is shaped by the following:
  - North Carolina General Statutes
  - Commission Rules
  - court decisions
  - professional standards within the community.
- Failure by brokers to diligently work to achieve the best possible outcomes for their principals may result in the following:
  - charges of negligence or misconduct
  - liability to the principal for any damages the principal may suffer
  - forfeiture of any claim to compensation
  - violation of License Law and Commission Rules.
- Brokers must comply with **Rule § 58A .0104(c)** prior to forming an agency relationship, which requires them to do the following:
  - provide and review the WWREA disclosure form with a prospective buyer or seller at first substantial contact in a real estate sales transaction

  - 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 include the following elements:
  - 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)**
  - specify a definite termination date.
    - ✦ Note that a property management agreement 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, meaning that the agreement, even if oral, must include 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, whereas the proposed NAR rules affect only NAR members and would 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 that supervised the broker at the time of the transaction, and the Commission does not specify commission rates nor arbitrate compensation issues between brokers and brokerages.

ACT 2

FREQUENTLY ASKED QUESTIONS — THE RED CARPET INTERVIEWS

LEARNING OBJECTIVES

After completing this Section, you should be able to:

- identify the most frequently asked questions
- 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 Commission offers brokers multiple, convenient communication options to connect with staff. Brokers may contact the Commission through:

- telephone—staff are available Monday through Friday, 8:30 a.m.–5:00 p.m.
- email—brokers may send inquiries to staff via individual or generic division email addresses listed on the Commission's website
- the Commission's website—contact forms and resources are available online

All callers are asked to provide their name, license number (if licensed), and a phone number. With this information, license specialists or a member of Regulatory Affairs staff will be able to call back, usually the same day. Further, License Services will be able to pull up your specific licensing record to answer questions accurately.

INTRODUCING ALFRED

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 CE requirements. This unique ability enhances the Commission's overall efficiency through proactive engagement and tailored responses.

Calling the Commission

The Commission receives an average of 500 telephone calls and 1,000 emails each day. Although a great majority of broker inquiries are requests for information on licensure and form processing; we still answer a variety of questions that pertain to brokerage activity as well.

Depending on the purpose of the telephone communication, incoming calls are sent to one of two different divisions, either License Services or Regulatory Affairs.

When calling the Commission, brokers will have the opportunity to speak directly with a License Specialist in License Services when guidance is needed on licensure or form submission, or an Information Officer in Regulatory Affairs to help interpret License Law and Commission Rules.

Main number: (919) 875-3700 | Regulatory Affairs (919) 719-9180

PLEASE NOTE

Due to the high volume of calls received, it may be necessary for a broker to leave their phone number, license number, and a reason for their call so that a call ticket may be assigned, and then a member of the Commission staff will return the call.

REGULATORY AFFAIRS

- Complaints
- Investigations
- Audits
- Contract questions
- Compliance concerns
- Transaction questions
- Law and Rule explanations

LICENSE SERVICES

- Continuing Education
- License applications
- BIC status
- Affiliations
- Broker license info
- Pocket cards
- Reinstatements
- Background checks
- License exam

ACTIVE, UNAFFILIATED, "FULL" BROKER

Can an active, unaffiliated, non-PB receive a referral fee paid directly to them?

Answer: *Yes, as long as the broker strictly adheres to the restrictions on what brokerage activities can be performed.*

AFFILIATED BROKER COMPENSATION PAYMENTS

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.

Note that prior to July 1, 2021, affiliated non-PBs could receive commissions or referral fees from individuals other than their BIC, provided the receipt of the commission/referral fee did not violate firm or office policies. The Rule change, however, mandates that ***all*** affiliated licensees 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. 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.

UNAFFILIATED BROKER COMPENSATION PAYMENTS

Note however, that the Rule does not prohibit an unaffiliated non-PB from receiving a referral fee paid directly to them, so long as their license was on active status at the time the referral was placed.

Limitations on an Unaffiliated Broker

Although unaffiliated brokers may be paid directly, they need to understand that the list of permitted brokerage activities is limited if they have not designated themselves as a BIC.

According to **Rule § 58A .0110(a)**, a non-PB who chooses to function as a sole proprietor, but not as a BIC, may not:

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

The Commission's eBulletin article, ***Limited Activities Available to Unaffiliated Brokers*** thoroughly explains the limitations placed on unaffiliated brokers who are conducting brokerage services. An unaffiliated broker, on active status, may engage in only limited activities, primarily:

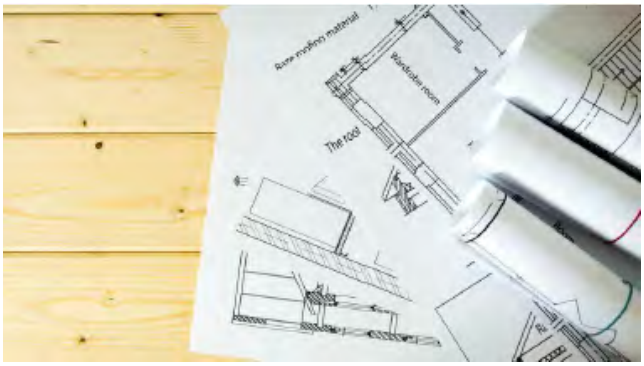
- receiving referral fees from another broker or brokerage company
- selling, buying, or leasing property for their own account
- representing someone as a buyer or tenant broker, so long as the broker did not actively solicit the business.

PROPERTY IMPROVEMENT WITHOUT A PERMIT

If an area of a property was created without a permit, can that area be included in the overall square footage (SF) for the property?

Answer: *Yes, the SF for the area created without a permit may be included in the overall SF for the property. But, this area must be identified separately and disclosed to all of the parties in writing that it was completed without a permit.*

A listing broker should disclose, in writing, all information about an improvement to property completed without a permit, to ensure they are not misrepresenting the property and/or misleading the buyer. Further, this disclosure should include the specific size, location, and other relevant specifications of the area that was improved without a permit.



COMMISSION DOES NOT REQUIRE ADVERTISEMENT OF SF

First, and foremost, the Commission does not require a broker to measure a space, nor advertise the SF of a property. Frequently a commercial MLS will request or require such information, as do many of the online listing services like LoopNet, Crexi, etc., but there is no law or Commission Rule that mandates such information be advertised.

While a commercial broker is not required to do so, it is likely that the market, clients, and competition will necessitate providing this information. For example, consider that most tenant searches for rental space start online and contain a certain size parameter. Even though you may have the perfectly sized space, if you do not provide SF, your property may not be in that prospective tenant's search result.

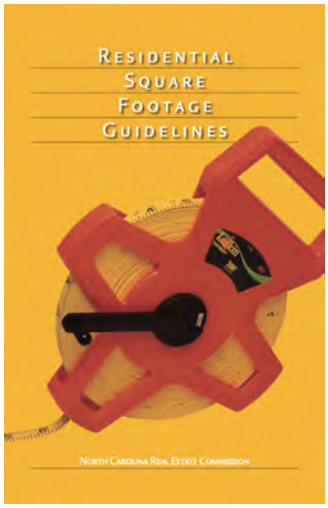
COMMISSION REQUIRES ACCURACY IF YOU ADVERTISE SF

As with any information contained within any advertising disseminated by a licensee, the Commission requires it to be accurate. In addition to

individual brokers, BICs are also responsible for all advertising, including representations about SF in any MLS. Misrepresentations or omissions may result in discipline from the Commission, so attention to accuracy is strongly recommended. A great resource for additional information is Tiffany Ross's article in the eBulletin entitled ***Measuring Square Footage.*** Further, the Commission published an article in 2015 entitled, ***Your Square Footage Measurements Must Be Right When Listing a Property***, which remains relevant today. Brokers should review the article to understand the Commission's responses to common inquiries about SF measurements.

Additionally, brokers and/or vendors may use technology to assist them with measuring the SF 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 SF of a property that is derived from the usage of technology.

RESIDENTIAL SF



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.

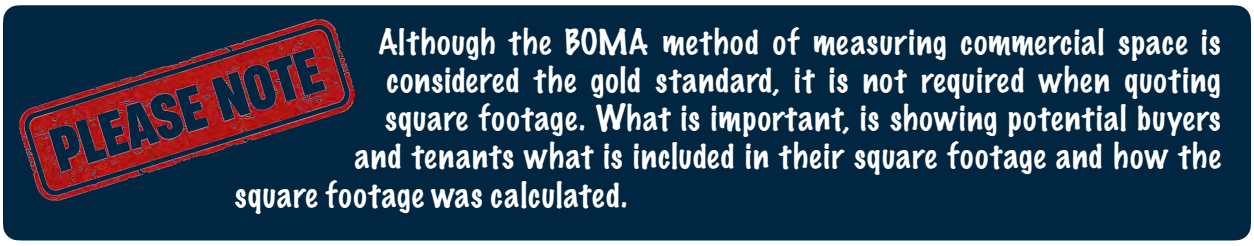
Brokers should also be mindful of the standards used by third-party vendors when measuring a property, as different vendors may follow different guidelines.

STANDARD FOR COMMERCIAL SF CALCULATION

The American National Standards Institute (ANSI) is a private, non-profit organization that administers and coordinates the US voluntary standards and conformity assessment systems. One such set of standards is associated with the accurate measurement of commercial real estate. Our Commission recognizes ANSI standards as comparable standards.

Note, however, as with residential property, NC commercial brokers are not required to state the square footage of a commercial property.

The Building Owners and Managers Association International (BOMA) published the first "Standard Method of Floor Measurement." Today, BOMA's methodology has become the standard referenced by ANSI in commercial property SF measurement through its rigorous and widely adopted methodology. BOMA has developed standards for measuring structures in each major sector of commercial real estate.

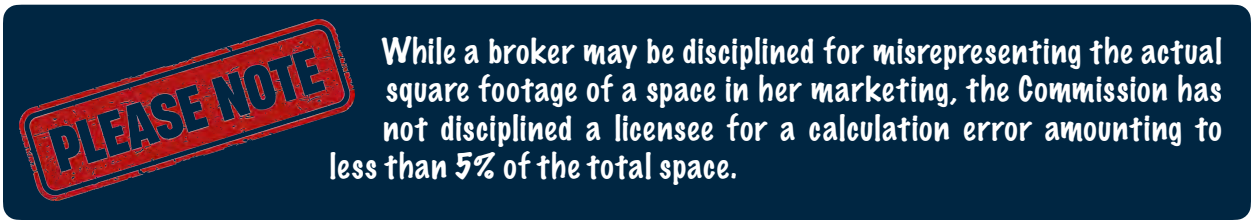


POTENTIAL FOR DISCIPLINE

If a broker incorrectly reports the SF of a property, it may rise to the level of a misrepresentation, and the listing broker and brokerage may be subject to discipline. According 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 BIC is accountable for all advertising and may also face discipline. The Commission will evaluate the factual allegations of each case individually to determine both the cause of the inaccuracy and the percentage difference between the reported and actual SF to determine whether discipline is warranted.

The Commission permits a buyer's broker to rely upon information provided by a listing broker, unless there is a red flag. For example, if a listing advertises a 3,000 SF property when it actually has only 2,000 SF, a competent buyer's broker should detect a thirty-three difference and further verify the advertised square footage.

For more information on the investigative process the Commission utilizes to determine the accuracy of advertised SF, brokers should review the



previously mentioned article, ***Your Square Footage Measurement Must Be Right When Listing a Property***.

UNLICENSED INDIVIDUALS: CO-HOSTING VACATION RENTALS

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

Answer: *No.*

YouTube thumbnail by Patryk Swietek

However, the bigger question is often: ***What is a vacation rental co-host?*** As you may have seen, there are many "make-money" videos online touting co-hosting as a quick path to income. These claims require careful scrutiny.

A co-host is not the owner but rather a person or company hired by the owner to assist with leasing a short-term vacation rental property. Co-hosting allows owners to retain control over their properties while partnering with a co-host or platform to handle specific tasks.

Typical duties include listing optimization, guest communication, check-in/check-out, and limited maintenance or resupply. This flexible model lets owners choose the level of assistance they need, particularly when they live outside the area.

CO-HOSTING VS. BROKERAGE ACTIVITIES

An unlicensed vacation rental co-host cannot be paid for bookings, advertising 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 this Commission eBulletin from May 2025, ***What Can a Co-host Do Without a License?***, an unlicensed individual who wishes to assist a vacation rental owner with online rental platforms may perform the following without having an 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
- be the point of contact for renters for issues that may arise during a tenancy.

An unlicensed individual assisting a vacation rental owner with online rental platforms is prohibited from doing the following:

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

HISTORY OF CRIMINAL ACTIVITY: A MATERIAL FACT?

If a property's occupant participated in criminal activity, is the criminal activity considered a material fact?

Answer: *It depends. Certain information about a property has been deemed immaterial.*

According to [N.C.G.S. § 39-50](), when offering real property for sale, it is not considered a material fact that:

- The property was previously occupied by a person who died while residing there
- The property was previously occupied by a person who had a serious illness while residing there
- A person convicted of a crime requiring registration under sex offender or crimes against minors statutes occupies, occupied, or resided near the property

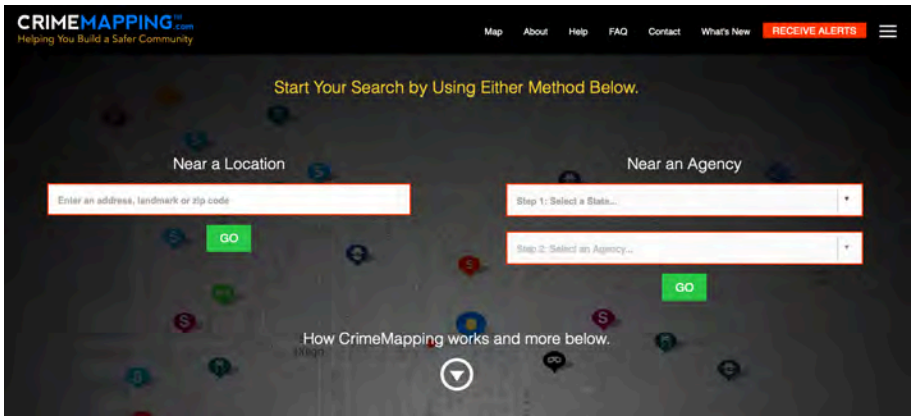
While such information is not a material fact, no seller nor broker may knowingly make a false statement regarding any such fact.

BALANCING FAIR HOUSING LAWS AND DISCLOSURE

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]().



"METH LABS" ARE DEEMED MATERIAL FACTS

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. If a broker knows, or reasonably should have known, that a property was used for the production of methamphetamine (meth), they are required to disclose this information. The Commission does not require brokers to check with the county health department, local law enforcement officials, nor 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 (DEA) maintains a **Clandestine Drug Lab Registry**.

What if the Meth Lab Was Decontaminated?

Brokers may encounter properties that were formerly meth labs, but have been decontaminated. After decontamination, is the fact that it was once a meth lab still a material fact?

The NC Department of Health & Human Services (DHHS) published ***Decontamination of Methamphetamine Laboratories*** which summarizes the steps necessary for decontamination of a meth lab. 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 mattresses
- removal of all carpet and padding 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 decontamination is complete and properly documented in accordance with the law, no disclosure is required.

If a meth lab is found on a property, you can read more information about the decontamination of property in the DHHS's publication ***FAQ for NC Property Owners***.

BROKERS: SELLING THEIR OWN HOMES

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

Answer: *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. The Commission recommends, however, that brokers disclose their license status, verbally or in writing, because having a license may give the broker an advantage during negotiations. However, NAR's Code of Ethics requires its members to disclose they have a real estate license.*

For clarity, brokers should review the information in the Commission's eBulletin, ***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.

WHAT ABOUT RPOADS?

Moreover, every licensee selling owned property, 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 their property** to all parties.

MAY OWNER/LICENSEE REPRESENT THE BUYER?

According to Rule § 58A .0104(o), a licensee selling their own residential property may not represent the buyer in the transaction. This is true regardless of the percentage ownership of the residential property.

However, brokers selling commercial property may represent a buyer, if the broker's ownership interest in the commercial property is less than 25% and the buyer consents to the representation after full written disclosure of the broker's ownership interest.

Please remember, even when selling property you have an ownership interest in, you are still a licensee, and according to N.C.G.S. § 93A-6(b)(3) subject to the Commission's power to discipline. The eBulletin article, ***You are a Broker and Selling Your Own Home*** provides additional information for brokers to consider prior to selling owned property.

SAFEGUARDING PROPERTY: KEYS

Does safeguarding the property of others include keys?

Answer: *Yes. Brokers act as fiduciaries for their principals while conducting real estate transactions. As a fiduciary, a licensee is acting for the principal in a relationship of trust and is thus obligated to act in the principal's best interests, essentially placing the principal'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 relate 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.

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?

> ***Answer:*** *It depends. Typically a real estate agency agreement is a contract that establishes a professional relationship between a real estate brokerage and a buyer or seller (e.g., Listing Agreement or Buyer Representation Agreement).*

Under these agency agreements, the client (principal) has an agency relationship with the brokerage, not with the individual affiliated broker. As such, if a broker terminates their affiliation with their brokerage, the client remains the brokerage's principal.

But the obvious question arises, what if the departing broker wants to take the client with them to her new brokerage? First and foremost, the decision whether to go with the departing broker to a new brokerage belongs to the client. If the client does not consent to going with the departing broker to the new brokerage, the client stays with the old brokerage, end of story.

If the old brokerage, and the client consent, then the agency agreement with the old brokerage is terminated and another agency agreement is created with the new brokerage.

Of note, however, the departing broker may be hindered in taking the client to her new brokerage because of the old brokerage's policies or employment contract, or if an NAR member, by NAR's Code of Ethics. Brokers changing brokerages are strongly encouraged to review brokerage policies and their employment agreement prior to making such decisions.

NAR members must adhere to Article 16 of the **Code of Ethics and Standards of Practice of the National Association of REALTORS® (2024)** and more particularly Standard of Practice 16-20 (NAR Code of Ethics, 2024) which states in part:

> *REALTORS®, prior to or after their relationship with their current firm is terminated, shall not induce clients of their current firm to cancel exclusive contractual agreements between the client and that firm.*

This concept is further explained in the NC REALTORS® (NCAR) Legal Q&A article ***Can a Departing Agent Take Their Clients with Them to a New Firm?*** A departing broker may take current clients to a new brokerage 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 the fact that a property encumbered with a Medicaid lien a material fact?

Answer: *Yes. Brokers must actively attempt to disclose any material fact that may affect a reasonable person's decision to buy, sell, or lease, and the presence of such a lien may do just that.*

TYPES OF MEDICAID RECOVERY IN NORTH CAROLINA

Pursuant to both Federal and State law, Medicaid has two different options to attempt to recover costs for long-term care provided to a Medicaid recipient. The first is a Medicaid Lien that can be placed on real property owned by the recipient while alive. The second is the Medicaid Estate Recovery Plan which can be set in motion after the recipient has passed away, and attaches to the Estate of the recipient.

The statutes that make this possible are **42 U.S.C. § 1396p(a)(1)(B)**, commonly referred to as the Tax Equity and Fiscal Responsibility Act (TEFRA). The ability for North Carolina's Medicaid program to impose a lien on a recipient's property while they are still alive stems from this federal law, which is then incorporated and administered through North Carolina's Medicaid Estate Recovery Plan under **N.C.G.S. § 108A-70.5**.

DELAYS ARE INHERENT WITH MEDICAID RECOVERY

As one can readily imagine, when the state attempts to recoup expenses, delays are likely, which could significantly impact the status of any real estate transaction. These delays, combined with the financial burden of satisfying the lien, make it an issue that buyers, sellers, and brokers must address proactively. Such liens must be satisfied in full with the 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 a 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.

The same exemptions do not apply to commercial property owned by a Medicaid recipient. 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.

As such, 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.

A resource is the eBulletin article entitled ***Medicaid Liens on Real Property***, to assist brokers with understanding the effect a Medicaid lien may have on a property being conveyed during a sales transaction.

ON-SITE AGENTS: WWREA DISCLOSURE

Do on-site sales reps at industrial, business, or retail development sites need to provide the WWREA to prospective buyers?

Answer: *It depends. If the sales representative is a licensed broker, they are required by* ***Rule § 58A .0104(c)*** *to provide the* ***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 required 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 licensee fails to provide the ***WWREA*** when required, they may be subject to disciplinary action.

However, if the sales representative is not a licensee, 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.

Unlicensed sales representatives are not subject to the Commission's regulatory requirements; thus, they are not obligated to provide the disclosure. Brokers engaging with unlicensed sales representatives should be aware that the sales representatives do not have to adhere to License Law and Commission Rules.

For additional information, brokers can review the 2021-2022 Update Course Section, ***The New WWREA Disclosure Form*** for explanations of agency relationships and diagrams.

COMPENSATION DISCLOSURE TO CLIENTS

Must a commercial listing broker obtain the seller's consent to share compensation with a cooperating buyer's broker?

Answer: *It depends! If the listing broker is an NAR member utilizing NCAR Standard Form (Form) listing agreement 571 or 572, then yes pursuant to the changes brought about by the NAR settlement. Non-NAR members, or any licensee not utilizing the Form has no such requirement.*

COMMISSION RULES REGARDING COMPENSATION

The Commission addresses these dynamics through a series of rules and mandatory disclosures designed to promote clarity and transparency.

Rule § 58A .0109(c), states:

> *(c) 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.*
>
> *(2) from any other party or person unless the broker provides full and timely disclosure of the incentive, bonus, rebate, or other consideration, or the promise or expectation thereof to the broker's principal. The disclosure may be made orally, but must be confirmed in writing before the principal makes or accepts an offer to buy or sell.*

Rule § 58A .0104(c) mandates that brokers provide and review the ***WWREA*** at first substantial contact with prospective buyers and sellers.

Rule § 58A .0104(a) requires that:

> *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.*
>
> *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.*

The WWREA Is the Starting Place for Compensation Discussions

Revised in 2021, this one-page document and the companion ***Questions and Answers on: Working With Real Estate Agents*** educate consumers on the different types of available agency relationships 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 for compensating their agent.

The Commission emphasizes that brokerage commissions are negotiable between brokers and their clients and the Commission 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.

WHAT ABOUT DISCLOSING TO THE SELLER THE AMOUNT OF THE COMMISSION THE LISTING BROKER IS SHARING WITH THE BUYER'S BROKER?

No Requirement for Seller or Listing Broker To Pay Buyer's Broker a Commission

It is important to understand at the outset that the payment of a commission to a buyer's broker is not a requirement imposed on the seller or listing agent by License Law nor Commission Rules. Rather, it is a matter negotiated between the buyer's broker and their client. While buyer brokers may attempt to secure commission payment from the listing broker or seller as part of the transaction, it is the buyer that is ultimately responsible for compensating their broker for the services rendered. The buyer agency agreement underscores the principle that agency relationships and compensation are flexible and subject to mutual agreement between the parties involved.

Form Listing Agreement Now Mandates Seller's Written Consent to Sharing Commission with Buyer's Broker

As part of NAR's settlement, changes were made to many of the Forms utilized by NAR members in North Carolina. One such change was to the commercial listing agreements, used by many commercial brokers, that affect the following Forms:

- ***Exclusive Right to Lease and/or Sell Listing Agreement*** (Form #570)
- ***Exclusive Right to Sell Listing Agreement*** (Form #571)
- ***Exclusive Right to Lease Listing Agreement*** (Form #572)

The change appears on all three forms in section number two, Broker Cooperation/Agency Relationships. The new language states as follows:

> *Any potential agreement between Firm and a cooperating agent to share compensation must be first approved by Client in writing.*

This language requires the listing broker to obtain written approval from the seller/client whenever a ***potential agreement*** to share the commission with the buyer's broker is contemplated.

This may be accomplished in a variety of ways. Forms 541 and 542, as applicable, may be used to document such cooperating compensation. But use of these forms is not required.

As such, consent could be obtained through email, or the listing broker could attach an addendum to the listing agreement with the firm's policy stated therein. Technically, this policy could provide blanket authorization to the broker to negotiate cooperative compensation. However, the **best practice** is to obtain written consent each time you are planning to negotiate cooperative compensation, and before communications with the buyer's broker on the topic. See the Appendix for more on this topic.

VERIFICATION OF BROKER'S LICENSE STATUS

I need to verify a broker's license status prior to hiring them for brokerage services. Is the information on the Commission's website accurate?

Answer: *Yes. The license status of a broker on the Commission's website is accurate, real-time data.*

Thus, 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.

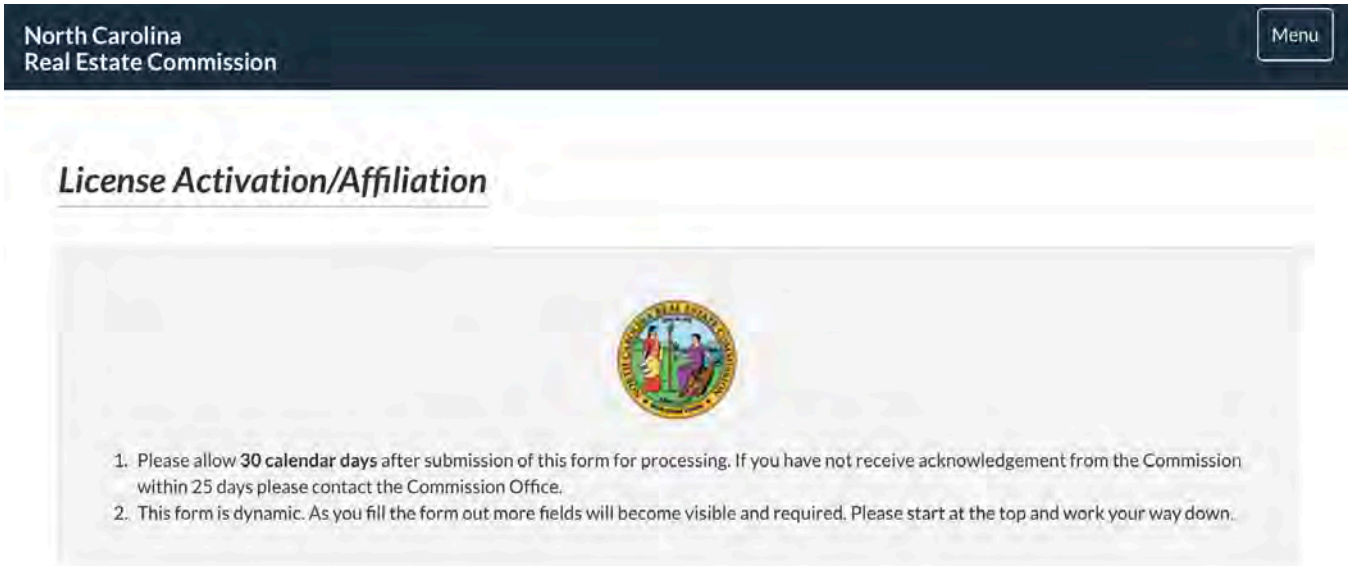
If a broker's license status is inactive, a note will be displayed at the top of their license record, as indicated below.

POTENTIAL FOR LAG-TIME DURING FORM PROCESSING

While the Commission's Licensee Database displays real-time data, licensees must be cognizant of the potential for lag-time between the filing of a form by a licensee and the Commission's processing of the form. Put simply, the mere filing of a form does not immediately result in a change in the database. The database will change once the Commission has reviewed the form for accuracy and processed the information.

For example, assume a PB on inactive status submitted a **License Activation and Broker Affiliation** (Form 2.08) through the Commission's website. Pursuant to **Rule § 58A .0504(d)** and **Rule § 58A .0506(c)**, upon submission of the form, the PB is considered active and may begin work. Despite this, the Licensee Database will not immediately display an "active" license status. As noted at the top of Form 2.08, the Commission will need time to process the request.

So while in theory, the PB has a temporary "active" status, it is pending approval by the Commission. If neither the PB nor their affiliated BIC receive a written acknowledgement from the Commission of license activation within thirty days of the date shown on the form, the PB shall immediately terminate their brokerage activities pending receipt of written acknowledgment from the Commission.



So, if a PB needs evidence of active status for MLS access, they will need to provide proof of their submission of Form 2.08 and reference to the Rules, until their updated status is displayed on the Commission's website.

- The Commission offers brokers multiple, convenient communication options to connect with staff. Brokers may contact the Commission through:
  - Telephone — staff are available Monday through Friday, 8:30 a.m.–5:00 p.m.
  - Email — brokers may send inquiries to staff via individual or generic division email addresses listed on the Commission's website.
  - Commission's website — contact forms and resources are available online.
- 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.
  - document the conversation to protect the broker.
- As of July 1, 2021, all affiliated licensees 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.

- A BIC cannot authorize an affiliated licensee to receive compensation from any other individual.
- Unaffiliated full brokers may be paid a commission or referral fee directly. However, they must understand that their brokerage activities are limited unless they affiliate with a BIC or designate themselves as a BIC.
- The permissible activities of an unaffiliated current and active 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.
- Any area of a property that was constructed without the required permits should be disclosed to all 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.
  - A buyer's agent should disclose to the buyer the size and location of such space as well.
- An unlicensed vacation property co-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**, it is not deemed a material fact in the sale of real property that the property was previously occupied by a person who was seriously ill or died while occupying it, or that a person convicted of a crime requiring registration under **N.C.G.S. § 27A** occupies, formerly occupied, or resides near the property. However, no seller may knowingly make a false statement regarding any such fact.
- Neither License Law nor Commission Rules require brokers who are buying or selling their own property to disclose that they hold a North Carolina real estate license. However, the Commission recommends disclosure because having a license may provide a broker with an advantage during negotiations.
  - Disclosure may be made verbally or in writing.

  - NCAR members must comply with the NAR Code of Ethics which requires disclosure of license status.
- Brokers should exercise reasonable skill, care, and diligence to ensure the seller's property is not damaged, lost, or stolen.
  - A broker affiliated with a brokerage is obligated to safeguard the property (e.g., money, deeds, documents, keys) that relates to the client's transaction.
- Under an agency agreement, the client has a formal relationship with the brokerage, not with the individual broker. If a broker terminates their affiliation with the brokerage, the client remains a principal of the brokerage.
- A Medicaid lien - arising when a state seeks reimbursement for long-term care expenses paid on behalf of a Medicaid recipient—is a material fact because it may delay or prevent the sale of a property.
- If a sales representative in a new subdivision is a licensed broker, they are required by **Rule § 58A .0104(c)** to provide the WWREA disclosure at first substantial contact with the prospective buyer.
- In real estate transactions, it is important to understand that the payment of a buyer broker commission is not a requirement imposed on the seller or listing agent. Instead, it is a matter negotiated between the buyer broker and their client.
- The Commission's eBulletin, ***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 **Licensee Database Search Tool** database now displays all brokers with active or inactive license statuses.

ACT 3

FAIR HOUSING — 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

The Department of Housing and Urban Development (HUD)

HUD is the federal agency responsible for national housing policy and programs that address America's housing needs, improve and develop the nation's communities, and enforce fair housing laws.

Federal Housing Administration (FHA)

The **FHA** is a component of HUD that provides mortgage insurance on loans made by approved lenders, enabling broader access to homeownership. It sets loan limits and underwriting standards, insuring lenders against loss to encourage lending to borrowers who might not otherwise qualify.

Fair Housing Act (Act)

The **Act** is a group of federal laws that forbid discrimination in housing based on race, color, national origin, religion, sex, familial status, and disability.

North Carolina Fair Housing Act (NC Act)

North Carolina's counterpart to the Act, the **NC Act**, is North Carolina law that also prohibits housing discrimination on the same core protected classes as the Act. It operates in coordination with the federal law, ensuring that state-level enforcement and remedies align with, and sometimes expand upon, federal protections.

North Carolina Human Relations Commission

North Carolina's **Human Relations Commission** (NCHRC) is the primary state agency responsible for enforcing the NC Act. It is vested with the

authority to investigate complaints, enforce compliance, and provide education on fair housing rights.

FHA LOAN LIMITS

On November 26, 2024, HUD announced new loan limits for the 2025 calendar year for its ***Single-Family Title II Forward and Home Equity Conversion 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, or those that may not have enough cash for a traditional down payment.

HUD is anticipating that mortgage limits across the country 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

HUD provides an easy reference tool, ***FHA Mortgage Limits*** which allows brokers to look up the FHA or GSE mortgage limits for one or more areas, and list them by state, county, or Metropolitan Statistical Area. 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.

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

BROKER SCREEN TEST - CAN YOU MAKE THE CUT?

TRUE OR FALSE?

Nonlicensees and investors are exempt from fair housing laws when making personally owned property available.

Brokers are exempt from discipline for fair housing violations when they are making available personally owned rental properties.

Violations of fair housing laws can result in criminal charges and imprisonment.

Brokers should rely on screening companies for tenants to get immunity from fair housing violations.

NCREC has full authority to investigate and discipline fair housing violations.

TENANT SCREENING COMPANIES

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

ANSWER: *Yes, housing providers (such as landlords or property managers) can be held liable under the Fair Housing Act for the screening criteria applied—even if those criteria come from third-party tenant screening companies.*

In April 2024, HUD's Office of Fair Housing and Equal Opportunity released updated guidance on applying the 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 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 that non-discriminatory screening criteria are 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 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 methods are applied consistently, in a non-discriminatory manner, and are based on accurate, relevant information. The following are examples of problematic practices:

- Treating an eviction caused by circumstances such as job loss as a blanket disqualifier.
- Imposing minimum income requirements when the rent will be paid by another party.
- Relying on outdated information rather than recent, relevant data.
- Using records that reflect only a negative outcome without considering the full context.

- Failing to include other lawful sources of income, such as housing choice vouchers, when evaluating an applicant's ability to pay rent.

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;
- explaining how housing providers and tenant screening companies must comply with the Fair Housing Act;
- highlighting fair housing concerns; and
- providing 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 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?

Answer: *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.*

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 included. 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.

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.

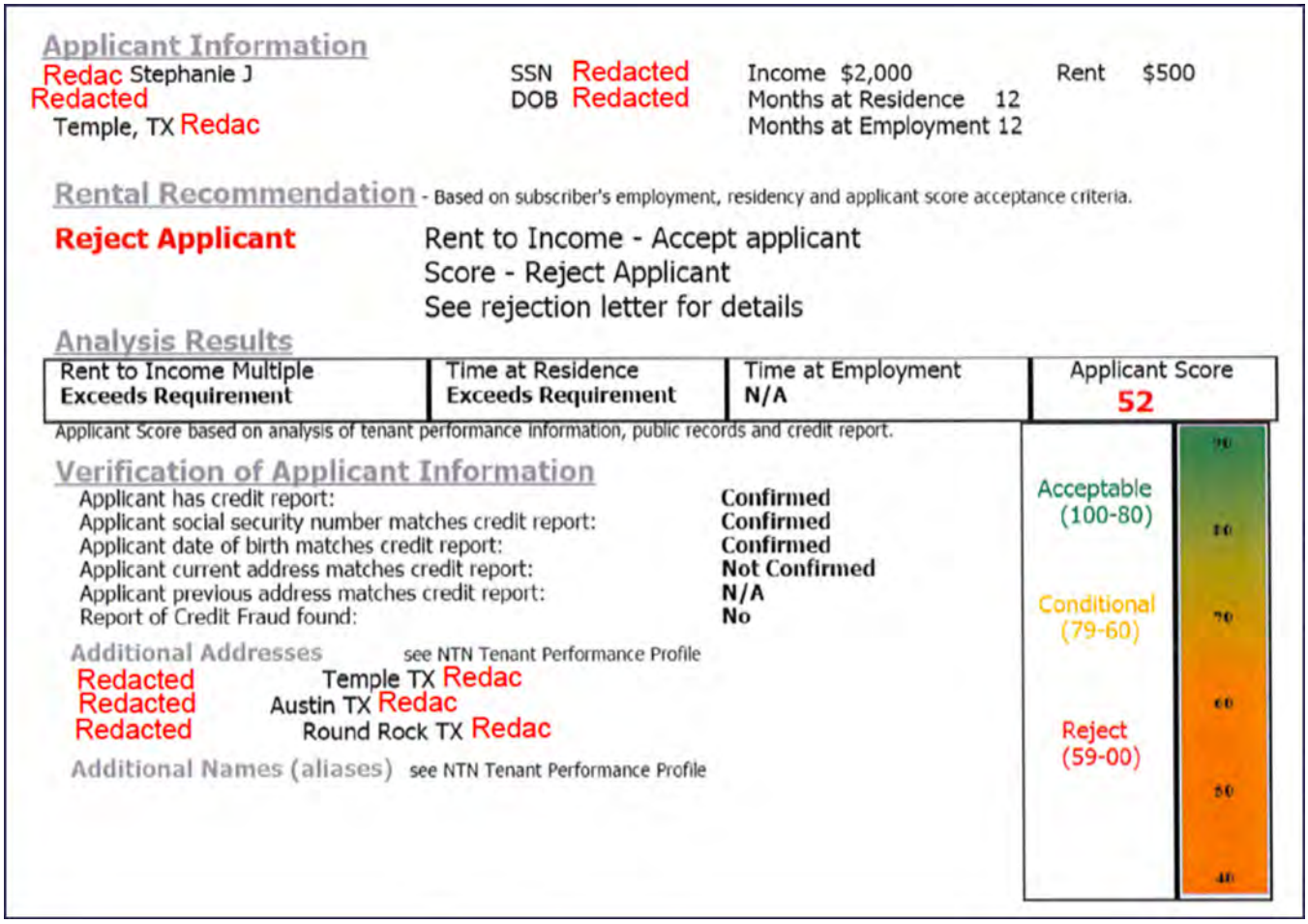
Score for [redacted]**: 538**

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

Housing providers and/or screening companies can estimate the credit score requirements for rental applicants. Some 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.



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)

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

ROLE OF HOUSING PROVIDERS

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

Answer: *Yes because housing providers remain responsible for ensuring that their housing decisions are non-discriminatory, even when using tenant screening companies.*

Because they are ultimately responsible for the decisions they make, allowing applicants to point out potential inaccuracies makes sense. As a best practice, providers should follow these guidelines:

- develop clear policies
  - Transparent, detailed, and publicly available screening policies.
  - Consistently apply policies to all tenants equally.
  - Use screening services or companies that adhere to their policies.
- customize criteria
  - Avoid "off-the-shelf" screening tools by customizing criteria to reflect application requirements.
- evaluate denial recommendations
  - Independently assess whether denial recommendations from screening reports align with established policies.
  - If the data does not justify a denial, consider accepting the applicant and request that the screening company adjust its recommendation.
- allow disputes of inaccurate information
  - Offer applicants the opportunity to dispute inaccurate or irrelevant negative information, regardless of how it was obtained.

Housing providers should choose a screening company that allows the following:

- 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
- 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

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

> ***Answer:*** *Screening companies should disclose the 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..*

Technology is always evolving; therefore, tenant screening companies must ensure their screening models comply with the Act. Housing providers should evaluate whether the platform their screening vendor utilizes offers the following features:

- 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 the platform does not 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, such as lifetime criminal record background checks.
- detailed transparent reports
  - Screening reports should clearly explain denial recommendations, including relevant details such as 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 to challenge the inclusion of accurate records, such as evictions tied to domestic violence, to ensure compliance with fair housing laws. Corrected reports should be promptly sent to both housing providers and applicants, with updates applied to future screenings for the individual.

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 compliant with the Act?

Answer: *Screening vendors should endeavor to employ relevant criteria, accurate data, transparency measures, and carefully tested models.*

The following guidelines can be used by tenant screening vendors and housing providers to assist them in complying with the 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 incidents or circumstances that are unlikely 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 screening companies should apply only the criteria set out in their written policy. Records that fall outside those criteria should not be considered. For example, a misdemeanor conviction should not be factored in if the policy specifies review of felony convictions only. Providers and screening companies should avoid requesting or using information about an applicant's criminal or financial history that is unrelated to the 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 explains the rationale, including supplemental documents like the records used to make 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 across all demographic groups.

When implemented, these steps can help tenant screening companies and housing providers comply with the 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. In fact, HUD discourages evaluating credit scores when a government entity guarantees a significant portion of the applicant's income. When an individual participates in an assisted housing program, the program has already determined that rent is affordable based on the applicant's income.

HUD also encourages housing providers to consider circumstances that may make an applicant's credit history irrelevant, such as when:

- the applicant has a co-signer who satisfies the financial requirement;
- a negative credit history is due to an event that is unlikely to recur (e.g., a medical or family emergency);
- a household member meets the financial requirements, eliminating the need to evaluate another household member's credit history; and
- minimal or poor credit history is related to domestic violence, dating violence, sexual assault, or stalking.

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 such as software platforms and artificial intelligence. Upholding these standards not only ensures compliance with the Fair Housing Act but also fosters a more equitable evaluation process for rental applicants based on their individual merits while ensuring equal access to housing.

HUD indicates that waiving or adjusting credit screening practices for an applicant may be required as a reasonable accommodation if the applicant has poor credit history due to a disability.

FAIR HOUSING CASE STUDIES

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

Answer: *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%	

A DOCUMENTARY: VARGAS V. FACEBOOK

Facts: In 2019, Rosemarie Vargas, a disabled Hispanic mother of two children, used Facebook to try to find a place to live in Manhattan. She alleged that her search produced no ads for housing. When a white friend used the same search criteria while sitting beside her, the friend received housing advertisements in desirable locations.

Ms. Vargas and other plaintiffs filed a class action lawsuit against Facebook, alleging discriminatory outcomes in its housing advertisement system. According to the plaintiffs, Facebook's advertising tools allowed advertisers to select their target audience, effectively steering housing advertisements away from users in protected classes. The plaintiffs claimed this practice created a segregated marketplace that deprived individuals in protected classes of equal housing opportunities.

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

Decision

The Ninth Circuit reversed the district court's decision in a memorandum opinion, [***Vargas v. Facebook, Inc.***, No. 21-16499, 2023 WL 4145434 (9th Cir. June 23, 2023), amended, 2023 WL 6784359 (9th Cir. Oct. 13, 2023)] making several key points:

Standing and Injury: Plaintiffs alleged a concrete injury consisting of the deprivation of truthful information and housing opportunities. They argued that because Facebook's practices concealed certain housing ads from users in protected classes, the harm occurred at the moment the ads were withheld—so it was not necessary to identify the specific ads they never saw.

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.

Section 230 Immunity: The Court addressed Facebook's claim of immunity under the CDA, which generally shields online platforms from liability for content created by third parties. The Ninth Circuit held that

Section 230 did not apply because the plaintiffs alleged that Facebook acted as a co-developer of discriminatory content, rather than merely publishing third-party material. By enabling advertisers to exclude users based on protected characteristics, Facebook's conduct exceeded the protections afforded it by the CDA.

This ruling clarifies that technology platforms may face liability when their tools or algorithms contribute to discriminatory outcomes, even if those outcomes originate from user-generated content. The decision reflects broader concerns about the intersection of civil rights and digital technology, and it paves the way for heightened scrutiny of discriminatory practices on online platforms—particularly in housing and other essential services.

DEPARTMENT OF JUSTICE CASE HIGHLIGHTS

In 2023, the U.S. Department of Justice (DOJ) secured forty-three settlements and judgments, resulting in $56 million in monetary relief related to violations of the Act, including addressing redlining and disability discrimination. Let's discuss some of the most notable cases that exemplify the DOJ's commitment to enforce fair housing laws and ensure equal access to housing for all.

A DOCUMENTARY: U.S. v. DOS SANTOS

Facts: Since the early 1970s, Salazar dos Santos managed residential rental properties located in and around Chicopee, Massachusetts on behalf of two different ownership trusts. Since at least 2008, dos Santos subjected female tenants living in the properties to discrimination based on sex, including severe or pervasive and unwelcome sexual harassment, on multiple occasions.

Procedural History: In December, 2020, the DOJ filed a civil lawsuit in the U.S. District Court for the District of Massachusetts [***United States v. Salazar dos Santos***, No. 3:20-cv-30191-MGM (D. Mass. May 3, 2023),

alleging that dos Santos and the ownership trusts violated the Act by sexually harassing tenants.

Decision: On May 3, 2023, the Court entered a consent decree that required the Defendants to:

- pay $425,000 in damages to six victims and a $25,000 civil penalty to the US;
- 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 training on the Act to property management staff; and
- bar dos Santos permanently from property management roles in any residential rental property transactions.

A DOCUMENTARY: U.S. v. SSM PROPERTIES

Facts: In 2016 and 2017, the Louisiana Fair Housing Action Center conducted testing to evaluate the Defendants' compliance with the Act. The tests revealed that the Defendants engaged in housing discrimination on the basis of race. Specifically, they treated Black individuals who visited their properties to inquire about rental units differently and less favorably than similarly situated White individuals visiting for the same purpose.

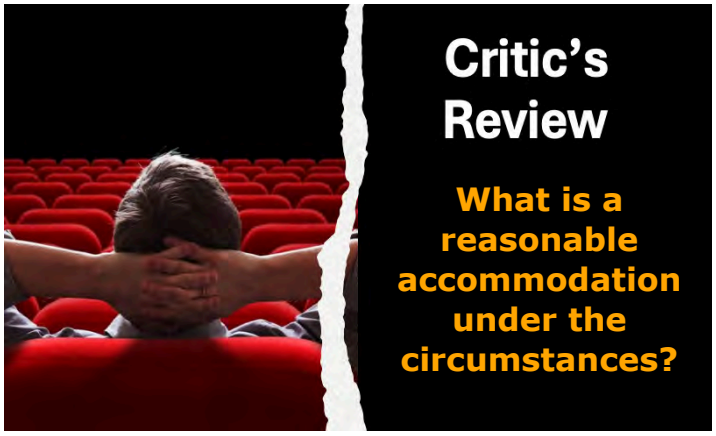
Procedural History: Following HUD's determination that no cause of action existed, the DOJ filed suit and in 2022 moved for summary judgment [***United States v. SSM Props., LLC***, No. 3:20-cv-729-CWR-LGI (S.D. Miss. N. Div. Aug. 3, 2022). The DOJ alleged that the owners and manager of three apartment complexes in and around Jackson, Mississippi,

violated the Act by steering Black testers to one complex and falsely claiming no vacancies at two others.

Decision: On August 3, 2022, the District Court granted Plaintiff's motion for summary judgment, and the Defendants then agreed to a ***consent decree*** that required the Defendants to pay $110,000 in damages and attorneys' fees, plus $13,000 in civil penalties.

CASE STUDIES AT THE MOVIES: U.S. V. ALBRIGHT CARE

Facts: Ruth Gural suffered from a cognitive impairment that substantially limited her ability to care for herself on a day-to-day basis. From December, 2017 until July 8, 2022, Mrs. Gural resided in one of Defendant's facilities. Mrs. Gural's son, who had power of attorney, arranged for daily care from a home care agency. However, at the outset of the COVID-19 pandemic, the Defendant's facility banned all outside home care individuals from the premises. In light of this, Mr. Gural moved in with Mrs. Gural to provide her the necessary assistance. In May, 2020, Defendant took steps to remove Mr. Gural and evict Mrs. Gural for failure to adhere to the COVID policy. Mrs. Gural requested a reasonable accommodation which was denied. Due to the constant threat of eviction, the Gurals moved out on July 8, 2020.



Procedural History: In 2023, the DOJ filed suit against Defendants alleging discrimination under the Act and sought an injunction against further such discrimination and for monetary damages [***United States v. Albright Care Servs.***, No. 4:23-cv-00594 (M.D. Pa. Apr. 11, 2023).

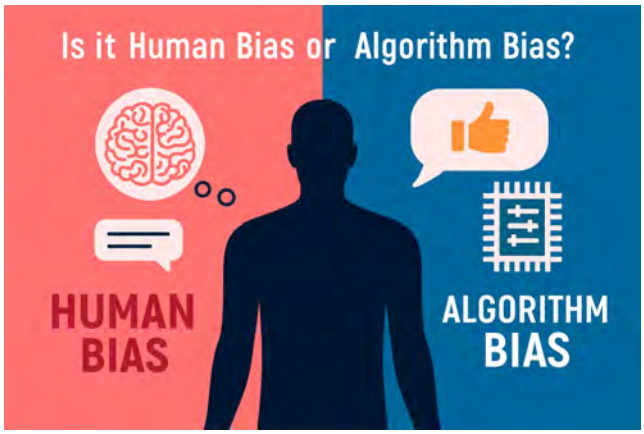
Decision: Defendants agreed to a

consent order that mandated rescission of the discriminatory policies; to adopt reasonable accommodation policies across their facilities in Pennsylvania, Maryland, and Tennessee, and to pay $215,000 in damages.

ALGORITHMIC BIAS

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

Answer: *Yes. AI-generated platforms can violate the Fair Housing Act if their algorithms result in discriminatory housing practices, whether intentional or not. This includes using data or targeting methods that unlawfully limit or exclude individuals based on protected characteristics such as race, color, religion, sex, disability, familial status, or national origin. If an AI system facilitates or perpetuates bias in advertising, screening, or other housing-related decisions, both the platform provider and those using the platform can be held liable under the 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 appears in tech platforms because algorithms are written by people; therefore, the platform is susceptible to bias, either implicit or explicit. Fundamentally, 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, color, religion, sex, disability, familial status, national origin, or any other protected characteristic under the Act. Therefore, NFHA conducted a survey to evaluate housing organizations' awareness regarding the risks/ benefits of using AI systems in housing.

The survey revealed a wide range of awareness levels 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 effectively conduct enforcement actions.

Visit the **NFHA website** if you would like additional information regarding algorithm bias or the effect that artificial intelligence may have on fair housing.

Fair Housing: A Right, Not a Partisan Issue

Now more than ever, we must defend fair housing as a public good. Join us in standing up for equal opportunity and inclusive communities.

- On November 26, 2024, the FHA announced new 2025 loan limits for its Single-Family Title II Forward and Home Equity Conversion 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 Act to tenant screening practices. The guidance provides a process for housing providers and tenant screening companies to identify the following:
  - Best practices for ensuring compliance with the Act.
  - Instances where applicants can ascertain when they may have been unlawfully denied housing.
- It is important for individuals to comprehend that the Act applies to housing decisions, regardless of the technology that is used to screen the applicants.
- The screening of rental applications should not rely on irrelevant criteria, as such information does not help determine whether an applicant will be a successful tenant. Such records include the following:
  - Evictions resulting from temporary job loss.
  - Minimum income requirements when rent will be paid by another individual.

  - Outdated information rather than recent, relevant data.
  - Data with a negative outcome without context.
  - Exclusion of lawful sources of income, such as housing choice vouchers.
- Data in tenant screening reports varies. 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 provides all of the following:
  - customizable tools
  - regular updates to data/software programs
  - monitoring for discriminatory effects
  - clear reasons for denials
  - the ability for applicants to correct inaccuracies
  - disclosure of key details about its screening systems
  - compliance with all relevant laws and regulations.
- The NFHA is committed to addressing how technology intersects with civil rights. Algorithms are written by humans and, whether implicit or explicit, bias can be embedded in these systems. The absence of intent does not excuse noncompliance with fair housing laws.
- When algorithms are used in housing decisions, they can disparately impact individuals on the basis of protected characteristics.

ACT 4

LICENSING & EDUCATION

LEARNING OBJECTIVES

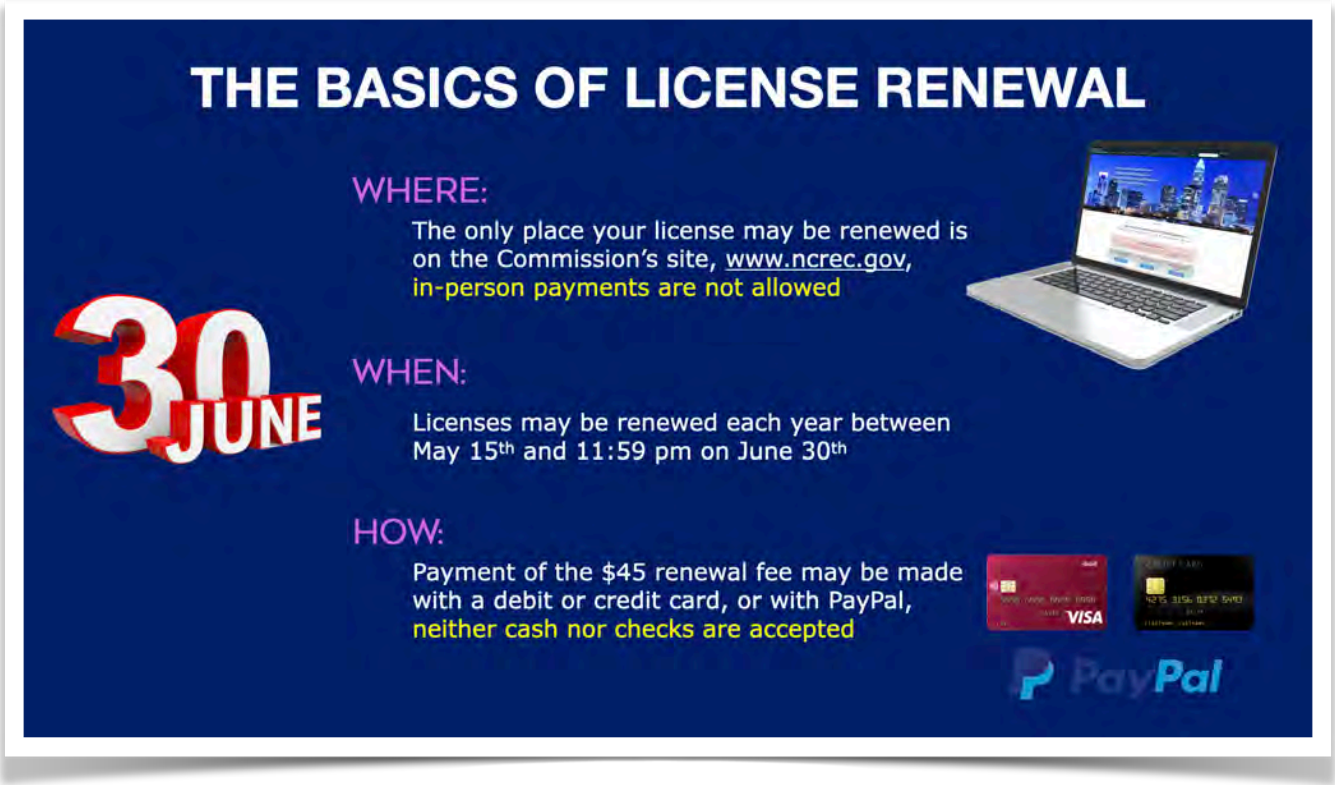
By the end of this Section, you should be able to:

- 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 forty-five-day renewal period between May 15th and June 30th. The annual renewal fee is $45.00 and must be:

- Paid online via the Commission's website
- Received by the Commission by 11:59:59 pm on June 30



Don't wait until the last minute on June 30th to renew your license. If the Commission's website is down, your internet or power is down, or something else prevents you from renewing, then your license will expire and you will have to deal with the consequences that result from your failure to timely renew your license.

FROM THE DIRECTOR'S CHAIR - EDITING OUT THE CONFUSION

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

Can I renew my license before completing my annual CE courses?

Answer: *Yes. License renewal is not contingent upon a licensee completing required CE courses. As such, a licensee may choose to renew their license on inactive status or prior to completing CE courses.*

Neither License Law nor Commission Rules require a licensee to complete CE courses prior to renewing their license. Theoretically, a broker wishing to maintain an active license could renew their license on May 15th and then complete their required CE no later than June 10th.

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

I am the BIC and qualifying broker of my firm. Must I renew both my individual license and firm license?

Answer: *Yes. An advantage of completing CE prior to renewing a license is that the licensee obtains knowledge and becomes more informed on the Commission's policies early in the license year.*

Thus, the licensee is made aware of law and Rule changes and reminded of their duties and obligations to protect the public as soon as possible. While it remains the licensee's decision when to take CE and renew their license, the earlier you take the CE, the sooner you are up-to-date changes.

I am the BIC and QB of my firm. Must I renew both my individual license and firm license?

Answer: *Yes. A broker who is both a BIC and qualifying broker (QB) of a firm is responsible for renewing both their individual broker license and the firm's license during the annual May 15th through June 30th renewal period.*

If the **BIC of a firm fails to renew their individual license** by the June 30 deadline, on July 1, the following will occur:

- The BIC's license is placed on expired status.
- All affiliated licensees are unaffiliated:
  - Previously affiliated broker licenses remain on active status at their home address.
  - Previously affiliated PB licenses are placed on inactive status because they are no longer affiliated.
- The firm license remains 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 have been reestablished under a new BIC.

If the **QB of a firm fails to renew their individual license**:

- The QB's license is placed on expired status.
- The firm license is placed on inactive status.
- The BIC of each of the firm's offices is undesignated, but the BIC's license remains on active status at their home address.

- All affiliated licensees are unaffiliated:
  - Previously affiliated broker licenses remain on active status at their home address.
  - Previously affiliated PB licenses are placed on inactive status because they are no longer affiliated.
- All brokerage activity at the firm must cease until:
  - a new QB is named;
  - the firm license is activated;
  - a new BIC is designated for each firm office; and
  - all broker affiliations and agency agreements are reestablished with the reinstated firm.

If the **QB** timely renews their individual license but **fails to renew the firm license**:

- The firm license is placed on expired status.
- The BIC of each of the firm's offices is undesignated, but the BIC's license remains on active status at their home address.
- All affiliated licensees are unaffiliated:
  - Previously affiliated broker licenses remain on active status at their home address.
  - Previously affiliated PB licenses are placed on inactive status because they are no longer affiliated.
- All brokerage activity at the firm must cease until:
- All brokerage activity at the firm must cease until:
  - The firm license is activated.
  - A new BIC is designated for each firm office.
  - All broker affiliations and agency agreements are reestablished with the reinstated firm.

Answer: *No. The QB's license must be on active status for the firm license to be renewed.*

As long as the firm has an actively licensed QB and the firm's license is timely renewed, the firm license remains 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 activities under the firm's name. While losing an actively licensed BIC only takes an individual office down, losing an actively licensed QB disables the entire firm.

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 activities at any office without a designated BIC.

Do I, as a QB, have to complete CE even if I am not actively practicing brokerage?

Answer: *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.

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

Answer: *Yes. Although a broker may intentionally place their license on inactive status, if the inactive license is not renewed, it expires.*

If a licensee's license expires, they must requalify for licensure before practicing real estate brokerage again. If a broker wants to activate their inactive license, the broker would need to meet the educational requirements under Rule 58A § .0504(d) and Rule 58A § .1702(a)-(b), respectively.

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

Can I legally complete pending transactions with an expired license?

Answer: *No. If a broker's license expires on June 30 for non-renewal, that broker cannot engage in any brokerage activities beginning July 1. This includes attending a closing for any client transaction pending before the license expired.*

The firm with which the expired broker was affiliated would have to send an actively licensed affiliated broker to represent the firm's client. A licensee with an expired license may not resume brokerage activity until the license is reinstated to active status.

EXPIRED AND INACTIVE LICENSURE

To lawfully engage in brokerage activity, an individual or entity must have a current real estate license on active status at the time the licensee provides the brokerage services.

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

Answer: *No. Remember, "placing a referral" is a brokerage activity, and as such, a licensee must have a current and active license at the time of making such a referral.*

A license on active status means the licensee has completed eight hours of CE by June 10 each year and renewed their broker license by June 30.

I am a PB licensed in February 2025. Do I have to take CE by June 10, 2026?

Answer: *Yes. Rule 58A .1702(c) indicates that, to maintain eligibility for an active license, annual CE courses must be completed before the second renewal following initial licensure and upon each subsequent renewal.*

In this scenario, a licensee who received their initial license in February 2025 must renew for the first time by June 30, 2025. No CE is required at the time of that first renewal. In their second license year (July 1, 2025–June 30, 2026), the licensee must complete CE no later than June 10, 2026, to keep the license active. The licensee may complete their second renewal as early as May 15, 2026, and CE can be completed any time before June 10, 2026. If the CE is not finished by June 10, the license renews on inactive status.

As a PB, am I required to take postlicensing education and CE if I haven't affiliated with a BIC?

Answer: *Yes. Per Rule § 58A .1902(b), a PB must complete their postlicensing education within eighteen months of initial licensure (not the 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 are 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 for a broker's license, per Rule § 58A .1703, with a CE delinquency are quite stringent.

Can I take CE with an inactive license?

Answer: *Yes. Rule 58A § .1702(e) provides that a broker is not required to take CE while their license is on inactive status.*

However, a licensee is well advised to take CE while on inactive status in preparation for easy license activation under Rule § 58A .1703.

Will I receive CE credit for successfully completing a postlicensing course?

Answer: *No. Postlicensing courses do not provide CE credit, per Rule § 58A .1704.*

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

Answer: *No. Courses taken by brokers to satisfy education requirements for other states or other license types, such as appraisal or home inspection, may not 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 equivalent CE 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 completed 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.

Answer: *No. There is no provision within License Law or Commission Rules for an automatic waiver of the postlicensing requirement.*

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 thirty-hour postlicensing courses under the following circumstances:

- The broker has obtained equivalent education to the Commission's postlicensing courses pursuant to Rule § 58A .1902.
- Licensed broker or salesperson in another state, working at least forty hours per week for at least five of the seven years immediately prior to the waiver request.
- The broker has worked forty hours per week as a licensed North Carolina attorney practicing real estate matters for two years preceding the 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.

BROKER LICENSE REINSTATEMENT / REACTIVATION GUIDE

Many licensees contact the Commission, EPs, and instructors with questions about how to get their real estate license "up to date." To correctly answer this query, three specific criteria must be determined:

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

DISTINGUISHING BETWEEN INACTIVE AND EXPIRED

The Commission 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.

Whenever a licensee is attempting to remedy an expired status or inactive status, the process begins with the licensee curing any CE deficiency that may exist in their license record.

Please review the Guides below for how to reinstate an expired license and/ or activate an inactive license.

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

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

ACT 5

LAW AND RULES—THE PROCESS OF RULEMAKING

LEARNING OBJECTIVES

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

TERMINOLOGY

Office of Administrative Hearings (OAH)

The OAH is an independent, quasi-judicial state agency created to keep rulemaking, investigation, advocacy, and adjudication as separate functions in the administrative process. OAH conducts legal analysis and administrative review, compiles and publishes the ***North Carolina Register*** and the ***North Carolina Administrative Code***, and provides both 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 may be submitted to the Commission during a sixty-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 force and effect of law. The Commission Rules are published in **Title 21, Chapter 58 of the North Carolina Administrative Code**, which is the official publication of the Rules that govern the Commission and real estate licensees.

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 passed by the North Carolina General Assembly. The General Assembly consists of the Senate and House of Representatives.

THE RULE-MAKING PROCESS

Rulemaking is the process by which the Commission clarifies laws through the adoption, amendment, or repealing of rules. The permanent rulemaking process begins with the Commission proposing a new rule, a change to an existing rule, or the elimination of an existing rule. The Commission then sends the proposal to the OAH.

OAH has the authority to review the entire rule and request Commission staff to address any concerns or to provide clarity on its proposal in light of the existing rules. OAH then publishes the proposed changes in the ***North Carolina Register***, which provides notice to the general public that the Commission has started the process to adopt, amend, or repeal a rule.

Once the proposed change is published, interested parties have two opportunities to comment on the proposed change. The first opportunity is the public comment period. Public comments can be submitted to the Commission during a sixty-day comment period. The second opportunity is during a public hearing that is held shortly after the proposed changes are 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 ended, the Commission must analyze all of the comments, evaluate how the proposal will affect stakeholders (e.g., brokers, brokerages, EPs, and instructors) and decide whether to adopt, amend, or reject their initial proposal. If the Commission, in light of the comments, decides to withdraw its proposal, the rulemaking process will end. On the other hand, if the Commission makes a substantial change to its original proposal, based upon the comments received, then the revision is republished, and another sixty-day comment period begins.

If the Commission decides to move forward with its rule proposal as written, the rule proposal is then sent to the RRC. Once the RRC has received the proposal, they conduct a review to ensure that:

- the Commission has followed the rulemaking requirements;
- the proposed rule change establishes a purpose with clear language; and
- the Commission has the legal authority to make the change.

If the RRC objects to the proposal, the Commission will then have the option to either revise its proposal or abandon the proposal and end the rulemaking process. If, however, the RRC approves the Commission's proposal, it is entered in the ***North Carolina Administrative Code***.

FINES AND RESTITUTION

The Commission plays a vital role in regulating the conduct of real estate licensees 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 or statements of any person or entity if:

- licensed under License Law;
- acting as a broker without a license (e.g., engaging in brokerage activities without authorization); or
- a person files a complaint with the Commission.

Under this Statute, the Commission has the power at any time to suspend or revoke a license issued under 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 also recognizing the importance of consumers' economic losses.

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

COMMISSION RULE CHANGES EFFECTIVE JULY 1, 2025

During 2024, the Commission proposed several changes to Commission Rules that became effective on July 1, 2025. The changes that directly impact brokers are summarized below.

A DOCUMENTARY: RULE 58A .0106

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 Susan, the BIC and property manager at XYZ Realty, to email her a copy of the agreement. Susan indicated that she would send her a copy within seven business days.

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. The Rule, however, did not address a subsequent request from a client for a copy of the document.

But, **Rule § 58A .0106** was amended to address this issue. The amendment now requires a licensee to comply with a customer or client's subsequent request for a document within three days of receipt of a request. This change allows clients and customers to request and receive 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 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 five days.

Anticipated Impact on Brokers

The primary anticipated impact for brokers is the need to adjust their workflows slightly to accommodate client-initiated document requests at any time. 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:

- Use effective record keeping, in digital or physical form, so documents can be retrieved and delivered within three days of receipt by the broker or of a customer or client's request.
- Educate customers and clients about their right to request documents and the broker's duty to deliver copies as required by the Rules.
- Implement workflow solutions to streamline document sharing and track deadlines with customers and clients.
- Maintain written office policies to ensure affiliated brokers comply with their responsibility to deliver instruments to customers and clients in a timely manner.

A DOCUMENTARY: RULE § 58A .0302

Mark filed a license application with the 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, unrepresented, withdrew his license application.

Rule § 58A .0302 was revised to prevent applicants from reapplying for an 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 by licensee candidates increased the administrative costs of reviewing 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 this Rule change is minimal, as it applies only to a specific subset of individuals involved in the licensing process. Licensees will not be affected by this amendment.

This amendment does not disrupt the current licensing process but reinforces its 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 adversely affect 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 before submitting your application.
- Submit a petition for predetermination if you would like the Commission's opinion on the likelihood of licensure in light of your criminal background.
- Proofread your application carefully for accuracy and truthfulness before submission.
- Periodically update your application to ensure the information remains current.
- Disclose criminal convictions and disciplinary actions proactively, including supporting documentation.
- Respond promptly and remain responsive and cooperative with Commission staff during the character and fitness review process.

A DOCUMENTARY: RULE § 58A .0502

David, a broker, created and registered ABC Realty with the NC Secretary of State. He submitted a firm license application to the Commission and indicated that he created the entity for compensation purposes only. In the firm license application, David indicated he would be the QB and did not need to designate a BIC under License Law and Commission Rules. While the application was pending, a complaint was filed against David by a previous buyer client alleging he failed to disclose material facts in a transaction. The Commission found probable cause against David.

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.

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

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

> *(a) 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. For purposes of this Rule, the term "principal," when it refers to a person or entity, means any person or entity owning 10 percent or more of the business entity, or who is an officer, director, manager, member, partner, or who holds any other comparable position.*
>
> *(c) 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:*
>
> *(11) any pending or previous professional license disciplinary action against the firm, its principals, or any proposed broker-in-charge;*

Under the amended Rule, the QB must set forth in the firm license application whether there are any pending or previous professional license disciplinary actions against the firm, its principals, or any proposed BIC. Thus, 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 or as a designated BIC of a firm, or both.

Anticipated Impact on Brokers

The anticipated impact of this Rule is minimal. 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.
- Disclosure of any pending or previous disciplinary action involving the professional license of a principal, the firm, or a 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 N.C.G.S. 93A-6(a).

Best Practices for an Ovation for Compliance

Brokers applying for a firm license should adhere to the following best practices prior to submitting a firm license application to the Commission:

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

EDUCATION RULE CHANGES EFFECTIVE JULY 1, 2025

A DOCUMENTARY: RULE 58H .0204

Lisa, a prospective student, registered for a prelicensing course with XYZ Realty School of Real Estate based upon their Google and Yelp reviews by former students. After she registered and paid for the course, she received the Policies and Procedures Disclosure (PPD) from the EP. After reviewing the PPD, Lisa became frustrated because her work schedule prevented her from meeting the attendance requirements set forth by the EP. Lisa requested a refund for the course. The ED, however, advised Lisa that the school does not issue any refunds.

Provision of PPD Prior to Enrollment

Rule § 58H .0204 was amended in two ways, first to address this issue, and second, as discussed below, providing up-to-date pass rates. The purpose of this two-prong rule change was to enhance transparency and accountability among EPs. The first change clarifies that EPs must deliver a PPD to ***prospective students*** before they register for a course.

Furnishing a PPD prior to enrollment ensures that prospective students understand important policies, expectations, and course requirements before registering and paying. Requiring this disclosure promotes informed decision-making and lessens the potential for misunderstandings regarding policies between students and EPs.

Referral to Commission's Data on EP's Pass Rates

The second change to this Rule appears in § 58H .0204(b)(8) which requires EPs to put a statement in the PPD referring the prospective student to the Commission's website for the ***Education Provider License Examination Performance Record*** including passage rates. Advances in technology and data collection/processing now make access to real-time data possible, so this change enhances transparency and provides prospective students with truly relevant information.

Also, the Commission wants to maintain consistency in how exam pass rates are displayed and advertised to the public. This change reinforces consumer protection and provides consumers with current, up-to-date information so they can make an informed choice of EP.

Effective July 1, 2025, Rule § 58H .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.

Anticipated Impact on Brokers

This Rule change has minimal impact to licensees who are not Eds or EPs.

Best Practices for an Ovation for Compliance

EDs/EPs should implement the following best practices to ensure compliance and maintain transparency regarding the examination pass rate statistics for consumers:

- Ensure their PPD is published for all prospective students.
  - 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.
  - Train staff/instructors to verify that all prospective and enrolled students have received the PPD.

- Modify the PPD to remove any specific exam pass rates and provide a direct link for students to review the ***up-to-date exam pass rates*** on the Commission's website.

A DOCUMENTARY: RULE § 58H .0206:

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 or otherwise provided in a misleading way. The problem was that prospective students were not

The Commission amended **Rule § 58H .0206** to promote up-to-date transparency and accuracy of relevant educational statistics. EPs and instructors are no longer allowed to advertise or make available any ***Education Provider License Examination Performance Record***, license examination pass rates, or course completion rates. Further, EPs may not reference nor publish the past rates of other EPs or instructors except as published by the Commission.

This change ensures that all students receive unbiased, verified data from a single source, the Commission's website. Also, prospective students will be able to make informed decisions based on verifiable real-time data rather than 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 licensees unless they serve as EPs instructors, or both. For EPs and instructors, the greatest impact would be utilizing the Commission's website data in their promotional/marketing materials.

Best Practices for Compliance

EPs will need to amend their advertising and marketing to ensure compliance. Further, EPs and instructors will need to modify how they respond to prospective student inquiries about license examination pass rates. For example, EPs and 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.

To ensure compliance, 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.
- Edit or update student course materials periodically to reflect the information displayed on the Commission's website.

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.

A DOCUMENTARY: RULE § 58H .0209

Rule § 58H .0209 was revised to improve clarity and organization. First, the title was reordered 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:

(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 the Commission Rules.

The third revision involved removing language from the Rule that was obsolete.

Anticipated Impact on Brokers

The revisions to this Rule do not impact licensees, unless they are an EP/ ED. Even the impact on an EP is minimal.

Best Practices for an Ovation for Compliance

EPs may want to consider implementing the following best practices to assure compliance:

- Review **Rules § 58H .0209** and **§ 58H .0416**.
- Modify renewal checklists, staff policies, procedures, and administrative handbooks to incorporate the current License Law and Commission rule requirements.

A DOCUMENTARY: RULE § 58H .0302

Prior to July 1, 2025, applicants to the Commission for Instructor Certification were not required to take any type of competency examination. This year, **Rule § 58H .0302** was amended to require all applicants for Instructor Certification pass an examination based on License Law & Commission Rules. This change ensures that instructor applicants have a comprehensive understanding of License Law and Commission Rules and can contribute quality instruction to real estate education. The inclusion of an instructor approval examination provides an opportunity for instructor

applicants to demonstrate their knowledge in License Law and Commission Rules and an ability to effectively teach real estate courses.

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.

Anticipated Impact on 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 the Rule, including successfully passing an instructor approval examination prior to registering for the New Instructor Seminar.

Best Practices for an Ovation for Compliance

The following best practices may assist instructor applicants in complying with this Rule:

- Review the requirements to become an instructor in **Rule § 58H .0302**.
- Review License Law, Commission Rules, and the Comments thereto.
- Schedule and take the instructor exam prior to enrolling for the New Instructor Seminar.
- Adhere to all additional instructor requirements.
  - Complete the Update Instructor Seminar (UIS) and at least six hours of a real estate instructor program each year. The UIS must be completed prior to teaching an Update Course.

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.

A DOCUMENTARY: RULE § 58H .0416

XYZ School of Real Estate (XYZ) wrote a CE course entitled "There Goes the Sale." Each year, XYZ licenses certain EPs to use, offer, and teach the course.

However, the course materials expired on June 30, 2025. While XYZ renewed its course materials for the license year 2025-2026, it did not reissue approval for other EPs to offer this course.

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

Rule § 58H .0416 has been adopted to outline the renewal and expiration requirements for course renewal. Specifically, once a CE course is approved, its approval will expire annually on June 30th.

In order to renew course approval, the owner of the CE course material, or another person authorized in writing by the course owner dated within six months prior to submission for renewal, may submit the course for renewal.

The submission for renewal shall include, in addition to the foregoing, the mandated course renewal fees and an original course approval pursuant to Rule § 58H .0401 if the course has not been renewed or has been renewed twice since initial approval.

The purpose of this Rule is to ensure 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. Further, the Rule enhances the quality of education

brokers will receive due to the courses being thoroughly reviewed for accuracy every three years.

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, Rule § 58H .0416 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 EPs and the real estate education courses they offer to students and brokers. The following are some key changes that EPs will experience:

- Annual expiration of course approvals on June 30 following the initial course approval.
- Course ownership or permission certification requirement.
  - To renew a course approval, EPs 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.
- Submission of an application of original course approval.
  - An EP 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.

Best Practices for an Ovation for Compliance

EPs should implement the following best practices to ensure compliance:

- 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 and plan accordingly.
- Submit course renewals on time.
  - Renew courses before June 30 of each year to prevent expiration.
  - Ensure that all required documentation (ownership certification or permission from course owners) is signed and dated by the course owner no earlier than six months prior to submission of the renewal.
- Prepare to submit an application for original course approval. Authors should anticipate the need for a full application if the course fails to renew or has renewed twice since the initial approval.

By following these best practices, EPs 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 visiting the **Commission's Resources** page.

- 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, the Commission is prohibited from imposing fines or ordering restitution for payment of monetary damages to consumers.
- While the Commission cannot independently order brokers to pay restitution, brokers may agree to pay as part of a negotiated settlement.
- **Rule § 58A .0106** was amended to require brokers to deliver a copy of any written agency agreement, contract, offer, lease, rental agreement, option, or other transaction-related document to a customer or client within three days of receipt of their request, regardless of when the request is made.
  - Brokers may wish to review **Rule § 58A .0108** regarding record retention and adopt the following best practices:
    - ✦ Utilize effective record keeping, digitally or physically, so transaction-related documents can be retrieved and delivered within three days of receipt of a request from a customer or client.

- ✦ Educate customers and clients regarding their right to request documents at any time and a licensee's duty to timely respond.
- ✦ Implement workflow solutions to streamline the sharing of documents and track deadlines with customers and clients.
- ✦ 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 an 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 aims to deter misuse of the application process, encourage applicants to approach the process seriously, and provide adequate time to resolve issues arising from a possible denial or withdrawal before a new application is submitted.
  - These changes protect the consumer by preventing principals of firms with unresolved disciplinary cases from entering the marketplace.

- EPs must deliver a PPD to **prospective** students. Basically, this requires EPs to make this information available **prior** to a student registering for a course.
- EPs are required to direct students to the Commission's official ***Education Provider License Examination Performance Record*** on the Commission's website.
- EPs and instructors may no longer advertise, make available, reference, or publish any ***Education Provider License Examination Performance Record***, license examination pass rates, or course completion rates, except as published by the Commission.
  - This Rule ensures students receive unbiased, verified data exclusively from the Commission's website.
- **Rule § 58H .0209** was revised to improve clarity and organization by revising the title for consistency, moving references to course renewal fees to another Rule, and eliminating subsection (k).
- **Rule § 58H .0302** was amended to add the following:

(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** establishes June 30 as the annual expiration date for all courses following initial approval and requires certification of course ownership or permission to use the course materials, payment of mandated renewal fees, and submission of an original course approval under **Rule § 58H .0401** if the course has not been renewed or has been renewed twice since initial approval.

APPENDIX

COMMERCIAL FORM CHANGES

WHAT TO KNOW ABOUT STANDARD FORMS

While the phrase "use the standard form" is frequently stated by licensees in North Carolina, many practitioners are unaware of the rules surrounding their creation and use. As such, we wanted to provide a summary of how the Forms are created and the basic rules for their use.

The Forms are created, revised, or eliminated by the NCAR Forms Committee and/or the NCAR/NCBA Joint Forms Task Force. Note, however, that only those Forms that end with "—T" are from the Joint Forms Task Force. As such, attorneys who are NCBA members may use the Forms that end in —T.

Otherwise, the Forms may be used only by NCAR members in transactions where the member is a broker or a principal. Nonmembers may also use the Forms when performing work for a NCAR member brokerage.

Note that when using the Forms, the preprinted language cannot be changed. The language can, however, be struck by drawing a line through the unwanted text. Additional language may, however, be conspicuously added. The parties signing the Forms are free to make such changes, but brokers should not alter Forms to which they are not a party.

For more information on the use of the Forms, consider the NCAR Legal Q&As Bulletin entitled ***Overview of the NC REALTORS® Forms Policy***.

SUMMARY OF 2025 FORM CHANGES

For the convenience of commercial practitioners, this manual provides a summary of the changes to five of the jointly approved Forms effective July 1, 2025. The summaries highlight the most significant substantive changes and do not address typographical or other minor revisions. Each form listed below was substantively revised. By selecting the hyperlink, you may view a marked-up copy showing all changes.

- **Form 501—Agency Forms Guidelines and Checklist**
- **Form 541—Commission Split Sales Transaction**
- **Form 542—Commission Split Lease Transaction**
- **Form 580-T—Agreement for Purchase and Sale of Improved Property**
- **Form 580L—T Agreement for Purchase and Sale of Land**

FORM 501 AGENCY FORMS GUIDELINES & CHECKLIST

As you may recall, NCAR eliminated Form 510 (Confirmation of Agency Relationship and Registration Statement) in 2023 due to low usage and substantial overlap with the WWREA. This year's revisions to Form 501 were made to eliminate all references to Form 510.

FORM 541 COMMISSION SPLIT SALES TRANSACTION

Over the past eighteen months, NCAR revised its Forms to comply with the NAR settlement. In 2024, revisions were made to the commercial listing agreements (Forms 570 and 571). These revisions required brokers to obtain the seller's or landlord's written consent before finalizing any compensation agreement between the listing broker and the buyer's or tenant's broker.

> Any potential agreement between Firm and a cooperating agent to share compensation must be first approved by Client in writing. Forms 541 and 542, as applicable, may be used document such cooperating compensation.

To assist brokers in fulfilling this contractual obligation, revisions were made to Forms 541 and 542. These revisions added the following language:

> By signing below, Landlord and Tenant hereby acknowledge receipt of a completed copy of this form, and consent to the split of compensation described herein.

This language indicated that by signing the Form, written approval of the compensation agreement was achieved, followed by signature lines for the buyer and seller (or landlord and tenant).

As explained in Act II (pages 57–58, *supra*), however, the use of Forms 541 and 542 is not required. NCAR further clarified this with the 2025 revisions. Specifically, the Forms now state that neither the buyer nor the seller is a party to any commission-split agreement and that their signatures are not required:

> By signing below, Seller and Buyer hereby acknowledge receipt of a completed copy of this form, and consent to the split of compensation described herein. Seller and Buyer are not parties to this Agreement. Their signatures are recommended but not required.

By signing below, Landlord and Tenant hereby acknowledge receipt of a completed copy of this form, and consent to the split of compensation described herein. Landlord and Tenant are not parties to this Agreement. Their signatures are recommended but not required.

The recommendation for signatures underscores the importance of disclosure and consent, while recognizing that consent may be obtained by other means, which may be more practical in transactions involving large corporate clients.

FORM 542 COMMISSION SPLIT LEASE TRANSACTION

The changes described for Form 541 also apply to Form 542, as identical revisions were made to both forms.

Paragraph three was simplified to clarify the leasing agency's status and to require that any changes be in writing and delivered to the listing agent.

(3) Leasing Agency's status in this transaction shall be that of (select one): ❑ a landlord's subagent ❑ a tenant's agent. If there shall be any change in such status, Leasing Agency shall notify Listing Agency in writing of said change.

Finally, a new checkbox line was added to the Options section, allowing for a commission split based on a percentage of the base rent payable during the initial term. This differs from the prior provision, in which the sole option was a percentage calculated on the total commission rather than on the total base rent.

(Select One Option)

❑ _____ percent of the **total commission** received by Listing Agency for the transaction. A commission is any compensation, valuable consideration or promise thereof received by Listing Agency, including, but not limited to, receipt of an interest in a joint venture, partnership or other business entity. Listing Agency's listing agreement specifies commissions payable as follows: _____

_____

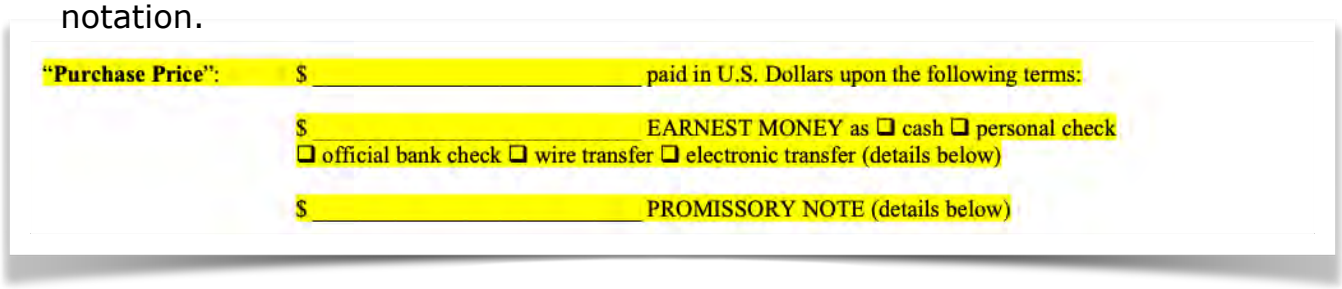
❑ _____% of the base rent scheduled to be paid during the initial term

❑ $_____ (flat fee).

FORM 580-T—AGREEMENT FOR PURCHASE AND SALE OF IMPROVED PROPERTY & FORM 580L-T—AGREEMENT FOR PURCHASE AND SALE OF LAND

The most significant changes this year are to Form 580—T and Form 580L—T. The goal of these revisions was to ensure that the essential terms appear on page one of each form. Accordingly, the parties, property, purchase price, earnest money, examination period, and closing date now all appear on page one. The forms were essentially reorganized to achieve this result.

The detailed provisions concerning earnest money and promissory notes have not been eliminated but have been moved to pages two and three. This change furthers the goal of keeping the essential terms on the first page. As a reminder to practitioners, the lines on page one relating to earnest money and promissory notes each include a (details below) notation.



"Purchase Price": $ _____ paid in U.S. Dollars upon the following terms:

$ _____ EARNEST MONEY as ❑ cash ❑ personal check ❑ official bank check ❑ wire transfer ❑ electronic transfer (details below)

$ _____ PROMISSORY NOTE (details below)