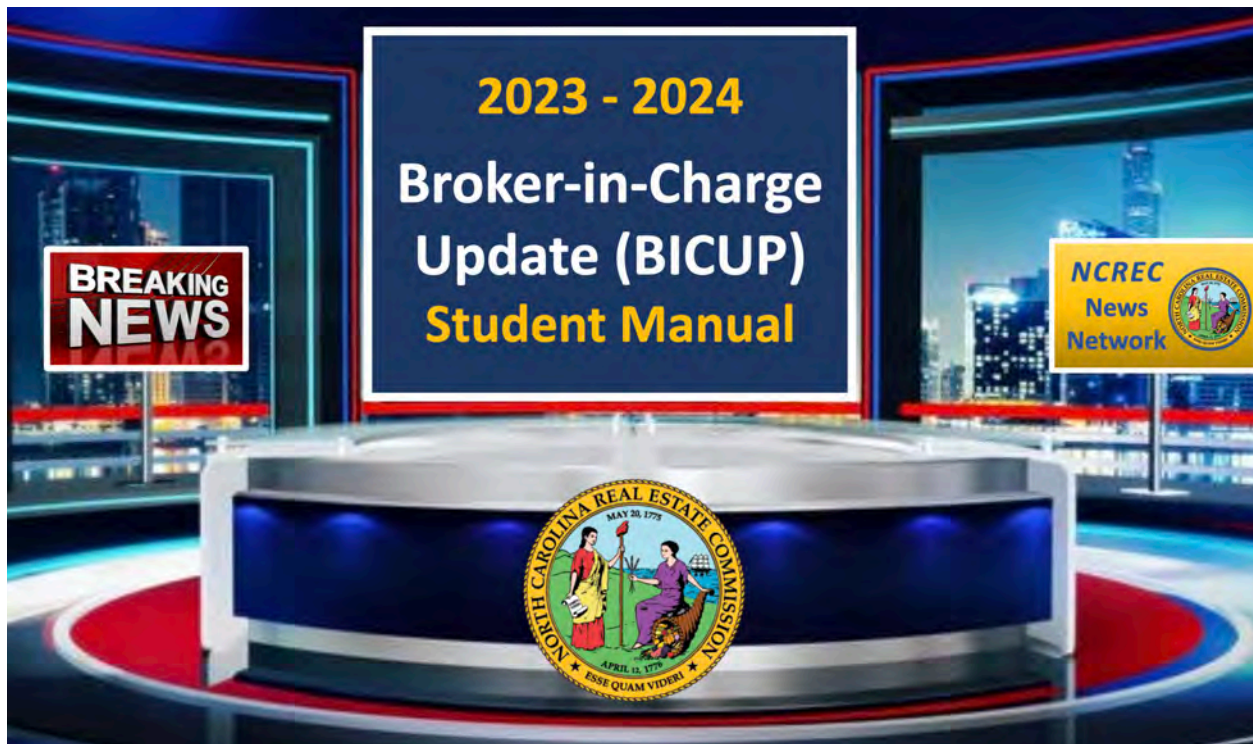


2023-2024 BROKER-IN-CHARGE UPDATE (BICUP) COURSE COMMERCIAL VERSION



STUDENT MANUAL

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Welcome to the 2023-2024 Mandatory Update Commercial Version

The North Carolina Real Estate Commission (Commission) is honored and excited to bring you the General Update and Broker-in-Charge Update Commercial Version courses for the 2023-2024 continuing education (CE) season.

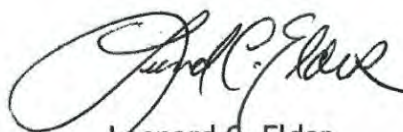
The Commission realizes that the Update courses form the core of CE for North Carolina brokers every year. They are the product of months of work, decades of experience and involve the time, energy, and efforts of many people throughout the Education and Regulatory Affairs Divisions.

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

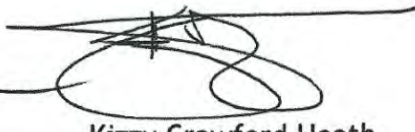
Many months of research and authorship are involved in drafting the course. Every word of content contained in the course is reviewed and refined on several levels at the Commission. The goal is to have the Education and Regulatory Affairs Divisions provide consistent and accurate information to consumers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

This year's courses are built around the theme of a news broadcast. They feature engaging "on the scene reporter" video clips to start the various news segments entitled, "Takin' it to the Streets," interactive polling with the students, and tons of additional resources. Along the way we will share some best practices and compliance warnings for hot industry topics such as appraisals, assumptions of loans and wholesaling.

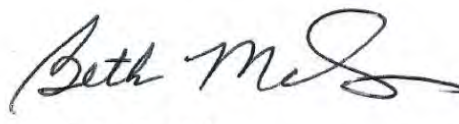
We trust you will walk away with a rewarding experience and lots of useful and practical information. Our hope is that you have a fun educational experience while taking this course just as we did creating it for you.



Leonard C. Elder
JD, DREI
Director
Education & Licensing



Kizzy Crawford Heath,
JD, DREI
Legal Education Officer



Beth McGonigle
Education Content Officer

The Commission would like to express its thanks to Cheryl Crawford, Sheila Knight, and Scotty Beal for their work on this year's Commercial Version.

NC Real Estate Commission's Diversity, Equity, and Inclusion Statement

The North Carolina Real Estate Commission is committed to promoting a diverse and inclusive culture and community. We understand, and celebrate, the differences that make each of our Consumers, Licensees, Commission members, and Commission staff unique. Diversity, Equity, and Inclusion are a top priority for the Commission, and we seek to enhance these principles in real estate brokerage through education, intentional actions, and partnerships.

For more information on the Commission's Diversity, Equity, and Inclusion initiatives see the [**Diversity, Equity, and Inclusion**](#) webpage.

Introduction

The 2023-2024 Broker-in-Charge Update (BICUP) Course, and the 2023-2024 Broker-in-Charge Update (BICUP) Course, Commercial Version, are four (4) hour* courses, one of which must be completed by all brokers-in-charge (BICs) and brokers who have BIC-Eligible status and who wish to renew their licenses on active status on July 1, 2024, for the 2024-2025 license year.

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

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

Development and Delivery

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

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

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

Commission Rule 58A .1705: Attendance & Participation Requirements

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

- (1) attend at least 90 percent of the scheduled instructional hours for the course;*
- (2) provide the broker's legal name and license number to the education provider;*
- (3) present the broker's pocket card or photo identification card, if necessary;*
- (4) personally perform all work required to complete the course.*

- (b) *With the instructor or the education provider's permission, a 10 percent absence allowance may be permitted at any time during the course, except that it may not be used to skip the last 10 percent of the course unless the absence is:*
- (1) *approved by the instructor; and*
 - (2) *for circumstances beyond the broker's control that could not have been reasonably foreseen by the broker, such as:*
 - (A) *an illness,*
 - (B) *a family emergency; or*
 - (C) *acts of God.*

Comments and Complaints

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

North Carolina Real Estate Commission Education and Licensing Division

PO Box 17100

Raleigh, NC 27619-7100

educ@ncrec.gov

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SEGMENT 1

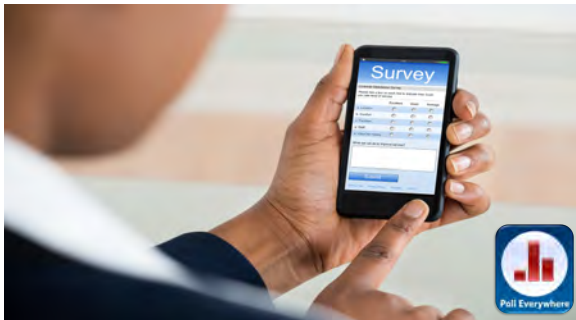
TODAY'S HEADLINES: NCREC TOP COMPLAINTS





1. How many complaints do you think are filed with the Commission each year?

2. Provide examples of the types of complaints filed with the Commission.



Viewer Poll

Which of the following complaints would result in the Commission opening an investigation file?

- a) My broker stated that the property was on municipal water and sewer. The property has a septic system.
- b) My landlord is expanding the strip center where I am a tenant and wants to increase the amount I pay in TICAM, but never got my agreement on the increase.
- c) I rent from a private owner and don't have a property manager. The owner is refusing to return my security deposit.
- d) My broker won't return my phone calls and is always very rude when I interact with him.

LEARNING OBJECTIVES

After completing this section, you should be able to:

- define N.C.G.S. §93A-6(a);
- identify the types of complaints within the Commission's scope of authority;
- explain a broker's duty to cooperate with a Commission investigation; and
- list the most common complaints received by the Commission.

TERMINOLOGY

Complaint: A written statement which includes allegations of misconduct by a real estate broker.

Complaining witness: The person who submit a complaint to the Commission.

Complainant = Plaintiff: Upon review of a submitted complaint, if the Commission opens an investigation against a respondent, the Commission (NOT the complaining witness) is the complainant.

Letter of inquiry: Written correspondence sent by the Commission, often via email, to a licensee informing them that a complaint has been filed against them (or another licensee) and requesting a written response and, possibly, transaction documents.

Respondent = Defendant: The person against whom the complaint is made and who must reply to the complaint.

COMMISSION AUTHORITY

Disciplinary Action by Commission

Where does the Commission get the authority to discipline real estate brokers? N.C.G.S. §93A-6(a) authorizes the Commission to take disciplinary action either on its own initiative or by complaint of any person. This authority allows the Commission to:

- investigate brokers and unlicensed activity;
- issue subpoenas for records and to compel attendance of witnesses to testify at hearings;
- hold hearings on broker misconduct; and
- impose sanctions for misconduct.

Complaints

Each year the Commission investigates a multitude of disciplinary cases as a result of complaints filed against licensees. In 2022, the Commission received 1,459 complaints. According to Rule 58A .0601, a complaint must:

(a) . . .

- (1) *be in writing;*
- (2) *identify the respondent broker or firm; and*
- (3) *apprise the Commission of the facts which form the basis of the complaint.*

Moreover, the Commission does not require that a specific form be used when filing a complaint; however, a standard **complaint form** can be found on the Commission's website.

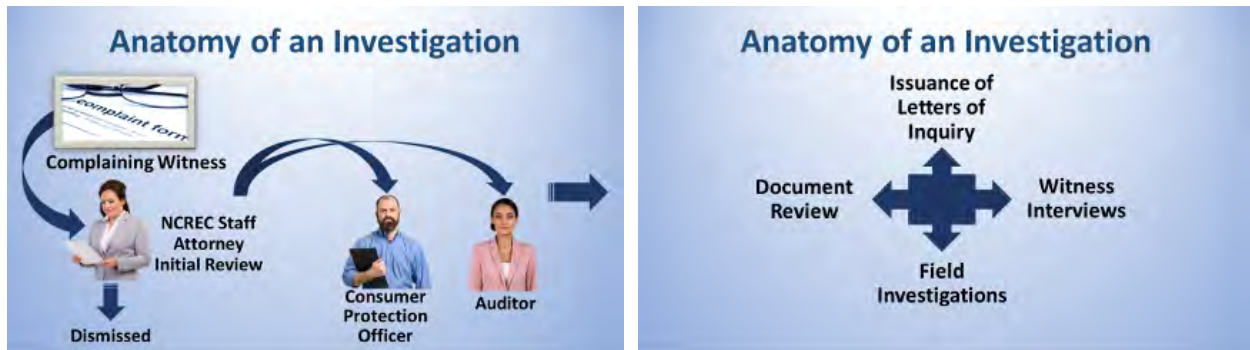
Additionally, the Commission may receive an anonymous complaint. Upon receipt of such a complaint, the Commission will investigate if the supplied information from the complaining witness provides sufficient detail. If a complaint is truly anonymous, then the Commission does not know the identity or contact information of the complaining witness. However, during the investigation, the identity may become known to the Commission and the respondent. If a complaining witness asks the Commission to keep their identity anonymous, we inform them that, once an investigation begins, a complaint becomes part of the public record, and the Commission cannot conceal the identity of the complaining witness.

ANATOMY OF A COMPLAINT

Disciplinary Action by Commission

Upon receipt of a complaint, a Commission staff attorney in the Regulatory Affairs Division assigns a file number and evaluates the complaint to ensure that it falls under the Commission's authority. If it does not, the complaining witness is notified that the complaint was dismissed. If it does,

a disciplinary case is opened and assigned to a Consumer Protection Officer (CPO) or an Auditor/Investigator who initiates correspondence or a field investigation.



COMMERCIAL NEWS FLASH: No Complainant Needed

NOTE: The Commission may also initiate its own complaint if it becomes aware of possible licensee misconduct.

Letter Inquiry Investigation

A letter inquiry investigation is initiated when the CPO sends a letter of inquiry to a respondent (i.e., the broker and/or brokerage against whom the complaint was filed) and to witnesses, some of whom may also be brokers. Historically, letters of inquiry were sent via USPS in a brown envelope. However, letters of inquiry are now sent via email to the licensee's private email address on record with the Commission and include copies of the original complaint and supporting documentation.

Due to the Commission sending letters of inquiry electronically, it is important that brokers ensure their contact information within their license record remains current, including an active email address that they check regularly. Pursuant to Rule 58A .0103(b), every broker shall notify the Commission in writing within 10 days of each change of:

- personal name;
- firm name;
- trade name;
- residence address;
- firm address;
- telephone number; and
- email address.

COMMERCIAL NEWS FLASH: Commission Website Has All You Need

NOTE: Brokers may make the above changes using specified forms under Licensee Forms on the Commission's website.



Viewer Poll

Do brokers need to respond to every letter of inquiry immediately upon receipt from the Commission?

If a broker/brokerage receives a letter of inquiry, Rule 58A .0601

requires the submission of a written response within 14 days of receipt. The response to the letter of inquiry must include:

- a disclosure of all requested information, and
- copies of all requested documents.

A broker's failure to promptly and fully respond to a letter of inquiry is itself an offense that may result in a disciplinary action pursuant to Rule 58A .0601(e). According to Rule 58A .0108(a), brokers must retain records of all sales, rentals, and other transactions conducted in such capacity, whether the transaction is pending, completed, or terminated. Further, subsection (c) of this rule requires brokers to make all records available for inspection and reproduction by the Commission or its authorized representatives without prior notice. Therefore, a broker/brokerage must include copies of all requested transactional documents while responding to the letter of inquiry.

Before failing or refusing to respond to a letter of inquiry, a broker should consider their response as an opportunity to refute the allegations within the complaint. Also, if the broker has a factual or legal defense, then it should be raised in the response. If a broker receives a letter of inquiry from the Commission, they should speak with their broker-in-charge (BIC) about the allegations within the complaint. It is also permissible for a BIC to review a broker's written response before it is sent to the Commission. However, a BIC cannot submit a written response on behalf of their affiliated broker. Most importantly, the Commission expects a separate response from each party named in the complaint.

Further, if additional time is needed to provide a thorough response, the broker should contact the CPO who sent the letter of inquiry and request an extension in writing. A well-drafted thorough response to a letter of inquiry that includes supplemental documentation can potentially assist the broker in avoiding disciplinary proceedings.

While a respondent is not required to hire an attorney to submit a response to a letter of inquiry on their behalf, some respondents choose to hire attorneys to assist them.

Field Investigations

The Commission also conducts field investigations when cases require in-person interviews, trust account audits, or the examination of evidence that cannot be easily identified/obtained through written correspondence. Auditors/investigators in the Regulatory Affairs Division are responsible for conducting field investigations. Once their investigation has concluded, written reports are submitted to staff attorneys for further evaluation.



ANATOMY OF A COMPLAINT RESOLUTION

Commission Jurisdiction

Many complaints do not fall within the Commission's scope of authority. Some do not allege facts that indicate a probable law or rule violation, and

others lack sufficient witness testimony or documentation to meet the Commission's burden of proof in either establishing probable cause or proving the allegations by a preponderance of the evidence.

Examples of complaints that are NOT actionable because they do not fall within the Commission's scope of authority include:

- disputes between cooperating brokers regarding commissions;
- disputes between affiliated brokers and their BICs regarding brokerage policies;
- distribution of marital assets between brokers who get divorced;
- disputes regarding the sale of heir's property by a disgruntled family member against the broker;
- fake landlord scams;
- homeowner association policies, procedures, and fees;
- out of state brokers who do not enter North Carolina to practice brokerage;
- tenants renting directly from landlords who are not licensees; and
- timeshare resale scams by unlicensed, out of state individuals.

The Commission has jurisdiction over brokers. It does not have jurisdiction over unlicensed persons and entities. However, the Commission does have the authority to seek injunctive relief in Superior Court against persons and entities who are engaged in unauthorized and unlicensed brokerage services.

When the Commission closes a case without disciplinary action because it lacked authority or was not able to establish sufficient evidence, the Commission notifies the complaining witness and respondent(s) in writing, usually using electronic communication.

Burden of Proof

According to the North Carolina Administrative Procedures Act (N.C.G.S. §150B-25.1, et. seq.), the petitioner (i.e., Commission) in a contested case has the burden of proving the facts alleged in the petition (i.e., complaint) by a preponderance of the evidence; although for the imposition of civil fines and penalties, the burden of proof is clear and convincing evidence. Meeting a preponderance of evidence burden means that a petitioner must present evidence that is more probably than not true. Meeting a clear and convincing burden means that the evidence is "highly probable" and

"instantly" tilts the evidentiary scales in the affirmative. *Colorado v. New Mexico*, 467 U.S. 310, 316 (1984).

Basically, the burden is on the Commission to prove that the person who was accused more likely than not committed the alleged act and may be sanctioned as a result. According to Merriam-Webster Dictionary, a sanction is defined as an action taken to enforce a law or rule.

COMMERCIAL NEWS FLASH: Commission Must Have Evidence of Violation

NOTE: Brokers are presumed to be innocent until proven guilty. The Commission will not pursue disciplinary action against a broker without having sufficient, admissible evidence of a violation that warrants such action.

Probable Cause Meeting

If the investigation indicates that disciplinary action is warranted, Regulatory Affairs must convince the Commission that "probable cause" exists. This is done in a meeting with the Commissioners where they receive a probable cause submission for their evaluation. These submissions contain only a summary of the facts without any names or locations. After review, the Commissioners decide whether to proceed to a formal hearing or dismiss the case based on the submission.

In determining whether probable cause exists, the Commissioners will evaluate the submissions and determine whether it is more probable than not that a violation of License Law and/or Commission rules occurred. Probable cause is essentially a judicial constraint. The United States Supreme Court stated that there is not a precise definition because the existence of probable cause deals with probabilities (i.e., it is more probable than not that this conduct occurred) and the totality of the circumstances.

If the Commission determines that probable cause exists, then the Commission orders a hearing which is conducted in accordance with the North Carolina Administrative Procedures Act, N.C.G.S. §150B. If a hearing is conducted, the Commission receives the sworn testimony of witnesses and gives brokers the opportunity to answer charges and present evidence in their defense.

Settlements

Prior to the hearing date, the Commission attorney and respondent may discuss possible settlement options in lieu of going to hearing. Sometimes a

licensee will offer to voluntarily surrender their license in lieu of proceeding to a hearing and possible disciplinary action. The surrender may allow the licensee to reapply, reapply after a specified time-period, or be permanent. Finally, the Commission must approve any final signed agreement or consent order.

COMMERCIAL NEWS FLASH: Most Complaints Don't Go to Hearing

NOTE: Statistically, only 10% of complaints proceed to a hearing.

Disciplinary Hearings

If the Commission decides to proceed to a disciplinary hearing, the hearing will be scheduled on the Commission's calendar. On the day of the hearing, the Chairman of the Commission will act as the presiding judge and make all determinations on evidence and objections. A member of the Attorney General's staff is also present to assist the Chairman on these issues, if needed.

The Commission's case is presented by members of Regulatory Affairs Division (like a prosecutor in a criminal case). They will present evidence to support the allegations against the respondent.

The respondent may be represented by an attorney. The respondent will present any evidence they may have to counter the Commission's case against them.

After all the evidence has been presented, and the closing arguments from each side have been heard, the Commissioners will deliberate in private and arrive at a final determination of whether a violation occurred, and if so, what sanction will be imposed.

Sanctions

At the conclusion of a hearing, the Commission may find that the broker has violated License Law and Commission rules. If the Commission imposes sanctions, they may include the following:

- license revocation with or without an option of re-applying for a license in the future. A broker whose license is revoked has no license.
- license suspension for a stated period. A broker whose license is suspended still has a license but is prohibited from using it for a specified period.

- reprimand which is a public statement of disapproval from the Commission. A broker who has been reprimanded continues to have an active license and may engage in real estate brokerage activities.

In addition to having the ability to impose sanctions, the Commission may impose reasonable conditions, restrictions, and limitations upon a license. For example, the Commission may impose a restriction such as a broker being ineligible to become a BIC for 5 years.

Did you know that the Commission has additional requirements under state law if they revoke or suspend a broker's license?

If the Commission revokes or suspends a broker's license for any time period, state law requires that the Executive Director of the Commission transmit a certified copy of the disciplinary order to the Clerk of Superior Court in the county where the broker maintains their principal place of business. Once the certified copy is received, the Clerk of Superior Court enters the order in the judgment docket as part of the public record.

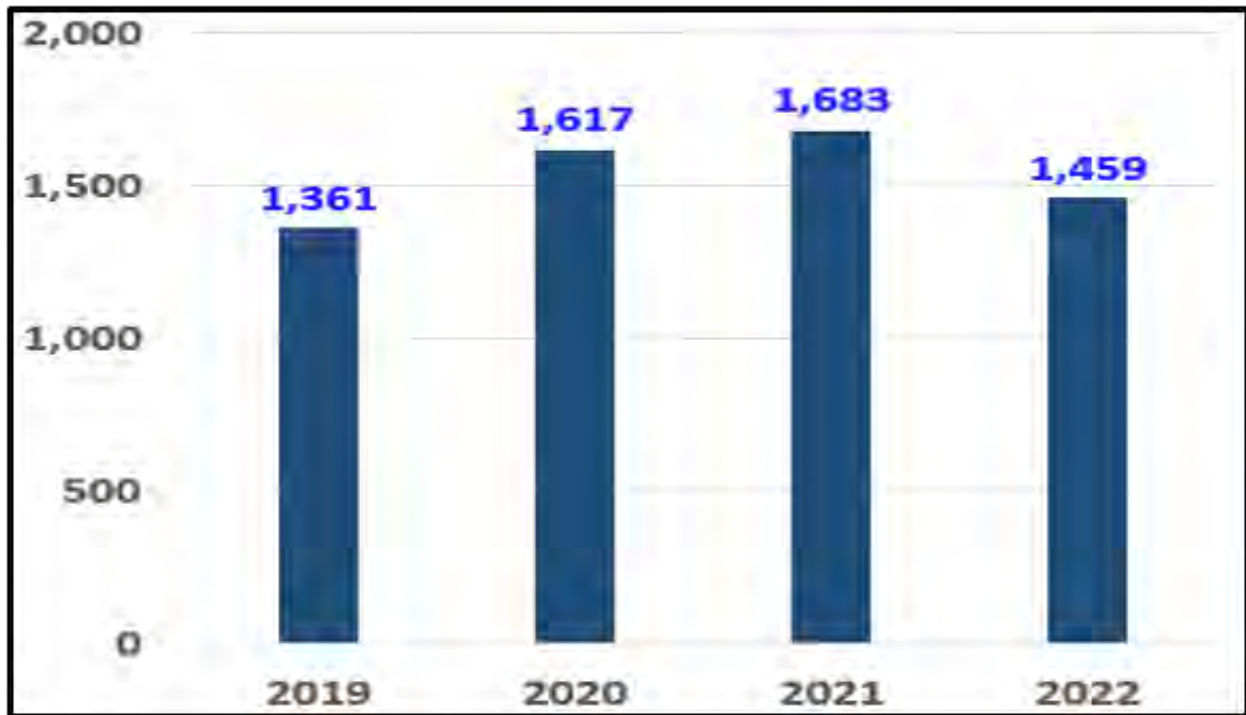
Brokers may also incur a possible stigma of incompetence or unprofessionalism due to their sanction(s) being discoverable via a basic search on the Internet, Commission website, eBulletin, and/or social media.

STATISTICS OF COMPLAINTS

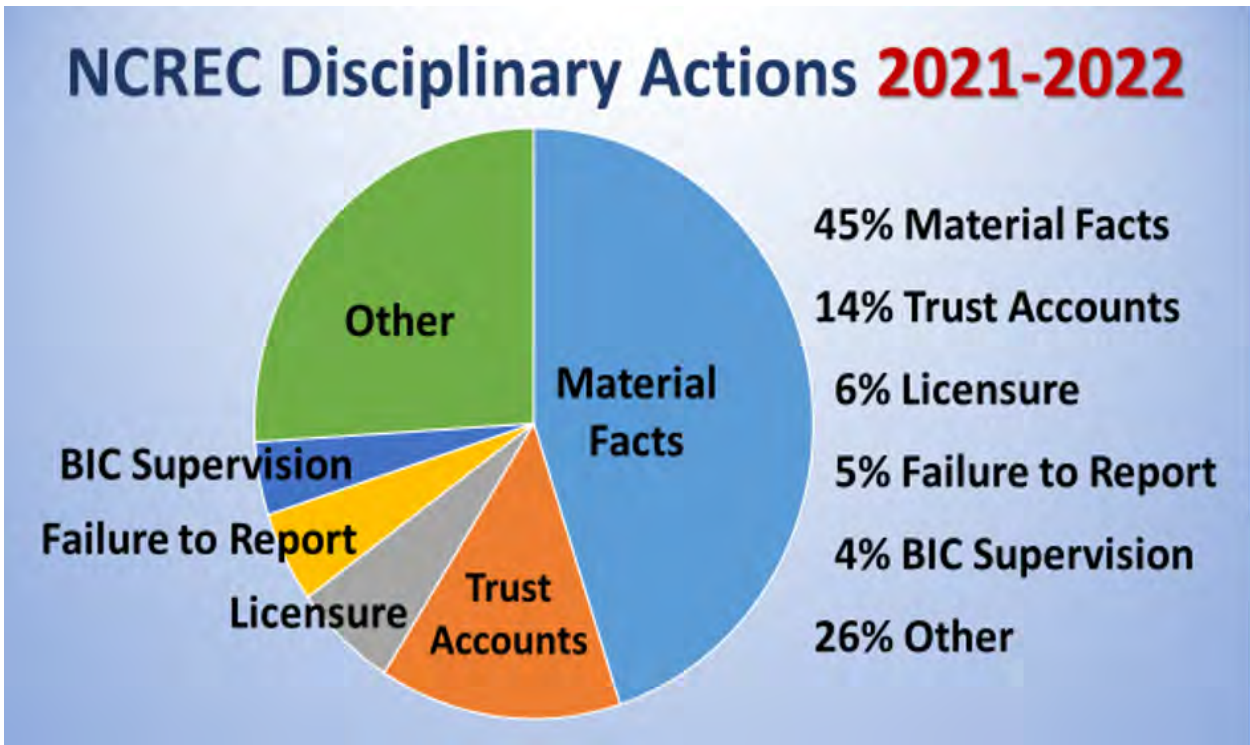
In 2019, Regulatory Affairs received 1,361 complaints, 1,617 in 2020, 1,683 in 2021, and 1,459 in 2022. Based on this data, Regulatory Affairs receives an average of 1,500 complaints each year.

The Most Common Complaints

- Agency agreements
- Competing offers
- False promises
- Material facts
- Trust accounts
- Unlicensed assistants



The statistics of most common complaints do not align perfectly with the most common disciplinary issues. The following two charts provide insight into the statistics of actual disciplinary actions over the two most recent license years.



The inordinately high “Other” category (26% of all complaints) in the 2021-2022 license year contained a wide variety of topics including:

- failure to follow a seller’s instructions;
- falsifying documents;
- license examination improprieties;
- communicating terms of offers without authorization;
- failures to respond to Letters of Inquiry;
- committing loan fraud; and
- licensees who failed to comply with landlord /tenant laws.

Let’s discuss whether the following sample complaints allege a License Law and/or Commission rule violation.

AGENCY COMPLAINTS



Takin' It to the Streets

I went to ABC Realty to have them help me find a rental property. During my office visit, Terris, the BIC, informed me that ABC Realty has a sales brokerage division and a property management division. Therefore, they could assist me with locating a

property for rent now and assist me with purchasing a property in the future.

Sam, an affiliated broker who works specifically in commercial sales, assisted me with locating a rental property. During the transaction, I thought Sam represented my interests. Instead, after I signed the lease for the property, it stated that ABC Realty represented the landlord of the property. I think Sam misled me while he was assisting me. I never signed any agreements with Sam prior to signing the lease, and he did not tell me that ABC Realty represented the landlord.

Upon initial review of these allegations, Commission staff may determine that these complaints involve a possible violation of Rule 58A .0104, Agency Agreements and Disclosures which states in pertinent part:

Every agreement for brokerage services in 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 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.

COMPETING OFFERS



Takin' It to the Streets

My broker stated that the listing agent disclosed my offer to other parties, so they offered more than me for the property. I think the seller didn't accept my offer because of their listing agent.

Rule 58A .0115 prohibits brokers from sharing the price or other material terms with competing parties without the express authority of the offering party (usually the buyer). Express authority is an agent's power to act on behalf of their principal. In other words, the client gives the broker permission to perform some act. However, brokers should know that License Law and Commission rules strictly prohibit the "shopping" of offers without everyone's permission to do so. A listing agent should not reveal to anyone other than the seller-client that a "full-price" or "cash" offer has been submitted, because sharing such information with a competing buyer would be a violation of Rule 58A .0115.

For clarification, a seller has the right to consider and respond to one offer or all offers. However, if the seller finds the offers received unacceptable, the seller may request the listing agent to ask prospective buyers to submit their highest offer and best terms. The seller makes this decision, not the listing agent. If the seller calls for highest offer and best terms, the listing

agent should advise buyers to submit a new offer or stand by their original offer. However, under no circumstances should the listing agent share the amount offered by any prospective buyer without that buyer's express authority. Nor may a listing agent redact the **offering price** within an offer and share the offer's terms with competing buyers. Such terms are part of the offer and may not be shared without the offeror's permission.

In October of 2017, the Commission published the article, [Be Prompt, Fair, and Honest When Dealing with Multiple Offers](#). This article focuses on ensuring that brokers present all offers immediately to the seller; however, the seller determines which offers to consider.



FALSE PROMISES



Takin' It to the Streets

My buyer agent informed me that the HVAC system on the property was new. Once I was under contract, I had the property inspected. The inspector indicated in her report that the HVAC system was outdated. My buyer agent stated the inspector was incorrect because both the listing agent and the seller stated the system was new. My buyer agent also stated her brokerage would add an addendum to our agency agreement and pay me \$5K toward replacing the HVAC system if I went through with the purchase of the property. I purchased the property, but I never received the \$5k from my buyer agent.

Subsections of N.C.G.S. §93A-6(a) indicate the Commission has the power to suspend or revoke, at any time, a license issued under the provisions of this chapter, or to reprimand or censure any licensee, if, following a hearing, the Commission adjudges the licensee to be guilty of (1) making any willful or negligent misrepresentation or any willful or negligent omission of material fact, (2) making any false promises of a character likely to influence, persuade, or induce, or (3) pursuing a course of

misrepresentation or making of false promises through agents, advertising or otherwise.

MATERIAL FACTS



Takin' It to the Streets


The listing agent did not tell my buyer agent that the seller's driveway encroached on the neighbor's property after the listing agent was informed of this fact by the seller. As a result, my buyer agent did not notify me of this encroachment.

I asked if I should have a survey performed on the property but my buyer agent said not to waste my money. I purchased the property and now my neighbor wants me to dig up my driveway because it is on their property.

Material Facts

Any fact that could affect a reasonable person's decision to buy, sell, or lease

- 1) Facts about the property
- 2) Facts that relate directly to the property
- 3) Facts directly affecting the principal's ability to complete the transaction
- 4) Facts that are known to be of special importance to a party



The disclosure of material facts is mandatory and must be volunteered freely to all parties in a transaction without regard to whom the broker represents. A broker must disclose material facts in a timely manner.

If a material fact is known prior to contract formation, then the broker must disclose the material fact prior to contract formation. If a material fact is discovered after contract formation, then the broker must disclose the material fact immediately. The broker cannot decide to wait for a party

to ask about the material fact or refrain from disclosing the material fact to any party because they believe that the material fact was common knowledge.

Therefore, the broker's responsibility is to research whether a material fact exists and disclose the presence of a material fact or potential material fact to the transactional parties so they can possess the adequate knowledge to:

- make an intelligent decision regarding selling or acquiring the property,
- negotiate repair services, or
- decide to terminate an existing contract.

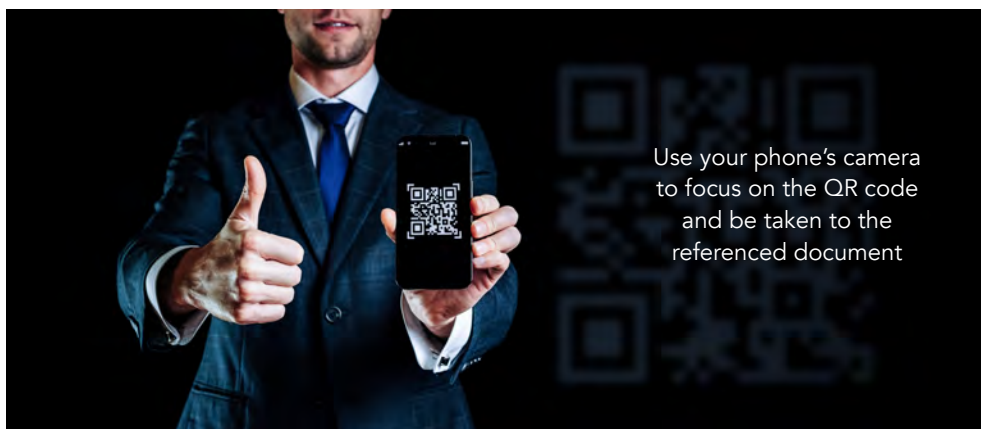
Additionally, the broker's responsibility includes:

- facts the broker know exist,
- facts the broker reasonably should know exist, and
- information considered common knowledge.

To avoid complaints of misrepresentation or omission of material facts, brokers need to take affirmative steps to research and confirm the accuracy of advertisements in print, in any MLS, and on any websites. For clarity, a broker may reasonably rely on the property description given by a listing agent unless the information seems suspicious or questionable.

The Commission has a plethora of resources on its website to assist brokers with comprehending their duties/obligations regarding the disclosure of material facts. The articles elaborate on the responsibilities under the License Law for all brokers in a transaction.

Specifically, articles such as [What Does "As Is" Really Mean?](#)





and **Regulatory Affairs Case Study: Get Answers First** explain the statutory requirements for listing agents and buyer agents to discover and disclose material facts to all parties in a transaction.

Also, the Commission has discussed the duty of a broker to discover and disclose material facts in the 2018-2019, 2019-2020, and 2022-2023 Update Courses. You can access these courses under **Publications** on the Commission's website.

TRUST ACCOUNTS



Takin' It to the Streets

After contracting to buy a property, I gave my buyer agent \$1,000 via the Venmo app for my due diligence fee and I have a screenshot of my receipt. My buyer agent then used her Venmo app and sent the \$1,000 to the seller. Now I want to cancel but the seller and my

buyer agent are telling me that I cannot get my due diligence fee back. My due diligence period has not expired yet.

What is Trust Money? Trust money is defined as:

- any funds belonging to others,
- received by a broker,
- while acting as an agent in a fiduciary capacity related to a real estate transaction.

Trust money includes (but is not limited to):

- any cash,
- earnest money deposits,
- rent payments,
- final settlement funds,
- sales and use tax,

- tenant security deposits,
- HOA dues,
- advance rental deposits, and
- funds used to maintain owners' properties.

All brokers have an obligation to safeguard and protect the trust money and property of others that is in the broker's possession. Therefore, brokers are expressly prohibited from:

- converting the money or property of others to their use;
- applying such money or property to a purpose other than what it was intended for; or
- permitting or assisting any other person in the conversion or misapplication of such money or property.

UNLICENSED ASSISTANTS



Takin' It to the Streets

My buyer agent works for XYZ Realty. The firm's unlicensed office assistant took me to view a property I wanted to purchase. She informed me that I should offer \$275,000 for the property based on the "comps" that my buyer agent had given her. She assisted me with preparing the offer, but it was not accepted. I feel like she did not represent my interest. My offer wasn't accepted because the seller said my offer was incomplete.

Unlicensed, Salaried Assistants

The Commission recognizes the importance of hiring assistants to handle some of the tasks that otherwise would fall to busy brokers to complete. That said, however, the Commission also recognizes the need to reserve specific duties to only those persons granted a real estate license.

As in our example above, the question often arises whether the unlicensed, salaried assistant crossed the line and performed activities that only a licensed broker may perform.

To assist brokers in making this determination, the Commission, in its comments to the [License Law & Rules Comments](#) publication, has prepared a list of the acts that can be performed by unlicensed individuals. They are also summarized in the below depictions:





The Commission has also written an article regarding the activities that are permitted by an unlicensed, salaried assistant. The following article can be used as a resource for brokers, [Unlicensed Assistants - Drawing the Line Between What They Can and Cannot Do.](#)

Unlicensed, Salaried Assistants of a Property Manager

In a commercial context, it is important for all licensee property managers to understand that there is a different list of permissible and prohibited tasks that can be completed by unlicensed, salaried assistants they employ. A review of the relevant License Law may provide some insights into this exception to the general rules.

Managing real property in North Carolina often involves the leasing or renting of property. Therefore, any individual or entity that manages real property belonging to others for compensation or consideration must be an actively licensed real estate broker.

N.C.G.S. §93A-2(c)(6), permits brokers who engage in property management activities to hire unlicensed salaried employees to assist them with leasing activities. These unlicensed assistants may:

- show rental properties to prospective tenants;
- provide the prospective tenants with information about the lease of the units;
- accept applications for lease of the units;
- complete and execute preprinted form leases; and
- accept predetermined security deposits and rental payments for the units only when the deposits and rental payments are made payable to the broker employed by the owner.

However, under no circumstances may an unlicensed, salaried employee of a licensee property manager solicit landlord-clients, enter into property management agreements, or negotiate rental amounts or tenant security deposits. A licensed real estate broker must perform these tasks.

To clarify, the Commission has provided a chart that indicates the permitted activities of an unlicensed, salaried assistant relating to property management in the [2018-2019 Update Course.](#)

Transaction Coordinators or unlicensed assistants

Brokers may also utilize the services of a transaction coordinator to assist them with managing some of the administrative aspects of the transaction. However, if a transaction coordinator does not have an active real estate license, they cannot participate in brokerage activities like negotiating repairs and contingencies. Basically, an unlicensed transaction coordinator can assist with:

- the completion of preprinted documents with broker oversight;
- ensuring documentation is complete;
- scheduling inspections/surveys;
- ensuring appropriate deadlines are met; and
- ensuring the closing attorney receives all the required documents prior to settlement.

Although a transaction coordinator handles administrative tasks, the broker is still responsible for their activities and must check to ensure the transaction coordinator is adhering to the law.

Conversely, if a transaction coordinator has an active real estate license, brokers must evaluate what the role/purpose of the transaction coordinator is during the transaction to ensure that all brokerage activity and related tasks are not violating the law, agency agreements, and company policies.

Further, if an unlicensed assistant does engage in activities that:

- are illegal,
- violate License Law and Commission rules, and/or
- violate state and federal laws

the BIC of the brokerage and/or affiliated broker may be held liable for the conduct of the unlicensed assistant. To ensure that unlicensed assistants are not participating in brokerage activities, training programs and educational resources should be available for the company's unlicensed assistants. These training programs and resources should thoroughly explain the obligations that an unlicensed assistant must adhere to while performing their duties.

IN OTHER NEWS . . .

During the course of an investigation, or later disclosure by a broker, the

Commission may become aware of a:

- felony or misdemeanor criminal charge or conviction,
- military court-martial,
- disciplinary action by another occupational licensing board,
- BIC who fails to supervise a provisional broker,
- BIC who doesn't fulfill their obligations under Rule 58A .0110(g), and/or
- broker who fails to respond to a Letter of inquiry.

Rule 58A .0601(c) states, when investigating a complaint, the scope of the Commission's investigation shall not be limited only to matters alleged in the complaint. Therefore, if Commission staff is made aware of a possible rule violation during an investigation, they can discipline the broker for the "new" allegation in addition to the allegation(s) already set forth in the complaint.

For example, the Commission may initiate a complaint upon its own action when a broker fails to timely report, per Rule 58A .0113, their felony or misdemeanor criminal conviction, military court-martial, or disciplinary action received by another occupational licensing board.

Specifically, Rule 58A .0113 requires:

Any broker who is convicted of a felony or misdemeanor, or who is disciplined by or enters into a conciliation agreement or consent order with any governmental agency in connection with any occupational license or whose notarial commission is restricted, suspended, or revoked, shall file with the Commission a Criminal Conviction Disciplinary Action Reporting Form of such conviction or action within 60 days of the final judgment, order, or disposition in the case.

Essentially, if a broker has a criminal conviction, they must file a Criminal Conviction Disciplinary Action Reporting Form (REC 2.09) and is available on the Commission's website or upon request to the Commission. The broker shall set forth the following in the form:

- full legal name;
- physical and mailing address;
- real estate license number;
- telephone number;
- email address;

- social security number;
- date of birth; and
- description of the criminal conviction and disciplinary action including the jurisdiction and file number.

COMMERCIAL NEWS FLASH: Failure To Report Certain Acts

NOTE: If a broker fails to timely report a felony or misdemeanor criminal conviction, military court-martial, or disciplinary action by another occupational licensing board but notifies the Commission when applying for BIC Eligible status, BIC designation, instructor approval, or completing a firm license application, the application for any of the aforementioned will be placed on hold. The Commission will initiate an investigation for the failure of the broker to report the conviction and to review the applicant's fitness of character. The application that is placed on hold will be addressed once the investigation and any subsequent disciplinary action has been resolved.

YOU BE THE INVESTIGATIVE REPORTER

Read the following factual allegations. Determine what, if any, License Law or Commission rules were violated.

1. My landlord is the private owner of the property located at 123 Main Street. He does not have a property manager. I have directly paid him my lease payment for the last two years. I have chosen not to renew my lease and he is upset. He said I damaged push/panic bars on the emergency exit doors, and he needs to replace them. He refuses to return my security deposit.
2. I am a licensed real estate broker. I represented a buyer in a transaction and had a cooperation agreement with the listing company that I would receive a percent of the commission. However, the listing brokerage has refused to pay me. The settlement occurred 21 days ago.
3. My BIC stated that I could not affiliate with "Z Property Management Firm." ABC Realty does not allow property management, but I want the experience. My BIC is violating the license law.
4. My broker is licensed in Florida, and I currently live in Florida as well. I purchased a property in Nags Head, NC. My Florida broker has assisted me in the past with purchasing properties in Florida, so I trusted him.

However, he did not tell me that the property in NC had recently flooded, and that the seller performed their own mold remediation. I also attended the property inspections alone. My Florida broker never accompanied me to view the property. My Florida broker owes me money because the property is infested with mold.

5. Linda is a licensed real estate broker in NC. Linda contacted me because she saw a "For Sale by Owner" sign in my yard. She stated that she was interested in purchasing my property. After we negotiated a price, Linda and I contracted for her to purchase my property. One week prior to settlement, I contacted Linda to make sure everything was okay, and she told me that Joe is the new buyer, and he will adhere to the terms in the contract. Apparently, after we went under contract, she sold her rights to buy my property to Joe for \$17,000. Joe was going to use my property as his primary residence. She provided me with Joe's information and an updated contract. I contacted Joe and he stated he could not obtain financing; therefore, he was unable to purchase the property. I turned down several offers because Linda stated she was going to buy my property.
6. My landlord does not properly maintain the parking lot and other common areas in the strip center where I lease space. They are increasing the TICAM fees from \$900 to \$1,350 in July of 2023. This fee is excessive because they are not using the money appropriately; further, they are already fining the other tenants for things like not keeping the dumpster area clean and free of garbage bins. They are squandering my fees that I pay each month.
7. John and I are licensed real estate brokers who decided to start a company together and work as a team. We were married for 7 years and just recently got a divorce. John has not paid me for three transactions. If we split the commission as agreed upon previously, he owes me \$47,000. This fee was also decided by the court and referenced in the Equitable Distribution Order when our divorce case was finalized.
8. I attempted to purchase a 2-acre parcel of highway commercial land listed by Jake Jones, a private seller. My buyer agent assisted me with the preparation of a contract to purchase this commercial lot. In that contract, I agreed to pay \$10K as a due diligence fee. However, once I paid the due diligence fee, neither I, nor my buyer agent, ever heard from Jake Jones again. We contacted the telephone number provided and it is no longer in service. We also sent emails, and the emails came back "undeliverable."

SEGMENT 2

NCREC ON YOUR SIDE: FREQUENTLY ASKED QUESTIONS





1. Do my social media posts about a property have to comply with Commission rules?

2. If a consumer has to click on an image or link in a post to get the name of the brokerage, is this in compliance with Commission rules?

LEARNING OBJECTIVES

After completing this section, you should be able to:

- explain how advertisements on social media must comply with Rule 58A .0105;
- identify when an assumed business name must be registered with the Commission; and
- define broker obligations when dealing with their personally owned property.

TERMINOLOGY

Assumed Business Name: A name other than the real legal name of the person, sole proprietorship, partnership, corporation, or limited liability company (LLC) in which they are conducting business.

Firm: A license issued to a business entity, such as a corporation, limited liability company, limited partnership, general partnership, association, or joint business venture. A sole proprietorship does not need a firm license because no entity has been created.

Limited Nonresident Commercial License (LNCL): A license issued to a person who:

- does not live or have any home, business, or delivery address in North Carolina (NC);
- has an active real estate broker or salesperson license in another state;
- wants to enter NC to engage in a commercial transaction as an affiliated agent with their out-of-state brokerage company; and
- must enter into a Declaration of Affiliation and a Brokerage Cooperation Agreement with a resident NC broker who will be responsible for supervising the nonresident.

INTERACTING WITH THE COMMISSION

Every day the staff at the Commission receives on average approximately 500 phone calls and 1,000 emails. Most of the communications are requests for information, explanations on processes or forms, and inquiries regarding a wide variety of topics.

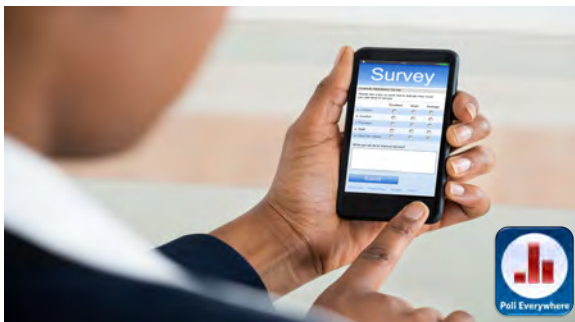
Main number: (919) 875-3700

Regulatory Affairs (919) 719-9180

Incoming calls are mostly sent to one of two different divisions, either License Services or Regulatory Affairs.

Just over 60 people work at the Commission, and the primary responsibility of many of them is to respond to questions and concerns from brokers. There is a high probability that when you call the Commission you will be routed to the individual who is highly trained at dealing with your specific issue. That means that you may have to wait a few minutes for answers to your particular question, but the specialist you have been routed to can see

that you are waiting, and they will be with you as soon as they complete an existing call. Sometimes, you are asked to leave your phone number, describe the nature of your question, and a call ticket is assigned to an individual specialist to call you back. The Commission tracks those calls by the broker's license number.




Viewer Poll

Why are brokers asked to provide their license number when they call the Commission?

- The Commission uses what brokers say against them.
- A certain number of calls will result in an audit of that broker.
- So that staff can provide accurate information based on the broker's records.
- In order to send notification to the BIC that a broker has contacted the Commission.

The Commission receives many calls that are not within the scope of the Commission's authority. Here are some other helpful phone numbers that will be of value to you.

Other Sources for News & Information



- **NC Dept. of Revenue**
877-252-3052
- **NC Association of REALTORS®**
336-294-1415
- **NC Secretary of State**
919-814-5400
- **NC Banking Commission**
919-733-3016
- **NC Appraisal Board**
919-870-4854

ADVERTISING CONCERNS



Takin' It to the Streets

Sally, a real estate broker with ABC Realty, practices commercial brokerage. Sally is friends with Mary, who recently bought two strip centers as investment properties. Mary offers to pay Sally to manage the properties for her and assist her with

locating tenants for her properties. ABC Realty does not allow affiliated brokers to practice property management; therefore, Sally would have to do it independently and use social media to locate prospective tenants. Sally places an ad on her personal Facebook page that states:

Are you looking for a great retail location for your coffee house? Brand new location with existing drive-thru! Look no further, I have the perfect commercial site for you.



Nice, isn't it?! If you are interested, call Sally Wholesome at 555-555-5555 or email me directly at sally@wholesome.com.

Is Sally's Facebook post considered an advertisement? If so, is she in compliance with License Law and Commission rules?

RULE 58A .0105: ADVERTISING

If a broker posts a property on their social media page for sale or lease, is this considered a form of advertising? Yes. According to License Law and Rules Comments section of the **North Carolina Real Estate License Law and Commission Rules** publication, the Commission includes any offer to sell, buy, exchange, rent or lease real property by a broker, advertising.

Social Media

Do I have to get the consent of my BIC before I post an advertisement on social media?

Yes. The Commission views posts by brokers on social media as a form of advertisement under Rule 58A .0105.



Rule 58A .0105(a) (1) indicates that a broker must have the authority to advertise. Brokers derive their authority by receiving consent from their BIC and including the name of the brokerage or sole proprietorship with

which they are affiliated in the advertisement.

Further, according to subsection (a)(2), brokers are also required to obtain the written consent of the owner or owner’s authorized agent prior to displaying a “for sale” or “for rent” sign on or otherwise advertising any real estate.

Rule 58A .0105(b) also prohibits blind advertisements. A broker “blindly” advertises a property they do not own when they fail to identify their brokerage company in the ad and thereby give the false impression that the broker owns the advertised property. In an effort to prevent blind advertisements, every advertisement shall include the name of the firm or sole proprietorship.

Can I use a logo to display the name of my brokerage in the advertisement?

Yes. While Rule 58A .0105(b) prohibits blind advertisements and requires the name of the sole proprietorship/ brokerage in the advertisement, the Rule does not specify the manner in which the broker posting the advertisement must comply with this requirement. Therefore, a broker may use a logo to



identify the name of the sole proprietorship/brokerage in which they are affiliated as long as it is readable.

In addition, since a BIC is responsible for all advertising by or in the name of the brokerage, the BIC must take all steps necessary to ensure that all advertising is truthful and complies with Commission rules.

NOTE: A generic franchise logo or personal logo is not sufficient to comply with the Rule because it is not the name of the brokerage.

COMMERCIAL NEWS FLASH: BIC Consent Required for Advertising

NOTE: The BIC does not have to issue “permission” every single time an affiliated broker creates an advertisement. However, the BIC does need to give consent, which coincides with their policies and procedures in the brokerage’s written office manual.

Is it okay for the name of my sole proprietorship/brokerage to be displayed after the consumer clicks on my advertisement?

No. Brokers have mistakenly believed that as long as a consumer can get to the name of the sole proprietorship/brokerage with just “one-click” on the post, they are adhering to the advertising rule. The Commission does not have a “one-click” rule. Rule 58A .0105(b) specifically states that every advertisement must indicate that it is the advertisement of a broker or firm. Therefore, if a broker posts a picture on their social media page advertising a property without the name of the sole proprietorship/brokerage in the post or on the picture, the broker may be in violation of the Rule.

Therefore, when brokers use social media to advertise property, they should include the name of the sole proprietorship/brokerage:

- in their social media name/handle;
- in the caption of their post;
- on the image of the property; and/or
- in their videos (e.g., stories, reels, etc.)

Once an advertisement is viewed on social media, a consumer should be able to identify the name of the affiliated sole proprietorship/brokerage upon sight. Consumers should not have to “click” on a link in an advertisement in order to identify the name of the sole proprietorship/brokerage.

Does the Commission prescribe the language that brokers must include in the advertisement? No. Although the Commission’s advertising rule does not regulate content, if an advertisement is discriminatory in nature and violates federal and/or state fair housing laws, the broker may be in violation of Rules 58A .0120(d) and .1601. Therefore, brokers are expected to comply with federal and state laws regarding advertising content; specifically, federal and state fair housing laws.

In plain words, to ensure compliance with federal and state fair housing laws, brokers should advertise the property and not who they would want in the property. Also, brokers should ensure that advertisements are truthful and accurate. Basically, the ads must not contain misleading statements or misrepresentations regarding the property.

Am I responsible if my advertisement is sent to multiple platforms? Yes. If a broker posts an advertisement on a website and authorizes the website to send the information to multiple platforms, the broker is essentially agreeing to adhere to the websites’ terms of use. Therefore, the broker is impliedly consenting to the information being released to undisclosed websites, which increases the possibility that property information and content may be altered during dissemination.

Further, brokers mistakenly believe they cannot be held liable for property information distributed to third party websites. This is incorrect. The Commission may hold a broker responsible for all information that they create for any form of advertising or distribution of property information, regardless of the platform. Additionally, brokers are expected to immediately update property information as it changes in any platform in which the broker placed the advertisement.



COMPETING OFFERS



Takin' It to the Streets

Rock Town, NC – Friday, Broker April visited the Commission regarding brokers sharing the Facebook posts of other brokers. Apparently, April's seller saw their property advertised on social media by a broker who

did not have their permission to advertise their property. The seller, who wishes to remain anonymous, is irate and wants to know if this is against License Law and Commission rules.

Is it permissible for a cooperating broker to share an advertisement on social media of the listing broker's advertisement without the seller's consent?

BIC Consent to Advertise

We all understand that a brokerage's BIC is responsible for all of the firm's advertising. Does that include social media?

Do I have to get the permission of the broker who posted a property on social media before I share their advertisement?

Yes. Pursuant to Rule 58A .0105(a)(1) and (2), a broker must have consent of the BIC, indicate the name of the brokerage, and obtain the written consent of the owner or owner's authorized agent to advertise the property. Essentially, if a broker shares a post on social media without the consent of the BIC, name of the sole proprietorship/brokerage, or owner of the property (e.g., owner's authorized agent), they may be in violation of Rule 58A .0105.

Also, brokers who are members of the National Association of Realtors (NAR) have additional requirements they must adhere to under the NAR's Code of Ethics. The NAR considers the copying and publishing of another broker's listing information advertising. As such, it requires specific authority from the listing broker/brokerage prior to sharing a post on social media because they have the written listing agreement with the seller.

Specifically, Article 12 of the [Code of Ethics and Standards of Practice of the National Association of REALTORS®](#) states:

REALTORS® shall not offer for sale/lease or advertise property without authority. . .



In summary, sharing a social media post (e.g., story, reel, or video) without the permission of the listing broker may violate the Code of Ethics and Standards of Practice of the National Association of REALTORS®. Therefore, brokers should obtain permission, preferably in writing before they click “share” or repost an advertisement.

Further, NC REALTORS® published a Legal Questions & Answer Update on August 27, 2020, entitled, [Can I Advertise Another Firm’s Property on Social Media?](#) Basically, the article clarifies that a REALTOR® may be in violation of Article 12 in the Code of Ethics if they do not have the authority to share an advertisement. Therefore, if a REALTOR® is trying to share an advertisement on social media, they should obtain the permission of the listing agent first to ensure compliance with the Code of Ethics.

Best Practices for Brokers Advertising on Social Media

The Commission will hold a broker/brokerage responsible for the property information that is posted on social media, authorized websites, or any other advertising media. Therefore, brokers should consider implementing the following best practices prior to advertising on any media platform:

- obtain consent of supervising BIC;
- include name of sole proprietorship/brokerage;
- receive written consent from the property owner or their authorized agent;
- verify the accuracy of all information;
- research websites and third-party platforms prior to advertising;
- consistently monitor the advertisement to ensure the accuracy of the property information; and
- create an “alert” so that you are notified when information is posted about the property.

Advertising, especially advertising on social media, can create some unexpected challenges. Therefore, brokerages should create specific

policies regarding advertising platforms that affiliated brokers are permitted to use.

COMMERCIAL NEWS FLASH: Advertising Records Must Be Kept

NOTE: Rule 58A .0108(a) requires brokers to keep records of all sale, rental, and other transactions whether the transaction is pending, completed, or terminated. Specifically, subsection (a)(14) includes advertisements for marketing a property as a record that must be retained by brokers. In plain words, advertisements, including social media posts, regarding a property are considered records under Commission rules. Therefore, brokers should place a copy of each advertisement in the transaction file; this includes a copy of each variation of a published ad.

FIRM LICENSING

An individual licensee may choose to create a business entity under which she will conduct real estate brokerage activity. The Commission does not mandate or advocate the creation of one business entity type over the other. However, in order to make an informed decision regarding an



entity, it is imperative that brokers know the difference between an entity and a sole proprietorship. Regardless of the business structure selected for brokerage activity, each will have its own advantages and consequences. Therefore, brokers should seek the advice of legal counsel, a business consultant, and/or a tax expert to make an informed decision.

Entities

The Commission regularly receives inquiries regarding the distinction between entities and sole proprietorships. N.C.G.S. §59-73.1 defines a business entity as:

. . . a domestic corporation (including a professional corporation as defined in G.S. 55-B-2), a foreign corporation (including a foreign professional corporation as defined in G.S. 55B-16), a domestic or foreign nonprofit corporation, a

domestic or foreign limited liability company, a domestic or foreign limited partnership, a domestic partnership, or any other partnership.

COMMERCIAL NEWS FLASH: Foreign Means Not North Carolina

NOTE: In this case, “domestic” and “foreign” only indicates whether an entity was created in North Carolina or somewhere outside our state.

Commission staff does not advise individuals on how to structure their real estate business. However, if the business is a partnership, corporation, limited liability company, association, or other business entity that conducts real estate brokerage activity, then the entity must be licensed. Prior to the submission of a firm license application, a domestic entity must be created and registered in North Carolina. If a foreign entity, it must obtain a Certificate of Authority from, and register with, the North Carolina Secretary of State (NCSOS) before conducting brokerage activity in NC.

An entity is created by written agreement (e.g., Articles of Corporation, Operating Agreement, etc.), and registration with the NCSOS. Once the entity is registered with the NCSOS, it may then apply for a firm license from the Commission pursuant to N.C.G.S. §93A-1 and 2.

License Law and Commission rules specify that any business entity (other than a sole proprietorship) must obtain a separate firm license. Further, the entity must obtain a firm license prior to engaging in any brokerage activity and/or receiving any compensation for brokerage activity in NC. A broker may submit a firm license application by:

- going to www.ncrec.gov;
- clicking on Forms;
- clicking on Application Forms;
- clicking on Firm Application (REC 1.72); and
- completing the form.

Additionally, an entity must have a qualifying broker (QB). The QB must be a principal of the entity, such as an officer, manager, general partner, or person/entity owning 10 percent or more of the business entity. Also, the QB must possess an active NC broker license that is not on provisional status.

One of the QB's many responsibilities per Rule 58A .0502(g), is to designate a BIC for each office. An entity cannot practice brokerage in NC without its QB having designated a BIC for each office., A QB may designate themselves as BIC as long as they meet the requirements.

An entity can also be created specifically for the receipt of compensation earned as an affiliate of another licensed brokerage. If an entity is created solely to receive compensation, a QB is still required pursuant to Rule 58A .0502; however, a BIC is not required if the four criteria set out in Rule 58A .0110(c) are met. While Rule 58A .0502 requires all entities created for compensation only, to have a QB, Rule 58A .0110(c) indicates a BIC is not needed for the entity as long as the entity:

(c) . . .

- (1) *is organized for the sole purpose of receiving compensation for brokerage services furnished by its qualifying broker through another firm or broker;*
- (2) *is treated for tax purposes as a pass-through business by the United States Internal Revenue Service;*
- (3) *has no principal or branch office; and*
- (4) *has no licensed person associated with it other than its qualifying broker*

The Commission has several resources available regarding firm licensure. The following resources may provide some clarity for brokers:



[Do I Need A Firm License](#)



[Business Entity FAQs](#)

Sole Proprietorships

A sole proprietorship is a business that is owned by an individual who is personally liable for all the debts/obligations of the business. If a broker is

a sole proprietor, a firm license is not required because a sole proprietorship is not considered an entity. However, to legally practice brokerage, a sole proprietor must have a current and active license because the business and the broker are one and the same.

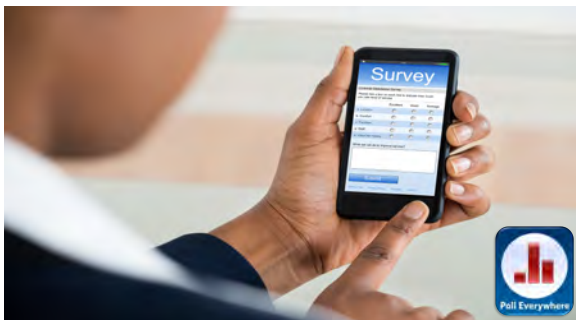
Can I work as a sole proprietor without being a BIC? Only in limited situations. Under Rule 58A .0110(b), a sole proprietor does not need to designate a BIC if they do not:

- engage in any transaction where a broker is required to deposit and maintain monies belonging to others in a trust account;
- engage in advertising or promoting services as a broker in any manner; or
- have one or more other brokers affiliated with the sole proprietorship in the real estate business.

For example, if a prospective buyer/tenant already knows that a broker is licensed and contacts the current and actively licensed broker, who does not advertise properties or brokerage services, then the broker can represent the buyer/tenant or refer the buyer/tenant to another broker for compensation without being a BIC.

Therefore, brokers who will be conducting brokerage activity as a sole practitioner must also designate themselves as BIC. In a less common scenario, if the owner of the sole proprietorship allows other brokers to affiliate with the sole proprietorship, one of those affiliated brokers could serve as BIC instead of the owner if they meet the requirements of Rule 58A .0110.

FIRM LICENSING CONCERNS



Viewer Poll

Do I need a firm license if I only use my LLC to receive compensation?

Yes. Rule 58A .0502(a) requires:

. . . every business entity other than a sole proprietorship to apply for and obtain from the Commission a firm license prior to engaging in business as a real estate broker.

The firm license application process requires the accurate completion of the [Firm Application Form \(Rec 1.72\)](#) and the appropriate submission of supporting documentation (e.g., documentation from the NCSOS). Rule 58A .0502(c) of this Rule lists the information required in the firm license application.



If brokers need assistance with completing the firm license application, the Commission has provided a [Firm Licensing](#) video under Resources to assist brokers with navigating this process.

ASSUMED BUSINESS NAMES



What do I need to do if I want to conduct business in a name different from what's on my real estate license?

The Commission allows sole proprietorships/brokerages to conduct real estate activities using an assumed business name pursuant to Rule 58A .0103(c). However, in order to use

an assumed business name, the sole proprietorship/brokerage must first register the assumed business name by submitting an [Assumed Business Name Certificate](#) to the North Carolina Secretary of State/County Register of Deeds Office.

Once the certificate has been filed, the sole proprietorship/ brokerage must notify the Commission in writing of their use of an assumed business name pursuant to Rule 58A .0103(c).



A sole proprietorship/brokerage notifies the Commission by submitting a [Request Firm Name Change and/or Request to Replace Firm License Certificate or Pocket Card \(Form 1.47\)](#) on the Commission's website.



Viewer Poll

I am a broker with 123 Realty, and I don't like my legal name. Can I file an Assumed Business Name Certificate so I can conduct brokerage activity under an assumed name?

- a) Yes, just register, record, and notify the Commission using Form 1.47.
- b) Yes, simply notify the Commission using Form 1.47.
- c) No, since you are a sole proprietor and not an entity, you cannot use an assumed name.
- d) No, since you are an individual broker, you cannot use an assumed name.

In adherence to the Rule, the Commission recognizes assumed business names for licensed firms and sole proprietorships, not individual brokers. Specifically, subsection I of the aforementioned Rule indicates:

. . . individual broker shall not advertise or operate in any manner that would mislead a consumer as to the broker's actual identity or as to the identity of the firm with which he or she is affiliated.

For example, if a broker is affiliated with a brokerage and their real estate license has their legal name as Stickena Desktop, then they must conduct brokerage activity using their legal name as shown on their North Carolina real estate license. So if Stickena Desktop advertised her real estate services as "The Real Estate Angel," she would be in violation of Commission rules because she cannot use an assumed business name since she is not conducting brokerage activity as a sole proprietor.

In contrast, a sole proprietor may use an assumed business name that is different from their legal name as long as they have filed an Assumed Business Name Certificate and notified the Commission per Rule 58A .0103(c). For instance, if John Doe is a sole proprietor and wants to conduct business under the name "Prince Realty," he must first search to ensure the name is not in use, complete and file the Assumed Business Name Certificate with the NC Secretary of State/County Register of Deeds office, and notify the Commission of the assumed business name using the Request Firm Name Change and/or Request to Replace Firm License Certificate or Pocket Card (Form 1.47).

However, a sole proprietor does not have to file an Assumed Business Name Certificate if they are using their legal surname or last name while conducting business. For example, if John Doe would like to conduct brokerage activity as Doe Realty, he does not need to file an Assumed Business Name Certificate because "Doe" is his surname.

Similarly, a licensed entity that conducts business using a name other than its legal name must file a Certificate of Assumed Business Name and notify the Commission as well. The rationale behind this requirement is to assist consumers with identifying the actual entity/sole proprietorship with whom they are dealing in real estate transactions.

Nicknames

Rule 58A .0103 requires a licensee to use the name printed on their license certificate when engaging in brokerage activities. If a broker who is licensed under the name, William Robert Smith, uses the name, Robert Smith, then, when his name appears in writing, it should indicate W. Robert Smith. If Mr. Smith uses the nickname, 'Rusty,' then, when identifying his name in writing, he must write, William 'Rusty' Smith. Simply writing Rusty Smith is prohibited. If a licensee changes their name and wishes to use the new name in their real estate business, they should submit the Request for Broker Name Change and/or Request to Replace Broker License/Pocket Card (Form REC 1.22) to the Commission on the website www.ncrec.gov.



On December 1, 2017, the NC legislature repealed Chapter 66, Article 14, and enacted Article 14A, the "Assumed Business Name Act."

N.C.G.S. §66-71.2 states that the purpose of the Act is to:

. . . afford the public the means to ascertain the real name of persons engaging in business in this State under an assumed name by requiring those persons to register the assumed business name . . .



The change modernized the assumed business name process and made it easier to register, find, and maintain assumed business name information for businesses. The Act altered the requirements for the assumed business name certificate and created the means by which a single registration in one Register of Deeds office can be effective for multiple counties. In the article, [**Assumed Business Name Filing Deadline Coming December**](#)



[1, 2022](#), the Commission informs brokers about the modernization of the assumed business name registration process.

Also, the article, [A Rose by Any Other Name - Names, Name Changes, and Assumed Names](#), clarifies the proper usage of names in advertising and informs brokers about the modernization of the assumed business name process.



AFFILIATION

Do I need to be affiliated with a BIC in order to practice real estate? It depends. Are you a full broker or a provisional broker? According to Rule 58A .0506(a), a provisional broker may only engage and hold themselves out as a real estate broker when their license is current and active and they are supervised by the BIC of the brokerage in which they are affiliated. A full broker may hold a license on active status while not being affiliated with a BIC.

Can I work as a sole proprietor without being a BIC?

It depends. A sole proprietor who is not a BIC can:

- make referrals and
- represent unsolicited buyers.

A broker who is operating as a sole proprietor without being a BIC cannot:

- maintain a trust account;
- advertise; and/or
- affiliate other brokers.

So, if a full broker wants to maintain a trust account, advertise their services, or affiliate other brokers, they must designate themselves as a BIC and meet the requirements of Rule 58A .0110. As mentioned previously, if the owner of the sole proprietorship allows other brokers to affiliate with the company, one of those affiliated brokers could serve as BIC instead of the owner if they meet the requirements of Rule 58A .0110.

LIMITED NONRESIDENT COMMERCIAL LICENSE



Do I need a separate license to sell or lease commercial properties in North Carolina?

If you have a North Carolina real estate license, you have achieved minimal competency to practice any form of real estate brokerage in NC. Therefore, a separate license is not required prior to conducting commercial real estate transactions.

North Carolina's broker license authorizes the practice of all brokerage activity including commercial, residential, land, and property management.

However, a broker is strongly encouraged to speak with their BIC to ensure they have the requisite competence and the permission of their brokerage company to practice this specialty area of brokerage prior to engaging in it.

Can I get a Limited Nonresident Commercial Brokers license (LNCL) if I live in North Carolina?

No. A LNCL is only available if you are a nonresident broker licensed in another jurisdiction. If such a broker wishes to conduct commercial brokerage activity in North Carolina, that broker will need to obtain a LNCL pursuant to Rule 58A .1801. Rule 58A .1801(a) states:

Any person resident in a state or territory of the United States other than North Carolina may perform the acts or services of a real estate broker in North Carolina in transactions involving commercial real estate if said person first applies for and obtains a limited nonresident commercial real estate broker license as provided in this Section.

The LNCL is a license issued to a person who:

- does NOT live or have any home, business, or delivery address in NC;
- has an active real estate broker or salesperson license in another state;
- wants to enter NC to engage in commercial transactions as an affiliated agent with their out-of-state brokerage company; and

- must enter into a Declaration of Affiliation and a Brokerage Cooperation Agreement with a resident NC broker who will be responsible for supervising the nonresident.

The LNCL is a broker license that restricts the holder to specific activities. A LNCL holder may only enter NC to engage in commercial real estate transactions as defined in Rule 58A .1802(1). If the LNCL holder obtains any home, business, or delivery address in North Carolina, the individual must apply for and obtain a NC broker license in order to engage in any brokerage activity within NC, just like every other North Carolina resident that wants to engage in brokerage activities.



The application for the LNCL can be found on the Commission's website here: [**Limited Nonresident Commercial Real Estate License \(Form REC 1.78\)**](#).

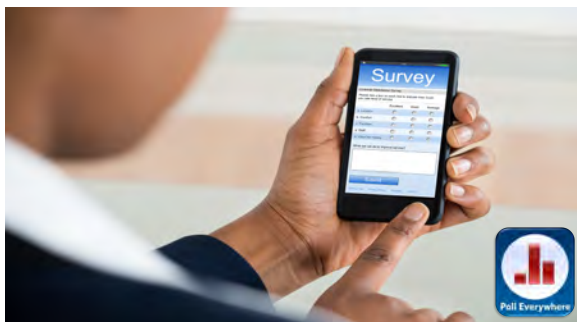
Also, the Declaration of Affiliation of Limited Commercial License is here: [**Declaration of Affiliation Between a Limited Nonresident Commercial Real Estate Licensee and a Resident Broker \(REC Form 1.79\)**](#).



COMMERCIAL NEWS FLASH: Business Entities Eligible for Firm License

NOTE: Corporations, business associations, and other entities are ineligible for licensure under Rule 58A .1802.

LEARNING OBJECTIVES



Viewer Poll

Do Commission rules require Code of Ethics training?

No. The Commission does not require Code of Ethics training. Code of Ethics requirements are set by the National Association of REALTORS® (NAR).

Not all licensees are members of the NAR. Brokers who are NAR members are required to complete Code of Ethics Training periodically in order to remain in good standing as a REALTOR®.



NATIONAL ASSOCIATION of REALTORS®

Members are required to complete Code of Ethics training every 3 years. The course must include at least 2.5 hours of instructional time and is offered in distance format, in synchronous courses, or in-person. These courses are offered through local REALTOR® associations. Some of these courses, if they are at least 4 hours long, may also provide Commission CE elective credit, but only if the course was submitted and approved for CE elective credit with the Commission.

CONTRACT SIGNATURES



Takin' It to the Streets

Miss Smith, a property owner states: My significant other and I own a property together. We are breaking up and my significant other told the broker that we were both in agreement on selling the property. I didn't even know the property had been

listed. Now it's under contract and they are telling me that I have to sign. Well, I am not going to do it. I want more money than they are telling me that I will get from this property. This isn't right. I am going to file a complaint with the North Carolina Real Estate Commission.

- 1. If signatures cannot be obtained, will this result in a breach of contract?

- 2. Could the buyer be entitled to damages?

- 3. Is there a probable violation of License Law and Commission rules?

What if a property has two owners and both have the legal right to sell the property or their interest in the property, but only one of them signs a listing agreement? Generally, a listing agreement is only enforceable against the person(s) who signed the agreement. As such, the best practice is to get each owner named on the deed to sign the listing agreement.

Do all owners of the property have to sign the offer to purchase? It is preferred/recommended. Generally, every owner whose name is on the deed to the property should sign the offer to purchase, as this would make it more likely that they will cooperate with the conveyance because they are legally bound to the contract terms.

What if one of the owners does not sign the offer to purchase? Clear title to the property may still be conveyed as long as all owners agree to sign the deed. But, if even one of the owners refuses to sign the deed, clear title cannot be conveyed to the prospective buyer. In such a situation, the owner(s) that do not want to sell the property may file a special proceeding in the appropriate court and request a partition or sale in lieu of partition pursuant to N.C.G.S. §46A-75. As should be obvious, this result can be avoided by simply having each owner sign the listing agreement and the offer to purchase.

What if the property is an estate property? If the real property is part of an estate that has not yet been settled, then a personal representative (executor or administrator) will need to sign the listing agreement and deed to convey clear title to the property to the prospective purchaser. However, personal representatives are not automatically given permission to sell an estate property.

Following the death of a property owner, a qualified person must apply to the appropriate Clerk of Court to be named a personal representative of the deceased's estate. If the deceased died with a will (testate), then the Clerk will name the qualified person the executor of the estate. If the deceased did not have a will (intestate), then the Clerk will name the qualified person the administrator of the estate.

Only a properly named personal representative may sell real property on behalf of an estate. If there is a will, and the will specifically grants the



executor permission to sell real property, the executor may do so. However, if the will is silent on this issue, or if there is no will, the personal representative must obtain a permission from the Clerk of Court to sell the real property. The petition for permission must contain a description of the



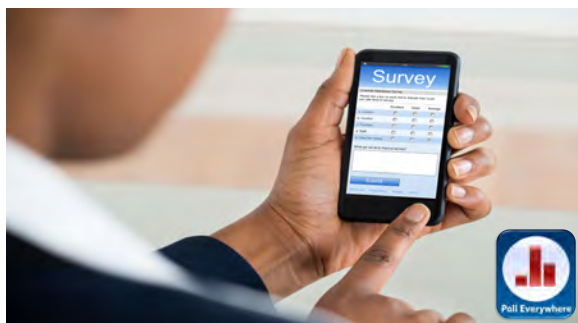
property to be sold, names and contact information of the heirs of the property, and a statement as to why selling the property is in the best interest of the estate.

If the surviving spouse of a decedent is the sole heir or devisee of the estate, then a summary administration may be all that is needed. If there are multiple heirs for an inherited property, all heirs (and possibly any spouses) must sign the

deed to convey clear title. If all heirs do not agree for the property to be sold, they may petition the Court for the property/land to be partitioned.

There are also provisions for "small estates." Due to the various possibilities, potential listing agents should always consult an attorney about what is required to successfully list and sell properties that are in an estate or owned by multiple heirs.

BROKER OWNED PROPERTIES

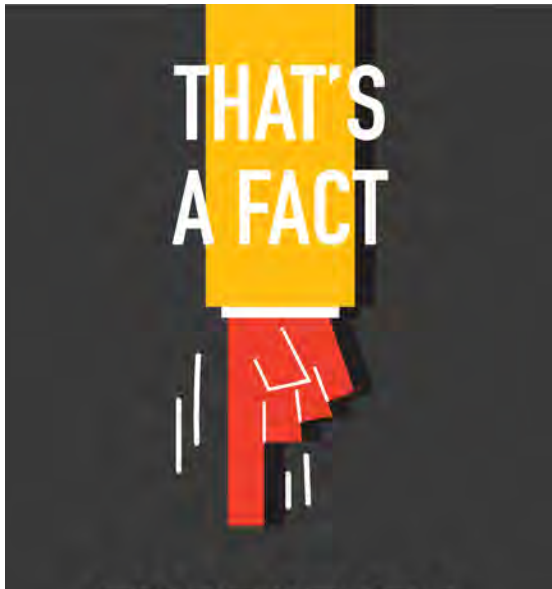


Viewer Poll

Do I have to comply with License Law and Commission rules when I am selling my own property?

Yes. Per N.C.G.S. §93A-6(b)(3), a broker must comply with License Law and Commission rules when selling their personally owned property. Quite frankly, the Commission does not require the broker to disclose they have a real estate license; however, the Commission strongly recommends this

disclosure because having a license may enhance the negotiating position of the broker if/when working with an unrepresented buyer.



Additionally, a broker still must comply with N.C.G.S. §47E, Residential Property Disclosure Act, when selling their own property. The broker-seller may check “Yes,” “No,” or “No Representation” on the Residential Property and Owners’ Association Disclosure Statement (RPOADS) but the broker-seller still has a mandatory obligation under N.C.G.S. §93A-6 to discover and disclose material facts in a timely matter, no later than the point in which the prospective buyer makes an offer on the property. The Commission does have the authority to discipline a broker who does not affirmatively and timely discover and

disclose material facts when selling their own property.

Because a broker may be disciplined for failing to discover and disclose material facts, it is imperative that the broker exercise reasonable effort to ascertain any material fact about the property that may affect the reasonable buyer’s decision to purchase the property. Further, Rule 58A .0104(o) indicates:

. . . a broker who is selling property in which the broker has an ownership interest shall not undertake to represent a buyer of that property except that a broker who is selling commercial real estate as defined in Rule .1802 of this Subchapter in which the broker has less than 25% ownership interest may represent a buyer of that property if the buyer consents to the representation after full written disclosure of the broker’s ownership interest.

If a broker attempts to represent a buyer for the broker’s own property this would create a conflict of interest. This is the reason it is a violation of Commission rules. However, if the broker-seller lists the property with their brokerage, another broker in the firm without an ownership interest may represent the prospective buyer as long as the buyer consents to the representation after full written disclosure of the affiliated broker’s ownership interest.



Takin' It to the Streets

Broker Daniel states: I don't know what the North Carolina Real Estate Commission thinks they are doing. I have a broker's license, but I don't use it to represent other people. I only manage residential rental properties that I own.

I have the right to create my own lease. What I charge for a security deposit and the requirements I put in my lease agreements are my personal business. The tenants agreed to everything, and I have everything in writing. Frankly, that is all that is required. The Commission should mind their own business.

1. What rules and statutes apply?

2. Do all property owners have to follow provisions of the Tenant Security Deposit Act (TSDA)?

3. Is there a probable violation of License Law and Commission rules?

COMMERCIAL NEWS FLASH: Unlicensed Landlords Must Comply with TSDA & RRAA

NOTE: Although a real estate license is not required when an individual is managing their own property; an unlicensed individual and a broker must both comply with the Tenant Security Deposit Act and the Residential Rental Agreements Act.

The TSDA can be found in N.C.G.S. §42-50. This Act specifies that a tenant security deposit must be placed in a trust/escrow account, or the owner may post a bond. The Act does allow a broker to post a bond when managing their own property. However, it is recommended that the broker

YOU BE THE CONSUMER PROTECTION OFFICER

1. Sam and Julie are brokers with Z Realty and co-own a residential property. They list the property for sale with Z Realty; Sam is the listing agent. Z Realty practices dual agency. Tuck, a prospective buyer, is interested in Sam and Julie's property. Sam informs Tuck that he cannot assist him with the transaction because he has an 80% ownership interest in the property. However, Sam informs Tuck that Julie can represent his interest because she only has a 20% ownership interest in the property. Therefore, Julie represented Tuck in the purchase of the residential property she co-owned with Sam.

Did Julie violate License Law and Commission rules?

2. John Rock, a licensed broker affiliated with 123 Realty, advertises his brokerage services as "The Rock Realty."

Is John allowed to advertise using the name "The Rock Realty?" Why or why not?

SEGMENT 3

WEATHER DESK: CHALLENGES OF A CHANGING MARKET





1. Is a broker price opinion (BPO) the same as an appraisal?

2. Can a broker communicate with an appraiser?

LEARNING OBJECTIVES

After completing this section, you should be able to:

- define appraiser pursuant to N.C.G.S. §93E;
- briefly describe the scope of the broker's and appraiser's role during the appraisal process;
- identify the types of assumable commercial mortgages;
- list the common limitations a buyer may encounter when assuming a mortgage;

- define wholesaling;
- describe the Commercial Broker Lien Act N.C.G.S. §44A-24.1 et seq., and
- compare and contrast BPOS with comparative market analysis (CMAs) and summarize the different fiduciary duties owed to recipients of these opinions.

TERMINOLOGY

Appraisal: An analysis, opinion, or conclusion as to the value of identified real estate or specified interests therein performed for compensation or other valuable consideration.

Appraiser: A person who is licensed to develop and communicate real estate appraisals or otherwise gives an opinion of the value of real estate or any interest therein for a fee or other valuable consideration.

Assumable Mortgage: A mortgage loan that can be transferred to another person.

Broker Price Opinion: An estimate, prepared by a broker that details the probable selling or leasing price of a particular parcel, or any interest therein, and provides a varying level of detail about the property's condition, market, and neighborhood, and information on comparable properties but does not include an automated valuation model.

Wholesaling: A strategy in which a party obtains a contract to purchase a property from a seller, and then prior to closing, assigns their contract rights to a buyer.

COMMERCIAL APPRAISALS

Appraisals are performed on a regular basis in both residential and commercial real estate transactions in North Carolina. There are numerous reasons why a party to a real estate contract may want to obtain an appraisal. Some of the more common include:

- determining fair listing and selling prices;
- assist in lease negotiations;

- assist lenders wanting to issue a loan;
- company acquisitions or dissolutions;
- environmental issues;
- eminent domain proceedings;
- tax assessment;
- zoning & planning questions of profitability;
- assist with auctions and forced sales; and
- replacement costs for insurance policies.



Due to varied reasons for appraisals, and the involvement of brokers in the process, this year's Commercial Update takes a deep dive into the commercial appraisal process and the rules and ethics involved.

- assist lenders wanting to issue a loan;
- company acquisitions or dissolutions;
- environmental issues;
- eminent domain proceedings;
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- assist with auctions and forced sales; and
- replacement costs for insurance policies.

Due to varied reasons for appraisals, and the involvement of brokers in the process, this year's Commercial Update takes a deep dive into the commercial appraisal process and the rules and ethics involved.

The Law

N.C.G.S. §93E-1-4(1) defines any real estate appraisal as:

. . . an analysis, opinion, or conclusion as to the value of identified real estate or specified interests therein performed for compensation or other valuable consideration.

The Appraiser

This opinion of value is generated by a licensed appraiser. N.C.G.S §93E requires anyone performing an appraisal in North Carolina to be licensed as an appraiser by the North Carolina Appraisal Board. An appraiser is defined

as a person who for a fee or valuable consideration develops and communicates such an opinion of value of real property, or any interest therein.

A key understanding that all licensees must possess is that appraisers have far more education and experience in the real estate valuation process than brokers. While we as brokers may complete broker price opinions (BPOs) and comparative market analyses (CMAs) for our customers and clients, that work pales in comparison to the work done by appraisers when determining the value of real property.

In all contexts, an appraisal results from an independent, impartial, and objective opinion of value that represents the appraiser's best judgment based on all relevant factual data reasonably available that is derived utilizing appropriate analytical methods. The ability of an appraiser to deliver such an opinion in a commercial setting is a byproduct of hundreds of hours of education, work, and practical experience.



Not all appraisers are created equal, as the North Carolina Appraisal Board recognizes four different levels of appraiser licenses. Like most professions in the real estate world, a license is required before a real estate appraisal may be provided for a fee.

The initial step to become an appraiser in North Carolina is the completion of a 75-hour qualifying education course that focuses on appraisal principles and practices. After completion of this course, an application is filed with the NC Appraisal Board, and after a review of the applicant's background and character, a Registered Trainee number is issued to the applicant.

After experiencing 1,000 hours of work as a trainee over a six-month period and completing another 75-hour qualifying education course focused on residential appraisals, the trainee may upgrade their credentials to that of a Licensed Residential Appraiser.

After an additional 500 hours of experience as a Licensed Residential Appraiser over at least a 12-month period, and another 50-hour qualifying education class focused on statistics, modeling, finance, and advanced

residential appraising, a Licensed Residential Appraiser may upgrade their credentials to that of a Certified Residential Appraiser. Note that passage of some college courses is a prerequisite for obtaining this certification.

Lastly, after completion of another 1,500 hours of practical experience, an additional 180 hours of focused qualifying education, and having obtained a bachelor's degree or higher from an accredited college or university, a Certified Residential Appraiser may upgrade their credentials to that of a General Appraiser. Note that only General Appraisers may complete appraisals on commercial property (including residential properties with greater than four units).

As is easily distilled from the above reading, the holder of a General Appraiser designation in North Carolina is one who has more than 3,000 hours of appraisal experience and 300 hours of required education, in addition to a college degree. It is this time in the classroom and in the field that sets appraisers apart from others in the real estate industry.

Governing Body

The work of appraisers in North Carolina is governed by the North Carolina Appraisers Act (N.C.G.S §93E). Pursuant to the Act, North Carolina appraisers are governed by the North Carolina Appraisal Board ("NCAB") located in Raleigh. The NCAB is an occupational licensing agency (like our Commission) created to oversee the application, licensing, education, and discipline of North Carolina appraisers.



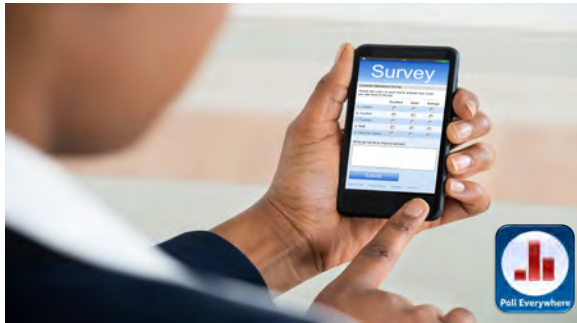
On a national level, the work of appraisers is largely governed by The Appraisal Foundation, which, through its Boards, is responsible for setting the Congressionally authorized standards and qualifications for real estate appraisers. Within the Foundation exists the Appraiser Qualifications Board

("AQB") that establishes the minimum qualifications for appraisers, and the Appraisal Standards Board ("ASB") that sets the minimum standards for the appraisal practice in general.

To fulfill its purpose, the ASB promulgated the Uniform Standards of Professional Appraisal Practice ("USPAP"). USPAP is the generally recognized ethical and performance standard for the appraisal profession across the country. USPAP was adopted by Congress in 1989, and contains standards for all types of appraisal services, including real estate, personal property, business, and mass appraisal. Compliance is required for state-

licensed and state-certified appraisers involved in any federally related real estate transactions.

While USPAP is written, amended, and interpreted by The Appraisal Foundation, compliance with its provisions is enforced by each state's appraisal board.



Viewer Poll

What is the difference between an appraisal and a BPO?

- a) A BPO can be used to originate a mortgage loan, but an appraisal cannot be used for that purpose.
- b) An appraisal estimates value, and a BPO estimates the probable sales price.
- c) Standards for a BPO are set by USPAP, and standards for appraisals are set by the NCREC.
- d) An appraisal can be performed for a fee, but a BPO cannot be performed for a fee.

Remember that brokers perform an analysis of recently sold properties in order to derive an indication of the probable sales price of a subject property. This probable sales price of the property is estimated in the BPO.

A probable sales price is not an opinion or conclusion of value or worth. Matter of fact, the North Carolina Appraisers Act specifically exempts BPOs/CMAs from the real estate appraiser license requirements when it is performed by a licensed real estate broker for a prospective or actual client provided that the broker does not hold themselves out as being state licensed as a real estate appraiser.

The Appraiser's Competency

As well all know, when espousing opinions, perfection is impossible to obtain. This reality is also recognized in the appraiser profession. "Competence does not require perfection" is the understanding USPAP begins with when discussing competency. The caveat, however, is that appraisers "must not render services in a careless or negligent manner."

To be competent, the USPAP Competency Rule requires that appraisers:

. . . determine, prior to agreeing to perform an assignment, that he or she can perform the assignment competently. Competence requires:

- 1. the ability to properly identify the problem to be addressed;*
- 2. the knowledge and experience to complete the assignment competently; and*
- 3. recognition of, and compliance with, laws and regulations that apply to the appraiser or to the assignment.*

USPAP views competency as multifactorial. At a minimum, competence requires familiarity with the type of property at issue, the market and geographic area in which it sits, potential intended uses, the laws and regulations that pertain to these factors, and the appropriate analytical method(s) to utilize. This begs the question of how one obtains this experience?

Most certainly the requisite experience an appraiser needs to perform a particular assignment may be acquired by personal study or by associating with/hiring another appraiser that has the required experience. This action, however, may not be conducive to accepting assignments from prospective clients, as they may not be willing to wait.

As the old saying goes, "I can't get a job without experience, but I can't get experience without a job." USPAP accommodates this frequent reality by providing specific guidance to appraisers that may not have the requisite competence in all of the necessary factors required by a particular assignment, but still want to assist the prospective client. Specifically, the USPAP Competency Rule states:

If an appraiser determines he or she is not competent prior to agreeing to perform an assignment, the appraiser must:

- 1. disclose the lack of knowledge and/or experience to the client before agreeing to perform the assignment;*
- 2. take all steps necessary or appropriate to complete the assignment competently; and*



- 3. Describe, in the report, the lack of knowledge and/or experience and the steps taken to complete the assignment competently.*

What does the appraiser do if they believed they had the requisite competence when they accepted the assignment, but subsequent information revealed that they now lack the competence to complete the assignment? USPAP mandates that the client be informed, that the appraiser take all steps necessary to complete the appraisal competently, and then explain in their report where the appraiser lacked the necessary knowledge and/or experience, and what was done to overcome the deficits. If the appraiser cannot complete the assignment competently, the only option is to withdraw from the assignment.

The Appraiser's Client

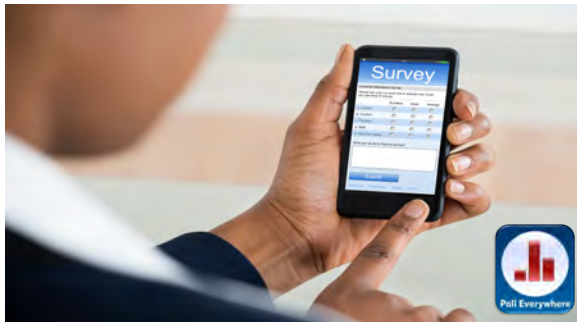
As was mentioned at the outset of this section, there are a variety of reasons why an appraisal may be requested. As such, the person or entity hiring an appraiser can be just as varied. While a buyer or seller of commercial real estate may engage an appraiser to better understand a property's value, the most common situation is where a lender on behalf of a buyer has commissioned an appraisal in an effort to assure that the lender's loan to value ratios fall within their required parameters.

While the appraiser must always adhere to the USPAP when performing an appraisal, the appraiser must also comply with the specific requirements from their client. Lenders, as well as Freddie Mac, Fannie Mae, and other governmental entities will all have specific requirements that the appraiser must meet in order to fulfill the scope of work. Further, state and local governments, corporate officers, transportation departments, insurance companies, and even couples wanting a divorce may have special needs regarding their request for an appraisal.

As brokers, we need to be cognizant of who has hired the appraiser, because that will dictate how we contact and provide information to, and obtain a report from, the appraiser. Keep in mind, the appraisal typically belongs to the person or entity that hired the appraiser, and thus that person or entity has control over who may be able to access the report.

Regardless of who has hired the appraiser, the appraiser must make sure to meet all the requirements mandated by their client. These specific requirements can be broad and vary depending on the type of appraisal, but regardless of the circumstances, the appraiser must follow those requirements to the letter in order to fulfill their client's needs. Furthermore, as appraisers must comply with USPAP, they must make

certain that the client's requirements do not violate any USPAP rules or obligations.



Viewer Poll

Does the buyer's choice of financing impact the appraisal process?

- a) No, all appraisals are the same regardless of the type of financing.
- b) No, the appraiser is not told about the type of financing the buyer is getting.
- c) Yes. The appraiser must comply with the requirements of the mortgage lender and guarantor.
- d) Yes, it impacts the type of value the appraiser must provide.

Appraiser Ethics

Appraisers must adhere to the ethical principles detailed in USPAP. Generally speaking, USPAP requires that all appraisers:

Promote and preserve the public trust inherent in appraisal practice by observing the highest standards of professional ethics.

USPAP's ethics rule is further divided into three categories, Conduct, Management, and Confidentiality.

- Under the Conduct category, an appraiser must "perform assignments with impartiality, objectivity, and independence without accommodation of personal interests." In plain terms, an appraiser must eliminate all bias, not advocate for any interest or party, nor include any predetermined opinions or conclusions.
- The Management category requires an appraiser to disclose anything of value that may have been given when obtaining the appraisal assignment from the client. Further, an appraiser may never accept an assignment where the compensation is contingent upon a particular result.
- The Confidentiality category requires an appraiser to protect the confidential nature of their relationship with their client, especially when communicating assignment results, and may only disclose

results to persons specifically authorized by the client or when mandated by due process of law.

Always remember that the appraiser is approaching their work in an unbiased fashion. As stated in the thoughtful article, [**The Appraiser's Role Isn't to Kill Your Deal**](#), an appraiser must not perform an assignment with bias nor accept an assignment that includes the reporting of predetermined opinions and conclusions. Appraisers must not advocate the cause or interest of any party or issue.



Basically, an appraiser does not care about the interests of the buyer of the subject property because the buyer is not their client.

The Commercial Appraiser's Process

At the outset of any appraisal assignment, the appraiser must determine whether they are able to competently perform the assignment as detailed in the request. This requirement not only encompasses competency from a knowledge, experience, and licensure level, but also the ability to properly complete the work based upon the property's geographic area, property type, or market location. If the appraiser does not believe, after application of due care and diligence, he is competent in all these areas concerning a particular assignment, the appraiser must refuse or withdraw from the assignment.

For each assignment accepted, an appraiser should generally follow a four-step process:

- Identify the problem or issue at stake;
- Determine the scope of the work necessary to address the identified problem;
- Gather the information and data (whether through personal investigation or research) that needs to be analyzed to comply with the scope of the work and address the problem to solved, and then complete the analysis; and
- Prepare an appropriate report that discloses the research and analyses performed and the conclusions and opinions derived therefrom.

Valuation Approaches

While there are a variety of methods and models that appraisers may use for any particular assignment, for our purposes here, we will focus on the three most common approaches used in commercial real property

appraisals. They are the Market Value Approach, the Income Approach, and the Cost Approach.

1. The Market Value Approach

When utilizing this approach, the appraiser is seeking “the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, where parties are acting prudently and knowledgeably, without undue stimulus.” Inherent in this definition is the concept that the contemplated transaction is arm’s length, and that the value reflects only the perspective of the marketplace, not that of any particular party.

This approach begins with knowledge and understanding of the subject property, which is typically accomplished by personal inspection, as well as gathering and verifying information through research.

Using this type of approach anticipates that the appraiser is at least as knowledgeable about a property as a typical market participant would be. If the subject property type is commonly appraised and the appraiser typically performs her work in this market, then the scope of work will be less than would be required for the appraiser to get up to speed on a market they have not worked in before, or a property type that is truly unique to the appraiser.

Understanding supply and demand in the market where the subject property is located, as well as an examination of the sales history of like kind and quality properties is an integral part of this approach.

COMMERCIAL NEWS FLASH: BPOs/CMAs are NOT Appraisals of Value

A BPO/CMA is an opinion of the probable sales price for a property based on the data of recently sold properties; it does not indicate the value of the property. As a matter of fact, the North Carolina Appraisers Act specifically exempts BPOs/CMAs from the real estate appraisal license requirements when it is performed by a licensed real estate broker for a prospective or actual client provided that the broker does not hold themselves out as being state licensed as a real estate appraiser. [More to come on this topic].

In this context, a real estate broker may be able to provide valuable information to the appraiser concerning comparable properties. An appraiser may obtain this information through online database services and not actually visit and inspect each comparable property. However, if the broker has done this work, and personally inspected and documented

comparable properties, that information may be valuable to an appraiser, as it will assist the appraiser in formulating a more well rounded and accurate opinion of value.

2. The Income Approach

For commercial properties that generate a stream of revenue, appraisers will often use the income approach to determine the value of the property. The concept behind this approach is the determination of the present-day value of future streams of income. Appraisers are able to use this approach for office properties, shopping centers, multifamily developments, and the like. Even if the property is owner occupied, it can be valued based upon what it would generate if the owner vacated the property in favor of tenants.

The income approach initially requires a determination of the net operating income generated by the property. This is reached by an analysis of the total revenue that could be generated, less the costs directly related to that revenue (vacancy, collections, etc.), less the operating expenses necessary to keep the property running. The bottom line number, after all revenue and expenses are totaled, is called the net operating income ("NOI").

COMMERCIAL NEWS FLASH: Opportunity to Help Appraiser

This is another area where a broker may be able to provide insights into the property that the appraiser may not be aware of. Alerting the appraiser to the property's unique operating expenses and the rationale behind them could aid the appraiser in determining a clear net operating income. Likewise, providing information related to a comparable property's NOI, gleaned from personal experience with the property, may be beneficial information to the appraiser when considering the other property as a comp.

The second metric used by appraisers when using the income approach is the capitalization rate, often referred to as the "cap rate." In its simplest form, the cap rate is a financial metric used by investors to evaluate the potential profitability of an income-generating property. It is calculated by dividing the property's net operating income (NOI) by its current market value or acquisition cost. The resulting percentage represents the rate of return an investor can expect to earn annually from the property, assuming it is purchased entirely with cash. As a powerful tool, the cap rate aids investors in comparing different properties, regardless of their size or location, enabling them to make well-informed decisions when allocating their capital within the dynamic real estate market. Therefore,

understanding and analyzing the cap rate can significantly enhance an investor's ability to identify lucrative investment opportunities and optimize their overall portfolio performance.

Let's walk through an example of how a commercial real estate appraiser would calculate the capitalization rate (cap rate) and then the market value for a commercial property generating \$85,000 in net operating income (NOI).

The appraiser would begin by gathering data on comparable properties in the same market which will serve as benchmarks to assess the subject property's value. This process not only involves finding properties with similar features, it involves determining the NOI for each comparable property. Once this has been determined, the NOI is divided by the sales price and the quotient is then multiplied by 100 to give you the cap rate. This process is repeated for each comparable property to arrive at a cap rate for the market.

For example, if the average cap rate for comparable properties is 6.5%, the appraiser would divide the subject property's NOI (\$85,000) by 6.5% (0.065) to arrive at an estimated market value of approximately \$1,307,692. It's essential to remember that the actual appraisal process is more intricate and considers additional factors, but this simplified example demonstrates how a commercial real estate appraiser can use the income approach to estimate the market value of a property based on its net operating income.

3. The Cost Approach

Valuation utilizing the cost approach is based upon the principle of substitution. In general, substitution stands for the proposition that a property's maximum value tends to correlate with the cost of obtaining an equal alternative property within the same time constraints. Put simply, a prudent investor would pay no more for an income-producing property than it would cost to build or purchase a similar property.

The Cost Approach to valuation anticipates completion of three steps prior to reaching a valuation.

Valuing the land as if it was vacant;

- Estimating the current cost of reconstructing all the improvements on the land and adding this to the land valuation; and
- Depreciating the existing improvements based upon either their actual deterioration, functional obsolescence, or economic obsolescence, and

then subtracting the depreciation from the current cost of reconstruction and land valuation.

COMMERCIAL NEWS FLASH: Opportunity to Help Appraiser

In this context, a broker should remember that land valuation is typically obtained by an analysis of comparable parcels. However, as stated above, while the appraiser may obtain her information from online databases, the broker may be able to add valuable insights by offering the results of their personal inspection of comparable properties.

Another area to be aware of is the method by which the appraiser considers construction costs. Is the appraiser analyzing replacement costs, or reproduction costs? Remember that replacement cost is simply the insertion of like kind and quality features readily available in the market. Reproduction cost, however, anticipates the construction of exact duplicates of the specific features.

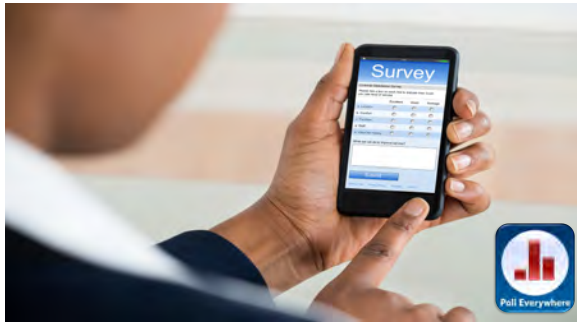
Reconciliation and Reporting

The process of arriving at a market valuation for a commercial property in an appraiser's final report involves a careful reconciliation of the common approaches to valuation discussed above. Reconciling them ensures a more accurate and comprehensive valuation.

This reconciliation process involves assigning different weights to each approach based on their relevance and reliability in the specific context. The appraiser may give more weight to the income approach if the property is primarily income-generating or rely heavily on the sales comparison approach if there are sufficient comparable sales data available.

By thoughtfully reconciling the various approaches, the appraiser can arrive at a comprehensive market valuation for the commercial property. The final report would present a well-supported and defensible value, providing stakeholders with a reliable basis for decision-making in matters such as financing, acquisitions, dispositions, or property taxation. The appraiser's expertise, experience, and adherence to professional standards play a critical role in ensuring the accuracy and credibility of the valuation presented in the final report.

Broker's Communications with Appraisers



Viewer Poll

Can brokers communicate with appraisers and maintain appraiser independence requirements?

- a) Yes, brokers may communicate with appraisers and not violate Dodd-Frank, TILA, and USPAP.
- b) No, it would violate Dodd-Frank.
- c) No, it would violate the Truth-in-Lending Act.
- d) No, it would violate USPAP.

A broker may communicate with an appraiser to assist them in arriving at a more well-rounded and defensible opinion of value. Remember, the role of the broker is to advocate on behalf of their client and adhere to their fiduciary duties while providing agency representation.

Although brokers are providing the property information for appraisers to ascertain their opinion of value, the communication of information is generally a one-way street from the broker to the appraiser. Brokers should not expect appraisers to discuss comparable properties with them or give them confidential information; in fact, they will not.

Brokers may communicate with appraisers and not violate Dodd-Frank, TILA, or USPAP. In the article, Issue Brief: Appraiser Independence, published by the NAR®, it quotes Dodd-Frank as follows:



The requirements of subsection (b) shall not be construed as prohibiting a mortgage lender, mortgage broker, mortgage banker, real estate broker, appraisal management company, employee of an appraisal management company, consumer, or any other person with an interest in a real estate transaction from asking an appraiser to undertake one or more of the following:

1. Consider additional, appropriate property information, including the consideration of additional comparable properties to make or support an appraisal.

2. *Provide further detail, substantiation, or explanation for the appraiser's value conclusion.*
3. *Correct errors in the appraisal report.*

The NAR® recommends that brokers prepare an Appraiser's Package in advance and have it available for the appraiser at the property. If the appraiser does not accept the packet of information prepared by the broker, the broker may send an email to the appraiser's client and include any documentation and data that was attempted to be shared with the appraiser. This communication will evidence the broker's due diligence in adhering to their fiduciary duties to their client.

Brokers may want to provide the following pieces of information to the appraiser early on in the process:

- Deed containing the property's legal description;
- Plat maps and surveys;
- Property features and upgrades;
- Current property tax bill;
- Zoning ordinance and zoning district map;
- A list of comparable properties with detailed information obtained by the broker may not be part of public or membership databases; and
- Tenant rosters and lease summaries for each tenant in the subject building.

Although brokers are providing property and market information to appraisers to assist them in forming their opinion, the communication of information is generally a one-way street from the broker to the appraiser. Brokers should not expect appraisers to discuss comparable properties with them or give them confidential information; in fact, they will not.

Broker Prohibitions When Working with Appraisers

Whenever working with an appraiser, the broker must remember to abide by all laws and rules concerning communications with the appraiser, and about the appraisal.



In the Commission article, [**Can I Talk to the Appraiser?**](#), the Commission discusses the duties of the broker, appraiser, and the questions that the broker may ask during the appraisal process. When communicating with the appraiser, under no circumstances should a broker attempt to coerce, extort, collude, or influence an

appraiser's opinion of value of a property. Quite frankly, Rule 58A .0120(c) prohibits such conduct:

A broker shall not coerce, extort, collude, instruct, induce, bribe, or intimidate a service provider in a real estate transaction in order to influence or attempt to influence their findings, report, or decision. Service providers include, but are not limited to, appraisers, attorneys, inspectors, financial lenders, and contractors.

Broker liability, pursuant to N.C.G.S. §93A-6(a)(1), for making misrepresentations is a big risk when it comes to the topic of appraisals. A broker's misrepresentation of the appraisal process, or the appraiser's report may create civil liability and a violation of Commission rules. Each of the following statements could be construed to be a factual misrepresentation:

- "The appraiser undervalued the home, its value is actually much higher."
- "The value of the home is what you are paying for it, not the appraiser's opinion of value."
- "An appraisal is just as good as getting a home inspection."
- "Don't worry about the low appraisal. Once you own this home, you will have lots of equity in it because of what you paid."
- "Home values always go up. Your home will increase in value and you can always refinance it in a year or two."
- "Zillow and some appraisers often say the property is worth more than it really is. As a real estate broker, I know your home is actually worth less than what those sources say."

Understanding the extent of these misrepresentations requires mastering some vocabulary and recognizing the distinctions in roles and requirements between appraisers and brokers.

Understanding the extent of these misrepresentations requires mastering some vocabulary and recognizing the distinctions in roles and requirements between appraisers and brokers.

- WORTH / VALUE – Interchangeable terms that should only be used by licensed appraisers. Appraisers determine value or worth.
- PROBABLE LIST PRICE or PROBABLE SALES/LEASE PRICE – The estimate provided by a real estate broker as to the proper amount at

which to either list a property or to accept in a purchase/lease contract.

- **ACTUAL PRICE** –The amount actually paid in dollars for the real estate.

Brokers should always avoid using the words “worth” or “value” in their discussions with consumers or clients. References to worth and value can lead to misrepresentations and potential liability for rendering an opinion that can only be legally provided by a licensed appraiser.

Bottom line, brokers may ask appraisers to consider additional property information, clarify their opinion of value, or correct any issues during the appraisal process as long as they are not coercing, influencing, or persuading the appraiser. If a broker participates in this type of conduct, they may be in violation of Rule 58A .0120(c). Further, brokers must guard against misrepresentations concerning appraisals, or risk a violation of N.C.G.S. §93A-6(a)(1).

Appraiser Bias?

What if I think racial bias exists in the appraisal?

If a broker or buyer thinks racial bias exists in an appraisal report, the broker or buyer may file a complaint with the North Carolina Appraisal Board and the North Carolina Human Relations Commission. Further, the broker may suggest that the buyer contact the lender to request a different appraiser and subsequent appraisal for the property. Brokers should not attempt to communicate with the appraiser their belief that racial bias exists in the appraisal report.



Best Practices for Brokers

Brokers should remember:

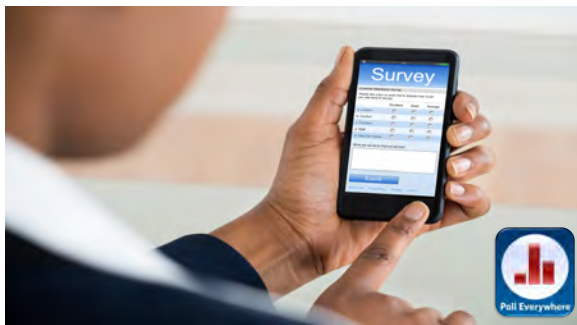
- it is illegal to attempt to influence or coerce appraisers;
- it is not within a broker’s scope of responsibility to indicate value or demand an appraiser use specific comparables;
- it is permissible for a broker to communicate with appraisers to provide relevant information during the appraisal process; and
- a broker may cooperate but must not use coercion to manipulate information in the appraisal report.



Bottom line, brokers can give data but not direction, provide information but not influence, and cooperate with the appraiser without any coercion. Brokers can always provide supporting info and documentation for the appraiser to consider during the appraisal process, but brokers cannot insist that the provided information be used. Further, if a broker attempts to change, manipulate, or influence data

in the appraisal report, this may be a violation of the Dodd-Frank Act. Additionally, brokers should remember that certain acts such as coercion, collusion, etc. are prohibited under Rule 58A .0120.

ASSUMING A COMMERCIAL MORTGAGE



Viewer Poll

Which of the following is an INCORRECT statement regarding a loan assumption?

- a) *The mortgage note must have an assumption clause.*
- b) *The lender must agree to the assumption.*
- c) *The borrower has to meet the lenders creditworthy guidelines.*
- d) *So long as the borrower makes the payments on time, there are no issues.*

Over the past several years, many buyers of commercial property were able to obtain loans with interest rates in the 3%-5% range. Today, with the prime rate above 8%, buyers are looking longingly at the interest rates the seller is enjoying and seeking to take advantage of the lower rates by offering to assume the seller's loan.

The ability of a seller to permit her buyer to assume the seller's mortgage is controlled by the language in the seller's loan documents. Specifically, the presence or absence of an alienation (due on sale) clause. Some lenders include alienation clauses that give the lender the option of either: (a) requiring the seller-borrower to pay off the entire loan at the time of conveyance; or (b) permitting the buyer to assume the entire remaining loan balance. As a practical matter, note that by choosing option (a), the lender will also trigger the acceleration clause found in the note.

Many types of commercial loans are assumable, including Fannie Mae, Freddie Mac, HUD multifamily, and CMBS loans. Sellers should be counseled to carefully review their note and be cognizant of all the potential costs and benefits associated with a loan assumption. Open and frank communication between the seller and the lender may often facilitate an opportunity for a buyer to assume an existing loan, which may be a real benefit to both buyers and sellers.

BROKER PRICE OPINIONS

In this section we provide a brief history of BPOs in North Carolina. Our "history" section speaks to how BPOs were handled prior to 2012 and a bit of the controversy that led to the License Law amendments in 2012. The remainder of the section will focus on the existing law and how brokers should be handling requests for these often critical opinions.

History

BPOs have been around for decades. That said however, prior to 2012, there was friction between real estate brokers and appraisers concerning the preparation of, and language contained in, BPOs. The law has always been that any person getting paid to provide a "market value" of real estate must be a licensed appraiser. There was also a narrow exception that allowed real estate brokers to prepare CMAs that provided a probable selling price of real estate. The friction arose largely due to the fact that BPOs were not mentioned in that exception. As demonstrated in a 1997 article in the Commission's Real Estate Bulletin, [**Broker Price Opinion Revisited**](#), the North Carolina Appraisal Board (NCAB) wrestled with the statutory exception allowing real estate brokers to complete CMAs and whether that also applied to BPOs.



The article noted that the terms BPO and CMA were being used interchangeably, but the NCAB's rules did not define or even mention a BPO. So the question became "when may a person not licensed or certified by the [NCAB] lawfully perform a [BPO]?" After additional analysis by the NCAB, it concluded that a broker may perform a BPO "not only for his or her actual client in a real estate brokerage transaction, but also for prospective clients such as buyers or sellers just entering the real estate market, or banks and relocation companies who must regularly sell real property through a broker's services."

The NCAB went on to define "prospective clients" to include anyone whom the real estate licensee reasonably anticipated may become a real estate client. Thus, for most of the early 2000s, the rule was that a broker could perform a comparable sales based BPO for the broker's existing client, or for one whom the broker believed may become his or her client.



In the aftermath of the 2007 subprime mortgage crisis, the BPO landscape shifted. The housing crash led to a surge in foreclosures and distressed properties which necessitated quick and accurate property pricing/valuations to facilitate informed decisions by stakeholders, from financial institutions to investors. Real estate brokers across the country were increasingly approached by lenders, REO asset managers, and others, and asked to perform BPOs for a fee. This most definitely raised the ire of appraisers. The Appraisal Institute in fact was arguing nationally against legislation loosening the reigns on BPOs suggesting "now is not the time to loosen collateral valuation standards" and there are "broker conflict of interest concerns" and "BPOs are largely unregulated and are performed with little oversight and training."

Appraisers contended that their specialized training and stringent licensing requirements were essential safeguards for maintaining a high standard of accuracy and impartiality in property pricing opinions. They raised valid concerns that real estate brokers, although knowledgeable about the market, might lack the comprehensive skill set needed to undertake in-depth analyses required for precise property valuations. Appraisers emphasized the importance of objectivity in assessing property values, highlighting their adherence to standardized methodologies and regulations that ensured fairness and consistency.



On the other hand, real estate brokers defended their expanded role by asserting that their on-the-ground expertise and familiarity with local market dynamics uniquely positioned them to provide valuable insights through BPOs. They argued

that brokers, deeply entrenched in day-to-day market activities, could offer a more practical and nuanced perspective on property values. Brokers also contended that their involvement in BPOs could lead to more efficient and timely valuations, especially in a rapidly changing market landscape.

A direct result of this tumult was North Carolina Senate Bill 521 introduced by Senator Clodfelter in 2011 seeking to specifically codify BPOs and bring their creation and sale under the regulation of the Real Estate Commission. The Bill proposed significant changes and finally codification of the terms CMA and BPO, and did so to coincide with language contained within the Appraisal Act. This comprehensive change has substantially quieted the two sides and provided necessary guardrails between the two disciplines.

The Law Governing BPOs and CMAs

On July 12, 2012, Governor Beverly Purdue approved amendments to N.C.G.S. §93A-82, §93A-83, §93E-1-3,1-4, 1-12, which became effective on October 1, 2012. This legislation established a framework for the permissible scope, qualifications, and procedures for real estate brokers engaging in BPOs, and provided the Commission with the specific authority to regulate BPOs by rule. Thus, Ch. 93, Article 6 of North Carolina Real Estate License Law was born.

Complementing this amendment to the License Law is Commission rule NCAC 58A .2202. Collectively they provide the regulatory framework for real estate brokers performing BPOs in North Carolina. These regulations strike a balance between empowering brokers to leverage their local market insights while upholding professional standards and client trust. The guidelines serve as a blueprint for brokers, underscoring their responsibilities to exercise prudence, due diligence, and adherence to



industry norms when providing BPOs, offering valuable guidance for both brokers and adult learners seeking to navigate the intricacies of property valuation practices in the state.

N.C.G.S. §93A-82 BPO Defined

First, and foremost, the new statute defined the terms “broker price opinion” and “comparative market analysis” as:

an estimate prepared by a licensed real estate broker that details the probable selling price or leasing price of a particular parcel of or interest in property and provides a varying level of detail about the property's condition, market, and neighborhood, and information on comparable properties, but does not include an automated valuation model.

This marked the first time BPO was defined, and of particular import, matching the BPO definition with that of the CMA, thus eliminating any ambiguity concerning the use of either term. Of particular note here, this definition of a BPO/CMA is identical to the definition of those terms in N.C.G.S. §93E-1-4 of the North Carolina Appraisers Act further solidifying the synonymous nature of the terms regardless of the discipline.

N.C.G.S. §93A-83(a) - Full Brokers Only

The statute mandates that only full brokers, with an active license in good standing, may prepare a BPO/CMA for a fee or any other type of consideration.

Note that provisional brokers may not prepare a BPO/CMA for a fee. This includes actual or prospective clients. This is due to concern that many provisional brokers do not have either adequate instruction or sufficient experience in brokerage to exercise the judgment necessary to properly perform a BPO/CMA.

N.C.G.S. §93A-83(a) states as follows:

(a) Authorized - A person licensed under this Chapter, other than a provisional broker, may prepare a broker price opinion or comparative market analysis and charge and collect a fee for the opinion if:

(1) The license of that licensee is active and in good standing; and

- (2) *The broker price opinion or comparative market analysis meets the requirements of subsection (c) of this section.*
- (3) *The requirements of this Article shall not apply to any broker price opinion or comparative market analysis performed by a licensee for no fee or consideration.*

The Commission expects every BPO/CMA performed by a broker to be completed in a competent manner without any undisclosed conflict of interest, even if no fee is received for the BPO/CMA.

N.C.G.S. §93A-83(b) - Who Can a BPO/CMA Be Prepared For?

This section of the statute reiterates the understanding concerning BPOs/CMAs, in that they can be prepared for existing or potential sellers, buyers, lessors or lessees. But it also expands the definition to include third parties and lienholders, who are making decisions or performing due diligence on real estate. Note however, that a BPO for an existing or potential lienholder may not be used as a basis for a mortgage loan origination.

N.C.G.S. §93A-83(b) states as follows:

- (b) *For Whom Opinion May Be Prepared Notwithstanding any provision to the contrary, a person licensed under this Chapter may prepare a broker price opinion or comparative market analysis for any of the following:*
 - (1) *An existing or potential seller of a parcel of real property.*
 - (2) *An existing or potential buyer of a parcel of real property.*
 - (3) *An existing or potential lessor of a parcel of or interest in real property.*
 - (4) *An existing or potential lessee of a parcel of or interest in real property.*
 - (5) *A third party making decisions or performing due diligence related to the potential listing, offering, sale, option, lease, or acquisition price of a parcel of or interest in real property.*

- (6) *An existing or potential lienholder or other third party for any purpose other than as the basis to determine the value of a parcel of or interest in property, for a mortgage loan origination, including first and second mortgages, refinances, or equity lines of credit.*
- (7) *The provisions of this subsection do not preclude the preparation of a broker price opinion or comparative market analysis to be used in conjunction with or in addition to an appraisal.*

N.C.G.S. §93A-83(c) - Required Contents of BPO/CMA

This section mandates that all BPOs/CMAs be in writing and contain at least eleven specific pieces of information. N.C.G.S. §93A-83(c) states as follows:

- (c) *Required Contents of a Broker Price Opinion or Comparative Market Analysis.--A broker price opinion or comparative market analysis shall be in writing and conform to the standards provided in this Article that shall include, but are not limited to, the following:*
 - (1) *A statement of the intended purpose of the broker price opinion or comparative market analysis.*
 - (2) *A brief description of the subject property and property interest to be priced.*
 - (3) *The basis of reasoning used to reach the conclusion of the price, including the applicable market data or capitalization computation.*
 - (4) *Any assumptions or limiting conditions.*
 - (5) *A disclosure of any existing or contemplated interest of the broker issuing the broker price opinion, including the possibility of representing the landlord/tenant or seller/buyer.*
 - (6) *The effective date of the broker price opinion.*
 - (7) *The name and signature of the broker issuing the broker price opinion and broker license number.*
 - (8) *The name of the real estate brokerage firm for which the broker is acting.*

- (9) *The signature date.*
- (10) *A disclaimer stating that "This opinion is not an appraisal of the market value of the property, and may not be used in lieu of an appraisal. If an appraisal is desired, the services of a licensed or certified appraiser shall be obtained. This opinion may not be used by any party as the primary basis to determine the value of a parcel of or interest in real property for a mortgage loan origination, including first and second mortgages, r refinances, or equity lines of credit."*
- (11) *A copy of the assignment request for the broker price opinion or comparative market analysis.*

NCAC 58A .2202 - Commission Standards for BPO/ CMAs

Please remember that License Law and Commission rules must be read in conjunction with each other. The Rules expand on and supplement License Law, but cannot replace or contradict state law. So a thorough understanding of the Commission rule on this subject is critical to proper preparation of a BPO/CMA.



Rule 58A .2202 complements the requirements of N.C.G.S. §93A-83. A BPO/CMA provided for a fee must be performed not only in compliance with License Law but also with the standards established in Rule 58A .2202. This Rule underscores the importance of brokers' expertise and local market

knowledge when preparing BPOs. It requires brokers to have an in-depth understanding of the local market conditions, property values, and other relevant factors that could impact the accuracy of the pricing opinion. The rule also mandates that brokers exercise due diligence in gathering and analyzing market data, ensuring that their BPOs are well-founded and defensible.

Undoubtedly, a part of the rationale behind this rule is to highlight the fact that a broker's analysis is markedly different than that of an appraiser, despite some similarities. Upon close examination, it becomes readily apparent that the work required to complete a BPO/CMA is significantly less comprehensive and detailed than what an appraiser would do to complete an appraisal.

That notwithstanding, brokers must approach BPO assignments with a thorough understand standards by which they must be completed. NCAC 58A .2202 states as follows:

- (a) A broker performing a broker price opinion or comparative market analysis for a fee shall comply with all the requirements in G.S. 93A-83 and in this Rule.*
- (b) A broker shall only accept an assignment to provide a broker price opinion or comparative market analysis for a property if the broker has knowledge of the real estate market, direct access to real estate market sales or leasing data, and brokerage or appraisal experience in the subject property's geographic location.*
- (c) A broker shall not provide a broker price opinion or comparative market analysis for a property unless the broker can exercise objective, independent judgment free of any influence from any interested party in the performance of his or her analysis of the facts relevant to determination of a probable selling or leasing price.*
- (d) A broker shall not provide a broker price opinion or comparative market analysis for a property unless the broker has personally inspected the exterior and interior of that property, provided, however, that an inspection of the exterior or interior is not required if this is waived in writing by the party for whom the opinion or analysis is being performed.*

- (e) *When developing a broker price opinion or comparative market analysis for a property or interest therein, a broker shall utilize methodology such as analysis of sales or income of sold or leased properties comparable to the subject property or capitalization as is appropriate for the assignment and type of subject property.*
- (f) *When analyzing sales or income of properties comparable to the property that is the subject of a broker price opinion or comparative market analysis assignment, a broker shall comply with the following standards:*
 - (1) *The broker shall select from reliable information sources a minimum of three sold or leased comparable properties for use in his or her analysis that are similar to the subject property with regard to characteristics such as property type, use, location, age, size, design, physical features, amenities, utility, property condition and conditions of sale. The comparable properties selected shall reflect the prevailing factors or market conditions influencing the sale or lease prices of similar properties in the subject property's local market; and*
 - (2) *The broker shall make adjustments to the selling or leasing price of selected comparable properties for differences between the characteristics of the comparable properties and the subject property as necessary to produce a credible estimate of the probable selling or leasing price. Adjustments shall be considered for differences in property characteristics such as location, age, size, design, physical features, amenities, utility, condition, economic or functional obsolescence and conditions of sale. The amounts of adjustments shall reflect the values that the local real estate market places on the differences in the characteristics in question.*
- (g) *A broker price opinion or comparative market analysis provided to the party for whom the opinion or analysis is being performed shall address, in addition to matters required to be addressed by G.S. 93A-83 and other provisions of this Rule, the following items:*

- (1) *a description of the comparable properties used in the analysis (including any unsold properties listed for sale or rent that were used as comparable properties);*
 - (2) *the adjustments made to the selling or leasing prices of comparable properties;*
 - (3) *local real estate market conditions;*
 - (4) *if the date on which the sale or lease of a comparable property became final is more than six months prior to the effective date of the broker price opinion or comparative market analysis, an explanation of why the comparable property was used in the analysis and a description of the market conditions affecting the comparable property at the time the sale or lease became final; and*
 - (5) *each method used in deriving the estimate of probable selling or leasing price.*
- (h) *In connection with a broker price opinion or comparative market analysis, an estimated probable leasing price may be reported by a broker as a lease rate and an estimated probable selling or leasing price may be reported by a broker either as a single figure or as a price range. When the estimated probable selling or leasing price is stated as a price range and the higher figure exceeds the lower figure by more than 10 percent, the broker shall include an explanation of why the higher figure exceeds the lower figure by more than 10 percent.*

This Rule establishes a clear demarcation between a BPO/CMA and formal appraisals, reaffirming that a BPO/CMA is not a substitute for a comprehensive real estate appraisal. It outlines that a BPO/CMA is intended to provide a broker's informed estimate of a property's probable sales or lease price based on their expertise and available data, but they do not require the same level of rigor as a full appraisal conducted by a licensed appraiser. This distinction highlights the unique role of brokers in offering BPOs as a complementary service within the real estate ecosystem.

Note that Rule 58A .2202(b) specifically addresses the experience required before a broker can undertake a BPO/CMA assignment. Market knowledge, access to market data, and overall brokerage experience are the starting

points for any broker considering whether to accept a BPO/CMA assignment. And note that these three criteria apply to the specific “geographic location” of the subject property. The “market” applies to the specific location of the property, not general market knowledge as it exists in say, North Carolina. Thus, a broker is prohibited from accepting such an assignment without specific knowledge of the actual market in which the property is geographically located.

Section (c) of this rule emphasizes the need for the broker to approach the assignment from an objective and disinterested perspective, and be free of any outside influence from an interested party. Brokers must pay particular attention to this requirement because whenever a broker is making recommendations regarding a probably selling or leasing price, upon which a commission could be based, greater scrutiny will be applied to the recommendation.

From a commercial perspective, brokers preparing BPOs/CMAs should take particular note of Rule 58A .2202(d) which specifically requires analysis of income and capitalization methods when dealing with revenue generating property. This section, in conjunction with N.C.G.S. §93A-83(c)(3), mandates the utilization of analysis like income capitalization and rent multipliers, where appropriate.

More often than not, a BPO/CMA assignment for an income producing property will require a sales comparison and income capitalization approach to accurately determine a probable selling price. While the income capitalization approach is considered the best approach for income producing property, the actual methods and approaches used will be dictated by the specific assignment.

Subsection (e) speaks to the specific procedures to be followed by a broker. These are same procedures used by appraisers. Although brokers are not performing appraisals, brokers must strictly adhere to the License Law and Commission rule and do so in a competent manner.

Subsection (g) addresses the issue of providing a range, or a specific amount, when determining the probable selling or listing price. The Commission rule allows brokers to display their “probable” price as a range, rather than a specific number. Note, however, that the “range” of prices must be such that the high end does not exceed the low end by more than ten percent. Deciding whether to provide a specific figure, or a range, should be determined after consulting with the client.

N.C.G.S. §93A-83(f-g) - Restrictions, etc.

Paragraphs (f) and (g) cement, without ambiguity, the purpose for which a BPO/CMA can be prepared. A broker may not knowingly prepare a BPO/CMA where an appraisal is required by state or federal law.

Further, a BPO/CMA that estimates the "value" or "worth" of real estate, instead of a probably sales or leasing price, is deemed to be an appraisal. If a BPO or CMA purports to estimate the "value" or "worth" of a property, then legally it is a "real estate appraisal" that may only be prepared by a North Carolina licensed or certified real estate appraiser and the broker could be



subject to disciplinary action for violating both License Law and the Appraisers Act. Last, a BPO/CMA may not, under any circumstances, be referred to as a valuation or appraisal. This clearly draws the line between appraisers and brokers, and each must act in such a manner as to not cross into the other's realm. N.C.G.S. §93A-83(f & g) state as follows:

- (f) Restrictions. - Notwithstanding any provisions to the contrary, a person licensed pursuant to this Chapter may not knowingly prepare a broker price opinion or comparative market analysis for any purpose in lieu of an appraisal when an appraisal is required by federal or State law. A broker price opinion or comparative market analysis that estimates the value of or worth a parcel of or interest in real estate rather than sales or leasing price shall be deemed to be an appraisal and may not be prepared by a licensed broker under the authority of this Article, but may only be prepared by a duly licensed or certified appraiser, and shall meet the regulations adopted by the North Carolina Appraisal Board. A broker price opinion or comparative market analysis shall not under any circumstances be referred to as a valuation or appraisal.*
- (g) No Report of Predetermined Result. - A broker price opinion or comparative market analysis shall not include the reporting of a predetermined result.*

NCAC 58A .0108(b)(12) - Record Retention

Rule 58A .0108 mandates retention of records associated with a broker's activities in brokerage transactions. This Rule specifically includes BPOs/CMA's and requires that such records, generally, be retained for 3 years.

To Fee or Not to Fee . . .

To this point our focus has been on BPOs/CMA's performed for a fee. But, there are a couple of nuances that need to be considered. For instance, remember that a commission earned by a broker for brokerage services pursuant to an agency agreement is not considered a "fee" under License Law. For example, a broker working for a property owner, who, in conjunction with a listing agreement, prepares a CMA for her seller/client, and then earns a commission after the sale of the property, is not deemed to have earned a "fee" for the CMA. The Commission does not consider compensation paid for general brokerage services under a real estate agency agreement to constitute a "fee" as that term is used in this section.

Some brokers may complete BPOs/CMA's for a prospective client in an effort to earn their business. This includes provisional brokers. The fact that they may subsequently enter into an agency agreement, and earn a commission, does not turn that commission into a "fee" under Article 6.



Those should be contrasted with other brokers who charge a prospective client up front for a BPO/CMA, but then refund the amount charged if an agency agreement is subsequently entered into. While such a policy is certainly acceptable, brokers must be non-provisional because a fee is charged initially.

Bottom line, regardless of whether a fee is charged, the BPO/CMA must be completed in strict compliance with License Law and Commission rules, and in a competent manner. Regardless of whether a fee is charged, your responsibilities in this regard do not change.

THE TSUNAMI OF WHOLESALING

One of the current hot topics in today's changing real estate market is the concept of "wholesaling." The term is being utilized a lot and has become a "catch-phrase" for a wide variety of strategies. There are literally hundreds of videos currently posted on YouTube featuring instructions and

coaching for how to wholesale properties. Some of the titles currently available are as follows:



“Make \$10,000 in 30 Days Wholesaling Real Estate”

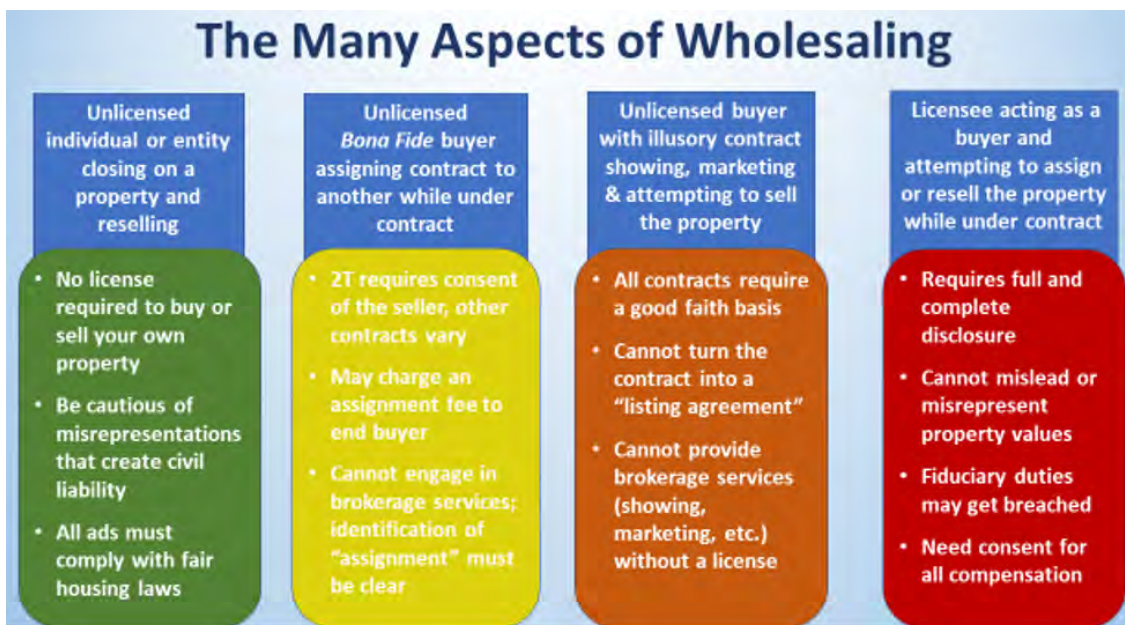
“Five Methods to Wholesale a House with No Money in 2023”

“Make \$1 Million a Year Wholesaling Real Estate”

“Watch me Wholesale this House and Make \$5,000 in Less than 1 Hour”

By promoting real estate as one of the basic principles of building wealth, individuals are being enticed to “wholesale” real estate believing it is an option to make a quick profit in a short amount of time while not spending any cash. Nearly all of the solicitations emphasize the fact that wholesalers act as investors and therefore do not need a real estate license.

Because the term “wholesaling” is being applied to a lot of different activity, it is helpful to look at four major categories that cover the scope of much of the activity. The chart below provides this categorization.



Unlicensed Individual or Entity Closing on a Property and Re-Selling

There may be some instances where a wholesaler enters into a purchase contract and intends to take title to the property. Once they close on the property and take ownership, they immediately attempt to resell the property for a profit without making any repairs/renovations. If a wholesaler takes title to a property before reselling it, then there is no requirement for the wholesaler to have a real estate license.

N.C.G.S. §93A-2(c)(7) specifically exempts from licensure any individual owner who personally leases or sells their personally owned property.

If an entity is purchasing and reselling the property, it is important to know who exactly is exempt from licensure pursuant to NCGS §93A-2(1):

- Corporations – officers and W2 employees;
- Partnerships – general partners and W2 employees; and
- LLCs – Managers, member-managers, and W2 employees.

This means that wholesalers claiming to represent entities who do not fall into the exempted categories could be involved in brokerage services that require active licensure. If the individual or entity meets the qualifications for exemption from NCREC licensure, such individuals still need to be cautious regarding all of the following:

- Making misrepresentations or committing fraud that can result in civil or criminal actions;
- Complying with federal and state fair housing laws;
- Avoiding the unauthorized practice of law; and
- Engaging in activities which pay fees or compensation to unlicensed persons for the referral of business. [an active real estate license is required to receive a referral fee].

Unlicensed Bona Fide Buyer Assigning Contracts to Another While Under Contract

There may be some instances where a wholesaler enters into a purchase contract and possesses the ability to purchase the property. The sale or assignment of the purchase contract is not a brokerage activity. Whether the purchase contract can be assigned depends on the language contained in the purchase contract itself. In the NCAR/NCBA Offer to Purchase and Contract, Standard Form 2T, the seller's informed consent is required to assign the contract. Other contracts may freely permit the assignment.

In a typical assignment, the assignee is obligated to perform on the contract based on its original terms and conditions. The assignor remains secondarily liable to perform if the assignee is unable to perform their obligations. There is no prohibition against the assignor charging the assignee an assignment fee. It is important to note that neither the assignor nor assignee are typically permitted to change the terms and conditions of the original contract.

The assignment of a contract, in and of itself, does not involve brokerage activity, so a real estate license is not required. However, individuals trying to sell some equitable right or interest in a property by virtue of an existing contract which they want to assign should be careful to avoid engaging in brokerage services that do require licensure. They cannot:

- advertise the property as if they are the owner,
- hold open houses, or
- solicit potential buyers in an effort to secure a buyer for the seller's property.

Unlicensed individuals or entities involved in transactions of this nature should be cautious regarding all of the following:

- Making certain the original purchaser is a bona fide buyer actually capable of performing the obligations in the contract which they sign;
- Making misrepresentations or committing fraud that can result in civil or criminal actions;
- Engaging in brokerage activities such as showing the property, advertising the property, or attempting to represent the seller;
- Avoiding the unauthorized practice of law;
- Engaging in activity which pays fees or compensation to unlicensed people for the referral of business; and
- Making certain that the assignee has the ability to perform the contractual obligations and the assignor is capable of performing the obligations in the event of default by the assignee.

Unlicensed Buyer with Illusory Contract Engaged in Brokerage Services to Find a Buyer

Engaging in these types of practices is one of the more troubling aspects of what is being labeled as wholesaling. This type of wholesaling process usually begins when an unlicensed wholesaler locates a property with a motivated seller. Unlicensed individuals are sometimes driving

neighborhoods, searching property records, and using social media to identify distressed properties or sellers.

Approaching the seller from the standpoint of an “investor,” the wholesaler attempts to get the seller to accept a “cash” offer and enter into a purchase contract at a below market price with no intention of personally closing on the property. The wholesaler then attempts to find a buyer to purchase the property at a higher price and on different terms than the original contract with the seller.



Oftentimes the wholesaler does not have the ability or qualifications to actually purchase the property. Therefore, as part of this process, it is common for the wholesaler to advertise and market the property as the owner, engage in the showings of the property, and solicit buyers to be an “end buyer” for the property. If the wholesaler can find such a buyer for the property, the plan is usually to create a new purchase contract with the “end buyer.” The wholesaler’s profit in the transaction is the difference between what they agreed to pay the seller and what the buyer agrees to pay for the property in the transaction.



There are many issues with this approach to wholesaling. Jurisdictions, including North Carolina, are analyzing its effects on the real estate industry. Oklahoma was one of the first states to pass the [**The Predatory Real Estate Wholesaler Act**](#), to protect consumers from wholesalers.

The Predatory Real Estate Wholesaler Act became effective on November 1, 2021, and requires wholesalers to obtain a real estate license and abide by Oklahoma laws which protect consumers and promote ethical behavior. Likewise, Nebraska just passed legislation requiring a real estate license for this type of activity.

North Carolina already has language which applies in this situation. N.C.G.S. §93A-2 indicates that a real estate broker is any:

- person, partnership, corporation, limited liability company, association, or other business entity who for compensation or valuable consideration or promise thereof,
- lists, leases, buys, exchanges, auctions, negotiates, or sales real estate,
- for others.

In North Carolina, only licensed real estate brokers can represent others in real estate transactions. Therefore, wholesalers who market a property as if they have legal title or a written agreement to provide agency representation are in violation of the law.

To legally advertise a property for others, an individual must have an active NC real estate license and a written agency agreement to provide brokerage services to the owner of legal title to the property.

If a wholesaler is unlicensed and wishes to be exempt from the Real Estate License Law, then the wholesaler may have to prove that they have entered into a bona fide purchase contract, that they have the ability to perform, and they are not entering into what appears to be a net listing to provide brokerage services to the seller. For clarity, a net listing is defined as a brokerage fee arrangement in a listing contract whereby the seller will receive a fixed price for their property and the broker will receive any amount realized (i.e., the "net") in excess of that price. They also must refrain from engaging in brokerage activities involving showing, advertising, and marketing the property in an attempt to help the seller find a buyer.

Individuals or entities involved in transactions of this nature should be cautious regarding all of the following:

- Engaging in brokerage activities that require licensure;
- Making misrepresentations or committing fraud that can result in civil or criminal actions;
- Entering into illusory contracts that the wholesaler is not capable of performing;
- Avoiding the unauthorized practice of law; and
- Engaging in "joint venture" activities which pay fees or compensation to unlicensed people for the referral of business.



Takin' It to the Streets

Chad, an unlicensed real estate investor, enters into a contract with Lucy, the seller, to purchase her 7,000 square foot farmhouse with 5 acres of land in Vance County for \$300K. After entering into the contract, Chad markets

Lucy's property for \$375K on the internet. Stew, a prospective buyer, is interested in purchasing the property for \$375K. Therefore, Chad assigns his rights to purchase Lucy's property to Stew for an assignment fee of \$75,000. Stew is now under contract to purchase Lucy's property. If the transaction is consummated, Chad will profit \$75K for assigning his rights to purchase Lucy's property.

1. *What concerns might the Commission have with this transaction?*

Real Estate Licensees Acting as a Buyer and Attempting to Assign or Resell the Property While Under Contract

Wholesaling often leads to complaints by consumers for deceptive practices and predatory language. This poses additional concerns for any NC real estate licensee. Brokers who act in any "wholesale" capacity are subject to a higher standard than unlicensed individuals. Brokers are subject to all of the basis set forth in N.C.G.S. §93A-6 as grounds for disciplinary action.

Brokers who engage in wholesaling should be cautious about all of the following:

- Proper and full disclosure of probable sales price and probable listing price to the parties in the transaction so as to not create any misrepresentations or omissions as to market value;
- Full and complete disclosure to the parties in the transaction of all material facts concerning the property;
- Strict adherence to agency disclosure, rules, and agency agreements;
- Compliance with fiduciary duties to represented clients; and
- Avoidance of any conduct that can be construed as making false promises or engaging in conduct that rises to the level of improper, fraudulent, or dishonest dealing.

Although North Carolina does not have any laws/regulations that prohibit wholesaling at this time, it is important for brokers to be knowledgeable regarding the legal consequences they may incur as a result of participating in a wholesale transaction.

Real Estate Brokers: What You Must Know



Is assignment of contracts in wholesale transactions permitted in North Carolina?

It depends. The ability to assign equitable rights depends upon the terms of the contract. If a contract expressly states that it cannot be assigned or it prevents assignment by one party without the consent of the other party, or contains qualifying language, the wholesaler cannot legally assign their equitable interest without the sellers' consent. The Standard Form 2T requires all parties to provide written

permission to assign a contract in Paragraph 15 (except for 1031 exchanges).

What should I do if I am contacted by a wholesaler who wants me to represent them in a transaction?

If a real estate broker is contacted by a wholesaler for agency representation, the real estate broker should speak with their BIC to ensure that this is permissible according to the office policies of the brokerage. If the BIC/brokerage allows affiliated brokers to represent wholesalers, the broker should educate the wholesaler on their fiduciary duties during representation, their obligation to operate in good faith and honesty, and the duty to disclose material facts to all parties in a transaction.

Can a wholesaler assign a purchase contract in NC?

It depends. If a wholesaler is represented by a broker and the broker uses Standard Form 2-T, Offer to Purchase and Contract, to submit an offer, the purchase contract is not automatically assignable as specified in Paragraph 15 without the seller's consent to the assignment. Therefore, the wholesaler may not, without the seller's written permission, assign their equitable rights to an end buyer without breaching the contract. However, if a wholesaler uses a contract that does not restrict assignment of rights, the wholesaler's equitable interest in the property may be assigned. A wholesaler may also assign their equitable rights in a purchase contract using an Assignment of Contract to an end buyer as long as it does not violate the contract terms within the purchase contract.

What should I tell my seller-client who receives an offer from a wholesaler?

A broker who receives an offer from a wholesaler must present the offer to comply with Rule 58A .0106, which requires brokers to deliver to the customer or their client copies of any offer within three days of the broker's receipt of the executed document.

The broker should present and review the offer with their seller-client. If the seller-client has questions regarding the contractual language used in the offer, the broker should advise their seller-client to speak with an attorney.

Must a real estate broker notify the seller that their buyer client, a wholesaler, intends to assign their contractual rights to purchase the property to an end buyer?

Yes. A real estate broker who represents a wholesaler should inform the seller of their buyer client's intent to assign their equitable rights to the contract. Pursuant to N.C.G.S. §93A-6(a)(1), a broker must disclose any information that may affect the principal's rights or interests, or influence the principal's decision in the transaction regardless of which party they represent.

The broker should disclose this information because it is about the intentions of the wholesaler and possibly their financial ability to consummate the transaction. Further, the broker may have to assist the client with obtaining additional information regarding the wholesaler's ability to complete the transaction.

May a real estate broker market a property on behalf of their principal, the wholesaler, when the principal only has equitable interest?

According to Rule 58A .0104, an agent must have a written agreement with a property owner prior to listing/advertising their property. The real estate broker who represents a buyer-wholesaler does not have a written agreement with the owner of the property to provide brokerage services; therefore, the real estate broker representing the buyer-wholesaler may not advertise the property that is the subject of the purchase contract. The wholesaler only has equitable interest and not legal title to the property. Consequently, the real estate broker may not market/advertise the property as if their principal, the buyer-wholesaler, is selling the property. If the broker engages in this conduct, they may be in violation of License Law and Commission rules.

Must I notify the seller when my principal, a wholesaler, assigns their contractual rights to the purchase contract to an end buyer?

It depends. If the contract terms are the same and the contract permits assignment, then the broker does not have to notify the seller. If the contract terms are different, then the broker must disclose this information. The wholesaler is still responsible for adhering to the terms in the original underlying contract.

I am a listing agent who learns that the buyer is a wholesaler after my seller accepts the offer. Should I inform my seller?

Yes. A listing agent must disclose to the seller that the buyer is a wholesaler as soon as they find out, because this information is considered a material fact under N.C.G.S. §93A-6(a)(1) and may directly affect a principal's ability to complete the transaction. Further, an agent has a fiduciary duty to protect the best interests of their client and this includes disclosing all relevant information that will assist them in making an informed decision regarding how to proceed in the transaction.

Can a broker act as a wholesaler in a real estate transaction?

Yes. A broker may utilize wholesaling as a personal investment strategy. However, the broker must not represent the prospective seller or end buyer in the transaction.

If a broker decides to wholesale and enters into a purchase contract with a prospective seller, the Commission encourages brokers to inform the prospective seller that the broker is licensed but does not represent their interests. Due to brokers having real estate licenses, they are held to a higher standard and must ensure that they are dealing in good faith and not engaging in deceptive or fraudulent practices. To ensure they are not engaging in deceptive practices, real estate brokers should inform prospective sellers of their intent to assign their equitable interests in the purchase contract to an end buyer for a fee. Further, the broker should recommend to the seller that they seek the advice of another broker or legal counsel prior to entering into a purchase contract.

Also, N.C.G.S. §93A-6(b)(3) states:

The Commission may suspend or revoke any license issued under the provisions of this Chapter or reprimand or censure any licensee when the licensee has violated any of the provisions of G.S. 93A-6(a) when selling, leasing, or buying the licensee's own property.

Although the Commission recommends that brokers indicate they have a real estate license when engaging in a transaction for personal benefit (i.e., self-interest), they must state that they have a real estate license if they are a REALTOR®.

COMMERCIAL NEWS FLASH: Brokers Must Understand Wholesaling

NOTE: Wholesaling is a very popular investment strategy; however, if done incorrectly, may violate License Law and Commission rules. Therefore, the Commission highly encourages brokers to thoroughly understand the usage of wholesaling as an investment strategy and the legal consequences that may arise from deceptive practices. The Commission also cautions brokerages to develop written office policies regarding wholesaling and whether an affiliated broker may provide agency representation to a wholesale investor. Moreover, brokers should recommend that sellers seek legal counsel when they have questions regarding wholesaling.

COMMERCIAL BROKER LIEN ACT

The North Carolina Commercial Broker Lien Act (“CBLA”) is designed to protect commercial brokers by providing them with a legal right to place a lien on a commercial property for unpaid commissions. Under the Act, a commercial broker can file a lien when they have earned a commission through successfully negotiating or facilitating a commercial real estate transaction, but the client has failed to make the agreed-upon payment. The lien allows the broker to claim a security interest in the property, giving them a powerful tool to secure their earned commission.

The CBLA was enacted by the General Assembly in 2011 in recognition of the fact that commercial brokers, like many other vendors working with commercial property, needed protections when it came to collecting their fees. The Act, found at N.C.G.S. §44A-24.1 et. seq., provides a step-by-step process for commercial brokers to collect their commission from a property owner that refuses to pay.

Applies Only to Commercial Brokers Working on Commercial Property

The Act is narrowly defined, and only applies to commercial brokers working with commercial property owners as a listing broker, whether for sale or lease. Put another way, only commercial listing brokers, listing

commercial property for sale or lease, may take advantage of the benefits afforded by the CBLA.

Further, the Act defines “commercial property” as property “used primarily for sales, office, research, institutional, agricultural, forestry, warehouse, manufacturing, industrial, or mining purposes or for multifamily residential purposes involving five or more dwelling units.” The Act also includes property that is properly zoned as commercial, even if not developed as such, or property that is “the subject of an official application or petition to amend the applicable zoning ordinance to permit” any of the aforesaid commercial uses.

Timing is Everything

The Act provides strict time limits for perfecting (timely filing) the lien. As one can imagine, the lien cannot be asserted until such time as a commission is owed the commercial broker. This will be dictated by the listing agreement. If using NCAR/NCBA Standard Form Listing Agreement #571, a commission is earned when a client:

. . . accepts an unconditional offer from a buyer or when all conditions have been met following Client’s acceptance of a conditional offer from a buyer, whether the buyer is procured by Firm, the Client or anyone else during the term of this Agreement.

Another timing requirement is that the lien not be filed more than 30 days prior to the closing of the transaction. [Note that this time constraint is excused upon grounds of the owner’s breach of the written agreement for broker services].

In the case of a lease or transfer of a nonfreehold interest, “a lien can be filed at any time within 30 days before transfer of possession until up to 90 days after transfer of possession or 60 days after the due date of a payment pursuant to the brokerage services agreement.” [See Dunklin, G. (2011, September) [**A Summary of the Commercial Real Estate Broker Lien Act.**](#) Real Property, Volume 34, 12-15. NCBAR.org.



The contents of the lien must comply with N.C.G.S. §44A-24.5, and identify the broker, the commercial property owner, and the amount claimed. Once signed by the broker, it is to be filed with the Clerk of the Superior Court in the county where the property is located. Once filed, it must be served upon the property owner via certified mail or through a process server.

The final time constraint is contained within N.C.G.S. §44A-24.8 and provides that the broker must commence a foreclosure lawsuit within 18 months after the filing of the lien. Failure to do so will result in the lien being extinguished.

Lien Priority

When the broker's lien is filed timely, it will take priority over any lien filed after the broker's lien. Any liens or mortgages filed prior to the broker's lien will have priority over the broker's lien and be paid prior to the broker from any foreclosure proceeds.

Further, N.C.G.S. §44A-24.14 mandates that mechanic's liens and materialmen's liens will always have priority over the broker's lien, regardless of when filed. Thus, it is critical that the broker understand where their lien falls in the hierarchy of other liens before filing a foreclosure action.

Commercial Broker Lien Act Statute

Part 4. Commercial Real Estate Broker Lien Act.

§ 44A-24.1. Short title.

This Part shall be known and may be cited as the "Commercial Real Estate Broker Lien Act." (2011-165, s. 1.)

§ 44A-24.2. Definitions.

The following definitions apply in this Part:

- (1) Broker. - A real estate broker licensed pursuant to Chapter 93A of the General Statutes.*
- (2) Broker services. - Services for which a license issued by the North Carolina Real Estate Commission is required pursuant to Chapter 93A of the General Statutes.*
- (3) Commercial real estate. - Any real property or interest therein, whether freehold or nonfreehold, which at the time the property or interest is made the subject of an agreement for broker services:
 - a. Is lawfully used primarily for sales, office, research, institutional, agricultural, forestry, warehouse, manufacturing, industrial, or mining purposes or for**

- multifamily residential purposes involving five or more dwelling units;*
- b. May lawfully be used for any of the purposes listed in sub-subdivision (3)a. of this section by a zoning ordinance adopted pursuant to the provisions of Chapter 160D of the General Statutes or which is the subject of an official application or petition to amend the applicable zoning ordinance to permit any of the uses listed in sub-subdivision (3)a. of this section which is under consideration by the government agency with authority to approve the amendment; or*
- c. Is in good faith intended to be immediately used for any of the purposes listed in sub-subdivision (3)a. of this section by the parties to any contract, lease, option, or offer to make any contract, lease, or option.*
- (4) Commission. - Any compensation which is due a broker for performance of broker services.*
- (5) Lien claimant. - A broker claiming a lien pursuant to this Part.*
- (6) Owner. - The owner of record of any interest in commercial real estate. (2011-165, s. 1; 2012-194, s. 15; 2017-211, s. 17; 2022-62, s. 6.)*

§ 44A-24.3. Commercial real estate lien.

- (a) A broker shall have a lien upon commercial real estate in the amount that the broker is due under a written agreement for broker services signed by the owner or signed by the owner's duly authorized agent, if:*
- (1) The broker has performed under the provisions of the agreement;*
 - (2) The written agreement for broker services clearly sets forth the broker's duties to the owner; and*
 - (3) The written agreement for broker services sets forth the conditions upon which the compensation shall be earned and the amount of such compensation.*

- (b) *The lien under this section shall be available only to the broker named in the instrument signed by the owner or the owner's duly authorized agent. A lien under this section shall be available only against the commercial real estate which is the subject of the written agreement for broker services.*
- (c) *When payment of commission to a broker is due in installments, a portion of which is due only after the conveyance or transfer of the commercial real estate, any notice of lien for those payments due after the transfer or conveyance may be recorded at any time subsequent to the transfer or conveyance of the commercial real estate and within 90 days of the date on which the payment is due. The notice of lien shall be effective as a lien against the owner's interest in the commercial real estate only to the extent funds are owed to the owner by the transferee, but the lien shall be effective as a lien against the transferee's interest in the commercial real estate. A single claim for lien filed prior to transfer or conveyance of the commercial real estate claiming all commissions due in installments shall also be valid and enforceable as it pertains to payments due after the transfer or conveyance; provided, however, that as payments or partial payments of commission are received, the broker shall provide partial releases for those payments, thereby reducing the amount due the broker under the broker's lien. (2011-165, s. 1.)*

§ 44A-24.4. When lien attaches to commercial real estate.

A lien authorized by this Part attaches to the commercial real estate only when the lien claimant files a timely notice of the lien conforming to the requirements of G.S. 44A-24.5 and this section in the office of the clerk of superior court. A notice of lien is timely if it is filed after the claimant's performance under the written agreement for broker services and before the conveyance or transfer of the commercial real estate which is the subject of the lien, except that in the case of a lease or transfer of a nonfreehold interest, the notice of a lien shall be filed no later than 90 days following the tenant's possession of the commercial real estate or no later than 60 days following any date or dates set out in the written agreement for broker services for subsequent payment or payments.

When a notice of a lien is filed more than 30 days preceding the date for settlement or possession set out in an offer to purchase, sales contract, or lease, which establishes the broker's claim of performance, the lien shall be available only upon grounds of the owner's breach of the written agreement for broker services. (2011-165, s. 1.)

§ 44A-24.5. Lien notice; content.

- (a) *A lien notice under this Part shall be signed by the lien claimant and shall contain an attestation by the lien claimant that the information contained in the notice is true and accurate to the best of the lien claimant's knowledge and belief.*
- (b) *The lien notice shall include all of the following information:*
- (1) The name of the lien claimant.*
 - (2) The name of the owner.*
 - (3) A description of the commercial real estate upon which the lien is being claimed.*
 - (4) The amount for which the lien is claimed and whether the amount is due in installments.*
 - (5) The claimant's grounds for the lien, including a reference to the written agreement for broker services that is the basis for the lien. (2011-165, s. 1.)*

§ 44A-24.6. When lien claim release or satisfaction to be filed.

If a claim for a lien has been filed with the clerk of superior court and a condition occurs that would preclude the lien claimant from receiving compensation under the terms of the written agreement for broker services on which the lien is based, the lien claimant shall file and serve the owner of record a written release or satisfaction of the lien promptly, and in no event more than 30 days after the demand. (2011-165, s. 1.)

§ 44A-24.7. Lien claimant to mail copy of notice of lien to owner by certified mail.

Any lien claimant who files a lien on commercial real estate pursuant to the provisions of this Part shall mail a copy of the

notice of the lien to the owner of the commercial real estate by certified mail, return receipt requested, or shall serve a copy of the notice of the lien in accordance with any of the provisions for service of process set forth in G.S. 1A-1, Rule 4. The lien claimant shall file proof of service with the clerk of the superior court. The lien is void if the lien claimant does not file and serve the lien as provided in this Part. (2011-165, s. 1.)

§ 44A-24.8. Enforcing lien.

A lien claimant may bring suit to enforce a lien which attaches pursuant to the provisions of this Part in any court of competent jurisdiction in the county where the commercial real estate is located. The lien claimant shall commence proceedings within 18 months after filing the lien, and failure to commence proceedings within the 18 months shall extinguish the lien.

If a claim is based upon an option to purchase the commercial real estate, the lien claimant shall commence proceedings within one year of the option to purchase being exercised. A claim for the same lien extinguished pursuant to this section and G.S. 44A-24.10 may not be asserted in any subsequent proceeding. A lender shall not be made a party to any suit to enforce a lien under this Part unless the lender has willfully caused the nonpayment of the commission giving rise to the lien. (2011-165, s. 1.)

§ 44A-24.9. Complaint; content; parties' foreclosure action; procedure.

- (a) A complaint filed pursuant to the provisions of this section and G.S. 44A-24.8 shall contain all of the following:*
- (1) A statement of the terms of the written agreement for broker services on which the lien is based or a copy of the written contract or agreement.*
 - (2) The date when the written agreement for broker services was made.*
 - (3) A description of the services performed.*
 - (4) The amount due and unpaid.*
 - (5) A description of the property that is subject to the lien.*

- (6) *Any other facts necessary for a full understanding of the rights of the parties.*
- (b) *The plaintiff shall file the action against all parties that have an interest of record in the commercial real estate; provided that a lender shall not be made a party to any suit to enforce a lien under this Part unless the lender has willfully caused the nonpayment of the commission giving rise to the lien: a foreclosure action for a lien claimed pursuant to this Part shall be brought pursuant to the provisions of this Article.*
- (c) *Valid prior recorded liens or mortgages shall have priority over a lien under this Part. (2011-165, s. 1.)*

§ 44A-24.10. Lien extinguished for lien claimant failing to file suit or answer in pending suit within 30 days after service on owner.

If a lien claimant fails to file a suit to enforce the lien or fails to file an answer in a pending suit to enforce a lien within 30 days after a properly served written demand of the owner, lienee, or other authorized agent, the lien shall be extinguished. Service of the demand shall be by certified mail, return receipt requested, or by personal service. The claimant shall file proof of properly served written demand with the clerk of the superior court. The provisions of this section shall not extend to any other deadline provided by law for the filing of any pleadings or for the foreclosure of any lien governed by this Part. (2011-165, s. 1; 2012-175, s. 12(b).)

§ 44A-24.11. Satisfaction or release of lien.

If a claim for a lien has been filed pursuant to the provisions of this Part with the clerk of superior court and the claim has been paid in full, or if the lien claimant fails to institute a suit to enforce the lien within the time as provided by law, the lien claimant shall acknowledge satisfaction or release of the lien in writing upon written demand of the owner promptly, and in no event more than 30 days after the demand. (2011-165, s. 1.)

§ 44A-24.12. Cost of proceeding to be paid by non-prevailing party.

The costs of any proceeding brought to enforce a lien filed pursuant to this Part, including reasonable attorneys' fees and

prejudgment interest due to the prevailing party, shall be paid by the non-prevailing party or parties. If more than one party is responsible for costs, fees, and prejudgment interest, the costs, fees, and prejudgment interest shall be equitably apportioned by the court among the responsible parties. (2011-165, s. 1.)

§ 44A-24.13. Discharge of lien.

(a) Unless an alternative procedure is available and is acceptable to the transferee in a real estate transaction, any claim of lien on commercial real estate filed under this Article may be discharged by any of the following methods:

- (1) The lien claimant of record, the claimant's agent, or attorney, in the presence of the clerk of superior court, may acknowledge the satisfaction of the claim of lien on the commercial real estate indebtedness, whereupon the clerk of superior court shall enter on the record of the claim of lien on the commercial real estate the acknowledgment of satisfaction, which shall be signed by the lien claimant of record, the claimant's agent, or attorney, and witnessed by the clerk of superior court.*
- (2) The owner may exhibit an instrument of satisfaction signed and acknowledged by the lien claimant of record, which instrument states that the claim of lien on the commercial real estate indebtedness has been paid or satisfied, whereupon the clerk of superior court shall cancel the claim of lien on the commercial real estate by entry of satisfaction on the record of the claim of lien on the commercial real estate.*
- (3) By failure to enforce the claim of lien on the commercial real estate within the time prescribed in this Article.*
- (4) By filing in the office of the clerk of superior court the original or certified copy of a judgment or decree of a court of competent jurisdiction showing that the action by the claimant to enforce the claim of lien on the commercial real estate has been dismissed or finally determined adversely to the claimant.*

- (5) *Whenever funds in an amount equal to one hundred twenty-five percent (125%) of the amount of the claim of lien on the commercial real estate is deposited with the clerk of superior court to be applied to the payment finally determined to be due, whereupon the clerk of superior court shall cancel the claim of lien on the commercial real estate.*
- (6) *Whenever a corporate surety bond, in an amount equal to one hundred twenty-five percent (125%) of the amount of the claim of lien on the commercial real estate and conditioned upon the payment of the amount finally determined to be due in satisfaction of the claim of lien on the commercial real estate is deposited with the clerk of superior court, whereupon the clerk of superior court shall cancel the claim of lien on the commercial real estate.*
- (b) *By failure to file documentation if required pursuant to G.S. 44A-24.6 or G.S. 44A-24.10.*
- (c) *If funds in an amount equal to one hundred twenty-five percent (125%) of the amount that is sufficient to release the claim of lien have been deposited with the clerk of superior court, or a bond in an equal amount has been secured, the lien claimant shall release the claim for the lien on the commercial real estate, and the lien claimant shall have a lien on the funds deposited with the clerk of superior court. (2011-165, s. 1.)*

§ 44A-24.14. Priority of lien under this Part.

Any claim of lien on real property or claim of lien on funds allowed under Part 1 or Part 2 of this Article shall be deemed superior in all respects to any lien asserted under this Part, regardless of the effective date of the competing liens and shall survive notwithstanding any judgment awarding a lien under this Part. No lien claimant filing a lien pursuant to this Part shall be entitled to participate in any pro rata distributions to claimants proceeding under G.S. 44A-21. (2011-165, s. 1.).

YOU BE THE INVESTIGATIVE NEWS REPORTER

1. Joe, an unlicensed wholesale investor from Florida, locates a property at 125 Church Street, Rock Sims, NC. Joe submits an offer to the owner of the property for \$85K. After the owner accepts the offer, Joe lists the property for sale in the local newspaper for \$125K. Is Joe illegally practicing real estate brokerage without a license?

2. Samantha, a licensed broker, is interested in investing in real estate. Samantha goes to her hometown, Cone Hill, and locates several distressed properties for sale. Samantha submits offers to the respective owners of the distressed properties. When she submits the offers for the properties, she does not inform the owners that she has a real estate license. One owner accepts her offer. Samantha is now under contract for the property. She advertises the property in her local MLS to find a buyer. Is Samantha in violation of License Law and Commission rules? If so, why?

SEGMENT 4

LEGISLATIVE DESK: LAW & RULES UPDATES





1. What do you know about the process the Commission must follow to implement rule changes?

2. What new rule changes have you heard about?

LEARNING OBJECTIVES

By the end of this section, you should be able to describe updates to License Law and Commission rules that became effective on July 1, 2023.

TERMINOLOGY

Office of Administrative Hearings (OAH): The Office of Administrative

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

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

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

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

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

THE 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, or the elimination of an existing rule. The Commission then sends the proposal to the OAH.

OAH publishes the proposed changes in the North Carolina Register which provides notice to the general public that the Commission has started the process to amend, adopt, 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 60-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 consider all of the comments and decide whether to amend, adopt, or reject their initial proposed changes. If the Commission, in light of the comments, decides to withdraw their proposed change, the rulemaking process will end. However, if the Commission makes a substantial change to its original proposed change based upon the comments received, then the revised proposed change is republished, and another 60-day comment period begins.

If the Commission decides to move forward with the rule change as written, the proposed rule change is then sent to the Rules Review Commission (RRC). The RRC is the executive agency charged with reviewing and approving rules adopted by state agencies.

Once the RRC has received the proposed changes, they are reviewed 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 proposed change, the Commission will then have the option to either revise the proposed change or abandon the proposed change and end the rulemaking process.

If, however, the RRC approves the Commission's proposed change, it is entered in the North Carolina Administrative Code.


The rulemaking process takes several months. The Commission has to ensure that its rulemaking process adheres to the OAH rules, analyze all of the comments received during the public comment period/public hearing,

and evaluate how the amendment, adoption, or repealing of rule text will affect stakeholders (i.e., brokers, brokerages, education providers, and instructors) prior to the RRC approving the rule.



COMMERCIAL NEWS FLASH: No Complainant Needed

BEST PRACTICE: Brokers can [subscribe](#) to the Commission’s mailing list to receive notice of rulemaking.



COMMISSION RULE CHANGES EFFECTIVE JULY 1, ‘23

The Commission revised several rules with an effective date of July 1, 2023, in Chapters 58A, 58B, and 58H. The changes that directly impact brokers will be summarized in this section.

Rule 58A .1708: Equivalent Credit

| SUMMARY OF RULE CHANGE | | |
|-------------------------------|---------------|---|
| Rule | Change | What Happened? |
| 58A .1708 Equivalent Credit | Amended | <p>Commission approved instructors can receive continuing education ("CE") credit for teaching a Commission Update Course, at no cost, by submitting a Request for Continuing Education Equivalent Credit form no later than 5:00 p.m. on June 17.</p> <p>A broker can receive CE credit for the first time the broker teaches an approved CE elective course, at no cost, by submitting a <i>Request for Continuing Education Equivalent Credit</i> form no later than 5:00 p.m. on June 17.</p> <p>A broker can receive CE credit for the year in which the broker develops and obtains approval of a CE elective course by paying a \$50.00 fee and submitting a <i>Request for Continuing Education Equivalent Credit</i> form no later than 5:00 p.m. on June 17.</p> |

Purpose of the Rule Change

Rule 58A .1708 was changed in part to save brokers the cost of \$50.00 to submit a course for approval because the education provider did not do so. North Carolina now provides an opportunity for brokers to take their courses in a variety of instructional methods (e.g., blended, distance, synchronous, etc.) that would meet their educational needs, which previously did not exist. There are over 600 different approved CE electives available to NC brokers via various delivery methods.

Elimination of this Rule will also reduce the number of brokers going inactive because equivalent credit was not granted for last minute applications and will also reduce confusion regarding continuing education.

Prior to July 1, 2023, Rule 58A .1708 permitted brokers to submit an equivalent credit waiver to receive equivalent credit for continuing education elective courses for:

- *teaching a Commission Update Course;*
- *teaching a Commission approved CE elective for the first time any given continuing education elective credit is taught;*

- *completing an unapproved course that the Commission finds equivalent to the elective course component of the continuing education requirement in Rule 58A .0407(a);*
- *developing a CE course approved by the Commission;*
- *authoring a real estate textbook; or*
- *authoring a scholarly article on a real estate topic published in a professional journal or periodical.*

Text of the Rule Changes

The following are the actual changes made to the existing rule, where strikethrough text represents language removed and underlined text represents language added.

21 NCAC 58A .1708 EQUIVALENT CREDIT

(a) The Commission shall award ~~a broker~~ an approved instructor continuing education credit for teaching a Commission Update Course. ~~A broker~~ An approved instructor seeking continuing education credit for teaching a Commission Update Course shall submit a form, available on the Commission's website, that requires the ~~broker~~ approved instructor to set forth the:

- (1) broker's approved instructor's name, license number, instructor number, address, telephone number, and email address;
- (2) Update Course number;
- (3) education provider's name and number;
- (4) education provider's address; and
- (5) date the course was taught.

(b) The Commission shall award a broker continuing education elective credit ~~for teaching a Commission-approved continuing education elective for the first time any given continuing education elective is taught.~~ the first time an approved continuing education elective course is taught by the broker. A broker seeking continuing education credit under this Paragraph shall submit a form, available on the Commission's website, that requires the broker to set forth the:

- (1) broker's name, license number, address, telephone number, and email address;
- (2) course title;
- (3) course number;
- (4) education provider's name and number;
- (5) education provider's address; and
- (6) date the course was taught.

~~(c) The Commission may award continuing education elective credit for completion of an unapproved course that the Commission finds equivalent to the elective course component of the continuing education requirement set forth in 21 NCAC 58H .0402. The broker shall submit a course completion certificate issued by the education provider, a copy~~

of the course description or course outline, and a fifty dollar (\$50.00) fee for each course for which the broker seeks credit. A broker seeking continuing education credit for a course that is not approved by the Commission shall submit a form, available on the Commission's website, that requires the broker to set forth the:

- (1) — broker's name, license number, address, telephone number, and email address;
- (2) — course title;
- (3) — number of instructional hours;
- (4) — course instructor's name; and
- (5) — education provider's name, address, telephone number, and email address.

~~(d)(c)~~ The Commission may award continuing education elective credit for developing a continuing education elective course the first time that it is approved by the Commission pursuant to 21 NCAC 58H .0401. However, a broker shall only receive credit for the year in which the continuing education elective course is approved. A broker seeking continuing education credit under this Paragraph shall submit a form, available on the Commission's website, that requires the broker to set forth the broker's name, license number, address, telephone number, and email address. Along with the form, the broker shall submit the course title, the course number, the date of the course approval, and a fifty dollar (\$50.00) fee for each course for which the broker seeks credit.

~~(e)~~ The Commission may award continuing education elective credit for authoring a real estate textbook. However, a broker shall receive credit for any single textbook only once. A broker seeking continuing education credit under this Paragraph shall submit a form, available on the Commission's website, that requires the broker to set forth the broker's name, license number, address, telephone number, and email address. Along with the form, the broker shall submit the title page of the textbook, showing the title, publisher, and publication date, the table of contents, and a fifty dollar (\$50.00) fee for each textbook for which the licensee seeks credit.

~~(f)~~ The Commission may award continuing education elective credit for authoring of a scholarly article on a real estate topic published in a professional journal or periodical. A broker shall receive credit for any single article only once. A broker seeking continuing education credit under this Paragraph shall submit a form, available on the Commission's website, that requires the broker to set forth the broker's name, license number, address, telephone number, and email address. Along with the form, the broker shall submit a copy of the article, proof of publication, and a fifty dollar (\$50.00) fee for each article for which the broker seeks credit.

~~(g)~~(d) In order for any application for equivalent credit to be considered and credits applied to the current licensing period, a complete application, the appropriate fee, and all supporting documents shall be received by the Commission no later than 5:00 p.m. **Eastern Time** on June 17.

~~(h)~~ Any equivalent continuing education credit awarded under this Rule shall be applied first to make up any continuing education deficiency for the previous license period and then to satisfy the continuing education requirement for the current license period; however, credit for an unapproved course or educational activity, other than teaching an approved elective course, that was completed during a previous license period shall not be applied to a subsequent license period.

History Note: Authority G.S. 93A-3(c); 93A-38.5;

Eff. July 1, 1994;

Amended Eff. July 1, 2017; April 1, 2006; July 1, 2001; July 1, 2000; March 1, 1996; July 1, 1995;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018;

Amended Eff. July 1, 2023; July 1, 2020.

Text of the New Rule Effective July 1, 2023*21 NCAC 58A .1708 EQUIVALENT CREDIT*

- (c) *The Commission shall award an approved instructor continuing education credit for teaching a Commission Update course. An approved instructor seeking continuing education credit for teaching a Commission Update Course*

shall submit a form available on the Commission's website, that requires the approved instructor to set forth the:

- (1) approved instructor's name, license number, instructor number, address, telephone number, and email address;*
 - (2) Update course number;*
 - (3) education provider's name and number;*
 - (4) education provider's address; and*
 - (5) date the course was taught.*
- (d) *The Commission shall award a broker continuing education elective credit the first time an approved continuing education elective course is taught by the broker. A broker seeking continuing education credit under this Paragraph shall submit a form, available on the Commission's website, that requires the broker to set forth the:*
- (1) broker's name, license number, address, telephone number, and email address;*
 - (2) course title;*
 - (3) course number;*
 - (4) education provider's name and number;*
 - (5) education provider's address; and*
 - (6) date the course was taught.*
- (e) *The Commission may award continuing education elective credit for developing a continuing education elective course the first time it is approved by the Commission pursuant to 21 NCAC 58H .0401. However, a broker shall only receive credit for the year in which the continuing education*

elective course is approved. A broker seeking continuing education credit under this Paragraph shall submit a form, available on the Commission's website that requires the broker to set forth the:

- (1) broker's name, license number, address, telephone number, and email address;*
 - (2) the course title;*
 - (3) the course number;*
 - (4) the date of course approval; and*
 - (5) a fifty-dollar (\$50.00) fee for each course for which the broker seeks credit.*
- (f) In order for any application for equivalent credit to be considered and credits applied to the current licensing period, a complete application, the appropriate fee, and all supporting documents shall be received by the Commission no later than 5:00 p.m. on June 17.*

Anticipated Impact to Brokers

The impact on brokers is minimal. Although the Commission is no longer taking waivers for CE courses, brokers have a multitude of courses they can take to receive CE elective credit. Additionally, the courses that the brokers must take going forward, are already approved CE courses by the Commission.

COMMERCIAL NEWS FLASH: Best Practices

As a best practice, brokers may wish to search CE courses that are approved on the Commission's website. Brokers can find courses by following these steps:

- go to www.ncrec.gov;
- click on the Education menu;
- click on Search CE Course Schedule; and
- click on Search Providers.



NOTE: A full listing of courses currently scheduled across the state will be displayed. A broker may wish to enter search criteria, such as education provider, instructor, or city for a narrowed list. The broker should contact the Education Provider directly to register for a course.



Viewer Poll

Can I get CE credit for CCIM® courses, appraisal courses, or courses offered by the REALTOR® Associations such as GRI®?

- a) No. CE credit will no longer be given for any of these courses.
- b) You might, but you are going to have to make a special request to get CE credit.
- c) Any course you take that lasts at least 4 hours provides CE credit.
- d) Yes. Many of these courses are already approved. They just have to be submitted by the provider and you don't have to file a special request or pay \$50 if NCREC has approved them.



Takin' It to the Streets

Ashley, a broker with XYZ Homes, lives in Oklahoma. On June 6, 2023, Ashley certified that she had an active license in Oklahoma when she renewed her license. Therefore, under Commission rules in effect at

that time, Ashley did not have to take any CE in North Carolina to keep her NC license on active status.

On May 17, 2024, she wants to certify that her license in Oklahoma is still on active status while renewing her NC license so that she does not have to take NC CE. Can she still do that?

Does it matter that Ashley is actively licensed in another state?

Does it matter what education she completed in Oklahoma?

Does it matter that she doesn't live in NC?

Rule 58A .1711: Continuing Education Required of Nonresident Brokers

| SUMMARY OF RULE CHANGE | | |
|--|---------------|--|
| Rule | Change | What Happened? |
| 58A .1711 CE Required of Nonresident Brokers | Repealed | The Commission repealed this Rule because nonresident brokers can easily take all of their North Carolina CE courses due to the variety of instructional methods now available to brokers. |

Purpose of the Rule Change

The Commission repealed this Rule because nonresident brokers have the ability to easily take all of their North Carolina CE courses in a variety of instructional methods (e.g., distance, synchronous, etc.).

Additionally, nonresident brokers will benefit from the education provided in the mandatory Update Course to ensure their continued compliance with License Law and Commission rule requirements in North Carolina.

Basically, all brokers with a North Carolina real estate license should:

- be subject to the same CE requirements;
- show competence regarding NC License Law and Commission rules;
- not rely on licensure or course completion in another state to indicate their competence in NC; and
- use the various instructional methods offered by NC certified education providers to meet the CE requirements in NC.

Rule 58A .1711 was repealed by the Commission on July 1, 2023. Prior to July 1, 2023, nonresident NC brokers could meet CE requirements for renewal, if they:

- certified during license renewal that they had an active license in another state; or
- completed the Commission-prescribed Update course and Commission-approved CE elective course; or
- completed two Commission-approved CE elective courses.

Effective July 1, 2023, nonresident brokers must now comply with North Carolina CE requirements as specified in Rule 58A .1702, Continuing Education Requirements. Essentially, Rule 58A .1702 requires all brokers to take eight credit hours of NCREC- approved real estate CE courses within one year prior to the expiration of their license as follows:

(1) *four credit hours of elective courses; and*

(2) *four hours of either:*

(A) *the "General Update Course," or*

(B) *for a broker with BIC Eligible status, "the Broker-in-Charge Update Course" in lieu of the "General Update Course."*

Text of the Rule Changes

The following are the actual changes made to the existing rule, where strikethrough text represents language removed and underlined text represents language added.

21 NCAC 58A .1711 CONTINUING EDUCATION REQUIRED OF NONRESIDENT BROKERS

History Note: Authority G.S. 93A-3(c); 93A-38.5;

Eff. July 1, 1994;

Amended Eff. July 1, 2017; July 1, 2015; January 1, 2008; April 1, 2006; October 1, 2000; March 1, 1996; July 1, 1995;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018;

Amended Eff. July 1, 2020; ~~July 1, 2018;~~ July 1, 2018;

Repealed Eff. July 1, 2023.

Anticipated Impact to Brokers

Nonresident brokers will be slightly impacted due to this Rule being repealed. Beginning July 1, 2023, nonresident brokers who wish to renew

their NC license on active status will have to complete a mandatory NCREC Update course (GENUP or BICUP based upon their license status) and a 4-hour NCREC-approved CE elective by June 10, 2024. Therefore, nonresident brokers will no longer be able to utilize the CE requirements from another state to certify they have met the CE requirements in North Carolina.

COMMERCIAL NEWS FLASH: Best Practices

The following best practices are instrumental for nonresident brokers:

- check your license status on the Commission’s website;
- complete the appropriate Update Course for your license status (e.g., General Update/GENUP, Broker-in-Charge/BICUP Update, or Commercial Versions thereof); and
- complete a 4-hour NCREC-approved CE elective.

NOTE: Nonresident brokers must complete their CE requirements by June 10 of each license year according to Rule 58A .1702.

Rule 58A .0114 Residential Property and Owners’ Association Disclosure Statement (“RPOADS”)

| SUMMARY OF RULE CHANGE | | |
|---|---------|---|
| Rule | Change | What Happened? |
| 58A .0114 Residential Property Owners’ Association Disclosure Statement | Amended | The purpose of the Commission’s amendments was two-fold. First, the Commission wanted to remove the actual RPOADS form from the Rule so rule changes would not be necessary to adjust the RPOADS form’s format and accessibility. Second, the Commission incorporated the requirement for property owners to answer additional questions and provide additional disclosures that reflect the condition of the property. |

Purpose of the Rule Change

In addition to the technical reason for the amendment, obtaining additional information was supported by many different organizations, and in light thereof, the new form requires additional information, such as:

- flood status;
- historic registration/designation;
- private well testing; and
- elevator systems relating to the property.

On July 1, 2023, the Commission amended Rule 58A .0114 and the RPOADS form. Rule 58A .0114(a) requires every owner of real property that is subject to a transfer of the type governed by N.C.G.S §§47E to complete the RPOADS and furnish a copy to the buyer in a timely manner.



RPOADS requires that most residential property owners complete a disclosure form to give to prospective purchasers. However, the Act is considered a voluntary disclosure law. In NC, the seller has the option to sell a property without making any representations as to the condition of the property or whether a previous owner severed the mineral, oil, and gas rights. With a couple of exceptions, a seller has three options when completing the RPOADS or the Mineral and Oil and Gas Rights Mandatory Disclosure Statement (MOG) disclosures. They can check "Yes," "No," or "No Representation" to most of the questions posed.

N.C.G.S. §47E-8 mandates that brokers inform clients of their rights and obligations under the Statute and ensure their statutory compliance.

Text of the Rule Changes

The following are the actual changes made to the existing rule, where strikethrough text represents language removed and underlined text represents language added.

Section 58A .0114 - RESIDENTIAL PROPERTY AND OWNERS' ASSOCIATION DISCLOSURE STATEMENT

(a) Every owner of real property subject to a transfer of the type governed by Chapter 47E of the General Statutes shall complete ~~the following~~ a Residential Property and Owners' Association Disclosure Statement (hereinafter "Disclosure Statement") and furnish a copy of the complete statement to a buyer in accordance with the requirements of G.S. 47E-4. ~~The form shall bear the seal of the North Carolina Real Estate Commission and shall read as follows:~~ Disclosure Statement is a form prescribed by the Commission and available on the Commission's website at <https://www.ncrec.gov/Forms/Consumer/rec422.pdf>. The Disclosure Statement shall include the requirements set forth in G.S. 47-E and the:

- (1) property address;
- (2) owner's name(s), signature(s), and date of Disclosure Statement completion;
- (3) instructions for Disclosure Statement completion;
- (4) year the dwelling was constructed;
- (5) condition of the property's:
 - (i) central vacuum, pool, hot tub, spa, sump pump, irrigation system, elevator or other systems; and
 - (ii) fixtures and appliances that may be included in the conveyance.
- (6) historic designation or registration of the property, if applicable;
- (7) noise, odor, smoke, or other issue from commercial, industrial, or military sources that affect the property;
- (8) flood hazard status of the property;
- (9) condition of the drainage, grading, or soil stability affecting the property;
- (10) private road(s) abutting or adjoining the property and the maintenance agreements, if applicable;
- (11) buyer's acknowledgement of examination of the Disclosure Statement prior to signing the Disclosure Statement; and
- (12) buyer's signature and date of Disclosure Statement receipt.

(b) A broker shall furnish a current Disclosure Statement published on the Commission's website to the property owner(s) for completion.

(c) A broker shall discover and disclose any material facts about the property that the broker knows or reasonably should know and shall not solely rely on the owner's Disclosure Statement representations.

[NOTE: The remainder of the rule contained the actual RPOADS form, which was deleted in its entirety, but not included here for sake of brevity].

Text of the New Rule Effective July 1, 2023

Section 58A .0114 - RESIDENTIAL PROPERTY AND OWNERS' ASSOCIATION DISCLOSURE STATEMENT

- (a) *Every owner of real property subject to a transfer of the type governed by Chapter 47E of the General Statutes shall complete a Residential Property and Owners' Association Disclosure Statement (hereinafter "Disclosure Statement") and furnish a copy of the complete statement to a purchaser in accordance with the requirements of G.S. 47E-4. The Disclosure Statement is a form prescribed by the Commission and available on the Commission's website at <https://www.ncrec.gov/Forms/Consumer/rec422.pdf>. The Disclosure Statement shall include the items set forth in G.S. 47E-4(b1)(1) and the following information pertaining to the property:*
- (1) property address;*
 - (2) owner's name(s), signature(s), and date of Disclosure Statement completion;*
 - (3) year the dwelling was constructed;*
 - (4) any historic designation or registration status which places a restriction on the property;*
 - (5) noise, odor, smoke, or other nuisance from commercial, industrial, or military sources impacting the property;*
 - (6) existence of any private road(s) abutting or adjoining the property and the maintenance agreements, if applicable;*
 - (7) type of heating, cooling, water heater fuel sources along with the year each system was manufactured;*
 - (8) type of fuel source, and, if the fuel source is stored in a tank, whether the tank is above or below ground and leased or owned by the seller;*
 - (9) type of water supply source and sewage disposal system, and if serviced by a septic system, identify the number of bedrooms allowed pursuant to permit;*
 - (10) any violations impacting the property, such as local ordinances, restrictive covenants, building codes, or other land-use restrictions;*

- (11) *whether any portion of the property is designated as within a Special Flood Hazard Area pursuant to Title 44, Chapter 1, Subchapter B, Part 65 of the Code of Federal Regulations, has a flood elevation certificate, is insured for flood damage, has experienced damage from natural events causing water seepage, or has had a claim filed for flood damage or received federal financial assistance for flood damage; and*
- (12) *if there is any problem, malfunction, or defect with the property's:*
 - (A) *roof, fireplaces, or chimneys;*
 - (B) *foundation, basement, crawl space, or slab;*
 - (C) *windows, doors, patio, deck;*
 - (D) *garage or other structural component of the property;*
 - (E) *electrical, heating, cooling, or elevator systems;*
 - (F) *plumbing, water supply, sewer, or septic systems;*
 - (G) *fixtures or appliances to be conveyed with the purchase;*
 - (H) *drainage, grading or soil stability; and*
 - (I) *condition caused by wood destroying insects or organisms.*
- (b) *A broker shall furnish a current Disclosure Statement published on the Commission's website to the property owner(s) for completion.*
- (c) *A broker representing either an owner or a purchaser of any real property subject to Chapter 47E of the North Carolina General Statutes shall disclose to the purchaser any material facts the broker knows or reasonably should know about the property. A broker's duty to disclose is separate from that of the owner's, and the owner's Disclosure Statement does not obviate the broker's duty to*

The New RPOADS Form Effective July 1, 2023

The new RPOADS form is reprinted below for your convenience.



STATE OF NORTH CAROLINA
RESIDENTIAL PROPERTY AND OWNERS' ASSOCIATION DISCLOSURE STATEMENT

WHEN IN DOUBT - DISCLOSE!

Purpose of the Disclosure Form: This is a statement of characteristics and condition of the Property for which the Owner has actual knowledge. The form is required by law, N.C.G.S. 47E, to be completed by the owner and provided to the buyer. All questions must be answered.

Representations: An owner has the option of selecting Yes (Y), No (N), or No Representation (NR). If an owner selects No Representation, this could mean that the owner has knowledge of an issue and is choosing not to disclose it. An owner is not required to disclose any of the material facts that have a No Representation option, even if they have knowledge of them. Representations in this form are made by the owners, not the owner's agents or subagents.

MESSAGE TO OWNER:

You must respond to each of the questions on the following pages of this form by filling in the requested information or by placing a check (v) in the appropriate box. In responding to questions, you are only obligated to disclose information about which you have actual knowledge. If you are assisted in the sale of your property by a licensed real estate broker, you are still responsible for completing and delivering the Disclosure Statement to the buyers; and the broker must disclose any material facts about your property that the broker knows or reasonably should know, regardless of your responses on the Disclosure Statement. You must give the completed Disclosure Statement to the buyer no later than the time the buyer makes an offer to purchase your property. If you do not, the buyer can, under certain conditions, cancel any resulting contract. You should give the buyer a copy of the Disclosure Statement containing your signature and keep a copy signed by the buyer for your records.

INSTRUCTIONS: DO NOT LEAVE ANY QUESTIONS UNANSWERED.

- a. If you check "Yes (Y)" for any question, you must explain your answer and either describe any problem or attach a report from an attorney, engineer, contractor, pest control operator, or other expert or public agency describing it. If you attach a report, you will not be liable for any inaccurate or incomplete information contained in it so long as you were not grossly negligent in obtaining or transmitting the information.
b. If you check "No (N)," you are stating that you have no actual knowledge of any problem. If you check "No (N)" and you know there is a problem, you may be liable for making an intentional misstatement.
c. If you check "No Representation (NR)," you are choosing not to disclose the conditions or characteristics of the property, even if you have actual knowledge of them or should have known of them.
d. If you check "Yes (Y)" or "No (N)" and something happens to the property to make your Disclosure Statement incorrect or inaccurate (for example, the roof begins to leak), you must promptly give the buyer an updated Disclosure Statement or correct the problem. Note that some issues, even if repaired, such as structural issues and fire damage, remain material facts and must be disclosed by a broker.

Buyer Initials _____ Date _____

Owner Initials _____ Date _____

Buyer Initials _____ Date _____

Owner Initials _____ Date _____

MESSAGE TO BUYER:

If the owner does not give you a Residential Property and Owners' Association Disclosure Statement by the time you make your offer to purchase the property, you may under certain conditions cancel any resulting contract without penalty to you as the buyer. To cancel the contract, you must personally deliver or mail written notice of your decision to cancel to the owner or the owner's agent within three calendar days following your receipt of the Disclosure Statement, or three calendar days following the date of the contract, whichever occurs first. However, the Disclosure Act does not give you the right to cancel a contract after settlement of the transaction or (in the case of a sale or exchange) after you have occupied the property, whichever occurs first. **The answers of the owner below are not a warranty and should not be a substitute for conducting a careful, independent evaluation of the Property. Buyers are strongly encouraged to get their own inspections from a licensed home inspector and/or other professional.**

INSTRUCTIONS:

- a. Carefully review the entire form. An owner has the option of selecting Yes (Y), No (N), or No Representation (NR). If an owner selects No Representation, this could mean that the owner has knowledge of an issue and is choosing not to disclose it. Notice answers with NR selected. An owner is not required to disclose any of the material facts that have a No Representation option, *even if they have knowledge of them.*
- b. Do not assume 'No (N)' is a guarantee of no defect. If an owner selects 'No (N)' this means that they have no knowledge of any defects, it does not mean that a defect does not exist.
- c. Schedule inspections, a buyer is expected to take reasonable steps to satisfy themselves that the Property is suitable for their needs and purposes.

MESSAGE TO BROKER:

A licensed real estate broker shall furnish their seller-client with a Disclosure Statement for the seller to complete in connection with the above referenced transaction. The broker shall review such completed form to ensure that the seller completed all answers and confirm that the disclosures made by the seller on the form are consistent with the broker's knowledge or representations about the property. **In accordance with 93A-6(a)(1) and (3), a broker shall take reasonable steps to discover and disclose material facts about the subject property about which the broker knows or reasonably should know and shall not rely solely on the owner's representations.** Brokers working with buyer-clients should obtain a completed copy of this form from the owner or listing agent to provide to their client to review and sign. Brokers should explain that this form does not replace an inspection and encourage buyers to protect their interests by having the property fully examined to the buyer's satisfaction. Brokers are NOT permitted to complete this form on behalf of their clients.

PROPERTY ADDRESS/DESCRIPTION _____

OWNER'S NAME(S) _____

DATE OWNER ACQUIRED THE PROPERTY _____ DO YOU OCCUPY THE PROPERTY? _____

IF NOT OWNER-OCCUPIED, HOW LONG HAS IT BEEN SINCE THE OWNER OCCUPIED THE PROPERTY? _____

Owner(s) and Buyers(s) acknowledge having read and reviewed the above instructions prior to completing the remainder of this form.

Owner Signature: _____ Date _____

Owner Signature: _____ Date _____

Buyer Signature: _____ Date _____

Buyer Signature: _____ Date _____

PROPERTY ADDRESS/DESCRIPTION _____

The following questions address the characteristics and condition of the property identified above about which the owner has actual knowledge. Where the question refers to “dwelling,” it is intended to refer to any structure intended for human habitation.

A. STRUCTURE / FLOOR / WALLS / CEILINGS / WINDOWS / ROOF

YES NO NR

- A1. In what year was the dwelling constructed? _____
Explain if necessary: _____
- A2. Have there been any structural additions or other structural or mechanical changes to the dwelling(s)?
- A3. The dwelling’s exterior walls are made of what type of material? (Check all that apply) Brick Veneer Wood Stone Vinyl Synthetic Stucco Composition/Hardboard Concrete Fiber Cement Aluminum Asbestos Other _____
- A4. In what year was the dwelling’s roof covering installed? _____ (Approximate if no records are available.)
Explain if necessary: _____
- A5. Is there any leakage or other problem with the dwelling’s roof?
- A6. Is there any water seepage, leakage, dampness, or standing water in the dwelling’s basement, crawl space, or slab?
- A7. Is there any problem with present infestation of the dwelling, or damage from past infestation of wood destroying insects or organisms which has not been repaired?
- A8. Is there any problem, malfunction, or defect with the dwelling’s:

| Options: | Y | N | NR | Options: | Y | N | NR |
|---|--------------------------|--------------------------|--------------------------|-----------------------------|--------------------------|--------------------------|--------------------------|
| Foundation | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Attached garage | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Slab | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Patio | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Fireplaces/chimneys | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Deck | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Floors | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Ceilings | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Windows (incl. storm windows & screens) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Interior/exterior walls | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Doors | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Other Structural Components | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

B. HVAC / ELECTRICAL

YES NO NR

- B1. Is there any problem, malfunction, or defect with the dwelling’s electrical system (outlets, wiring, panel, switches, fixtures, generator, etc.)?
- B2. Is there any problem, malfunction, or defect with the dwelling’s heating and/or air conditioning?
- B3. What is the dwelling’s heat source? (Check all that apply) Furnace Heat Pump Baseboard Other _____ Year of system manufacture: _____
Explain if necessary: _____

Buyer Initials _____ Date _____

Owner Initials _____ Date _____

Buyer Initials _____ Date _____

Owner Initials _____ Date _____

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PROPERTY ADDRESS/DESCRIPTION _____

B4. What is the dwelling's cooling source? (Check all that apply) Central Forced Air Wall/Window Unit(s) YES NO NR
 Other _____ Year of system manufacture: _____
 Explain if necessary: _____

B5. What is the dwelling's fuel source? (Check all that apply) Electricity Natural Gas Propane Oil NR
 Other _____
 If the fuel source is stored in a tank, identify whether the tank is above ground or below ground, and whether the tank is leased by seller or owned by seller.

C. PLUMBING / WATER SUPPLY / SEWER / SEPTIC

C1. What is the dwelling's water supply source? (Check all that apply) City/County Community System YES NO NR
 Private Well Shared Well Other _____

C2. If the dwelling's water source is supplied by a private well, have you had the well tested? If so, what was the date of the last well test? _____ NR

C3. The dwelling's water pipes are made of what type of material? (Check all that apply) Copper NR
 Galvanized Plastic Polybutylene Other _____

C4. Water heater fuel source: (Check all that apply) Gas Electric Other _____ NR
 Year of system manufacture: _____ Explain if necessary: _____

C5. What is the dwelling's sewage disposal system? (Check all that apply) Septic Tank Septic Tank with Pump NR
 Community System Connected to City/County System City/County System available Straight pipe (wastewater does not go into a septic or other sewer system [note: use of this type of system violates State law])
 Other _____

C6. If the dwelling is serviced by a septic system, do you know how many bedrooms are allowed by the septic system permit? If your answer is "Yes," how many bedrooms are allowed? _____ YES NO NR
 No records available.

C7. Is there any problem, malfunction, or defect with the dwelling's:

| Options: | Y | N | NR | Options: | Y | N | NR |
|---|--------------------------|--------------------------|--------------------------|---------------|--------------------------|--------------------------|--------------------------|
| Plumbing system (pipes, fixtures, water heater, etc.) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Sewer system | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Water supply (water quality, quantity, or water pressure) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Septic system | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

D. FIXTURES / APPLIANCES

D1. Is the dwelling equipped with an elevator system? YES NO NR

Buyer Initials _____ Date _____

Owner Initials _____ Date _____

Buyer Initials _____ Date _____

Owner Initials _____ Date _____

PROPERTY ADDRESS/DESCRIPTION _____

D2. Is there any problem, malfunction, or defect with the dwelling's:

| Options: | Y | N | NR | Options: | Y | N | NR |
|--|--------------------------|--------------------------|--------------------------|-----------------------------------|--------------------------|--------------------------|--------------------------|
| Appliances to be conveyed (range/oven, attached microwave, hood/fan, dishwasher, disposal, etc.) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Gas logs | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Attic fan, exhaust fan, ceiling fans | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Pool/hot tub/spa | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Central vacuum | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Sump pump | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Elevator system or component | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Security system | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Garage door openers | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | TV cable wiring or satellite dish | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Irrigation system | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Other systems | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

E. LAND / ZONING

- | | YES | NO | NR |
|--|--------------------------|--------------------------|--------------------------|
| E1. Is there any problem, malfunction, or defect with the drainage, grading, or soil stability of the property? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| E2. Is the property in violation of any local zoning ordinances, restrictive covenants, or other land-use restrictions (including set-back requirements)? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| E3. Is the property in violation of any building codes (including the failure to obtain proper permits for room additions or other changes/improvements)? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| E4. Is the property subject to any utility or other easements, shared driveways, party walls, or encroachments from or on adjacent property? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| E5. Does the property abut or adjoin any private road(s) or street(s)? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| E6. If there is a private road or street adjoining the property, are there any owners' association or maintenance agreements dealing with the maintenance of the road or street? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| E7. Is the property designated or registered as a historic property or located in a historic district? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

F. ENVIRONMENTAL / FLOODING

- | | YES | NO | NR |
|---|--------------------------|--------------------------|--------------------------|
| F1. Are there any hazardous or toxic substances, materials, or products (such as asbestos, formaldehyde, radon gas, methane gas, lead-based paint) which exceed government safety standards located on or which otherwise affect the property? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| F2. Is there any debris (whether buried or covered) or underground storage tanks, or any environmentally hazardous conditions (such as contaminated soil or water, or other environmental contamination) located on or which otherwise affect the property? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| F3. Is there any noise, odor, smoke, etc., from commercial, industrial, or military sources which affects the property? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Buyer Initials _____ Date _____
 Buyer Initials _____ Date _____

Owner Initials _____ Date _____
 Owner Initials _____ Date _____

PROPERTY ADDRESS/DESCRIPTION _____

- | | YES | NO | NR |
|---|--------------------------|--------------------------|--------------------------|
| F4. Is the property located in a federally-designated flood hazard area? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| If you answered yes, is there a current flood insurance policy covering the property? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| [NOTE: An existing flood insurance policy may be assignable to a buyer at a lesser premium than a new policy.] | | | |
| If you answered yes, is there a flood elevation certificate for the property? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| F5. To your knowledge, has the property experienced any damage due to flooding, water seepage, or pooled water attributable to a natural event such as heavy rainfall, coastal storm surge, tidal inundation, or river overflow? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| If you answered yes, have you ever filed a claim for flood damage to the property with any insurance provider, including the National Flood Insurance Program? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| If you answered yes, have you received assistance from FEMA or any other federal disaster flood assistance for flood damage to the property? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| [Note: For properties that have received disaster assistance, the requirement to obtain flood insurance passes down to all future owners. Failure to obtain flood insurance when required can result in an owner being ineligible for future assistance.] | | | |
| F6. Have you ever filed a claim for flood damage to the property with any insurance provider, including the National Flood Insurance Program? If yes, provide the amount received: _____ | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| F7. Is there current flood insurance on the property? If yes, provide the annual premium amount: _____ | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| F8. Have you or any previous owner received assistance from FEMA, the US Small Business Administration, or any other federal disaster flood assistance for flood damage to the property? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| [NOTE: For properties that have received disaster assistance, the requirement to obtain flood insurance passes down to all future owners. Failure to obtain flood insurance can result in an owner being ineligible for future assistance.] | | | |
| F9. Is there a FEMA elevation certificate for the property? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

G. MISCELLANEOUS

- | | YES | NO | NR |
|---|--------------------------|--------------------------|--------------------------|
| G1. Is the property subject to any lawsuits, foreclosures, bankruptcy, leases or rental agreements, judgments, tax liens, proposed assessments, mechanics' liens, materialmens' liens, or notices from any governmental agency that could affect title to the property? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Buyer Initials _____ Date _____
 Buyer Initials _____ Date _____

Owner Initials _____ Date _____
 Owner Initials _____ Date _____

PROPERTY ADDRESS/DESCRIPTION _____

YES NO NR

G2. Is the property subject to governing documents separate from an owners' association which impose various mandatory covenants, conditions, and/or restrictions upon the lot or unit?

If you answered "yes" to any of the questions listed above please explain (attach additional sheets if necessary):

In lieu of providing a written explanation, you may attach a written report to this Disclosure Statement by a public agency, attorney, engineer, land surveyor, geologist, pest control operator, contractor, home inspector, or other expert, dealing with matters within the scope of that public agency's functions or the expert's license or expertise.

OWNERS' ASSOCIATION DISCLOSURE

YES NO NR

1. Is the property subject to regulation by one or more owners' association(s) including, but not limited to, obligations to pay regular assessments or dues and special assessments? If your answer is "yes," please provide the information requested below as to each owners' association to which the property is subject [insert N/A into any blank that does not apply]:

a. (specify name) _____ whose regular assessments ("dues") are \$ _____ per _____. The name, address and telephone number of the president of the owners' association or the association manager are _____

b. (specify name) _____ whose regular assessments ("dues") are \$ _____ per _____. The name, address and telephone number of the president of the owners' association or the association manager are _____

* If you answered "Yes" to Question 1 above, you must complete the remainder of this Disclosure Statement. If you answered "No" or "No Representation" to the Owners' Association Question 1 above, you do not need to answer the remaining questions on this Disclosure Statement. Skip to the bottom of the last page and initial and date the page.

YES NO NR

2. Are any fees charged by the association or by the association's management company in connection with the conveyance or transfer of the lot or property to a new owner? If your answer is "yes," please state the amount of the fees: _____

Buyer Initials _____ Date _____

Owner Initials _____ Date _____

Buyer Initials _____ Date _____

Owner Initials _____ Date _____

PROPERTY ADDRESS/DESCRIPTION _____

- | | YES | NO | NR |
|--|--------------------------|--------------------------|--------------------------|
| 3. Are there any dues, fees, or special assessment which have been duly approved as required by the applicable declaration or by-laws, and that are payable to an association to which the lot is subject? If your answer is "yes," please state the nature and amount of the dues, fees, or special assessments to which the property is subject: _____ _____ _____ | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. Are there any unsatisfied judgments against, pending lawsuits, or existing or alleged violations of the association's governing documents involving the property? If your answer is "yes," please state the nature of each pending lawsuit, unsatisfied judgment, or existing or alleged violation. _____ _____ | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 5. Are there any unsatisfied judgments or pending lawsuits against the association? If your answer is "yes," please state the nature of each unsatisfied judgment or pending lawsuit. _____ _____ | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 6. Which of the following services and amenities are paid for by the owners' association(s) identified above out of the association's regular assessments ("dues")? (Check all that apply.) | | | |

| Options: | Y | N | NR | Options: | Y | N | NR |
|---|--------------------------|--------------------------|--------------------------|---|--------------------------|--------------------------|--------------------------|
| Exterior Building Maintenance of Property to be Conveyed | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Exterior Yard/Landscaping Maintenance of Lot to be Conveyed | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Common Areas Maintenance | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Storm Water Management/Drainage/Ponds | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Trash Removal | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Private Road Maintenance | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Pest Treatment/Extermination | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Parking Area Maintenance | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Water | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Security | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Sewer | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Internet Service | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Recreational Amenity Maintenance (specify amenities covered): _____ _____ _____ | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Other: : (specify) _____ _____ _____ | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Owner(s) acknowledge(s) having reviewed this Disclosure Statement before signing and that all information is true and correct to the best of their knowledge as of the date signed.

Owner Signature: _____ Date _____

Owner Signature: _____ Date _____

Buyers acknowledge receipt of a copy of this Disclosure Statement and that they have reviewed it before signing.

Buyer Signature: _____ Date _____

Buyer Signature: _____ Date _____

Anticipated Impact to Brokers

Despite the changes to the Rule and the form, the required content, and the disclosure requirements of N.C.G.S. §47E-4 remain unchanged. The Commission expects brokers to provide guidance to their clients while they are completing the additional disclosures (e.g., flood status, historic registration/ designation, private well testing, and elevator systems relating to the property) that are on the revised *RPOADS*.



In 2018, the Commission wrote an article entitled, [**Sellers Required by Law to Provide Two Disclosure Statements to Buyers**](#), to assist brokers with comprehending their duties/obligations under Real Estate License.

COMMERCIAL NEWS FLASH: Best Practices

Brokers acting as listing agents should educate their owner-clients regarding their rights and obligations to provide specific disclosure statements under N.C.G.S. §47E-4. The broker should always:

- furnish the RPOADS form to a residential seller-client and inform the client of their duty to complete the form;
- educate the owner on the broker's mandatory obligation to discover and disclose material facts;
- refuse to advise the residential seller-client on how to answer the questions, but instead, refer them to their attorney if they have questions in this regard; and
- deliver the completed form to all prospective buyers.

TECHNICAL RULE CHANGES EFFECTIVE JULY 1, '23

As previously stated, the Commission revised several rules with an effective date of July 1, 2023, in Chapters 58A, 58B, and 58H. Technical changes were made to the following rules by adding, deleting, or altering the text in an effort to provide greater clarity.

Rule 58A .0113: Reporting Criminal Convictions and Disciplinary Actions

| SUMMARY OF RULE CHANGE | | |
|--|---------------|---|
| Rule | Change | What Happened? |
| 58A .0113 Reporting Criminal Convictions | Amended | This Rule was amended to now require brokers to include military court-martial convictions on the Criminal Conviction Disciplinary Action Reporting form. |

Purpose of the Change

Prior to July 1, 2023, this Rule did not require brokers to report military court-martial convictions on the Criminal Conviction Disciplinary Action Reporting Form. However, the Commission amended this Rule effective July 1, 2023, to clarify that military court-martial convictions are reportable offenses.

Text of the Rule Changes

21 NCAC 58A .0113 REPORTING CRIMINAL CONVICTIONS AND DISCIPLINARY ACTIONS

(a) Any broker who is convicted of any felony or misdemeanor, or who is disciplined by or enters into a conciliation agreement or consent order with any governmental agency in connection with any occupational license, or whose notarial commission is restricted, suspended, or revoked, shall file with the Commission a Criminal Conviction Disciplinary Action Reporting Form of such conviction or action within 60 days of the final judgment, order, or disposition in the case. A broker shall file with the Commission a Criminal Conviction Disciplinary Action Reporting Form within 60 days of:

- (1) a final judgment, order, or disposition of any felony or misdemeanor conviction;
- (2) a disciplinary action or entering into a conciliation agreement or consent order with a governmental agency or occupational licensing agency;
- (3) a final judgment, order, or disposition of a military court-martial conviction; or
- (4) a notarial commission sanction pursuant to G.S. 10B-60.

(b) The Criminal Conviction Disciplinary Action Reporting Form is available on the Commission's website at www.ncrec.gov or upon request to the Commission. In the Form, the broker Commission and shall set forth the broker's:

- (1) full legal name;
- (2) physical and mailing address;
- (3) real estate license number;
- (4) telephone number;
- (5) email address;
- (6) social security number;

- (7) date of birth; and
- (8) description of the criminal conviction and disciplinary conviction, military court-martial conviction, notarial commission sanction, or professional license disciplinary action, including the jurisdiction and file number.

History Note: Authority G.S. 93A-3(c); 93A-6(a); 93A-6(a)(10); 93A-6(b)(2);
 Eff. August 1, 1996;
 Amended Eff. July 1, 2016; July 1, 2009; January 1, 2008; April 1, 2006; July 1, 2003; July 1, 2000;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018;
 May 1, 2018;
 Amended Eff. July 1, 2023.

Text of the New Rule Effective July 1, 2023

21 NCAC 58A .0113 REPORTING CRIMINAL CONVICTIONS AND DISCIPLINARY ACTIONS

- (b) *A broker shall file with the Commission a Criminal Conviction Disciplinary Action Reporting Form within 60 days of:*
- (1) *a final judgment, order, or disposition of any felony or misdemeanor conviction;*
 - (2) *a disciplinary action or entering into a conciliation agreement or consent order with a governmental agency or occupational licensing agency;*
 - (3) *a final judgment, order, or disposition of a military court-martial conviction; or*
 - (4) *a notarial commission sanction pursuant to G.S. 10B-60.*
- (c) *The Criminal Conviction Disciplinary Action Reporting Form is available on the Commission's website at www.ncrec.gov or upon request to the Commission and shall set forth the broker's:*
- (1) *Full legal name;*
 - (2) *Physical and mailing address;*
 - (3) *Real estate license number;*
 - (4) *telephone number;*

- (5) *email address;*
- (6) *social security number;*
- (7) *date of birth; and*
- (8) *description of the criminal conviction, military court-martial conviction, notarial commission sanction, or professional license disciplinary action, including the jurisdiction and file number.*

Anticipated Impact to Brokers

As we are all aware, the Commission requires all brokers to notify the Commission of certain criminal convictions and disciplinary actions. This amendment broadens the Rule to include military court-martial convictions.

Rule 58A .0301: License Application

| SUMMARY OF RULE CHANGE | | |
|-------------------------------|---------|--|
| Rule | Change | What Happened? |
| 58A .0301 License Application | Amended | This Rule was amended to now require all applicants for a real estate license to include military court-martial convictions in their license applications. |

Purpose of the Change

This is a clarification of this Rule that coincides with the changes to Rule 58A .0113 regarding conviction reporting.

Text of the Rule Changes

21 NCAC 58A .0301 FORM LICENSE APPLICATION

~~An individual or business entity who wishes to file an application for a broker license shall make application on a form prescribed by the Commission and may obtain the required form upon request to the Commission. The application form for an individual calls for the applicant's name and address, the applicant's social security number, proof of the applicant's identity, places of residence, education, prior real estate licenses, and other information necessary to identify the applicant and determine the applicant's qualifications and fitness for licensure. The application form for a business entity is described in Rule .0502 of this Section.~~

~~(a) An individual seeking licensure as a real estate broker shall submit a license application that is available on the Commission's website and shall include the applicant's:~~

- ~~(1) legal name;~~
- ~~(2) mailing, physical, and email address;~~

- (3) telephone number;
- (4) social security number and date of birth;
- (5) qualification for license application;
- (6) real estate license history;
- (7) places of residence for the past seven years;
- (8) employment history for the past three years;
- (9) criminal offenses, military courts-martial convictions, professional license disciplinary actions, including the jurisdiction, file number, and explanation of each offense;
- (10) liens or unpaid judgments;
- (11) certification the applicant has read the Real Estate Licensing in North Carolina brochure that is available on the Commission's website; and
- (12) declaration and signature.

(b) In addition to the application required by Paragraph (a) of this Rule, the applicant shall submit:

- (1) the license application fee pursuant to Rule .0302 of this Section; and
- (2) a criminal records report from a [designated] Commission-designated criminal reporting service obtained within six months prior to application submission.

*History Note: Authority G.S. 93A-3(c); 93A-4(a),(b),(d); 93A-4;
 Eff. February 1, 1976;
 Readopted Eff. September 30, 1977;
 Amended Eff. April 1, 2006; July 1, 2000; February 1, 1991; February 1, 1989; August 1, 1988;
 December 1, 1985;*

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018;
 May 1, 2018;
 Amended Eff. July 1, 2023.*

Text of New Rule Effective July 1, 2023

21 NCAC 58A .0301 License Application

- (a) *An individual seeking licensure as a real estate broker shall submit a license application that is available on the Commission's website and shall include the applicant's:*
- (1) *legal name;*
 - (2) *mailing, physical, and email address;*
 - (3) *telephone number;*
 - (4) *social security number and date of birth;*
 - (5) *qualification for license application;*

- (6) *real estate license history;*
 - (7) *places of residence for the past seven years;*
 - (8) *employment history for the past three years;*
 - (9) *criminal offenses, military courts-martial convictions, professional license disciplinary actions, including the jurisdiction, file number, and explanation of each offense;*
 - (10) *liens or unpaid judgments;*
 - (11) *certification the applicant has read the Real Estate Licensing in North Carolina brochure that is available on the Commission's website; and*
 - (12) *declaration and signature.*
- (b) *In addition to the application required by Paragraph (a) of this Rule, the applicant shall submit:*
- (1) *the license application fee pursuant to Rule .0302 of this Section; and*
 - (2) *a criminal records report from a Commission-designated criminal reporting service obtained within six months prior to application submission.*

Anticipated Impact to Brokers

This amendment will only impact brokers who served our country in the military. If you are an active-duty service member, or certain retirees, and the subject of a court-martial, this change in the Rule will apply to you.

Rule 58A .0505: Reinstatement of a License

| SUMMARY OF RULE CHANGE | | |
|---|---------|---|
| Rule | Change | What Happened? |
| 58A .0505 Reinstatement of a License | Amended | In conjunction with the other rule changes regarding military court-martials, this Rule was amended to now require individuals to include a criminal record report from a designated criminal reporting service obtained within six months prior to application and subsection (c)(2) requires the disclosure of military court-martial convictions when they are seeking to reinstate their license. |

Purpose of the Rule Change

Historically, Rule 58A .0505(e) required brokers that have expired, revoked, or surrendered licenses for more than two years to submit an original license application, fee, and take the NC Real Estate License examination.

Rule 58A .0505(e) now requires brokers that have expired, revoked, or surrendered licenses for more than two years to reinstate their license by submitting a license application and application fee pursuant to N.C.G.S. §93A-4 and Rules .0301, .0302, and .0511.

Essentially, this Rule provides nonresident brokers the same option as brokers who reside within North Carolina when seeking to reinstate their license. Therefore, nonresident brokers now have the choice to reinstate their license by electing to either pass the "State" section of the NC Real Estate License examination or be issued a NC broker license on provisional status.

Text of the Rule Changes

21 NCAC 58A .0505 REINSTATEMENT OF A LICENSE

- (a) The fee for reinstatement of a license that has been expired, revoked, or surrendered for less than two years shall be an amount equal to two times the current renewal license fee pursuant to Rule .0503 of this Section.
- (b) The reinstatement application form is available on the Commission's website and shall include the applicant's:
- (1) legal name;
 - (2) mailing, physical, and email address;
 - (3) telephone number;
 - (4) previous license number;
 - (5) Secretary of State identification number, if applicable;
 - (6) social security number and date of birth, if applicable;
 - (7) qualifying broker and broker-in-charge's legal name and license number, if applicable;
 - (8) criminal record report from a designated criminal reporting service obtained prepared within six months of prior to application;
 - (9) certification; and
 - (10) signature.
- (c) An individual seeking reinstatement of a license that has been expired for less than six months shall:
- (1) submit the reinstatement fee pursuant to Paragraph (a) of this Rule;
 - (2) disclose any criminal ~~conviction~~ or conviction, court-martial conviction, notarial commission sanction, or disciplinary action pursuant to Rule .0113 of this Section, including any conviction or disciplinary action incurred while the individual's license was expired; and
 - (3) satisfy the license activation requirements of Rule .1703 of this Subchapter, if applicable.

(d) An individual seeking reinstatement of a license that has been expired for six months but no more than two years or revoked or surrendered for no more than two years shall:

- (1) submit a complete reinstatement application pursuant to Paragraph (b) of this Rule;
- (2) submit the reinstatement fee pursuant to Paragraph (a) of this Rule; and
- (3) pass:
 - (A) one Postlicensing course within six months prior to submitting ~~his or her~~ a reinstatement application;
 - (B) the "National" and "State" sections of the current license examination within 180 days after submitting ~~his or her~~ a reinstatement application; or
 - (C) the "State" section of the current license examination within 180 days after submitting ~~his or her~~ a reinstatement application if the individual possesses an active broker license in another state.

(e) An individual seeking reinstatement of a license that has been expired, revoked, or surrendered for more than two years shall submit ~~an original~~ a license application and application fee pursuant to G.S. 93A-4 and Rules ~~.0301 and .0302~~ Rules .0301, .0302, and .0511 of this Subchapter.

(f) ~~A reinstated license shall be reinstated with the same license number and status, either full or provisional, it held before expiration, revocation, or surrender if reinstated within three years from the expiration, revocation, or surrender and shall be effective as of the date of reinstatement, not the date of original initial licensure. If a license is reinstated after three years from the expiration, revocation, or surrender, the license shall be on provisional broker status pursuant to G.S. 93A-4(a1).~~

(g) A business entity seeking reinstatement of a license shall submit:

- (1) the reinstatement fee pursuant to Paragraph (a) of this Rule if the license has been expired for less than six months;
- (2) the reinstatement fee and a complete reinstatement application pursuant to Paragraphs (a) and (b) of this Rule if the license has been expired for six months but no more than two years or revoked or surrendered for no more than two years; or
- (3) ~~an original~~ a firm license application pursuant to G.S. 93A-4 and Rules .0301, .0302, and .0502 of this Subchapter if the license has been expired, revoked, or surrendered for more than two years.

(h) A broker seeking reinstatement of a license shall satisfy to the Commission that ~~he or she~~ the broker possesses the character requisites pursuant to G.S. 93A-4(b).

History Note: Authority G.S. 93A-3(c); 93A-4; ~~93A-4.1; 93A-38.5;~~

Eff. February 1, 1976;

Readopted Eff. September 30, 1977;

Temporary Amendment Eff. April 24, 1995 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;

Amended Eff. July 1, 2017; January 1, 2012; July 1, 2009; January 1, 2008; April 1, 2004; July 1, 2000; August 1, 1998; July 1, 1996; August 1, 1995; July 1, 1995;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018;

Amended Eff. July 1, 2023; July 1, 2018.

Text of New Rule Effective July 1, 2023

21 CAC 58A .0505 REINSTATEMENT OF A LICENSE

- (a) *The fee for reinstatement of a license that has been expired, revoked, or surrendered for less than two years shall be an amount equal to two times the current renewal license fee pursuant to Rule .0503 of this Section.*
- (b) *The reinstatement application form is available on the Commission's website and shall include the applicant's:*
- (1) Legal name;*
 - (2) mailing, physical, and email address;*
 - (3) telephone number;*
 - (4) previous license number;*
 - (5) Secretary of State identification number, if applicable;*
 - (6) social security number and date of birth, if applicable;*
 - (7) qualifying broker and broker-in-charge's legal name and license number, if applicable;*
 - (8) criminal record report from a designated criminal reporting service obtained within six months prior to application;*
 - (9) certification; and*
 - (10) signature.*
- (c) *An individual seeking reinstatement of a license that has been expired for less than six months shall:*
- (1) submit the reinstatement fee pursuant to Paragraph (a) of this Rule;*
 - (2) disclose any criminal conviction, court-martial conviction, notarial commission sanction, or disciplinary action pursuant to Rule .0113 of this Section, including any conviction or disciplinary action incurred while the individual's license was expired; and*

- (3) *satisfy the license activation requirements of Rule .1703 of this Subchapter, if applicable.*
- (d) *An individual seeking reinstatement of a license that has been expired for six months but no more than two years or revoked or surrendered for no more than two years shall:*
 - (1) *submit a complete reinstatement application pursuant to Paragraph (b) of this Rule;*
 - (2) *submit the reinstatement fee pursuant to Paragraph (a) of this Rule; and*
 - (3) *pass:*
 - (A) *one Postlicensing course within six months prior to submitting a reinstatement application;*
 - (B) *the "National" and "State" sections of the current license examination within 180 days after submitting a reinstatement application; or*
 - (C) *the "State" section of the current license examination within 180 days after submitting a reinstatement application if the individual possesses an active broker license in another state.*
- (e) *An individual seeking reinstatement of a license that has been expired, revoked, or surrendered for more than two years shall submit a license application and application fee pursuant to G.S. 93A-4 and Rules .0301, .0302, and .0511 of this Subchapter.*
- (f) *A reinstated license shall be effective as of the date of reinstatement, not the date of initial licensure. If a license is reinstated after three years from the expiration, revocation, or surrender, the license shall be on provisional broker status pursuant to G.S. 93A-4(a1).*
- (g) *A business entity seeking reinstatement of a license shall submit:*
 - (1) *the reinstatement fee pursuant to Paragraph (a) of this Rule if the license has been expired for less than six months;*

- (2) *the reinstatement fee and a complete reinstatement application pursuant to Paragraphs (a) and (b) of this Rule if the license has been expired for six months but no more than two years or revoked or surrendered for no more than two years; or*
- (3) *a firm license application pursuant to G.S. 93A-4 and Rules .0301, .0302, and .0502 of this Subchapter if the license has been expired, revoked, or surrendered for more than two years.*
- (h) *A broker seeking reinstatement of a license shall satisfy to the Commission that the broker possesses the character requisites pursuant to G.S. 93A-4(b).*

Anticipated Impact to Brokers

The amendment to this rule requires individuals to include a criminal record report from a designated criminal reporting service obtained within six months prior to application and subsection (c)(2) requires the disclosure of military court-martial convictions when they are seeking to reinstate their license.

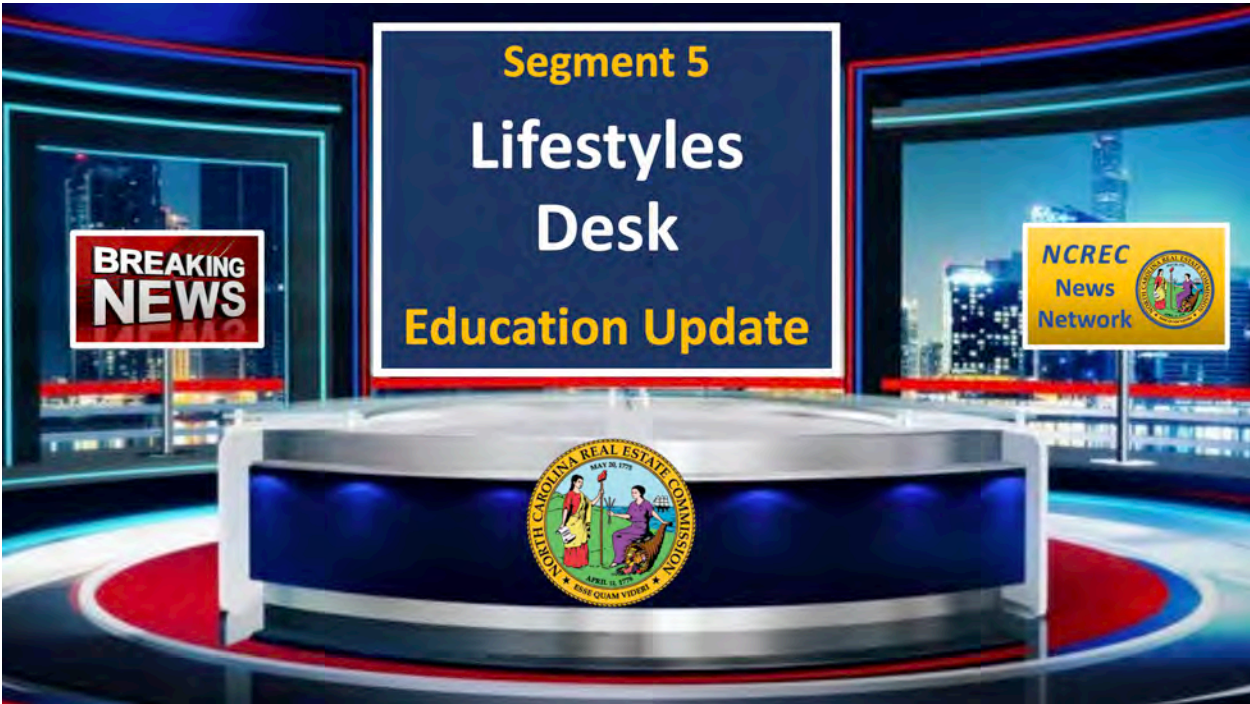
COMMERCIAL NEWS FLASH: Other Rule Changes

The Commission amended and repealed several rules on July 1, 2023. Although all of the rules were not discussed in this section, brokers may retrieve the most current License Law and Commission rules by accessing the Commission's website using the following instructions:

- go to www.ncrec.gov;
- click on Resources;
- click License Law/Rules;
- click Chapter 58 under Rules; and
- review Real Estate Commission rules in Chapter 58.

SEGMENT 5

LIFESTYLES DESK: EDUCATION UPDATE





1. Do you need to complete CE prior to renewing your license?

2. How do you maintain a license on inactive status?

3. Why would a broker have to comply with license reinstatement requirements?

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 inactive license.



LICENSE RENEWAL

Broker, firm, and Limited Nonresident Commercial licensees must renew their real estate license each year during the statutory 45-day renewal period between May 15-June 30. The annual renewal fee is \$45.00 and must be:



- Paid online at the Commission's website; and
- Received by the Commission by 11:59:59 pm on June 30.



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

License Renewal – The Basics

The renewal fee is \$45

- How is this paid?
 On the Commission's website using a credit card, debit card, or PayPal Cash, checks & in-person payments are **not** accepted
- When is the fee due?
 Must be received by the Commission by **11:59:59 p.m. on June 30**

COMMERCIAL NEWS FLASH: DON'T WAIT TIL LAST MINUTE

NOTE: Don't wait until the last minute on June 30th to renew your license. If the Commission's website is down or your internet or power is down, or anything 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 renew in a timely manner.

FACT OR MYTH?



I can renew my broker license before I complete my CE courses?

FACT!

The annual license renewal period is May 15-June 30. There is not a License Law nor Commission rule that requires a broker to complete CE courses prior to renewing their license. Therefore, a broker may choose to renew their license prior to completing CE courses.

License renewal is not contingent upon a broker completing their CE requirements. 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.

COMMERCIAL NEWS FLASH: DON'T WAIT TIL LAST MINUTE

NOTE: 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 and early June.

I can complete my CE courses prior to renewing my license?

FACT!

A broker may choose to complete their CE courses prior to renewing their real estate license. The Commission does not require a broker to renew their license prior to completing CE nor does it require completion of CE courses prior to submitting a license renewal. It is up to the broker to decide when to take CE and renew their license. However, to maintain a current and active license status, a broker must complete CE courses by June 10 and renew their license online during the annual May 15-June 30 renewal period.

As the BIC and Qualifying Broker of my brokerage company, I only have to renew one license.

Myth

A broker who is both BIC and QB is responsible for renewing both their individual broker license and the firm license during the annual May 15-June 30 renewal period.

- As designated BIC of the firm, if the broker fails to renew their individual broker license:
 - all affiliated full brokers under their supervision will be unaffiliated from the brokerage but maintain active status at their home address;
 - the licenses of all affiliated provisional brokers will go inactive;
 - the firm license will remain active but can have no affiliated brokers until a new BIC is designated; and
 - all broker affiliations and agency agreements will have to be reestablished under a new BIC.
- As QB of the firm, if the broker fails to renew their individual broker license:
 - the firm license will go to inactive status;
 - all affiliated full brokers will be unaffiliated from the brokerage but maintain active status at their home address;
 - the licenses of all affiliated provisional brokers will go inactive; and
 - all brokerage activity on behalf of the firm must cease until a new QB is named and all broker affiliations and agency agreements are reestablished.
- The QB renews their individual license, but fails to renew the firm license:
 - the firm license expires;
 - all affiliated brokers will be unaffiliated from the brokerage;
 - all brokerage activity on behalf of the firm would cease until a new firm application is approved; and
 - all broker affiliations and agency agreements must be reestablished prior to performing any brokerage activity on behalf of the reinstated firm.

I am a QB. I need to renew both my broker license and firm license.

FACT!

A QB must renew their individual broker license and firm license annually during the statutory period of May 15-June 30. The QB is the individual, according to Rule 58A .0502(g)(2), that is required to renew the firm license.

- If the QB fails to renew their individual broker license, the broker's license will expire and the firm's license will go inactive with all the ramifications noted earlier.
- If the QB fails to renew the firm license during the annual May 15-June 30 renewal period, the firm's license will expire with all the ramifications noted earlier.
- In both cases, all broker affiliations and agency agreements will terminate and the ability to practice brokerage must cease until licenses are back on active status.

I am inactive so I don't need to renew my license.

Myth

Although a broker may intentionally place their license on inactive status, the broker should still renew their license each year during the May 15-June 30 renewal period to ensure they still have a license in the event they would like to practice brokerage in the future. If a broker wants to activate their inactive license, the broker would need to meet the requirements under Rule 58A .0504(d) and .1702(a)-(b), respectively.

I didn't renew my license, so now I can only wrap up the transactions I have pending.

Myth

If your license expires on June 30 due to non-renewal, you cannot engage in any brokerage activities beginning July 1. This includes attending a closing on behalf of a client; your brokerage company would have to send another affiliated broker to represent the firm's client. You may not resume brokerage practice until your license is reinstated, back on "active" status, and affiliated with a BIC.

COMMERCIAL NEWS FLASH: Active Military

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



Takin' It to the Streets

Weaklon, NC - Sam, the Qualifying Broker of See Homes, failed to complete his General Update Course and CE elective by June 10th. Upon realizing his mistake, Sam called Real Estate Schools R'Us to schedule the needed courses on June 11. He

received a voicemail that the education provider was closed. Sam became furious because he knew that this would impact his brokerage, See Homes.

Sam immediately called the Commission and spoke with a License Specialist. The License Specialist indicated that Sam could not take courses during the June 11-June 30 CE blackout period. The License Specialist also noticed that Sam had not renewed his license. Therefore, she reminded Sam to renew his license by June 30th. Sam became irate and told the License Specialist that he knows he needs to renew his license; however, she was not empathetic regarding his need to immediately complete CE courses.

1. *What will be the status of Sam's broker license on July 1st?*

2. *How will Sam's broker license status impact See Homes, if at all?*

EXPIRED AND INACTIVE LICENSURE

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

The Cost of an Unhealthy Lifestyle

**An inactive or expired license means
CEASE ALL BROKERAGE ACTIVITY!**

You cannot:

- Attend a closing
- Continue to communicate with clients
- Finish a transaction
- Conduct any marketing or advertising



My license is inactive, so I can only receive referral fees.

Myth

A broker must have a current, active license at the time of the brokerage activity including at the time of making a referral in order to legally receive any income from brokerage activity, including referral fees. A broker who has an active license has timely renewed their broker license by June 30 and has completed the appropriate 8 hours of CE by June 10 each year.

I was licensed in May 2023 as a provisional broker. I don't have to take CE until my second full year of brokerage, so I don't need CE until June 2025.

Myth

Rule 58A .1702(c) indicates that, to maintain eligibility for an active license, CE courses shall be completed BEFORE the second renewal following the initial licensure and upon each subsequent annual renewal. In the scenario above, the broker who was licensed in May, 2023, would renew their broker license for the first time by June 30, 2023, to remain on active status. The second renewal of their license would occur on or before June 30, 2024, and, therefore, the broker must complete CE prior to June 10, 2024, to maintain eligibility for an active license. NOTE: Provisional brokers must also timely complete Postlicensing Education based on date of initial licensure and be affiliated with a BIC to maintain active status.

As a provisional broker, I have always been inactive and never affiliated with a firm, so the countdown for me to take Postlicensing and CE has not begun yet.

Myth

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

I can take CE while my license is inactive.

FACT!

Rule 58A .1702(e) indicates a broker is not required to take CE while their license is on inactive status. However, the broker may take CE while their license is on inactive status in preparation to achieve active status under Rule 58A .1703.

I can get CE credit for Postlicensing courses.

Myth

Postlicensing courses do not provide CE credit, per Rule 58A .1704.

Lots of people get waivers for completion of CE or Postlicensing courses.

Myth

This statement is confusing the terms. A broker's completion of a CE course will result in the broker receiving a certificate of completion. However, in some instances, a broker can obtain a waiver of the CE requirement, meaning the broker does not need to obtain a CE certificate. According to Rule 58A .1708, the Commission awards CE equivalent waivers if certain requirements are met. A broker may receive credit that is equivalent to a CE course and obtain a waiver 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.

Brokers must submit a complete application prior to June 17 specifying how they met the requirements under this Rule [with an application fee of \$50 for the new course approval option]. NOTE: Effective July 1, 2023, Rule 58A .1708 was amended to limit equivalent credit options to approved educators.

A waiver can also be obtained for Postlicensing education. Rule 58A .1905 states that a broker may apply for a waiver of one or more of the three 30-hour Postlicensing courses where the broker has:

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

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

So long as the firm license is renewed, the status of the QB's license doesn't matter.

Myth

A licensed firm must have a QB whose license is on active status. As long as the firm has an actively licensed QB, and the firm's license is timely renewed, the firm license will remain active. If the QB's license expires or is

inactive on July 1, the firm's license will also be inactive, meaning no brokers may engage in brokerage activities for the firm. While losing a BIC only takes one office down, losing a QB takes the entire firm down.

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

If a broker is only acting as a QB and not actively engaged in brokerage activities, they do not have to complete CE.

Myth

For a broker to remain a QB for a firm, the broker must take CE to maintain an active license. Every broker who wishes to maintain active status must pay their license renewal fee during the annual May 15-June 30 renewal period each year and complete the appropriate CE by June 10. If the QB failed to complete the appropriate CE by June 10, the firm could appoint a new actively-licensed QB by June 30 to avoid having the firm license go inactive. NOTE: Please review the Reinstatement Chart below for questions on how to reinstatement an inactive and/or expired broker license.

BROKER LICENSE REACTIVATION

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

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

Distinguishing Between Inactive or Expired

The Commission strongly recommends that when licensees have questions about their license status that they contact a Commission License Specialist

who can examine the licensee's record and properly advise them of the process necessary to achieve their goals.

COMMERCIAL NEWS FLASH: MUST Cure CE Deficits

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

BROKER LICENSE REINSTATEMENT GUIDE

On the following pages you will find a handy reference summarizing what steps need to be take to reinstate a license that is expired, and/or, a license that is inactive.

When the Broker License is Expired

| Cause of the Expiration | Length of Expiration | Process Required Per Rule 58A .0505 |
|--|---|--|
| <p>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</p> | <p>Less than 6 Months</p> | <ul style="list-style-type: none"> Pay a \$90 reinstatement fee Disclose any convictions or disciplinary actions File a Form 2.08 - License Activation and Broker Affiliation |
| | <p>More than 6 months but less than 2 years</p> | <ul style="list-style-type: none"> 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 <p>*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</p> |
| | <p>More than 2 years</p> | <ul style="list-style-type: none"> Must be relicensed as if they never possessed a license: <ul style="list-style-type: none"> ➡ Complete a Prelicensing course ➡ Pass the National and State sections of the license exam ➡ Submit a new license application fee |

When the Broker License is Inactive

| Why is license Inactive? | Length of Inactive Status | Process Required Per Rule |
|---|---------------------------|--|
| Provisional broker inactive due ONLY to non-affiliation | Any length of time | <ul style="list-style-type: none"> File Form 2.08 - License Activation and Broker Affiliation <p style="text-align: center;">Per Rule 58A .0506</p> |
| Provisional broker inactive due to failing to complete Postlicensing within 18 months | Any length of time | <ul style="list-style-type: none"> 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 <p style="text-align: center;">Per Rule 58A .1902</p> |
| Broker inactive due to a CE Deficiency | 2 years or less | <ul style="list-style-type: none"> Make up any deficiency in the previous year with CE electives Complete the required current year CE consisting of the Update course and an elective course File Form 2.08 - License Activation and Broker Affiliation <p style="text-align: center;">Per Rule 58A .1703</p> |
| | More than 2 years | <ul style="list-style-type: none"> Complete the required current year CE consisting of the 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 <p style="text-align: center;">Per Rule 58A .1703</p> |

SEGMENT 6

BUSINESS NEWS: BIC POLICIES





1. Does your office have a written policies and procedures manual?

2. What types of things does your manual address?

LEARNING OBJECTIVES

After completing this section, you should be able to:

- identify the BIC's responsibilities for supervising affiliated brokers;
- determine whether BICs should have written office policies;
- identify recommended issues and topics to be addressed in brokerage office policies; and

- identify the questions that the Commission may ask a BIC regarding their office policies.

TERMINOLOGY

- **ALERT:** The BIC has to ensure affiliated brokers: comply with agency agreements and disclosures, have current, active licenses, comply with advertising laws and regulations, create, maintain, and retain transaction files, and properly handle trust money.
- **Broker:** This is the primary license status for a broker license and includes any licensee who is affiliated with a firm or sole proprietorship.
- **Broker-in-Charge (BIC):** The broker who has been designated as the primary person having responsibility for the supervision and management of a brokerage office.
- **Provisional Broker (PB):** This is the entry-level license status for an individual broker license who has not completed the 90-hour Postlicensing education program. A PB must be under the supervision of a BIC to be on active status and legally provide brokerage services.

BIC RESPONSIBILITIES



According to Rule 58A .0110(a), every real estate firm shall designate one BIC for the firm's principal office and a different broker to serve in the same capacity at each branch office.

Additionally, a BIC may not be the BIC of more than one office location at a time, and no office of a firm shall have more than one designated BIC.

Even a broker practicing alone (i.e. sole proprietor) must designate a BIC if the brokerage:

- engages in any transaction where the broker is required to deposit and maintain monies belonging to others in a trust account;
- engages in advertising or promoting their services as a broker in any manner; or
- has one or more other brokers affiliated with them in the real estate business per Rule 58A .0110(b).

BIC Duties & Responsibilities



The designated BIC is the primary individual the Commission will hold responsible for the supervision and management of the office. Therefore, the BIC has the responsibility to supervise affiliated brokers, employees, and others who perform duties on behalf of the brokerage.

Commission Rule 58A .0110(g) lists the specific responsibilities of a broker-in-charge as follows:

- (1) *assure that each broker affiliated at the office has complied with Rules .0503, .0504, and .0506 of this Subchapter;*
- (2) *notify the Commission of any change of firm's business address or trade name and the registration of any assumed business name adopted by the firm for its use;*

- (3) *be responsible for the conduct of advertising by or in the name of the firm at such office;*
- (4) *maintain the trust or escrow account of the firm and the record pertaining thereto;*
- (5) *retain and maintain records relating to transactions conducted by or on behalf of the firm, including those required to be retained pursuant to Rule .0108 of this Section;*
- (6) *supervise provisional brokers associated with or engaged on behalf of the firm at such office in accordance with the requirements of Rule .0506 of this Subchapter;*
- (7) *supervise all brokers affiliated at the office with respect to adherence to agency agreement and disclosure requirements;*
- (8) *notify the Commission in writing that he or she is no longer serving as a BIC of a particular office within 10 days following any such change;*
- (9) *complete the Commission's Basic Trust Account Procedures Course within 120 days of assuming responsibility for a trust account in accordance with N.C.G.S. §93A-6(g), however, the BIC shall not be required to complete the course more than once in three years; and*
- (10) *supervise all unlicensed individuals employed at the office and ensure that unlicensed individuals comply with N.C.G.S. §93A-2(c)(6).*

Therefore, Rule 58A .0110 is very specific regarding a BIC's responsibility for both provisional brokers and full brokers contrary to some beliefs in real estate. Essentially, a BIC has five supervisory responsibilities related to all affiliated brokers.

The BIC has to ensure affiliated brokers are:

- complying with agency agreements and disclosures;
- have current, active licenses;
- complying with advertising laws and regulations;
- creating, maintaining, and retaining transaction files; and
- properly handling trust money.

The responsibilities are remembered best by using the acronym ALERT.

A BIC Must Be ALERT To All of the Following for ALL Affiliated Brokers:

- **A**gency Disclosures & Agreements
- **L**icenses, current and active
- **E**very Advertisement
- **R**ecord Keeping
- **T**rust Accounts



Rule 58A
.0110(g)

For ALL affiliated brokers under the BIC's supervision



Takin' It to the Streets

Red City, NC – On Wednesday, police were called to ABC Brokerage due to an argument between a BIC and their affiliated broker. The broker was irate because she could not affiliate with more than one brokerage at a time. The broker

told the police that she wanted to practice property management at a different company because ABC Brokerage does not practice this type of real estate.

The BIC told us in a telephone interview that they did not know that an office policy could create so much aggression. The BIC was also shocked because the broker had acknowledged receipt of the office policies when they signed their employment agreement.

No arrests were made as of Wednesday afternoon. However, the broker filed a complaint with NCREC for them to review.

1. Can the brokerage prevent affiliated brokers from affiliating with more than one brokerage?
-

2. Does the Commission dictate the required office policies for brokerages?
-

WRITTEN OFFICE POLICIES

Written office policies are considered essential for all brokerages. Further, policies and procedures can assist BICs with standardizing operational tasks, establishing expectations, and providing guidance for all affiliated brokers, employees, and other individuals who perform duties on behalf of the brokerage. Also, when policies are developed, the BIC should uniformly apply and enforce them in the brokerage.

Although the Commission does not dictate the topics a BIC must include in their written office policies, the Commission recommends that a BIC's written office policies address:

- communication with the BIC or BIC delegate,
- training requirements,
- meeting schedules,
- transaction/document review process,
- client/consumer interaction,
- current regulatory information, and/or
- how to handle issues that may arise while practicing brokerage.



To assist BICs with developing written office policies, the Commission has created a [**Broker-in-Charge Best Practices Guide**](#) to provide BICs with guidance as they are developing their business practices and procedures for which rules and policies should be created. The BIC Best Practices Guide is intended only as a starting point for BICs.

The Guide is posted on the Commission's website (ncrec.gov) under Resources.

Lastly, brokerages differ in size and practice varying specializations of real estate. Therefore, there is not a one size fits all office policy that would meet the needs of each real estate office. BICs may want or need to create policies for many other topics or issues, depending upon the nature and complexity of their brokerage practice. Moreover, as real estate practices change, a firm's policies and procedures manual should be updated to provide guidance to affiliated brokers.

In regards to provisional brokers, the Rule is very specific regarding a BIC's supervisory obligations. A BIC must supervise all brokerage activities of PBs affiliated with the office. Generally, a PB may perform the same acts as a broker whose license is not on provisional status as long as they are supervised by a BIC. A PB may not operate independently in any way.

Commission Rule 58A .0506(d) states:

A broker-in-charge shall supervise the provisional broker in a manner that assures that the provisional broker performs all acts for which a real estate license is required in accordance with the Real Estate License Law and Commission rules. A supervising broker who fails to supervise a provisional broker as prescribed in this Rule may be subject to disciplinary action pursuant to Rule .0110 of this Subchapter.

According to Rule 58A .0506(c), the PB may engage in real estate brokerage activities immediately once the BIC has submitted the Commission's [**License Activation and Broker Affiliation Form \(REC 2.08\)**](#). The form sets forth the:



- (1) *provisional broker's:*

 - (A) *name;*
 - (B) *license number, type of license, and current license status;*
 - (C) *physical, mailing, and emailing addresses;*
 - (D) *public and private phone numbers;*
 - (E) *completed Postlicensing courses, if necessary;*
 - (F) *completed continuing education courses, if necessary; and*

- (G) signature.
- (2) broker-in-charge's:
 - (A) name;
 - (B) license number;
 - (C) firm's name and license number;
 - (D) physical, mailing, and emailing addresses;
 - (E) public and private phone numbers; and
 - (F) signature.

If the PB and BIC do not receive written acknowledgement from the Commission confirming the PB's active status within 30 days of the date shown on the activation form, the BIC must immediately terminate the PB's real estate brokerage activities pending receipt of the written acknowledgement of license activation from the Commission.

WRITTEN OFFICE POLICIES



Supervising Provisional Brokers

Policies and Procedure Worksheet

Supervision of Provisional Brokers

1. Will the office policy allow for the affiliation of provisional brokers?
 YES
 NO

2. How many provisional brokers will the BIC supervise?

3. What initial orientation and training will be available for provisional brokers?

4. What consequences will be imposed if a provisional broker does not satisfactorily complete training?
 Termination of Affiliation
 Restriction of Activity
 Warning Follow-Up

5. How will the BIC monitor completion of their Postlicensing courses?

6. Will the office policy require provisional brokers to complete Postlicensing sooner than 18 months?

7. What will be the office policy for reviewing and approving advertisements submitted by provisional brokers?
 In Person with BIC
 By a Mentor
 Not Required
 Prefilled Form

8. What is the office policy for using and/or advertising on social media?

9. What will be the office policy for reviewing agency agreements and contracts?

10. How will the BIC maintain contact and ensure provisional brokers are held accountable for their brokerage conduct?

Regular Staff Meetings

Regular One-on-One Meetings

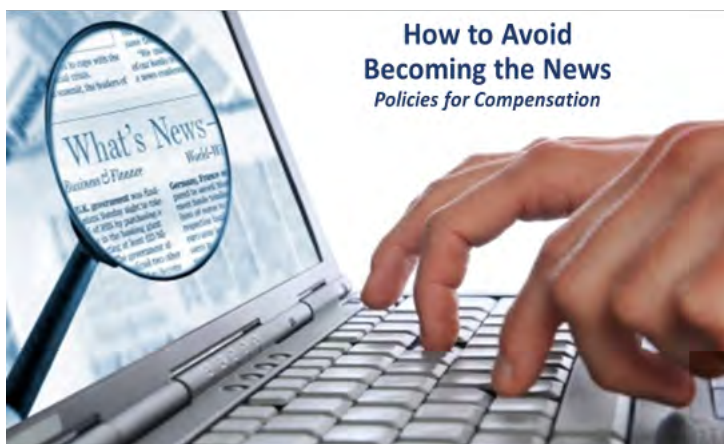
11. Will provisional brokers be required to have mentors?

Compensating Provisional Brokers

Affiliated brokers must receive their compensation for brokerage activity from their BIC. Specifically, Rule 58A .0120(b), requires affiliated brokers to receive their compensation from their current BIC or the BIC at the time of their transaction. Therefore, BICs should develop written policies regarding how compensation for affiliated brokers will be disbursed as well as for unlicensed assistants and employees of the brokerage.

Further, the written office policies should address issues relating to compensation such as:

- the schedule for compensation;
- how compensation will be paid after termination of affiliation with the brokerage;
- how team members (e.g. employees and unlicensed assistants) will receive compensation;
- how commission splits amongst affiliated brokers and co-brokerage referrals will be handled;
- tax withholdings and how the brokerage handles requests from governmental entities to garnish the wages of an affiliated broker;
- permitted communications regarding disbursements with the closing attorney; and
- policies regarding commission disputes amongst affiliated brokers and co-brokers.



Rule 58A .0120(b) requires affiliated brokers to be paid compensation directly from their BIC. BICs should not attempt to compel closing attorneys to pay their affiliated brokers directly or boycott the closing attorney if they refuse the request. If a BIC participates in this conduct, they may be in violation of Rule 58A. 0120.

Policies and Procedure Worksheet

Compensation

1. Will the office policy allow affiliated brokers to communicate with closing attorneys regarding commission disbursements?

YES

NO

2. How often will brokers be paid their compensation from brokerage activity?
- _____

3. How will the broker be paid any outstanding compensation if they are no longer affiliated with the brokerage?
- _____

4. Will the office policy allow licensees within the brokerage to agree to split their compensation?

Yes

No

It Depends

Explain: _____

5. How will the BIC annually report income to the affiliated brokers?
- _____

6. Will the office policy address how to handle commission amongst cooperating brokers, customers, and clients? If so, how?
- _____

7. How will the BIC garnish wages if ordered by the court or a government agency?
- _____

8. Will the BIC withhold taxes?

Yes

No

Active and Current Licensure

A BIC should create office policies that outline the requirements under the Rule to maintain an active real estate license. An individual or entity must have a CURRENT real estate broker license on ACTIVE STATUS while conducting real estate brokerage pursuant to Rule 58A .0505.

In the office policies, a BIC may decide to require affiliated brokers to pay their license renewal fees and complete their required continuing education and/or postlicensing educational courses by an earlier specified date to ensure they maintain active license status. If a broker has an expired license or a license on inactive status, brokerage activity is prohibited.

COMMERCIAL NEWS FLASH: Policies Can Be More Restrictive

NOTE: A BIC may choose to have more restrictive office policies as long as the policies are not in violation of License Law and Commission rules.

Competence of Brokers

In North Carolina, there is only one type of real estate license for individuals and that is the broker license. An individual who has successfully completed the NC's Broker Prelicensing Course and passed the NC Real Estate License Examination is stated to have minimal competency to engage in brokerage in North Carolina. Although brokers have minimal competency, they should still evaluate whether additional knowledge and/or skills are needed to ensure they provide their fiduciary duties of skill, care, and diligence to their clients.

The Commission discussed how brokers could determine their competency to practice various areas of brokerage in the 2019-2020 Update Course section entitled, **Competence of Licensees**. Although the section focused on, residential sales/ property management, vacation rental management, and commercial sales/ property management, the "competence road map" can be used for any area of brokerage.



The "competence road map" provided by the Commission is instrumental in assisting brokers with evaluating their competency. Prior to engaging in any brokerage services, the broker should ask themselves the following questions:



1. Am I authorized to engage in this type of transaction? In other words, do I have my BIC's/company's permission?
2. Do I have the necessary education and training to competently engage in this type of transaction?

Written office policies would also assist brokers by providing clarity regarding how the BIC determines competency. Due to the BIC being responsible for the supervision of all affiliated brokers, a BIC may allow or prohibit brokerage activity based on specific criteria. For clarity, a BIC may prohibit the affiliated broker from engaging in certain types of transactions because:

- the company does not engage in that type of brokerage;
- the company has special policies for newly affiliated brokers;
- the affiliated broker may lack the skill, knowledge, and experience needed to practice that specialty brokerage; and/or
- the BIC may lack the skill, knowledge, and experience to supervise that type of brokerage activity.

It is also essential that BICs are honest with themselves regarding their competence and areas of expertise.

Therefore, BICs should perform a self-evaluation to ascertain their level of competence prior to allowing an affiliated broker to practice a specialty area of brokerage. A BIC can utilize the following questions to determine whether they possess the competence to supervise affiliated brokers in various brokerage practice areas:

1. Have I obtained specialized education?
2. Have I engaged in all types of brokerage transactions?
3. Will I allow mentors to assist my affiliated brokers?

If a BIC is going to allow various types of transactions to be practiced in their brokerage, the BIC must ensure that they have the knowledge to provide appropriate supervision to their affiliated brokers involved in the transaction. Moreover, a BIC should:

- take specialized classes/necessary education in all brokerage areas in which they allow affiliated brokers to practice;

- limit the types of brokerage activity the company allows if the BIC does not possess the education and skill; and
- delegate authority to experienced mentors to assist affiliated brokers with their transaction.

Although it is permissible for BICs to delegate authority to mentors, the Commission will still hold the BIC solely responsible because a BIC cannot delegate responsibility for their supervision of the affiliated brokers. So if a BIC fails to exercise their duty of supervision, they may be in violation of License Law and Commission rules.

Policies to Ensure Competence of Brokers

BICs can allow or restrict affiliated brokers from performing certain activities based on whether:

- The firm engages in a specific type of brokerage
- The firm has special policies for newly affiliated brokers
- The BIC has the skill, knowledge, and experience for the type of brokerage activity

The diagram shows six specialties: Buyers, Sellers, Property Management, Commercial, Vacation Rentals, and Foreclosures.

NOTE: A reasonable BIC would not allow affiliated brokers to practice a specialty area of brokerage in which the BIC is not competent.

Policies and Procedure Worksheet

Competence

1. Will the office policy allow affiliated brokers to practice multiple specialties of brokerage?

- YES
- NO

2. How will the BIC determine whether or not the affiliated broker is competent to practice a specialty area of brokerage?

3. What ongoing training will the brokerage provide for specialty areas of brokerage, if any?

4. What consequences will be imposed if training is not satisfactorily completed?

- Termination of Affiliation
- Restriction of Activity
- Warning Follow-Up

5. How will the BIC monitor the affiliated broker who practices in a specialty area of brokerage that is unfamiliar to the BIC?

6. Will the office policy require affiliated brokers to certify their completion of requisite training and/or experience *prior* to practice in a specialty area of brokerage? _____

7. What is the office policy for reviewing agency agreements and contracts when the BIC is unfamiliar with the specialty area of brokerage?

Best Practices for Office Policies

A BIC should establish a checklist to assist them with ensuring that all affiliated brokers are in compliance with License Law and Commission rules while conducting brokerage activity.

Further, the written office policies must be applicable to all affiliated brokers and uniformly enforced. A BIC may consider including in their checklist:

- a reminder to check for active firm licenses for business entities;
- a reminder to check for active licensure for brokers;
- a policy regarding how compensation will be paid;
- a plan for reviewing all advertisements;
- policies for using social media for brokerage activity; and
- a policy regarding requirements brokers must meet to ensure continued competence while practicing brokerage.

COMMERCIAL NEWS FLASH: Checklists Are Your Friend

NOTE: BICs may find checklists beneficial when creating their office policies. These questions are not all inclusive; however, they will provide BICs with some preliminary information regarding what should be included in their brokerage policies.

COMMISSION QUESTIONS REGARDING COMPLIANCE

In an effort to determine whether the BIC was aware or reasonably should have known about the alleged brokerage misconduct. The Commission will ask BICs detailed questions regarding the brokerage's office policies and request specific documentation regarding the transaction.



The following information provides a general overview of the questions and/or documentation that may be requested by Commission staff during an investigation.

1. Does the brokerage have a written policies and procedures manual?
2. Does the brokerage enter into written employment/independent contractor agreements with affiliated brokers?
3. Does the brokerage have a written policy regarding the issue/conduct in question in the policies and procedures manual or in the broker's employment agreement? If so, provide a copy of it.
4. Did the BIC provide training on the policy to the affiliated broker involved in the transaction? If so,



- describe that training and provide records confirming broker's attendance/participation in the training.
5. Did the BIC enforce the firm's policy? If so, how?
 6. Describe your role in the transaction that is the subject of the complaint.
 7. Describe your supervision of the affiliated broker in the transaction that is the subject of the complaint.
 8. Provide copies of all written communications (e.g. emails, text messages, etc.) that the BIC exchanged with the affiliated broker involved in the transaction regarding the issue in the complaint.
 9. Provide copies of all additional documentation necessary to support your position.
 10. Provide any additional information you believe will help us better understand this matter.



Often times during an investigation, the Commission is made aware that a brokerage may not have written office policies, although they are highly encouraged.

The Commission will take into consideration whether a brokerage has an office policy manual (preferably written).

BICs should keep in mind that having an office policy manual and providing regular need-based training about the correct way to handle/address various issues may shift more of the responsibility and liability for inappropriate brokerage activity directly to the individual broker-respondent.

However, merely having written office policies may not be adequate if the policies are not enforced at all or consistently. The Commission expects BICs to be aware of what is going on in their offices and the brokerage activities of their affiliated brokers.

Therefore, there are some factors that the Commission evaluates when determining whether the BIC is providing appropriate supervision for their affiliated brokers. The factors are as follows:

- the type of transaction conducted (e.g. agency representation or broker personal transaction);
- the extent/nature of harm to the consumer;
- the timeline in which the BIC reviewed the transaction file for compliance;
- the geographic location of the BIC and the affiliated broker (i.e. including the method of supervision to account for the distance);
- the cooperativeness of the BIC during the investigation;
- whether an agreeable resolution was achieved;
- whether the BIC provided corrective/remedial action against the affiliated broker;
- the extent of cooperation of the BIC;
- whether the BIC acknowledged the wrongful conduct of the broker; and
- the attitude/remorse of the BIC.



The above factors are not all inclusive; therefore, the Commission will take into consideration all factual findings derived from a review of the evidence, interviews of the parties, and written documentation/correspondence to determine the liability of the BIC.

Therefore, it is imperative for BICs to supervise affiliated brokers, create office policies, enforce office policies objectively/consistently, timely intervene to resolve any issues during a transaction, and cooperate with any Commission investigation upon notice of a complaint.

Further, BICs are likely to face disciplinary action when:

- an issue exists for an extended period of time without their knowledge, and/or
- they attempt to conceal an issue rather than intervene and correct it.

Consider this, a BIC who attempts to intervene and resolve an issue and even voluntarily inform the Commission of the situation will be in a better position with the Commission than a BIC who refuses to accept responsibility for the actions of themselves and their affiliated brokers.

In conclusion, during an investigation, the Commission may review the written office policies of the brokerage. If a BIC has written office policies, it may reduce the brokerage's liability and risk if a complaint is filed with the Commission. It would be wise for the BIC to have all affiliated brokers sign a dated statement acknowledging receipt of an agreement to abide by the company's policies.

APPENDIX

UPDATE DESK: COMMERCIAL FORM CHANGES



SUMMARY OF FORM CHANGES

As a handy reference to commercial practitioners, we have provided a summary of the eight (8) NCAR/NCAB commercial forms that are new or changed effective on July 1, 2023. A summary of the significant changes to each form is included. A marked-up copy of each form showing the exact changes may be viewed by clicking on the name of the form.

ELIMINATED Form 510 – Confirmation of Agency Relationship and Registration Statement

This form has been eliminated due to low usage and substantial overlap with the Working with Real Estate Agent (WWREA) forms in the 500 series (Form 520B, Form 520S, Form 521L, and Form 521T).

Form 570 – Exclusive Right to Lease and/or Sell Listing Agreement

¶7(a)(i) The checkbox portion of this section has been amended to clarify that the firm’s commission will be reduced only when the buyer is not represented, and that if the firm is acting as dual agent, then the full commission stated previously in ¶7(a)(i) will be due.

If this box is checked, notwithstanding the foregoing, in the event that ~~there is no cooperating agent involved in a sale transaction;~~ **Buyer is not represented by a buyer agent or subagent of Client,** the commission stated in (i) above shall be adjusted to _____ percent (_____%) of the gross sales price of the Property or _____ (\$ _____), whichever is greater, and/or other: _____
~~For purposes of this subsection only, “cooperating agent” shall mean any agent other than the individual licensee signing on behalf of Firm below.~~

Form 571 – Exclusive Right to Sell Listing Agreement

¶7(a)(i) The checkbox portion of this section has been amended to clarify that the firm’s commission will be reduced only when the buyer is not represented, and that if the firm is acting as dual agent, then the full commission stated previously in ¶7(a)(i) will be due.

If this box is checked, notwithstanding the foregoing, in the event that **there is no cooperating agent involved in a sale transaction; Buyer is not represented by a buyer agent or subagent of Client**, the commission stated in (i) above shall be adjusted to _____ percent (_____%) of the gross sales price of the Property or (\$ _____), whichever is greater, and/or other: _____

For purposes of this subsection only, "cooperating agent" shall mean any agent other than the individual licensee signing on behalf of Firm below:

Form 572 – Exclusive Right to Lease Listing Agreement

¶9 – The beginning parenthetical has been revised to make clear that providing the Working with Real Estate Agents form is not a prerequisite to a firm's right to be paid. Brokers can, of course, be disciplined for failing to provide the WWREA at first substantial contact. However, a failure to timely provide the WWREA does not, by law, prohibit compensation. The form has therefore been revised to reflect the existing law.

9. SALE PROTECTION PROVISION (Review of Form 520 Working with Real Estate Agents is suggested) (use of this provision requires Form 520, Working with Real Estate Agents Disclosure): If any party directly or indirectly purchases the Property during the term of this Agreement or any tenant under a lease for which a commission is payable hereunder directly or indirectly purchases the Property, whether strictly in accordance with the terms of any option, right of first refusal, similar right or otherwise, during the term of the lease (term to include the period of any extensions or renewals thereof based upon extension or renewal rights contained in the original provisions of such lease), then it is acknowledged that a commission shall be nonetheless earned upon execution of such sale agreement and payable at closing. The parties agree that the commission payable shall be _____ or _____ percent (_____%) of the gross sales price. Gross sales price includes all consideration received or receivable by Client, in whatever form, including the assumption or release of existing liabilities. Client shall pay the fee upon delivery of the deed or other evidence of transfer of title or interest; provided, however, if the transaction involves an installment contract, then Client shall pay the fee upon the signing of such installment contract.

Form 580-T – Agreement for Purchase and Sale of Improved Property

¶7(a) – Language has been added to clarify the buyer's and seller's rights to cancel or create leases during the transaction. No leases may be canceled or created without the buyer's written consent, and buyer may not interfere with an existing lease prior to closing.

Section 7. Leases (Check one of the following, as applicable):

- If this box is checked, Seller affirmatively represents and warrants that there are no Leases (as hereinafter defined) affecting the Property.
- If this box is checked, Seller discloses that there are one or more leases affecting the Property ("Leases"), and the following provisions are hereby made a part of this Agreement.

(a) A list of all Leases shall be set forth on **Exhibit C**. Seller represents and warrants that, as of the Contract Date, there are no other Leases, oral or written, recorded or not, nor any subleases affecting the Property, except as set forth on **Exhibit C**. **Unless written consent is given by Buyer, Seller will not enter in to any Lease affecting the Property nor terminate any Lease in Exhibit C during the effectiveness of this Agreement. Buyer agrees to take no action which would affect any lease in Exhibit C prior to Closing;**

(b) Seller shall deliver copies of any Leases to Buyer pursuant to Section 4 as if the Leases were listed therein;

Form 580L-T – Agreement for Purchase and Sale of Land

¶7(a) –Language has been added to clarify the buyer’s and seller’s rights to cancel or create leases during the transaction. No leases may be canceled or created without the buyer’s written consent, and buyer may not interfere with an existing lease prior to closing.

Section 7. Leases (Check one of the following, as applicable):

If this box is checked, Seller affirmatively represents and warrants that there are no Leases (as hereinafter defined) affecting the Property.

If this box is checked, Seller discloses that there are one or more leases affecting the Property (“Leases”), and the following provisions are hereby made a part of this Agreement.

(a) A list of all Leases shall be set forth on **Exhibit C**. Seller represents and warrants that, as of the Contract Date, there are no other Leases, oral or written, recorded or not, nor any subleases affecting the Property, except as set forth on **Exhibit C**. **Unless written consent is given by Buyer, Seller will not enter in to any Lease affecting the Property nor terminate any Lease in Exhibit C during the effectiveness of this Agreement. Buyer agrees to take no action which would affect any lease in Exhibit C prior to Closing;**

(b) Seller shall deliver copies of any Leases to Buyer pursuant to Section 4 as if the Leases were listed therein;

NEW Form 592L-T – Vacant Land Commercial Lease Agreement

7.1. This new form is based on existing Form 592-T and is designed to be used when vacant land is leased by the tenant for a commercial purpose. Common uses for this form could include farming, hunting, or pop-up retail stands. While this form does provide some direction as to who owns any improvements made to the land, it is not comprehensive. If the parties intend to perform serious renovations or improvements to the property, then they should seek legal counsel.



Draft 11/30/2022

**VACANT LAND COMMERCIAL LEASE AGREEMENT
(Single-Tenant Facility)**

(Note: This form is not intended to be used as a Sublease and SHOULD NOT be used in Sublease circumstances)

THIS COMMERCIAL LEASE AGREEMENT, including any and all addenda attached hereto ("Lease"), is by and between a(n) _____ ("Landlord"),
(individual or State of formation and type of entity)
whose address is _____, and
_____, a(n)
(individual or State of formation and type of entity) ("Tenant").
whose address is _____

If this box is checked, the obligations of Tenant under this Lease are secured by the guaranty of _____ (name(s) of guarantor(s)) attached hereto and incorporated herein by reference. (Note: Attach Guaranty Agreement (Form 595-T) or attorney-drafted guaranty).

For and in consideration of the mutual promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

LAND LAND

1. Landlord leases unto Tenant, and Tenant hereby leases and takes upon the terms and conditions which hereinafter appear, the following described property, including any improvements located thereon (hereinafter called the "Land Land"), to wit:

(Address): _____

All A portion of the property in Deed Reference: Book _____, Page No. _____, _____ County; consisting of approximately _____ acres.

Plat Reference: Lot(s) _____, Block or Section _____, as shown on Plat Book or Slide _____ at Page(s) _____, _____ County, consisting of _____ acres.

If this box is checked, Land shall mean that property described on **Exhibit A** attached hereto and incorporated herewith by reference.

(For information purposes only, the tax parcel number of the Land is: _____)

Occupancy Limitation: If this box is checked, notwithstanding any greater occupancy of the Land which may be permitted by any law, statute, ordinance, regulation, rule (including rules enacted pursuant to any private use restrictions), as the same may be amended from time to time, Tenant shall not allow occupancy of the Land to exceed _____ persons per _____ square feet in the Land at any one time.

If this box is checked, Agent shall hold the security deposit in trust and shall be entitled to the interest, if any, thereon.

UTILITY BILLS/SERVICE CONTRACTS

6. Landlord and Tenant agree that utility bills and service contracts ("Service Obligations") for the Land shall be paid by the party indicated below as to each Service Obligation. In each instance, the party undertaking responsibility for payment of a Service Obligation covenants that they will pay the applicable bills prior to delinquency. The responsibility to pay for a Service Obligation shall include all metering, hook-up fees or other miscellaneous charges associated with establishing, installing and maintaining such utility or contract in said party's name. Within thirty (30) days of the Lease Commencement Date, Tenant shall provide Landlord with a copy of any requested Tenant Service Obligation information.

| Service Obligation | Landlord | Tenant | Not-Applicable |
|---|--------------------------|--------------------------|--------------------------|
| Sewer/Septic | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Water | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Electric | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Gas | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Telephone | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| HVAC (maintenance/service contract) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Elevator (including phone line) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Security System | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Fiber Optic | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Janitor/Cleaning | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Trash/Dumpster | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Landscaping/Maintenance | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Sprinkler System (including phone line) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Pest Control | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Snow/Ice Removal | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Landlord shall not be liable for injury to Tenant's business or loss of income therefrom or for damage that may be sustained by the person, merchandise or personal property of Tenant, its employees, agents, invitees or contractors or any other person in or about the Land, caused by or resulting from fire, steam, electricity, gas, water or rain, which may leak or flow from or into any part of the Land, or from the breakage, leakage, obstruction or other defects of any utility installations, air conditioning system or other components of the Land, except to the extent that such damage or loss is caused by Landlord's gross negligence or willful misconduct. Landlord represents and warrants that the heating, ventilation and air conditioning system(s) and utility installations existing as of the Lease Commencement Date shall be in good order and repair. Subject to the provisions of this Section 6, Landlord shall not be liable in damages or otherwise for any discontinuance, failure or interruption of service to the Land of utilities or the heating, ventilation and air conditioning system(s) and Tenant shall have no right to terminate this Lease or withhold rental because of the same.

UTILITIES

6. Landlord warrants that the following utilities are available on the Land: sewer/septic water electric gas. Should Tenant wish to use any of these utilities, Tenant must pay for any connecting costs or improvements necessary to the Land for such utilities. Any improvements to the Land relating to utilities are subject to Landlord's rights in paragraphs 13 and 14 herein.

RULES AND REGULATIONS

7. If this box is checked, the rules and regulations attached hereto ("Rules and Regulations") are made a part of this Lease. Tenant agrees to comply with all Rules and Regulations of Landlord in connection with the Land which are in effect at the time of the execution of the Lease or which may be from time to time promulgated by Landlord in its reasonable discretion, provided notice of such new Rules and Regulations is given to Tenant in writing and the same are not in conflict with the terms and conditions of this Lease.

PERMITTED USE

8. The permitted use of the Land shall be: _____ ("Permitted Use"). The Land shall be used and wholly occupied by Tenant solely for the purposes of conducting the Permitted Use, and the Land shall not be used for any other purposes unless Tenant obtains Landlord's prior written approval of any change in use.

Landlord makes no representation or warranty regarding the suitability of the Land for or the legality (under zoning or other applicable ordinances) of the Permitted Use for the Land, provided however, that Landlord does represent that it has no contractual obligations with other parties which will materially interfere with or prohibit the Permitted Use of Tenant on the Land. **Tenant is advised to verify whether the Land can be used for the Permitted Use prior to signing this Lease.** At Tenant's sole expense, Tenant shall procure, maintain, and make available for Landlord's inspection from time to time any governmental license(s) or permit(s) required for the proper and lawful conduct of Tenant's business in the Land.

Tenant shall not cause or permit any waste to occur in the Land and shall not **overload any system or utilities serving the Land.** Tenant shall keep the Land, and every part thereof, in a clean and wholesome condition, free from any objectionable noises, loud music, objectionable odors, or nuisances.

TAXES AND INSURANCE

(Note: The following box should only be checked if there are no boxes checked below in Section 9.)

If this box is checked, Tenant shall have no responsibility to reimburse Landlord for taxes or insurance.

9. Landlord shall pay all taxes (including but not limited to, ad valorem taxes, special assessments and any other governmental charges) on the Land and shall procure and pay for such commercial general liability, broad form fire and extended and special perils insurance with respect to the Land, **and any improvements to the land,** as Landlord in its reasonable discretion may deem appropriate. Tenant shall reimburse Landlord for all taxes and insurance as provided herein within fifteen (15) days after receipt of notice from Landlord as to the amount due. Tenant shall be solely responsible for insuring Tenant's personal and business property and for paying any taxes or governmental assessments levied thereon. Tenant shall reimburse Landlord for taxes and insurance during the term of this Lease, and any extension or renewal thereof. **If boxes are checked below, the manner of reimbursement shall be as indicated:**

11. **Landlord agrees to keep in good repair the roof, foundation, structural supports and exterior walls of the buildings located on the Land (exclusive of all glass and exclusive of all exterior doors) and, except as may be specifically allocated to Tenant in Section 12 herein, Landlord agrees to be responsible for capital replacements on the Land, provided that Landlord shall not be responsible for repairs or capital replacements rendered necessary by the negligence or intentional wrongful acts of Tenant, its employees, agents, invitees or contractors.** Tenant shall promptly report in writing to Landlord any defective condition known to it which Landlord is required to repair or replace and failure to report such conditions shall make Tenant responsible to Landlord for any liability incurred by Landlord by reason of such conditions.

(Note: Should Landlord and Tenant need to further detail the allocation of responsibility hereunder, the Special Stipulations box at the end of the Lease should be checked and such allocation should be specified on an Exhibit B.)

REPAIRS BY TENANT

12. (a) Tenant accepts the Land in **their its** present condition and as suited for the Permitted Use and Tenant's intended purposes. Tenant, throughout the initial term of this Lease, and any extension or renewal thereof, at its expense, shall maintain in good order and repair the Land, (except those repairs expressly required to be made by Landlord hereunder), specifically including but not limited to any building and other improvements located thereon, **all light bulb and ballast replacements, plumbing fixtures and systems repairs within the Land and water heater repairs.** Tenant further agrees to care for the grounds **around on** the **Land building,** including the mowing of grass, care of shrubs and general landscaping. Tenant shall use only licensed contractors for repairs where such license is required. Landlord shall have the right to approve the contractor as to any repairs in excess of \$____.

If this box is checked, Tenant, at its expense, shall maintain the heating, ventilation and air conditioning system(s) ("HVAC Systems") in good order and repair, including but not limited to replacement of parts, compressors, air handling units and heating units. Tenant shall be required to maintain a preventive maintenance contract for the HVAC Systems on terms and with a provider reasonably acceptable to Landlord, which contract shall call for at least semi annual maintenance, inspection and repair of such HVAC Systems ("HVAC Contract"). Tenant shall provide a copy of the HVAC Contract to Landlord annually. Provided that: (i) Tenant has kept the HVAC Contract in force, and, (ii) Tenant shall have obtained Landlord's prior written approval of the

contractor and the repair or replacement expenses for the HVAC Systems, then, for any calendar year, Tenant shall be responsible for the cost of repairing or replacing the HVAC Systems (or any major component thereof) up to \$ _____ per HVAC System with a maximum repair or replacement cost of \$ _____ for all HVAC Systems ("HVAC Cap") in such year. Tenant shall provide Landlord copies of all records related to the servicing, maintenance, repair, and replacement of the HVAC Systems upon the occurrence of any service, maintenance, repair, or replacement of the HVAC Systems. Landlord shall be responsible for paying the repair cost or replacement cost of such HVAC System in excess of the HVAC Cap.

If this box is checked, Landlord, at its expense, shall maintain the heating, ventilation and air conditioning system(s) ("HVAC Systems") in good order and repair, including but not limited to replacement of parts, compressors, air handling units and heating units. Provided that, Tenant shall reimburse Landlord for the cost of repairing or replacing the HVAC Systems (or any major component thereof) an amount up to \$ _____ per HVAC System with a maximum replacement cost of \$ _____ for all HVAC Systems ("HVAC Cap") in such year. Landlord shall be responsible for paying the repair cost or replacement cost of such HVAC System in excess of the HVAC Cap. Tenant shall reimburse Landlord for the amount of the HVAC Cap payable hereunder upon the written request of Landlord.

(b) Tenant, Tenant's employees, agents, invitees or contractors shall take no action which may void any manufacturers or installers warranty with relation to the Land. Tenant shall indemnify and hold Landlord harmless from any liability, claim, demand or cause of action arising on account of Tenant's breach of the provisions of this Section 12.

ALTERATIONS

13. Tenant shall not make any alterations, additions, or improvements to the Land without Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Landlord, in connection with Landlord's consent to same, may designate any such alterations, additions, or improvements to the Land as subject to removal upon the expiration or earlier termination of this Lease, in which case, upon Landlord's written notice to Tenant to remove same at the expiration or earlier termination of this Lease, Tenant shall do so and restore the Land to the condition that existed prior to such alterations, additions, or improvements being made. Tenant shall promptly remove any alterations, additions, or improvements constructed in violation of this Section 13 upon Landlord's written request. All approved alterations, additions, and improvements will be accomplished in a good and workmanlike manner, in conformity with all applicable laws and regulations, and by a contractor approved by Landlord, free of any liens or encumbrances. Tenant has no authority to allow, will not permit, and will indemnify Landlord and hold it harmless from, any contractors', laborers', mechanics', or materialmen's liens, or any other similar liens filed against the Land in connection with any alterations, additions, or improvements to the Land.

SURRENDERING THE LAND

14. Tenant shall schedule its move date with Landlord, in writing, in advance of the expiration or earlier termination of this Lease. Tenant agrees to return the Land to Landlord at the expiration or earlier termination of this Lease, broom clean and in at least as good condition and repair as on the Lease Commencement Date, natural wear and tear, damage by storm, fire, lightning, earthquake or other

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DESTRUCTION OF OR DAMAGE TO LAND

15. (a) Subject to Section 15(c) below, if the Land is totally substantially destroyed by storm, fire, lightning, earthquake, or other casualty, Landlord may shall have the right to terminate this Lease on written notice to Tenant within 60 thirty (30) days after such destruction and this Lease shall terminate as of the date of such destruction and rental shall be accounted for as between Landlord and Tenant as of that date.

(b) If the Land is damaged but not wholly destroyed by any such casualties or if the Landlord does not elect to terminate the Lease under Section 15(a) above, Landlord shall commence (or shall cause to be commenced) reconstruction repairs to of the Land within one hundred twenty (120) days after such occurrence and prosecute the same diligently to completion, not to exceed two hundred seventy (270) days from the date upon which Landlord receives applicable permits and insurance proceeds. In the event Landlord shall fail to substantially complete reconstruction of the Land within said two hundred seventy (270) day period, Tenant's sole remedy shall be to terminate this Lease.

(c) In the event of any casualty on the Land is substantially destroyed during the last one (1) year of the Lease Term, Landlord and Tenant each shall have the option to terminate this Lease on written notice to the other of exercise thereof within sixty (60) days after such occurrence.

(d) In the event of ~~reconstruction of~~ ~~Landlord's repairing~~ the Land, Tenant shall continue the operation of its business on the Land during any such period to the extent reasonably practicable from the standpoint of prudent business management, and the obligation of Tenant to pay annual rental and any other sums due under this Lease shall remain in full force and effect during the period of reconstruction ~~so long as Tenant is able to continue such operation of its business~~. The annual rental and other sums due under this Lease shall be abated proportionately with the degree to which Tenant's use of the Land is impaired, commencing from the date of destruction and continuing during the period of such reconstruction. Tenant shall not be entitled to any compensation or damages from Landlord for loss of use of the whole or any part of the Land, Tenant's personal property, or any inconvenience or annoyance occasioned by such damage, reconstruction, or replacement.

CONDEMNATION

17. (a) If the entire Land shall be appropriated or taken under the power of eminent domain by any governmental or quasi-governmental authority or under threat of and in lieu of condemnation (hereinafter, "taken" or "taking"), this Lease shall terminate as of the date of such taking, and Landlord and Tenant shall have no further liability or obligation arising under this Lease after such date, except as otherwise provided for in this Lease.

(b) If more than twenty-five percent (25%) of ~~the floor area of any building of~~ the Land is taken, or if by reason of any taking, regardless of the amount so taken, the remainder of the Land is not one undivided space or is rendered unusable for the Permitted Use, either Landlord or Tenant shall have the right to terminate this Lease as of the date Tenant is required to vacate the portion of the Land taken, upon giving notice of such election within thirty (30) days after receipt by Tenant from Landlord of written notice that said Land have been or will be so taken. In the event of such termination, both Landlord and Tenant shall be released from any liability or obligation under this Lease arising after the date of termination, except as otherwise provided for in this Lease.

EXTERIOR SIGNS

21. Tenant shall place no signs ~~upon the outside walls, doors or roof of~~ the Land, except with the express written consent of the Landlord in Landlord's sole discretion. Any consent given by Landlord shall expressly not be a representation of or warranty of any legal entitlement to signage on the Land. Any and all signs placed on the Land by Tenant shall be maintained in compliance with governmental rules and regulations governing such signs and Tenant shall be responsible to Landlord for any damage caused by installation, use or maintenance of said signs, and all damage incident to removal thereof. ~~Any signs placed by Tenant on the Land is expressly subject to all terms of this Lease, including paragraphs 13 and 14 herein.~~

NOTICES

28. All notices required or permitted under this Lease shall be in writing and shall be personally delivered or sent by U.S. certified mail ~~or any similar delivery service which provides tracking and delivery confirmation, return receipt requested, postage prepaid.~~ Notices to Tenant shall be delivered or sent to: ~~the address shown at the beginning of this Lease, except that upon Tenant taking possession of the Land, then the Land shall be Tenant's address for such purposes.~~ Notices to Landlord shall be delivered or sent to the address shown at the beginning of this Lease and notices to Agent, if any, shall be delivered or sent to the address set forth in Section 3 hereof. All notices shall be effective upon delivery. Any party may change its notice address upon written notice to the other parties, given as provided herein.

NEW AND CHANGED FORMS FOR 2023

For your convenience, we have provided copies of the newly approved commercial forms.

STANDARD FORM 570



EXCLUSIVE RIGHT TO LEASE AND/OR SELL LISTING AGREEMENT

This Exclusive Right to Lease And/Or Sell Listing Agreement, hereinafter known as "Agreement", is by and between:
 _____ (Name of Firm), hereinafter known as "Firm" and
 _____ hereinafter known as "Client".

In consideration of Firm's agreement to list the following described property, hereinafter known as "Property," for lease and/or sale and to use its efforts to find a buyer/tenant, Client agrees with Firm as follows:

1. EXCLUSIVE RIGHT TO LEASE AND/OR SELL: For a period extending until 11:59 p.m. (based upon the time at the locale of the Firm's office) on _____, 20____, Firm shall have the exclusive right to lease and/or sell the Property as agent of Client at the price and on the terms set forth below, or upon such other terms as may be agreed upon in writing by Client with any buyer/tenant. **Client represents that, as of the commencement date of this Agreement, Client is not a party to a listing agreement with any other firm.**

2. BROKER COOPERATION/AGENCY RELATIONSHIPS: Firm has advised Client of Firm's general company policy regarding cooperating with subagents, buyer/tenant agents or dual agents. Client has received and read the "Working with Real Estate Agents Disclosure" and authorizes the Firm to compensate (subject to Sections 7c.(ii) and 7c.(iii)) and 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/tenant agents
- dual agents representing both Client and the buyer/tenant in the same transaction (subject to the terms of Section 15).

3. PROPERTY: (Address) _____
(Legal Description/Description) _____

See attached Exhibit _____ for legal description/description of premises.

To the best of Client's knowledge: (i) the Property is not subject to any rights of first refusal, rights of first offer or similar rights of others to acquire or lease all or a portion of the Property, (ii) as respects the Property there have been no licenses or leases granted or transfers of mineral, oil and gas or other similar rights, (iii) Client has paid or will pay in full all persons recently contracted with (or contracted with hereafter prior to any transaction) to do work related to or affecting the Property and Client will comply with all laws related to mechanics liens, (iv) the streets serving the Property are public streets and are maintained by a public authority, and (v) the Property has not been clad previously (either in whole or in part) with an "exterior insulating and finishing system" commonly known as "EIFS" or "synthetic stucco", unless disclosed as follows (Insert "None" or the identification of any matters relating to (i) through (v) above, if any): _____

4. LISTING TERMS:

SALE

LEASE

| | |
|------------------------------|----------------------------------|
| Sales Price _____ | Rental _____ |
| Client Financing Terms _____ | Taxes Paid By _____ |
| _____ | Insurance Paid By _____ |
| Possession Delivered _____ | Utilities Paid By _____ |
| _____ | Operating Expenses Paid By _____ |



Firm Rep. Initials _____ Client Initials _____

Maintenance Paid By _____
 Possession Delivered _____
 Other Terms: _____ Other Terms: _____

See attached Exhibit _____ for additional listing terms.

ADVERTISING AND DATABASE LISTINGS: In connection with the marketing and lease/sale of the Property, Client authorizes and directs Firm: (CHECK ALL APPLICABLE SECTIONS)

- to place a sign on the Property. All other signs marketing the Property for lease or for sale shall be removed.
- Listing Service.** To submit pertinent information concerning the Property to any listing service or information exchange of which Firm is a member or in which any of Firm's agents participate and to furnish to such listing service or information exchange notice of all changes of information concerning the Property authorized in writing by Client. Client authorizes Firm, upon execution of a lease or sales contract for the Property, to notify the listing service or information exchange of the lease/pending sale, and upon lease execution or closing of the sale, to disseminate leasing/sales information, including rate/sales price, to the listing service, information exchange, appraisers and real estate brokers.
- Advertising Other Than On The Internet.** Client authorizes Firm to advertise the Property in non-Internet media, and to permit other firms to advertise the Property in non-Internet media to the extent and in such manner as Firm may decide.
- Internet Advertising.** Client authorizes Firm to display information about the Property on the Internet either directly or through a program of any listing service or information exchange of which the Firm is a member or in which any of Firm's agents participate, and authorizes other firms who belong to any listing service of which the Firm is a member or in which any of Firm's agents participate to display information about the Property on the Internet in accordance with the listing service or information exchange rules and regulations. *If Client does not authorize Internet Advertising as set forth above, Client MUST complete an opt-out form in accordance with listing service rules. (NOTE: NCAR Form #105 may be used for this purpose.)*

If Client authorizes Internet Advertising as set forth above, Client authorizes the display of (**Check ALL applicable sections**):

- The address of the Property
- Automated estimates of the market value of the Property
- Third-party comments about the Property

Client acknowledges and understands that while the marketing services selected above will facilitate the showing and sale or lease of the Property, there are risks associated with allowing access to and disseminating information about the Property that are not within the reasonable control of the Firm, including but not limited to:

1. unauthorized use of a lock/key box,
2. control of visitors during or after a showing or an open house,
3. inappropriate use of information about the Property placed on the Internet or furnished to any listing service in which the Firm participates.

Client therefore agrees to indemnify and hold harmless Firm from any damages, costs, attorneys' fees and other expenses as a result of any personal injury or property loss or damage to Client or any other person not caused by Firm's negligence arising directly or indirectly out of any such marketing services.

MARKETING EXPENSE: In the event that the Property does not sell or lease during the term of this Agreement, Client shall nonetheless be obligated to reimburse Firm for actual documented expenses incurred in marketing the Property up to the amount of \$ _____.

5. SPECIAL PROVISIONS:

See attached Exhibit _____ for special provisions.

Firm Rep. Initials _____ Client Initials _____

6. COOPERATION WITH FIRM:

a. Exclusive Rights: Client agrees to cooperate with Firm to facilitate the leasing and/or sale of the Property. The Property may be shown only by appointment made by or through Firm. Client immediately shall refer to Firm all inquiries or offers it may receive regarding the Property. Client agrees to cooperate with Firm in bringing about a lease or sale of the Property. All negotiations shall be conducted through Firm. Firm shall be identified as the contact firm with all state and local economic development agencies being notified of the Property's availability.

b. Services: No management services, repair services, collection services, notices, legal services or tax services shall be provided by Firm. In the event that Firm does procure any of these services at the request of Client, it is understood and agreed that Firm shall only be acting in the capacity of procurer for Client and shall accrue no liability or responsibility in connection with any services so obtained on behalf of Client. This exclusion of liability and responsibility shall not apply in the event that Firm directly contracts with Client to provide any such service.

7. COMMISSIONS: The amount, format or rate of real estate commission is not fixed by law. Commissions are set by each broker individually and may be negotiable between a firm and its client.

a. Sales Commissions:

(i) Commissions shall be earned when Client accepts an unconditional offer from a buyer or when all conditions have been met following Client's acceptance of a conditional offer from a buyer whether the buyer is procured by Firm, the Client or anyone else during the term of this Agreement. Client shall pay Firm a commission equal to _____ percent (_____%) of the gross sales price of the Property, or the sum of (\$ _____), whichever is greater, and/or other: _____

Commission shall be paid in cash or by bank check. Gross sales price includes any and all consideration received or receivable, in whatever form, by Client including, but not limited to, the assumption or release of existing liabilities. Client shall pay the commission upon delivery of the deed or other evidence of transfer of title or interest; provided, however, if the transaction involves an installment contract, then Client shall pay the commission upon the signing of such installment contract. In the event of any breach or termination by Client of any contract of purchase and sale, it is understood and agreed that the commission remains earned and payable upon notice given by Client to buyer of Client's intent not to proceed with such sale, notwithstanding the basis of such intent not to proceed. In the event Client contributes or conveys the Property or any interest therein to a joint venture, partnership or other business entity or executes an exchange, the commission shall be calculated on the fair market value of the Property or interest therein contributed, conveyed, transferred or exchanged and is payable at the time of the contribution, conveyance, transfer or exchange. If Client is a partnership, corporation or other business entity, and an interest in the partnership, corporation or other business entity is transferred, whether by merger, outright purchase or otherwise, in lieu of a sale of the Property, and applicable law does not prohibit the payment of a fee or commission in connection with such sale or transfer, the commission shall be calculated on the fair market value of the Property, rather than the gross sales price, multiplied by the percentage of interest so transferred, and shall be paid by Client at the time of the transfer. Provided, however that this interest transfer provision shall not apply to a transfer of an interest in a partnership, corporation or other business entity between existing partners, shareholders or other interest holders of the entity.

If this box is checked, notwithstanding the foregoing, in the event that Buyer is not represented by a buyer agent or subagent of Client, the commission stated in (i) above shall be adjusted to _____ percent (_____%) of the gross sales price of the Property or other: (\$ _____), whichever is greater, and/or other: _____

(ii) **Options:** _____ % of any option fees shall be paid to Firm at the time such monies are paid to Client, said amount to be applied to commissions payable pursuant to Section 7.a.(i), provided, Firm shall not be paid, on account of this provision, an amount in excess of its entitlement pursuant to Section 7.a.(i).

(iii) Should there be a forfeiture of earnest money, Firm shall be entitled to _____ % of same, provided that Firm shall not receive an amount in excess of the commission set forth in Section 7.a.(i).

b. Lease Commissions:

(i) Commissions shall be earned when Client directly or indirectly leases or agrees to lease the Property, whether tenant is procured by Firm, the Client or anyone else during the term of this Agreement. Firm's commission shall be calculated according to the schedule in Section 7.b.(ii). Commissions shall be paid in cash or by bank check.

(ii) Schedule of Commissions:

(complete both (a) and (b), only (a) will apply unless Firm elects in writing to have (b) apply)

(a) Commission Paid Upon Execution of Lease:

- (i) _____ percent (_____ %) of the total rent for the first _____ months in which rent is to be paid, plus _____ percent (_____ %) of the total rent for the remainder of the term;
- (ii) \$ _____ (flat fee);

payable in full upon execution of a lease by Client and tenant, unless otherwise provided here:

(b) Commission Paid Over the Term of Lease: In the event Firm elects in writing to collect a commission over the term of the lease, the commission is _____ percent (_____ %) of the total rent collected from tenant or \$ _____ per collection period, whichever is more, payable within ten (10) days of the receipt of each lease payment by Client during the term of the lease.

- If this box is checked, notwithstanding the foregoing, in the event that there is no cooperating agent involved in a lease transaction, the commission stated in (a) above shall be adjusted to _____ percent (_____ %) of the total rent for the first _____ months in which rent is to be paid, plus _____ percent (_____ %) of the total rent for the remainder of the term or \$ _____ (flat fee), or, if Firm elects in writing to have (b) above apply, the greater of _____ percent (_____ %) of the total rent collected from tenant or \$ _____ per collection period.
For purposes of this subsection only, "cooperating agent" shall mean any agent other than the individual licensee signing on behalf of Firm below.

(iii) Percentage Rent: If a lease for which a commission is payable hereunder contains a percentage rent clause, Client shall pay a commission on the percentage rent payable by the tenant at the commission rate applicable to the period of the lease term for which the percentage rent is payable. This commission shall be payable within fifteen (15) days after receipt of each tenant payment to Client.

(iv) Option(s) or Right(s) of First Refusal to Renew, Extend Lease or Occupy Additional Space: If a lease for which a commission is payable hereunder contains (i) an option or right of first refusal to renew or extend, and a lease term is renewed or extended whether strictly in accordance with the terms of such option or right or otherwise and/or (ii) an option or right of first refusal to expand, and tenant occupies additional space whether strictly in accordance with the terms of such option or right or otherwise, then Client shall pay a commission in accordance with this Section 7.b. on the additional rent to be paid, calculated at the commission rate applicable hereunder for the years of the lease in which the additional rent is payable. Said commission shall be earned and payable upon the notice of exercise of any option or right of first refusal to renew or extend or upon the notice of exercise of any option or right of first refusal to expand, as applicable.

(v) Commissions payable pursuant to this Agreement are leasing fees only and shall not be considered compensation for or an obligation to manage or sell the Property.

c. General Commissions Provisions:

(i) Purchase of Property by Tenant: If a tenant under a lease for which a commission is payable hereunder directly or indirectly purchases the Property, whether strictly in accordance with the terms of any option, right of first refusal, similar right or otherwise, during the term of the lease (term to include the period of any extensions or renewals thereof based upon extension or renewal rights contained in the original provisions of such lease), then a sales commission shall be calculated and paid in accordance with the provisions of Section 7.a.(i).

(ii) Firm shall not be required to compensate or pay any commission to, either directly or indirectly, a buyer/tenant who seeks to be compensated or paid a commission in connection with any transaction pursuant to this Agreement.

(iii) If Firm has worked directly with a buyer/tenant in connection with the Property, either as a client or a customer, and such relationship is evidenced in writing (either by a CONFIRMATION OF AGENCY RELATIONSHIP AND REGISTRATION STATEMENT - NCAR Form 510 - or substantially similar registration document), then Firm may not compensate or pay any commission to another real estate agent (not associated with Firm) in connection with any transaction pursuant to this Agreement involving said registered buyer/tenant.

Firm Rep. Initials _____ Client Initials _____

(iv) In the event Client fails to make payments within the time limits set forth in this Agreement, then the delinquent amount shall bear interest from the date due until paid at the maximum rate permitted in the state of North Carolina. If Firm is required to institute legal action (including mediation or arbitration) against Client relating to this Agreement, Firm shall be entitled to costs of such action.

(v) In the event Client sells or otherwise disposes of its interest in the Property, Client shall remain liable for payment of the commissions provided for in this Agreement, including, without limitation, the commission obligations set forth in Section 7.a. or 7.b. unless the purchaser or transferee assumes all of such obligations in writing and Firm agrees in writing to such assumption.

(vi) "Buyer", "tenant" and "registered prospect" as used herein shall be deemed to include, but not be limited to: (i) any holder of a right of first offer or refusal or similar right which holder is not specifically named herein and excluded from the terms of this Agreement, (ii) any prospect registered by Firm pursuant to Section 8 hereof (which prospect registration listing shall identify specific principals and shall not include brokers acting in a brokerage capacity), and, (iii) the successors or assigns, principals, officers, directors, employees or shareholders thereof or any affiliate, alter-ego or commonly controlled entity of any such person.

8. REGISTERED PROSPECTS:

a. Prior Listing Agreements: If the Property was exclusively listed for lease or sale with another agency prior to this Agreement, then Client shall provide Firm in writing the names of registered prospects (as defined in Section 7c.(vi) above) and the duration of the protection period under the prior listing agreement. If Client provides such information to Firm within twenty (20) days of the date of this Agreement, then a direct or indirect lease or agreement to lease or sale or agreement to sell during such protection period to a registered prospect is excluded from this Agreement.

b. Later Lease Or Sale To Registered Prospect: If within _____ days after the expiration or earlier termination of this Agreement (the "Protection Period"), Client directly or indirectly leases or agrees to lease or sells or agrees to sell the Property to a party with whom Firm (or any other agent acting for or through Firm) has had substantive bilateral communication concerning the Property during the term of this Agreement, Client shall pay Firm the same commission to which Firm would have been entitled had the sale or lease been made during the term of this Agreement; provided that names of registered prospects (as defined in Section 7c.(vi) above) are delivered or postmarked to Client within fifteen (15) days after the expiration or earlier termination of this Agreement. **In the event the Property is exclusively listed for lease or sale with another agency after the expiration or earlier termination of this Agreement and Client directly or indirectly leases or agrees to lease or sells or agrees to sell the Property to a registered prospect (as defined in Section 7c.(vi) above) during the Protection Period, then Client shall pay to Firm the same commission to which Firm would have been entitled.**

9. AUTHORITY: Client represents and warrants to Firm that it has the right to offer the Property for lease and/or sale. Each signatory to this Agreement represents and warrants that he or she has full authority to sign this Agreement and such instruments as may be necessary to effectuate any transaction contemplated by this Agreement on behalf of the party for whom he or she signs and that his or her signature binds such party and the holders of the interests in Client.

10. BANKRUPTCY: In the event that the Property comes under the jurisdiction of a bankruptcy court, Client shall immediately notify Firm of the same and, if Client is the subject of bankruptcy, shall promptly take all steps necessary to obtain court approval of Firm's appointment to sell or lease the Property, unless Firm shall elect to terminate this Agreement upon said notice.

11. INDEMNIFICATION: Client represents and warrants that the information set forth herein and any other information as may be furnished to Firm by Client, including information relating to environmental matters, is correct to the best of Client's knowledge. Firm shall have no obligation or responsibility for checking or verifying any such information, except as may be required by law. Client shall indemnify Firm for any and all loss or damage sustained by Firm as a result of (i) Firm's or Client's furnishing such information to a buyer or tenant or anyone else; and (ii) the presence of storage tanks on, or the presence or release of hazardous substances, materials and wastes on or from, the Property.

12. PARTIES AND BENEFITS: This Agreement shall be binding upon and inure to the benefit of the parties, their heirs, successors and assigns and their personal representatives. Client agrees that at any time during the term of this Agreement, Firm may either assign Firm's rights and responsibilities hereunder to another real estate agency, or transfer to another person or entity all or part of the ownership of Firm's real estate agency, and that in the event of any such assignment or transfer, this Agreement shall continue in full force and effect; provided, that any assignee or transferee must be licensed to engage in the business of real estate brokerage in the State of North Carolina. In the event of any such assignment or transfer, Client may terminate this Agreement without cause on thirty (30) days' prior written notice to the assignee or transferee of Client's intent to terminate this Agreement.

13. COUNTERPARTS; ENTIRE AGREEMENT; AMENDMENT; SEVERABILITY; ATTORNEYS FEES; GOVERNING LAW: This Agreement may be executed in one or more counterparts, which taken together, shall constitute one and the same original document. Copies of original signature pages of this Agreement may be exchanged via facsimile or e-mail, and any such copies shall constitute originals. This Agreement contains the entire agreement of the parties and supercedes all prior written and oral proposals, understandings, agreements and representations, all of which are merged herein. The parties acknowledge and agree that: (i) the initials lines at the bottom of each page of this Agreement are merely evidence of their having reviewed the terms of each page, and (ii) the complete execution of such initials lines shall not be a condition of the effectiveness of this Agreement. No amendment or modification to this Agreement shall be effective unless it is in writing and executed by all parties hereto. No waiver of any breach of any obligation or promise contained herein shall be regarded as a waiver of any future breach of the same or any other obligation or promise. The invalidity of one or more provisions of this Agreement shall not affect the validity of any other provisions hereof and this Agreement shall be construed and enforced as if such invalid provisions were not included. It shall not be deemed a breach of this Agreement for Firm to comply with an order resulting from an arbitration conducted by a REALTOR® association or issued by a court of competent jurisdiction. If legal proceedings (including mediation or arbitration) are instituted to enforce any provision of this Agreement, the prevailing party in the proceeding shall be entitled to recover from the non-prevailing party reasonable attorneys fees and court costs incurred in connection with the proceeding. This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina.

14. INTELLECTUAL PROPERTY RIGHTS: Client grants to Firm and any listing or commercial database service in which Firm or its agents participate a non-exclusive, perpetual license to use any information, photographs, drawings or other intellectual property that Client provides to Firm, including the rights to display, reproduce or make derivative works from the intellectual property.

15. DUAL AGENCY: Client understands that the potential for dual agency will arise if a buyer/tenant who has an agency relationship with Firm becomes interested in viewing the Property. If such circumstance of dual agency arises, Firm at that time shall orally confirm to Client that Firm is then serving in a dual agency role.

(a) Disclosure of Information. In the event Firm serves as a dual agent, Client agrees that without permission from the party about whom the information pertains, Firm shall not disclose to the other party the following information:

- (1) that a party may agree to a price, terms, or any conditions of sale or lease other than those offered;
- (2) the motivation of a party for engaging in the transaction, unless disclosure is otherwise required by statute or rule; and
- (3) any information about a party which that party has identified as confidential unless disclosure is otherwise required by statute or rule.

(b) Firm's Role as Dual Agent. If Firm serves as agent for both Client and a buyer/tenant in a transaction involving the Property, Firm shall make every reasonable effort to represent Client and buyer/tenant in a balanced and fair manner. Firm shall also make every reasonable effort to encourage and effect communication and negotiation between Client and buyer/tenant. Client understands and acknowledges that:

- (1) Prior to the time dual agency occurs, Firm will act as Client's exclusive agent;
- (2) In its separate representation of Client and buyer/tenant, Firm may obtain information which, if disclosed, could harm the bargaining position of the party providing such information to Firm;
- (3) Firm is required by law to disclose to Client and buyer/tenant any known or reasonably ascertainable material facts. Client agrees Firm shall not be liable to Client for (i) disclosing material facts required by law to be disclosed, and (ii) refusing or failing to disclose other information the law does not require to be disclosed which could harm or compromise one party's bargaining position but could benefit the other party.

(c) Client's Role. Should Firm become a dual agent, Client understands and acknowledges that:

- (1) Client has the responsibility of making Client's own decisions as to what terms are to be included in any lease or purchase and sale agreement with a buyer/tenant client of Firm;
- (2) Client is fully aware of and understands the implications and consequences of Firm's dual agency role as expressed herein to provide balanced and fair representation of Client and buyer/tenant and to encourage and effect communication between them rather than as an advocate or exclusive agent or representative;
- (3) Client has determined that the benefits of dual agency outweigh any disadvantages or adverse consequences;
- (4) Client may seek independent legal counsel to assist Client with the negotiation and preparation of a lease or purchase and sale agreement or with any matter relating to the transaction which is the subject matter of a lease or purchase and sale agreement.

Should Firm become a dual agent, Client waives all claims, damages, losses, expenses or liabilities, other than violations of the North Carolina Real Estate License Law and intentional wrongful acts, arising from Firm's role as a dual agent. Client shall have a duty to protect Client's own interests and should read any purchase and sale agreement carefully to ensure that it accurately sets forth the terms which Client wants included in said agreement.

(d) Designated Dual Agency. When a real estate firm represents both the buyer/tenant and seller/landlord in the same real estate transaction, the firm may, in its discretion, offer designated dual agency. If offered, designated dual agency permits the firm, with the prior express approval of both the buyer/tenant and seller/landlord, to designate one or more agents to represent only the interests of the seller/landlord and a different agent(s) to represent only the interests of the buyer/tenant, unless prohibited by law.

An individual agent may not be designated to represent a party in a transaction if that agent has received confidential information concerning the other party in connection with the transaction.

(e) Authorization/Direction *(initial)*.

_____ Dual Agency. Client authorizes the Firm to act as a dual agent, representing both the Client and the buyer/tenant, subject to the terms and conditions set forth in Paragraph 15.

Client DOES DOES NOT authorize the same individual agent to represent both the Client and the buyer/tenant in a transaction.

(also initial if Firm offers designated dual agency and Client authorizes designated dual agency) Designated Dual Agency. In addition to authorizing Firm to act as a dual agent, Client authorizes and directs Firm to designate an individual agent(s) to represent the Client and a different individual agent(s) to represent the buyer/tenant. Firm will practice designated dual agency unless: (i) designated agency would not be permitted by law due to circumstances existing at the time of the transaction, or (ii) Client authorizes Firm in writing to remain in dual agency only.

OR

_____ Exclusive Representation. Client desires exclusive representation at all times during this agreement and does NOT authorize either dual agency or designated dual agency.

[THIS SPACE INTENTIONALLY LEFT BLANK]

Firm Rep. Initials _____ Client Initials _____

THE BROKER SHALL CONDUCT ALL BROKERAGE ACTIVITIES IN REGARD TO THIS AGREEMENT WITHOUT RESPECT TO THE RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN, HANDICAP OR FAMILIAL STATUS OF ANY PARTY OR PROSPECTIVE PARTY. FURTHER, REALTORS® HAVE AN ETHICAL DUTY TO CONDUCT SUCH ACTIVITIES WITHOUT RESPECT TO THE SEXUAL ORIENTATION OF ANY PARTY OR PROSPECTIVE PARTY.

THE NORTH CAROLINA ASSOCIATION OF REALTORS®, INC. MAKES NO REPRESENTATION AS TO THE LEGAL VALIDITY OR ADEQUACY OF ANY PROVISION OF THIS FORM IN ANY SPECIFIC TRANSACTION.

CLIENT:
Individual

Date: _____

Date: _____

FIRM:

(Name of Firm)
By: _____
Name: _____
Individual License #: _____ State: _____
Date: _____

Business Entity

(Name of Entity)
By: _____
Name: _____
Title: _____
Date: _____
Address: _____

Phone: _____
Facsimile: _____
E-mail: _____

Address: _____

Phone: _____
Facsimile: _____
E-mail: _____

STANDARD FORM 571



EXCLUSIVE RIGHT TO SELL LISTING AGREEMENT

This Exclusive Right to Sell Listing Agreement, hereinafter known as "Agreement", is by and between _____ (Name of Firm), hereinafter known as "Firm" and _____ hereinafter known as "Client".

In consideration of Firm's agreement to list the following described property, hereinafter known as "Property," for sale and to use its efforts to find a buyer, Client agrees with Firm as follows:

1. EXCLUSIVE RIGHT TO SELL: For a period extending until 11:59 p.m. (based upon the time at the locale of the Firm's office) on _____, 20____, Firm shall have the exclusive right to sell the Property as agent of Client at the price and on the terms set forth below, or upon such other terms as may be agreed upon in writing by Client with any buyer. **Client represents that, as of the commencement date of this Agreement, Client is not a party to a listing agreement with any other firm.**

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 compensate (subject to Sections 7b.(i) and 7b.(ii)) and 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).

3. PROPERTY: (Address) _____
(Legal Description/Description) _____

See attached Exhibit _____ for legal description/description of premises.

To the best of Client's knowledge: (i) the Property is not subject to any rights of first refusal, rights of first offer or similar rights of others to acquire or lease all or a portion of the Property, (ii) as respects the Property there have been no licenses or leases granted or transfers of mineral, oil and gas or other similar rights, (iii) Client has paid or will pay in full all persons recently contracted with (or contracted with hereafter prior to any transaction) to do work related to or affecting the Property and Client will comply with all laws related to mechanics liens, (iv) the streets serving the Property are public streets and are maintained by a public authority, and (v) the Property has not been clad previously (either in whole or in part) with an "exterior insulating and finishing system" commonly known as "EIFS" or "synthetic stucco", unless disclosed as follows (Insert "None" or the identification of any matters relating to (i) through (v) above, if any): _____

4. LISTING TERMS:

Sales Price: _____

Client Financing Terms: _____

Possession Delivered: _____

Other Terms: _____

See attached Exhibit _____ for additional listing terms.



This form approved by:
 North Carolina Association of REALTORS®, Inc.

Firm Rep. Initials _____ Client Initials _____

ADVERTISING AND DATABASE LISTINGS: In connection with the marketing and sale of the Property, Client authorizes and directs Firm: (CHECK ALL APPLICABLE SECTIONS)

- to place a sign on the Property. All other signs marketing the Property for sale shall be removed.
- Listing Service.** To submit pertinent information concerning the Property to any listing service or information exchange of which Firm is a member or in which any of Firm's agents participate and to furnish to such listing service or information exchange notice of all changes of information concerning the Property authorized in writing by Client. Client authorizes Firm, upon execution of a sales contract for the Property, to notify the listing service or information exchange of the pending sale, and upon closing of the sale, to disseminate sales information, including sales price, to the listing service, information exchange, appraisers and real estate brokers.
- Advertising Other Than On The Internet.** Client authorizes Firm to advertise the Property in non-Internet media, and to permit other firms to advertise the Property in non-Internet media to the extent and in such manner as Firm may decide.
- Internet Advertising.** Client authorizes Firm to display information about the Property on the Internet either directly or through a program of any listing service or information exchange of which the Firm is a member or in which any of Firm's agents participate, and authorizes other firms who belong to any listing service of which the Firm is a member or in which any of Firm's agents participate to display information about the Property on the Internet in accordance with the listing service or information exchange rules and regulations. *If Client does not authorize Internet Advertising as set forth above, Client MUST complete an opt-out form in accordance with listing service rules. (NOTE: NCAR Form #105 may be used for this purpose.)*

If Client authorizes Internet Advertising as set forth above, Client authorizes the display of (**Check ALL applicable sections**):

- The address of the Property
- Automated estimates of the market value of the Property
- Third-party comments about the Property

Client acknowledges and understands that while the marketing services selected above will facilitate the showing and sale of the Property, there are risks associated with allowing access to and disseminating information about the Property that are not within the reasonable control of the Firm, including but not limited to:

1. unauthorized use of a lock/key box,
2. control of visitors during or after a showing or an open house,
3. inappropriate use of information about the Property placed on the Internet or furnished to any listing service in which the Firm participates.

Client therefore agrees to indemnify and hold harmless Firm from any damages, costs, attorneys' fees and other expenses as a result of any personal injury or property loss or damage to Client or any other person not caused by Firm's negligence arising directly or indirectly out of any such marketing services.

MARKETING EXPENSE: In the event that the Property does not sell during the term of this Agreement, Client shall nonetheless be obligated to reimburse Firm for actual documented expenses incurred in marketing the Property up to the amount of \$ _____.

5. SPECIAL PROVISIONS:

See attached Exhibit _____ for special provisions.

6. COOPERATION WITH FIRM:

a. Exclusive Rights: Client agrees to cooperate with Firm to facilitate the sale of the Property. The Property may be shown only by appointment made by or through Firm. Client immediately shall refer to Firm all inquiries or offers it may receive regarding the Property. Client agrees to cooperate with Firm in bringing about a sale of the Property. All negotiations shall be conducted through Firm. Firm shall be identified as the contact firm with all state and local economic development agencies being notified of the Property's availability.

Firm Rep. Initials _____ Client Initials _____

b. Services: No management services, repair services, collection services, notices, legal services or tax services shall be provided by Firm. In the event that Firm does procure any of these services at the request of Client, it is understood and agreed that Firm shall only be acting in the capacity of procurer for Client and shall accrue no liability or responsibility in connection with any services so obtained on behalf of Client. This exclusion of liability and responsibility shall not apply in the event that Firm directly contracts with Client to provide any such service.

7. COMMISSIONS: The amount, format or rate of real estate commission is not fixed by law. Commissions are set by each broker individually and may be negotiable between a firm and its client.

a. Sales Commissions:

(i) Commissions shall be earned when Client accepts an unconditional offer from a buyer or when all conditions have been met following Client's acceptance of a conditional offer from a buyer, whether the buyer is procured by Firm, the Client or anyone else during the term of this Agreement. Client shall pay Firm a commission equal to _____ percent (____%) of the gross sales price of the Property, or the sum of (\$ _____), whichever is greater, and/or other: _____

Commission shall be paid in cash or by bank check. Gross sales price includes any and all consideration received or receivable, in whatever form, by Client including, but not limited to, the assumption or release of existing liabilities. Client shall pay the commission upon delivery of the deed or other evidence of transfer of title or interest; provided, however, if the transaction involves an installment contract, then Client shall pay the commission upon the signing of such installment contract. In the event of any breach or termination by Client of any contract of purchase and sale, it is understood and agreed that the commission remains earned and payable upon notice given by Client to buyer of Client's intent not to proceed with such sale, notwithstanding the basis of such intent not to proceed. In the event Client contributes or conveys the Property or any interest therein to a joint venture, partnership or other business entity or executes an exchange, the commission shall be calculated on the fair market value of the Property or interest therein contributed, conveyed, transferred or exchanged and is payable at the time of the contribution, conveyance, transfer or exchange. If Client is a partnership, corporation or other business entity, and an interest in the partnership, corporation or other business entity is transferred, whether by merger, outright purchase or otherwise, in lieu of a sale of the Property, and applicable law does not prohibit the payment of a fee or commission in connection with such sale or transfer, the commission shall be calculated on the fair market value of the Property, rather than the gross sales price, multiplied by the percentage of interest so transferred, and shall be paid by Client at the time of the transfer. Provided, however that this interest transfer provision shall not apply to a transfer of an interest in a partnership, corporation or other business entity between existing partners, shareholders or other interest holders of the entity.

If this box is checked, notwithstanding the foregoing, in the event that Buyer is not represented by a buyer agent or subagent of Client, the commission stated in (i) above shall be adjusted to _____ percent (____%) of the gross sales price of the Property or (\$ _____), whichever is greater, and/or other: _____

(ii) **Options:** _____ % of any option fees shall be paid to Firm at the time such monies are paid to Client, said amount to be applied to commissions payable pursuant to Section 7.a.(i), provided, Firm shall not be paid, on account of this provision, an amount in excess of its entitlement pursuant to Section 7.a.(i).

(iii) Should there be a forfeiture of earnest money, Firm shall be entitled to _____ % of same, provided that Firm shall not receive an amount in excess of the commission set forth in Section 7.a.(i).

b. General Commissions Provisions:

(i) Firm shall not be required to compensate or pay any commission to, either directly or indirectly, a buyer who seeks to be compensated or paid a commission in connection with any transaction pursuant to this Agreement.

(ii) If Firm has worked directly with a buyer in connection with the Property, either as a client or a customer, and such relationship is evidenced in writing (either by a CONFIRMATION OF AGENCY RELATIONSHIP AND REGISTRATION STATEMENT - NCAR Form 510 - or substantially similar registration document), then Firm may not compensate or pay any commission to another real estate agent (not associated with Firm) in connection with any transaction pursuant to this Agreement involving said registered buyer.

(iii) In the event Client fails to make payments within the time limits set forth in this Agreement, then the delinquent amount

shall bear interest from the date due until paid at the maximum rate permitted in the state of North Carolina. If Firm is required to institute legal action (including mediation or arbitration) against Client relating to this Agreement, Firm shall be entitled to costs of such action.

(iv) In the event Client sells or otherwise disposes of its interest in the Property, Client shall remain liable for payment of the commissions provided for in this Agreement, including, without limitation, the commission obligations set forth in Section 7.a. unless the purchaser or transferee assumes all of such obligations in writing and Firm agrees in writing to such assumption.

(v) "Buyer" and "registered prospect" as used herein shall be deemed to include, but not be limited to: (i) any holder of a right of first offer or refusal or similar right which holder is not specifically named herein and excluded from the terms of this Agreement, (ii) any prospect registered by Firm pursuant to Section 8 hereof (which prospect registration listing shall identify specific principals and shall not include brokers acting in a brokerage capacity), and, (iii) the successors or assigns, principals, officers, directors, employees or shareholders thereof or any affiliate, alter-ego or commonly controlled entity of any such person.

8. REGISTERED PROSPECTS:

a. Prior Listing Agreements: If the Property was exclusively listed for sale with another agency prior to this Agreement, then Client shall provide Firm in writing the names of registered prospects (as defined in Section 7b.(v) above) and the duration of the protection period under the prior listing agreement. If Client provides such information to Firm within twenty (20) days of the date of this Agreement, then a direct or indirect sale or agreement to sell during such protection period to a registered prospect is excluded from this Agreement.

b. Later Sale To Registered Prospect: If within _____ days after the expiration or earlier termination of this Agreement (the "Protection Period"), Client directly or indirectly sells or agrees to sell the Property to a party with whom Firm (or any other agent acting for or through Firm) has had substantive bilateral communication concerning the Property during the term of this Agreement, Client shall pay Firm the same commission to which Firm would have been entitled had the sale been made during the term of this Agreement; provided that names of registered prospects (as defined in Section 7b.(v) above) are delivered or postmarked to Client within fifteen (15) days after the expiration or earlier termination of this Agreement. **In the event the Property is exclusively listed for sale with another agency after the expiration or earlier termination of this Agreement and Client directly or indirectly sells or agrees to sell the Property to a registered prospect (as defined in Section 7b.(v) above) during the Protection Period, then Client shall pay to Firm the same commission to which Firm would have been entitled.**

9. LEASE PROTECTION PROVISION: In the event that the Property is leased during the term hereof, it is acknowledged that Firm shall nonetheless earn a commission upon execution of such lease agreement. The parties agree to act in good faith in determining that the commission is an amount reasonable in this area for the type of Property.

10. AUTHORITY: Client represents and warrants to Firm that it has the right to offer the Property for sale. Each signatory to this Agreement represents and warrants that he or she has full authority to sign this Agreement and such instruments as may be necessary to effectuate any transaction contemplated by this Agreement on behalf of the party for whom he or she signs and that his or her signature binds such party and the holders of the interests in Client.

11. BANKRUPTCY: In the event that the Property comes under the jurisdiction of a bankruptcy court, Client shall immediately notify Firm of the same and, if Client is the subject of bankruptcy, shall promptly take all steps necessary to obtain court approval of Firm's appointment to sell the Property, unless Firm shall elect to terminate this Agreement upon said notice.

12. INDEMNIFICATION: Client represents and warrants that the information set forth herein and any other information as may be furnished to Firm by Client, including information relating to environmental matters, is correct to the best of Client's knowledge. Firm shall have no obligation or responsibility for checking or verifying any such information, except as may be required by law. Client shall indemnify Firm for any and all loss or damage sustained by Firm as a result of (i) Firm's or Client's furnishing such information to a buyer or anyone else; and (ii) the presence of storage tanks on, or the presence or release of hazardous substances, materials and wastes on or from, the Property.

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14. COUNTERPARTS; ENTIRE AGREEMENT; AMENDMENT; SEVERABILITY; ATTORNEYS FEES; GOVERNING

LAW: This Agreement may be executed in one or more counterparts, which taken together, shall constitute one and the same original document. Copies of original signature pages of this Agreement may be exchanged via facsimile or e-mail, and any such copies shall constitute originals. This Agreement contains the entire agreement of the parties and supercedes all prior written and oral proposals, understandings, agreements and representations, all of which are merged herein. The parties acknowledge and agree that: (i) the initials lines at the bottom of each page of this Agreement are merely evidence of their having reviewed the terms of each page, and (ii) the complete execution of such initials lines shall not be a condition of the effectiveness of this Agreement. No amendment or modification to this Agreement shall be effective unless it is in writing and executed by all parties hereto. No waiver of any breach of any obligation or promise contained herein shall be regarded as a waiver of any future breach of the same or any other obligation or promise. The invalidity of one or more provisions of this Agreement shall not affect the validity of any other provisions hereof and this Agreement shall be construed and enforced as if such invalid provisions were not included. It shall not be deemed a breach of this Agreement for Firm to comply with an order resulting from an arbitration conducted by a REALTOR® association or issued by a court of competent jurisdiction. If legal proceedings (including mediation or arbitration) are instituted to enforce any provision of this Agreement, the prevailing party in the proceeding shall be entitled to recover from the non-prevailing party reasonable attorneys fees and court costs incurred in connection with the proceeding. This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina.

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16. DUAL AGENCY: Client understands that the potential for dual agency will arise if a buyer who has an agency relationship with Firm becomes interested in viewing the Property. If such circumstance of dual agency arises, Firm at that time shall orally confirm to Client that Firm is then serving in a dual agency role.

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- (2) the motivation of a party for engaging in the transaction, unless disclosure is otherwise required by statute or rule; and
- (3) any information about a party which that party has identified as confidential unless disclosure is otherwise required by statute or rule.

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- (1) Prior to the time dual agency occurs, Firm will act as Client's exclusive agent;
- (2) In its separate representation of Client and buyer, Firm may obtain information which, if disclosed, could harm the bargaining position of the party providing such information to Firm;
- (3) Firm is required by law to disclose to Client and buyer any known or reasonably ascertainable material facts. Client agrees Firm shall not be liable to Client for (i) disclosing material facts required by law to be disclosed, and (ii) refusing or failing to disclose other information the law does not require to be disclosed which could harm or compromise one party's bargaining position but could benefit the other party.

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- (1) Client has the responsibility of making Client's own decisions as to what terms are to be included in any purchase and sale agreement with a buyer client of Firm;
- (2) Client is fully aware of and understands the implications and consequences of Firm's dual agency role as expressed herein to provide balanced and fair representation of Client and buyer and to encourage and effect communication between them rather than as an advocate or exclusive agent or representative;
- (3) Client has determined that the benefits of dual agency outweigh any disadvantages or adverse consequences;
- (4) Client may seek independent legal counsel to assist Client with the negotiation and preparation of a purchase and sale agreement or with any matter relating to the transaction which is the subject matter of a purchase and sale agreement.

Should Firm become a dual agent, Client waives all claims, damages, losses, expenses or liabilities, other than violations of the North Carolina Real Estate License Law and intentional wrongful acts, arising from Firm's role as a dual agent. Client shall have a duty to protect Client's own interests and should read any purchase and sale agreement carefully to ensure that it accurately sets forth the terms which Client wants included in said agreement.

(d) Designated Dual Agency. When a real estate firm represents both the buyer and seller in the same real estate transaction, the firm may, in its discretion, offer designated dual agency. If offered, designated dual agency permits the firm, with the prior express approval of both the buyer and seller, to designate one or more agents to represent only the interests of the seller and a different agent(s) to represent only the interests of the buyer, unless prohibited by law.

An individual agent may not be designated to represent a party in a transaction if that agent has received confidential information concerning the other party in connection with the transaction.

(e) Authorization/Direction *(initial)*.

_____ Dual Agency. Client authorizes the Firm to act as a dual agent, representing both the Client and the buyer, subject to the terms and conditions set forth in Paragraph 16.

Client DOES DOES NOT authorize the same individual agent to represent both the Client and the buyer in a transaction.

_____ *(also initial if Firm offers designated dual agency and Client authorizes designated dual agency)* Designated Dual Agency. In addition to authorizing Firm to act as a dual agent, Client authorizes and directs Firm to designate an individual agent(s) to represent the Client and a different individual agent(s) to represent the buyer. Firm will practice designated dual agency unless: (i) designated agency would not be permitted by law due to circumstances existing at the time of the transaction, or (ii) Client authorizes Firm in writing to remain in dual agency only.

OR

_____ Exclusive Representation. Client desires exclusive representation at all times during this agreement and does NOT authorize either dual agency or designated dual agency.

[THIS SPACE INTENTIONALLY LEFT BLANK]

Firm Rep. Initials _____ Client Initials _____

THE BROKER SHALL CONDUCT ALL BROKERAGE ACTIVITIES IN REGARD TO THIS AGREEMENT WITHOUT RESPECT TO THE RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN, HANDICAP OR FAMILIAL STATUS OF ANY PARTY OR PROSPECTIVE PARTY. FURTHER, REALTORS® HAVE AN ETHICAL DUTY TO CONDUCT SUCH ACTIVITIES WITHOUT RESPECT TO THE SEXUAL ORIENTATION OF ANY PARTY OR PROSPECTIVE PARTY.

THE NORTH CAROLINA ASSOCIATION OF REALTORS®, INC. MAKES NO REPRESENTATION AS TO THE LEGAL VALIDITY OR ADEQUACY OF ANY PROVISION OF THIS FORM IN ANY SPECIFIC TRANSACTION.

CLIENT:
Individual

FIRM:

(Name of Firm)

Date: _____

By: _____

Name: _____

Date: _____

Individual License #: _____ State: _____

Date: _____

Business Entity

Address: _____

(Name of Entity)

By: _____

Phone: _____

Name: _____

Facsimile: _____

Title: _____

E-mail: _____

Date: _____

Address: _____

Phone: _____

Facsimile: _____

E-mail: _____

STANDARD FORM 572



EXCLUSIVE RIGHT TO LEASE LISTING AGREEMENT

This Exclusive Right to Lease Listing Agreement, hereinafter known as "Agreement", is by and between _____ (Name of Firm), hereinafter known as "Firm" and _____ hereinafter known as "Client".

In consideration of Firm's agreement to list the following described property, hereinafter known as "Property," for lease and to use its efforts to find a tenant, Client agrees with Firm as follows:

1. EXCLUSIVE RIGHT TO LEASE: For a period extending until 11:59 p.m. (based upon the time at the locale of the Firm's office) on _____, 20____, Firm shall have the exclusive right to lease the Property as agent of Client at the price and on the terms set forth below, or upon such other terms as may be agreed upon in writing by Client with any tenant. Provided, however, that this Agreement shall be renewed automatically for successive twelve (12) month periods unless prior written notice of termination is given by either party at least sixty (60) days before the end of the then expiring twelve (12) month period. **Client represents that, as of the commencement date of this Agreement, Client is not a party to a listing agreement with any other firm.**

2. BROKER COOPERATION/AGENCY RELATIONSHIPS: Firm has advised Client of Firm's general company policy regarding cooperating with subagents, tenant agents or dual agents. Client has received and read the "Working with Real Estate Agents (Lease Transactions) Disclosure" and authorizes the Firm to compensate (subject to Sections 7b.(i) and 7b.(ii)) and 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
- tenant agents
- dual agents representing both Client and the tenant in the same transaction (subject to the terms of Section 16).

3. PROPERTY: (Address) _____
(Legal Description/Description) _____

See attached Exhibit _____ for legal description/description of premises.

To the best of Client's knowledge: (i) the Property is not subject to any rights of first refusal, rights of first offer or similar rights of others to acquire or lease all or a portion of the Property, (ii) as respects the Property there have been no licenses or leases granted or transfers of mineral, oil and gas or other similar rights, (iii) Client has paid or will pay in full all persons recently contracted with (or contracted with hereafter prior to any transaction) to do work related to or affecting the Property and Client will comply with all laws related to mechanics liens, (iv) the streets serving the Property are public streets and are maintained by a public authority, and (v) the Property has not been clad previously (either in whole or in part) with an "exterior insulating and finishing system" commonly known as "EIFS" or "synthetic stucco", unless disclosed as follows (Insert "None" or the identification of any matters relating to (i) through (v) above, if any): _____

4. LISTING TERMS:

Rental: _____

Taxes Paid By: _____

Insurance Paid By: _____



North Carolina Association of REALTORS®, Inc.

Firm Rep. Initials _____ Client initials _____



STANDARD FORM 572

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Utilities Paid By: _____

Operating Expenses Paid By: _____

Maintenance Paid By: _____

Possession Delivered: _____

Other Terms: _____

See attached Exhibit _____ for additional listing terms.

ADVERTISING AND DATABASE LISTINGS: In connection with the marketing and lease of the Property, Client authorizes and directs Firm: (CHECK ALL APPLICABLE SECTIONS)

- to place a sign on the Property. All other signs marketing the Property for lease shall be removed.
- Listing Service.** To submit pertinent information concerning the Property to any listing service or information exchange of which Firm is a member or in which any of Firm's agents participate and to furnish to such listing service or information exchange notice of all changes of information concerning the Property authorized in writing by Client. Client authorizes Firm, upon execution of a lease for the Property, to notify the listing service or information exchange of the lease, and upon lease execution, to disseminate leasing information, including rate, to the listing service, information exchange, appraisers and real estate brokers.
- Advertising Other Than On The Internet.** Client authorizes Firm to advertise the Property in non-Internet media, and to permit other firms to advertise the Property in non-Internet media to the extent and in such manner as Firm may decide.
- Internet Advertising.** Client authorizes Firm to display information about the Property on the Internet either directly or through a program of any listing service or information exchange of which the Firm is a member or in which any of Firm's agents participate, and authorizes other firms who belong to any listing service of which the Firm is a member or in which any of Firm's agents participate to display information about the Property on the Internet in accordance with the listing service or information exchange rules and regulations. *If Client does not authorize Internet Advertising as set forth above, Client MUST complete an opt-out form in accordance with listing service rules. (NOTE: NCAR Form #105 may be used for this purpose.)*

If Client authorizes Internet Advertising as set forth above, Client authorizes the display of (**Check ALL applicable sections**):

- The address of the Property
- Automated estimates of the market value of the Property
- Third-party comments about the Property

Client acknowledges and understands that while the marketing services selected above will facilitate the showing and lease of the Property, there are risks associated with allowing access to and disseminating information about the Property that are not within the reasonable control of the Firm, including but not limited to:

1. unauthorized use of a lock/key box,
2. control of visitors during or after a showing or an open house,
3. inappropriate use of information about the Property placed on the Internet or furnished to any listing service in which the Firm participates.

Client therefore agrees to indemnify and hold harmless Firm from any damages, costs, attorneys' fees and other expenses as a result of any personal injury or property loss or damage to Client or any other person not caused by Firm's negligence arising directly or indirectly out of any such marketing services.

MARKETING EXPENSE: In the event that the Property does not lease during the term of this Agreement, Client shall nonetheless be obligated to reimburse Firm for actual documented expenses incurred in marketing the Property up to the amount of \$ _____.

5. SPECIAL PROVISIONS:

See attached Exhibit _____ for special provisions.

6. COOPERATION WITH FIRM:

a. Exclusive Rights: Client agrees to cooperate with Firm to facilitate the leasing of the Property. The Property may be shown only by appointment made by or through Firm. Client immediately shall refer to Firm all inquiries or offers it may receive regarding the Property. Client agrees to cooperate with Firm in bringing about a lease of the Property. All negotiations shall be conducted through Firm. Firm shall be identified as the contact firm with all state and local economic development agencies being notified of the Property's availability.

b. Services: No management services, repair services, collection services, notices, legal services or tax services shall be provided by Firm. In the event that Firm does procure any of these services at the request of Client, it is understood and agreed that Firm shall only be acting in the capacity of procurer for Client and shall accrue no liability or responsibility in connection with any services so obtained on behalf of Client. This exclusion of liability and responsibility shall not apply in the event that Firm directly contracts with Client to provide any such service.

7. COMMISSIONS: The amount, format or rate of real estate commission is not fixed by law. Commissions are set by each broker individually and may be negotiable between a firm and its client.

a. Lease Commissions:

(i) Commissions shall be earned when Client directly or indirectly leases or agrees to lease the Property, whether tenant is procured by Firm, the Client or anyone else during the term of this Agreement. Firm's commission shall be calculated according to the schedule in Section 7.a.(ii). Commissions shall be paid in cash or by bank check.

(ii) Schedule of Commissions:

(complete both (a) and (b), only (a) will apply unless Firm elects in writing to have (b) apply)

(a) Commission Paid Upon Execution of Lease:

- (i) _____ percent (_____ %) of the total rent for the first _____ months in which rent is to be paid, plus _____ percent (_____ %) of the total rent for the remainder of the term;
- (ii) \$ _____ (flat fee);

payable in full upon execution of a lease by Client and tenant, unless otherwise provided here:

(b) Commission Paid Over the Term of Lease: In the event Firm elects in writing to collect a commission over the term of the lease, the commission is _____ percent (_____ %) of the total rent collected from tenant or \$ _____ per collection period, whichever is more, payable within ten (10) days of the receipt of each lease payment by Client during the term of the lease.

If this box is checked, notwithstanding the foregoing, in the event that there is no cooperating agent involved in a lease transaction, the commission stated in (a) above shall be adjusted to _____ percent (_____ %) of the total rent for the first _____ months in which rent is to be paid, plus _____ percent (_____ %) of the total rent for the remainder of the term or \$ _____ (flat fee), or, if Firm elects in writing to have (b) above apply, the greater of _____ percent (_____ %) of the total rent collected from tenant or \$ _____ per collection period.
For purposes of this subsection only, "cooperating agent" shall mean any agent other than the individual licensee signing on behalf of Firm below.

(iii) Percentage Rent: If a lease for which a commission is payable hereunder contains a percentage rent clause, Client shall pay a commission on the percentage rent payable by the tenant at the commission rate applicable to the period of the lease term for which the percentage rent is payable. This commission shall be payable within fifteen (15) days after receipt of each tenant payment to Client.

(iv) Option(s) or Right(s) of First Refusal to Renew, Extend Lease or Occupy Additional Space: If a lease for which a commission is payable hereunder contains (i) an option or right of first refusal to renew or extend, and a lease term is renewed or extended whether strictly in accordance with the terms of such option or right or otherwise and/or (ii) an option or right of first refusal to expand, and tenant occupies additional space whether strictly in accordance with the terms of such option or right or otherwise, then Client shall pay a commission in accordance with this Section 7.a. on the additional rent to be paid, calculated at the commission rate applicable hereunder for the years of the lease in which the additional rent is payable. Said commission shall be earned and payable upon the notice of exercise of any option or right of first refusal to renew or extend or upon the notice of exercise of any option or right of first refusal to expand, as applicable.

Firm Rep. Initials _____ Initials _____

(v) Commissions payable pursuant to this Agreement are leasing fees only and shall not be considered compensation for or an obligation to manage or sell the Property.

b. General Commissions Provisions:

(i) Firm shall not be required to compensate or pay any commission to, either directly or indirectly, a tenant who seeks to be compensated or paid a commission in connection with any transaction pursuant to this Agreement.

(ii) If Firm has worked directly with a tenant in connection with the Property, either as a client or a customer, and such relationship is evidenced in writing (either by a CONFIRMATION OF AGENCY RELATIONSHIP AND REGISTRATION STATEMENT - NCAR Form 510 - or substantially similar registration document), then Firm may not compensate or pay any commission to another real estate agent (not associated with Firm) in connection with any transaction pursuant to this Agreement involving said registered tenant.

(iii) In the event Client fails to make payments within the time limits set forth in this Agreement, then the delinquent amount shall bear interest from the date due until paid at the maximum rate permitted in the state of North Carolina. If Firm is required to institute legal action (including mediation or arbitration) against Client relating to this Agreement, Firm shall be entitled to costs of such action.

(iv) In the event Client sells or otherwise disposes of its interest in the Property, Client shall remain liable for payment of the commissions provided for in this Agreement, including, without limitation, the commission obligations set forth in Section 7.a. unless the purchaser or transferee assumes all of such obligations in writing and Firm agrees in writing to such assumption.

(v) "Tenant" and "registered prospect" as used herein shall be deemed to include, but not be limited to: (i) any holder of a right of first offer or refusal or similar right which holder is not specifically named herein and excluded from the terms of this Agreement, (ii) any prospect registered by Firm pursuant to Section 8 hereof (which prospect registration listing shall identify specific principals and shall not include brokers acting in a brokerage capacity), and, (iii) the successors or assigns, principals, officers, directors, employees or shareholders thereof or any affiliate, alter-ego or commonly controlled entity of any such person.

8. REGISTERED PROSPECTS:

a. Prior Listing Agreements: If the Property was exclusively listed for lease with another agency prior to this Agreement, then Client shall provide Firm in writing the names of registered prospects (as defined in Section 7b.(v) above) and the duration of the protection period under the prior listing agreement. If Client provides such information to Firm within twenty (20) days of the date of this Agreement, then a direct or indirect lease or agreement to lease during such protection period to a registered prospect is excluded from this Agreement.

b. Later Lease To Registered Prospect: If within _____ days after the expiration or earlier termination of this Agreement (the "Protection Period"), Client directly or indirectly leases or agrees to lease the Property to a party with whom Firm (or any other agent acting for or through Firm) has had substantive bilateral communication concerning the Property during the term of this Agreement, Client shall pay Firm the same commission to which Firm would have been entitled had the lease been made during the term of this Agreement; provided that names of registered prospects (as defined in Section 7b.(v) above) are delivered or postmarked to Client within fifteen (15) days after the expiration or earlier termination of this Agreement. **In the event the Property is exclusively listed for lease with another agency after the expiration or earlier termination of this Agreement and Client directly or indirectly leases or agrees to lease the Property to a registered prospect (as defined in Section 7b.(v) above) during the Protection Period, then Client shall pay to Firm the same commission to which Firm would have been entitled.**

9. SALE PROTECTION PROVISION (Review of Form 520 Working with Real Estate Agents is suggested): If any party directly or indirectly purchases the Property during the term of this Agreement or any tenant under a lease for which a commission is payable hereunder directly or indirectly purchases the Property, whether strictly in accordance with the terms of any option, right of first refusal, similar right or otherwise, during the term of the lease (term to include the period of any extensions or renewals thereof based upon extension or renewal rights contained in the original provisions of such lease), then it is acknowledged that a commission shall be nonetheless earned upon execution of such sale agreement and payable at closing. The parties agree that the commission payable shall be _____ or _____ percent (____%) of the gross sales price. Gross sales price includes all consideration received or receivable by Client, in whatever form, including the assumption or release of existing liabilities. Client shall pay the fee upon delivery of the deed or other evidence of transfer of title or interest; provided, however, if the transaction involves an installment contract, then Client shall pay the fee upon the signing of such installment contract.

In the event Client contributes or conveys the Property or any interest therein to a joint venture, partnership or other business entity or executes an exchange, the fee shall be calculated on the fair market value of the Property or interest therein contributed, conveyed, transferred or exchanged and is payable at the time of the contribution, conveyance, transfer or exchange. If Client is a partnership, corporation or other business entity, and an interest in the partnership, corporation or other business entity is transferred, whether by merger, outright purchase or otherwise, in lieu of a sale of the Property, and applicable law does not prohibit the payment of a fee or commission in connection with such sale or transfer, the fee shall be calculated on the fair market value of the Property, rather than the gross sales price, multiplied by the percentage of interest so transferred, and shall be paid by Client at the time of the transfer.

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Firm Rep. Initials _____ Initials _____

STANDARD FORM 572
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10. AUTHORITY: Client represents and warrants to Firm that it has the right to offer the Property for lease. Each signatory to this Agreement represents and warrants that he or she has full authority to sign this Agreement and such instruments as may be necessary to effectuate any transaction contemplated by this Agreement on behalf of the party for whom he or she signs and that his or her signature binds such party and the holders of the interests in Client.

11. BANKRUPTCY: In the event that the Property comes under the jurisdiction of a bankruptcy court, Client shall immediately notify Firm of the same and, if Client is the subject of bankruptcy, shall promptly take all steps necessary to obtain court approval of Firm's appointment to lease the Property, unless Firm shall elect to terminate this Agreement upon said notice.

12. INDEMNIFICATION: Client represents and warrants that the information set forth herein and any other information as may be furnished to Firm by Client, including information relating to environmental matters, is correct to the best of Client's knowledge. Firm shall have no obligation or responsibility for checking or verifying any such information, except as may be required by law. Client shall indemnify Firm for any and all loss or damage sustained by Firm as a result of (i) Firm's or Client's furnishing such information to a buyer or tenant or anyone else; and (ii) the presence of storage tanks on, or the presence or release of hazardous substances, materials and wastes on or from, the Property.

13. PARTIES AND BENEFITS: This Agreement shall be binding upon and inure to the benefit of the parties, their heirs, successors and assigns and their personal representatives. Client agrees that at any time during the term of this Agreement, Firm may either assign Firm's rights and responsibilities hereunder to another real estate agency, or transfer to another person or entity all or part of the ownership of Firm's real estate agency, and that in the event of any such assignment or transfer, this Agreement shall continue in full force and effect; provided, that any assignee or transferee must be licensed to engage in the business of real estate brokerage in the State of North Carolina. In the event of any such assignment or transfer, Client may terminate this Agreement without cause on thirty (30) days' prior written notice to the assignee or transferee of Client's intent to terminate this Agreement.

14. COUNTERPARTS; ENTIRE AGREEMENT; AMENDMENT; SEVERABILITY; ATTORNEYS FEES; GOVERNING LAW: This Agreement may be executed in one or more counterparts, which taken together, shall constitute one and the same original document. Copies of original signature pages of this Agreement may be exchanged via facsimile or e-mail, and any such copies shall constitute originals. This Agreement contains the entire agreement of the parties and supercedes all prior written and oral proposals, understandings, agreements and representations, all of which are merged herein. The parties acknowledge and agree that: (i) the initials lines at the bottom of each page of this Agreement are merely evidence of their having reviewed the terms of each page, and (ii) the complete execution of such initials lines shall not be a condition of the effectiveness of this Agreement. No amendment or modification to this Agreement shall be effective unless it is in writing and executed by all parties hereto. No waiver of any breach of any obligation or promise contained herein shall be regarded as a waiver of any future breach of the same or any other obligation or promise. The invalidity of one or more provisions of this Agreement shall not affect the validity of any other provisions hereof and this Agreement shall be construed and enforced as if such invalid provisions were not included. It shall not be deemed a breach of this Agreement for Firm to comply with an order resulting from an arbitration conducted by a REALTOR® association or issued by a court of competent jurisdiction. If legal proceedings (including mediation or arbitration) are instituted to enforce any provision of this Agreement, the prevailing party in the proceeding shall be entitled to recover from the non-prevailing party reasonable attorneys fees and court costs incurred in connection with the proceeding. This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina.

15. INTELLECTUAL PROPERTY RIGHTS: Client grants to Firm and any listing or commercial database service in which Firm or its agents participate a non-exclusive, perpetual license to use any information, photographs, drawings or other intellectual property that Client provides to Firm, including the rights to display, reproduce or make derivative works from the intellectual property.

16. DUAL AGENCY. Client understands that the potential for dual agency will arise if a tenant who has an agency relationship with Firm becomes interested in viewing the Property. If such circumstance of dual agency arises, Firm at that time shall orally confirm to Client that Firm is then serving in a dual agency role.

(a) **Disclosure of Information.** In the event Firm serves as a dual agent, Client agrees that without permission from the party about whom the information pertains, Firm shall not disclose to the other party the following information:

- (1) that a party may agree to a price, terms, or any conditions lease other than those offered;
- (2) the motivation of a party for engaging in the transaction, unless disclosure is otherwise required by statute or rule; and
- (3) any information about a party which that party has identified as confidential unless disclosure is otherwise required by statute or rule.

(b) **Firm's Role as Dual Agent.** If Firm serves as agent for both Client and a tenant in a transaction involving the Property, Firm shall make every reasonable effort to represent Client and tenant in a balanced and fair manner. Firm shall also make every reasonable effort to encourage and effect communication and negotiation between Client and tenant. Client understands and acknowledges that:

- (1) Prior to the time dual agency occurs, Firm will act as Client's exclusive agent;

(2) In its separate representation of Client and tenant, Firm may obtain information which, if disclosed, could harm the bargaining position of the party providing such information to Firm;

(3) Firm is required by law to disclose to Client and tenant any known or reasonably ascertainable material facts. Client agrees Firm shall not be liable to Client for (i) disclosing material facts required by law to be disclosed, and (ii) refusing or failing to disclose other information the law does not require to be disclosed which could harm or compromise one party's bargaining position but could benefit the other party.

(c) Client's Role. Should Firm become a dual agent, Client understands and acknowledges that:

(1) Client has the responsibility of making Client's own decisions as to what terms are to be included in any lease with a tenant client of Firm;

(2) Client is fully aware of and understands the implications and consequences of Firm's dual agency role as expressed herein to provide balanced and fair representation of Client and tenant and to encourage and effect communication between them rather than as an advocate or exclusive agent or representative;

(3) Client has determined that the benefits of dual agency outweigh any disadvantages or adverse consequences;

(4) Client may seek independent legal counsel to assist Client with the negotiation and preparation of a lease or with any matter relating to the transaction which is the subject matter of a lease agreement.

Should Firm become a dual agent, Client waives all claims, damages, losses, expenses or liabilities, other than violations of the North Carolina Real Estate License Law and intentional wrongful acts, arising from Firm's role as a dual agent. Client shall have a duty to protect Client's own interests and should read any purchase and sale agreement carefully to ensure that it accurately sets forth the terms which Client wants included in said agreement.

(d) Designated Dual Agency. When a real estate firm represents both the landlord and tenant in the same real estate transaction, the firm may, in its discretion, offer designated dual agency. If offered, designated dual agency permits the firm, with the prior express approval of both the landlord and tenant, to designate one or more agents to represent only the interests of the landlord and a different agent(s) to represent only the interests of the tenant, unless prohibited by law.

An individual agent may not be designated to represent a party in a transaction if that agent has received confidential information concerning the other party in connection with the transaction.

(e) Authorization/Direction (initial).

_____ Dual Agency. Client authorizes the Firm to act as a dual agent, representing both the Client and the tenant, subject to the terms and conditions set forth in Paragraph 16.

Client DOES DOES NOT authorize the same individual agent to represent both the Client and the tenant in a transaction.

_____ (also initial if Firm offers designated dual agency and Client authorizes designated dual agency) Designated Dual Agency. In addition to authorizing Firm to act as a dual agent, Client authorizes and directs Firm to designate an individual agent(s) to represent the Client and a different individual agent(s) to represent the tenant. Firm will practice designated dual agency unless: (i) designated agency would not be permitted by law due to circumstances existing at the time of the transaction, or (ii) Client authorizes Firm in writing to remain in dual agency only.

OR

_____ Exclusive Representation. Client desires exclusive representation at all times during this agreement and does NOT authorize either dual agency or designated dual agency.

[THIS SPACE INTENTIONALLY LEFT BLANK]

Firm Rep. Initials _____ Initials _____

THE BROKER SHALL CONDUCT ALL BROKERAGE ACTIVITIES IN REGARD TO THIS AGREEMENT WITHOUT RESPECT TO THE RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN, HANDICAP OR FAMILIAL STATUS OF ANY PARTY OR PROSPECTIVE PARTY. FURTHER, REALTORS® HAVE AN ETHICAL DUTY TO CONDUCT SUCH ACTIVITIES WITHOUT RESPECT TO THE SEXUAL ORIENTATION OF ANY PARTY OR PROSPECTIVE PARTY.

THE NORTH CAROLINA ASSOCIATION OF REALTORS®, INC. MAKES NO REPRESENTATION AS TO THE LEGAL VALIDITY OR ADEQUACY OF ANY PROVISION OF THIS FORM IN ANY SPECIFIC TRANSACTION.

CLIENT:

FIRM:

Individual

(Name of Firm)

Date: _____

By: _____

Date: _____

Name: _____

Individual License #: _____ State: _____

Date: _____

Business Entity

Address: _____

(Name of Entity)

Phone: _____

By: _____

Facsimile: _____

Name: _____

E-mail: _____

Title: _____

Date: _____

Address : _____

Phone: _____

Facsimile: _____

E-mail: _____

Firm Rep. Initials _____ Initials _____

STANDARD FORM 580-T



AGREEMENT FOR PURCHASE AND SALE OF IMPROVED REAL PROPERTY

THIS AGREEMENT, including any and all addenda attached hereto ("Agreement"), is by and between

a(n) _____ ("Buyer"), and
(individual or State of formation and type of entity)

a (n) _____ ("Seller").
(individual or State of formation and type of entity)

(NOTE: If the Buyer or Seller is an entity, in order to form a binding agreement and complete a transaction, the entities listed as Buyer or Seller in this Agreement should be validly formed and in good standing with the Secretary of State in the State of formation of the entity.)

FOR AND IN CONSIDERATION OF THE MUTUAL PROMISES SET FORTH HEREIN AND OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, THE PARTIES HERETO AGREE AS FOLLOWS:

Section 1. Terms and Definitions: The terms listed below shall have the respective meaning given them as set forth adjacent to each term.

(a) "**Property**": (Address) _____

Plat Reference: Lot(s) _____, Block or Section _____, as shown on Plat Book or Slide _____ at Page(s) _____, _____ County, consisting of _____ acres.

If this box is checked, "Property" shall mean that property described on **Exhibit A** attached hereto and incorporated herewith by reference,

(For information purposes: (i) the tax parcel number of the Property is: _____; and, (ii) some or all of the Property, consisting of approximately _____ acres, is described in Deed Book _____, Page No. _____, _____ County.)

together with all buildings and improvements thereon and all fixtures and appurtenances thereto and all personal property, if any, itemized on **Exhibit A**.

\$ _____ (b) "**Purchase Price**" shall mean the sum of _____ Dollars,

payable on the following terms:

\$ _____ (i) "**Earnest Money**" shall mean _____ Dollars or terms as follows: _____

The Earnest Money shall be deposited in escrow with _____ (name of person/entity with whom deposited- "Escrow Agent") within five (5) calendar days of the Contract Date, to be applied as part payment of the Purchase Price of the Property at Closing, or disbursed as agreed upon under the provisions of Section 10 herein. Should Buyer fail to deliver the Earnest Money by the date required hereunder, or should any check or other funds paid by Buyer be dishonored, for any reason, by the institution upon which
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This form jointly approved by:
North Carolina Bar Association's Real Property Section
North Carolina Association of REALTORS®, Inc.

STANDARD FORM 580-T
Revised 7/2023
© 7/2023

Buyer Initials _____ Seller Initials _____

the payment is drawn, Buyer shall have one (1) banking day after written notice of such dishonor to deliver cash, official bank check, wire transfer or electronic transfer to the Escrow Agent. If Buyer fails to deliver the required funds within one (1) banking day after written notice, then Seller may terminate this Agreement by written notice to Buyer at any time thereafter, provided Seller has not then received acknowledgement by Escrow Agent of its receipt of funds from Buyer. If the Escrow Agent has not delivered to the Seller the acknowledgement of Earnest Money on the last page of this Agreement by the calendar day following the date the Earnest Money is required to be delivered hereunder, it shall be presumed that the Earnest Money was not delivered by the required time (unless, upon the written request of Seller, Escrow Agent can provide proof of its receipt of the Earnest Money by the required time). Buyer and Seller consent to the disclosure by the Escrow Agent, to the parties to this Agreement, the Broker(s) and any Buyer lender, of any material facts pertaining to the Earnest Money.

ANY EARNEST MONEY DEPOSITED BY BUYER IN A TRUST ACCOUNT MAY BE PLACED IN AN INTEREST BEARING TRUST ACCOUNT, AND: (check only ONE box)

ANY INTEREST EARNED THEREON SHALL BE APPLIED AS PART PAYMENT OF THE PURCHASE PRICE OF THE PROPERTY AT CLOSING, OR DISBURSED AS AGREED UPON UNDER THE PROVISIONS OF SECTION 10 HEREIN. (Buyer's Taxpayer Identification Number is: _____)

ANY INTEREST EARNED THEREON SHALL BELONG TO THE ACCOUNT HOLDER IN CONSIDERATION OF THE EXPENSES INCURRED BY MAINTAINING SUCH ACCOUNT AND RECORDS ASSOCIATED THEREWITH.

\$ _____ (ii) **Delivery of a promissory note** secured by a deed of trust, said promissory note in the amount of _____ Dollars being payable over a term of _____ years, with an amortization period of _____ years, payable in monthly installments of principal, together with accrued interest on the outstanding principal balance at the rate of _____ percent (_____%) per annum in the amount of \$ _____, with the first principal payment beginning on the first day of the month next succeeding the date of Closing, or such other terms as may be set forth on **Exhibit B**. At any time, the promissory note may be prepaid in whole or in part without penalty and without further interest on the amounts prepaid from the date of such prepayment. (NOTE: In the event of Buyer's subsequent default upon a promissory note and deed of trust given hereunder, Seller's remedies may be limited to foreclosure of the Property. If the deed of trust given hereunder is subordinated to senior financing, the material terms of such financing must be set forth on Exhibit B. If such senior financing is subsequently foreclosed, the Seller may have no remedy to recover under the note.)

\$ _____ (iii) **Cash, balance of Purchase Price**, at Closing in the amount of _____ Dollars.

Buyer, at Buyer's expense, shall be entitled to pursue qualification for and approval of any loan Buyer intends to obtain in connection with the transaction contemplated by this Agreement. (Note: Buyer's obligations under this Agreement are not conditioned upon obtaining or closing any loan. Therefore, Buyer is advised to consult with Buyer's lender prior to signing this offer to assure that the Examination Period allows sufficient time for Buyer's lender to provide Buyer sufficient information to decide whether to proceed with or terminate the transaction.)

- (c) "**Closing**" shall mean the date of completion of the process detailed in Section 11 of this Agreement. Closing shall occur on or before _____ or _____.
- (d) "**Contract Date**" means the date this Agreement has been fully executed by both Buyer and Seller.
- (e) "**Examination Period**" shall mean the period beginning on the first day after the Contract Date and extending through 5:00pm (based upon time at the locale of the Property) on _____.

Buyer Initials _____ Seller Initials _____

TIME IS OF THE ESSENCE AS TO THE EXAMINATION PERIOD.

- (f) **“Broker(s)”** shall mean: _____ (“Listing Agency”),
 _____ (“Listing Agent” – License # _____)
 Acting as: Seller’s Agent; Dual Agent
 and _____ (“Selling Agency”),
 _____ (“Selling Agent”- License # _____)
 Acting as: Buyer’s Agent; Seller’s (Sub)Agent; Dual Agent

- (g) **“Seller’s Notice Address”** shall be as follows:

 e-mail address: _____ fax number: _____
 except as same may be changed pursuant to Section 12.

- (h) **“Buyer’s Notice Address”** shall be as follows:

 e-mail address: _____ fax number: _____
 except as same may be changed pursuant to Section 12.

- (i) If this block is marked, additional terms of this Agreement are set forth on **Exhibit B** attached hereto and incorporated herein by reference. (Note: Under North Carolina law, real estate agents are not permitted to draft conditions or contingencies to this Agreement.)
- (j) If this block is marked, additional terms of this Agreement are set forth on the Additional Provisions Addendum (Form 581-T) attached hereto and incorporated herein by reference.
- (k) If this block is marked, additional terms of this Agreement are set forth on the Back Up Agreement Addendum (Form 581A-T) attached hereto and incorporated herein by reference.

Section 2. Sale of Property and Payment of Purchase Price: Seller agrees to sell and Buyer agrees to buy the Property for the Purchase Price.

Section 3. Proration of Expenses and Payment of Costs: Seller and Buyer agree that all property taxes (on a calendar year basis), leases, rents, mortgage payments and utilities or any other assumed liabilities as detailed on attached **Exhibit B, and/or Exhibit C, as applicable**, if any, shall be prorated as of the date of Closing. Seller shall pay for preparation of a deed and all other documents necessary to perform Seller’s obligations under this Agreement, excise tax (revenue stamps), any deferred or rollback taxes, and other conveyance fees or taxes required by law, any fees required for confirming Seller’s account payment information on owners’ association dues or assessments for payment or proration; any fees imposed by an owners’ association and/or a management company as agent of the owners’ association in connection with the transaction contemplated by this Agreement other than those fees required to be paid by Buyer in this Section 3 below, and the following:

Buyer shall pay recording costs, costs of any title search, title insurance, survey, the cost of any inspections or investigations undertaken by Buyer under this Agreement, charges required by an owners’ association declaration to be paid by Buyer for Buyer’s future use and enjoyment of the Property, including, without limitation, working capital contributions, membership fees, or charges for Buyer’s use of the common elements and/or services provided to Buyer, any costs or charges for determining restrictive covenant

Buyer Initials _____ Seller Initials _____

compliance, and the following:

Each party shall pay its own attorney's fees.

Section 4. Deliveries: Seller agrees to use best efforts to deliver to Buyer, as soon as reasonably possible after the Contract Date, copies of all material information relevant to the Property in the possession of Seller, including but not limited to: title insurance policies (and copies of any documents referenced therein), surveys, soil test reports, environmental surveys or reports, site plans, civil drawings, building plans, maintenance records and copies of all presently effective warranties or service contracts related to the Property. Seller authorizes (1) any attorney presently or previously representing Seller to release and disclose any title insurance policy in such attorney's file to Buyer and both Buyer's and Seller's agents and attorneys; and (2) the Property's title insurer or its agent to release and disclose all materials in the Property's title insurer's (or title insurer's agent's) file to Buyer and both Buyer's and Seller's agents and attorneys. If Buyer does not consummate the Closing for any reason other than Seller default, then Buyer shall return to Seller all hard copy materials delivered by Seller to Buyer pursuant to this Section 4 (or Section 7, if applicable), if any, and shall, upon Seller's request, following release of the Earnest Money, provide to Seller copies of (subject to the ownership and copyright interests of the preparer thereof) any and all studies, reports, surveys and other information relating directly to the Property prepared by or at the request of Buyer, its employees and agents, without any warranty or representation by Buyer as to the contents, accuracy or correctness thereof. Notwithstanding the above provisions regarding delivery and return of information and documentation, should there exist a separate non-disclosure, confidentiality, or similar agreement between Buyer and Seller, the terms of which conflict with this provision insofar as delivery and return of information and documentation, then the terms of such non-disclosure, confidentiality, or similar agreement shall control as to the delivery and return of information and documentation.

Section 5. Evidence of Title: Seller agrees to convey fee simple insurable title to the Property without exception for mechanics' liens, free and clear of all liens, encumbrances and defects of title other than: (a) zoning ordinances affecting the Property, (b) Leases (as defined in Section 7, if applicable) and (c) specific instruments on the public record at the Contract Date agreed to by Buyer (not objected to by Buyer prior to the end of the Examination Period), which specific instruments shall be enumerated in the deed referenced in Section 11 (items 5(a), 5(b) and 5(c) being collectively "Permitted Exceptions"); provided that Seller shall be required to satisfy, at or prior to Closing, any encumbrances that may be satisfied by the payment of a fixed sum of money, such as deeds of trust, mortgages or statutory liens. Seller shall not enter into or record any instrument that affects the Property (or any personal property listed on **Exhibit A**) after the Contract Date without the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed.

Section 6. Conditions: This Agreement and the rights and obligations of the parties under this Agreement are hereby made expressly conditioned upon fulfillment (or waiver by Buyer, whether explicit or implied) of the following conditions:

(a) **Title Examination:** After the Contract Date, Buyer shall, at Buyer's expense, cause a title examination to be made of the Property before the end of the Examination Period. In the event that such title examination shall show that Seller's title is not fee simple insurable, subject only to Permitted Exceptions, then Buyer shall promptly notify Seller in writing of all such title defects and exceptions, in no case later than the end of the Examination Period, and Seller shall have thirty (30) days to cure said noticed defects. If Seller does not cure the defects or objections within thirty (30) days of notice thereof, then Buyer may terminate this Agreement and receive a return of Earnest Money (notwithstanding that the Examination Period may have expired). If Buyer is to purchase title insurance, the insuring company must be licensed to do business in the state in which the Property is located. Title to the Property must be insurable at regular rates, subject only to standard exceptions and Permitted Exceptions.

(b) **Same Condition:** If the Property is not in substantially the same condition at Closing as of the date of the offer, reasonable wear and tear excepted, then the Buyer may (i) terminate this Agreement and receive a return of the Earnest Money or (ii) proceed to Closing whereupon Buyer shall be entitled to receive, in addition to the Property, any of the Seller's insurance proceeds payable on account of the damage or destruction applicable to the Property.

(c) **Inspections:** Buyer, its agents or representatives, at Buyer's expense and at reasonable times during normal business hours, shall have the right to enter upon the Property for the purpose of inspecting, examining, conducting timber cruises, and surveying the Property; provided, however, that Buyer shall not conduct any invasive testing of any nature without the prior express written approval of Seller as to each specific invasive test intended to be conducted by Buyer. Buyer shall conduct all such on-site inspections, examinations, testing, timber cruises and surveying of the Property in a good and workmanlike manner, at Buyer's expense, shall repair any damage to the Property caused by Buyer's entry and on-site inspections and shall conduct same in a manner that does not unreasonably interfere with Seller's or any tenant's use and enjoyment of the Property. In that respect, Buyer shall make reasonable efforts to undertake on-site inspections outside of the hours Seller's or any tenant's business is open to the public. Buyer shall provide Seller or any tenant (as applicable) reasonable advance notice of and Buyer shall cause its agents or representatives and third party service providers (e.g. inspectors, surveyors, etc.) to give reasonable advance notice of any entry onto the Property. Buyer

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shall be obligated to observe and comply with any terms of any tenant lease which conditions access to such tenant's space at the Property. Upon Seller's request, Buyer shall provide to Seller evidence of general liability insurance. Buyer shall also have a right to review and inspect all contracts or other agreements affecting or related directly to the Property and shall be entitled to review such books and records of Seller that relate directly to the operation and maintenance of the Property, provided, however, that Buyer shall not disclose any information regarding this Property (or any tenant therein) unless required by law, and the same shall be regarded as confidential, to any person, except to its attorneys, accountants, lenders and other professional advisors, in which case Buyer shall obtain their agreement to maintain such confidentiality. Buyer assumes all responsibility for the acts of itself and its agents or representatives in exercising its rights under this Section 6(c) and agrees to indemnify and hold Seller harmless from any damages resulting therefrom. This indemnification obligation of Buyer shall survive the Closing or earlier termination of this Agreement. Except as provided in Section 6(b) above, Buyer shall have from the Contract Date through the end of the Examination Period to perform the above inspections, examinations and testing. **IF BUYER CHOOSES NOT TO PURCHASE THE PROPERTY, FOR ANY REASON OR NO REASON, AND PROVIDES WRITTEN NOTICE TO SELLER THEREOF PRIOR TO THE EXPIRATION OF THE EXAMINATION PERIOD, THEN THIS AGREEMENT SHALL TERMINATE, AND BUYER SHALL RECEIVE A RETURN OF THE EARNEST MONEY.**

Section 7. Leases (Check one of the following, as applicable):

If this box is checked, Seller affirmatively represents and warrants that there are no Leases (as hereinafter defined) affecting the Property.

If this box is checked, Seller discloses that there are one or more leases affecting the Property ("Leases"), and the following provisions are hereby made a part of this Agreement.

(a) A list of all Leases shall be set forth on **Exhibit C**. Seller represents and warrants that, as of the Contract Date, there are no other Leases, oral or written, recorded or not, nor any subleases affecting the Property, except as set forth on **Exhibit C**. Unless written consent is given by Buyer, Seller will not enter in to any Lease affecting the Property nor terminate any Lease in Exhibit C during the effectiveness of this Agreement. Buyer agrees to take no action which would affect any lease in Exhibit C prior to Closing;

(b) Seller shall deliver copies of any Leases to Buyer pursuant to Section 4 as if the Leases were listed therein;

(c) Seller represents and warrants that, as of the Contract Date, there are no current defaults (or any existing situation which, with the passage of time, or the giving of notice, or both, or at the election of either landlord or tenant, could constitute a default) either by Seller, as landlord, or by any tenant under any Lease ("Lease Default"). In the event there is any Lease Default as of the Contract Date, Seller agrees to provide Buyer with a detailed description of the situation in accordance with Section 4. Seller agrees not to commit a Lease Default as Landlord after the Contract Date; and agrees further to notify Buyer immediately in the event a Lease Default arises or is claimed, asserted or threatened to be asserted by either Seller or a tenant under the Lease.

(d) In addition to the conditions provided in Section 6 of this Agreement, this Agreement and the rights and obligations of the parties under this Agreement are hereby made expressly conditioned upon the assignment of Seller's interest in any Lease to Buyer in form and content acceptable to Buyer (with tenant's written consent and acknowledgement, if required under the Lease). Seller agrees to deliver an assignment of any Lease at or before Closing, with any security deposits held by Seller under any Leases to be transferred or credited to Buyer at or before Closing. The assignment shall provide: (i) that Seller shall defend, indemnify and hold Buyer harmless from claims, losses, damages and liabilities (including, without limitation, court costs and attorneys' fees) asserted against or incurred by Buyer which are caused by or the result of any default by Seller under any Lease prior to the date of Closing, and (ii) that Buyer shall defend, indemnify and hold Seller harmless from claims, losses, damages and liabilities (including, without limitation, court costs and attorneys' fees) asserted against or incurred by Seller which are caused by or the result of any default by Buyer under any Lease after the date of Closing.

(e) Seller also agrees to work diligently to obtain any tenant signatures on any estoppel certificates in such form as Buyer may reasonably request and to work diligently to obtain any subordination, nondisturbance and attornment agreements in such form as Buyer may reasonably request.

Section 8. Environmental: Seller represents and warrants that it has no actual knowledge of the presence or disposal, except as in accordance with applicable law, within the buildings or on the Property of hazardous or toxic waste or substances, which are defined as those substances, materials, and wastes, including, but not limited to: those substances, materials and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR Part 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302.4) and amendments thereto, or such substances, materials and wastes, which are or become regulated under any applicable local, state or federal law, including, without limitation, any material, waste or substance which is (i) petroleum, (ii) asbestos, (iii) polychlorinated biphenyls, (iv) designated as a Hazardous Substance pursuant to Section 311 of the

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Clean Water Act of 1977 (33 U.S.C. §1321) or listed pursuant to Section 307 of the Clean Water Act of 1977 (33 U.S.C. §1317), (v) defined as a hazardous waste pursuant to Section 1004 of the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §6903) or (vi) defined as a hazardous substance pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §9601). Seller has no actual knowledge of any contamination of the Property from such substances as may have been disposed of or stored on neighboring tracts.

Section 9. Risk of Loss/Damage/Repair: Until Closing, the risk of loss or damage to the Property, except as otherwise provided herein, shall be borne by Seller. Except as to maintaining the Property in its same condition, Seller shall have no responsibility for the repair of the Property, including any improvements, unless the parties hereto agree in writing.

Section 10. Earnest Money Disbursement: In the event that any condition hereto is not satisfied, then the Earnest Money shall be refunded to Buyer. In the event of breach of this Agreement by Seller, the Earnest Money shall be refunded to Buyer upon Buyer's request, but such return shall not affect any other remedies available to Buyer for such breach. In the event of breach of this Agreement by Buyer, the Earnest Money shall be paid to Seller as liquidated damages and as Seller's sole and exclusive remedy for such breach, but without limiting Seller's rights under Section 6(c) or Section 22 of this Agreement. It is acknowledged by the parties that payment of the Earnest Money to Seller in the event of a breach of this Agreement by Buyer is compensatory and not punitive, such amount being a reasonable estimation of the actual loss that Seller would incur as a result of such breach. The payment of the Earnest Money to Seller shall not constitute a penalty or forfeiture but actual compensation for Seller's anticipated loss, both parties acknowledging the difficulty determining Seller's actual damages for such breach.

NOTE: In the event of a dispute between Seller and Buyer over the disposition of the Earnest Money held in escrow, a licensed real estate broker is required by state law (and Escrow Agent, if not a broker, hereby agrees) to retain the Earnest Money in the Escrow Agent's trust or escrow account until Escrow Agent has obtained a written release from the parties consenting to its disposition or until disbursement is ordered by a court of competent jurisdiction. Alternatively, if a broker or an attorney licensed to practice law in North Carolina is holding the Earnest Money, the broker or attorney may deposit the disputed monies with the appropriate clerk of court in accordance with the provisions of N.C.G.S. §93A-12.

Seller and Buyer hereby agree and acknowledge that the Escrow Agent assumes no liability in connection with the holding of the Earnest Money pursuant hereto except for negligence or willful misconduct of Escrow Agent. Escrow Agent shall not be responsible for the validity, correctness or genuineness of any document or notice referred to under this Agreement. Seller and Buyer hereby agree to indemnify, protect, save and hold harmless Escrow Agent and its successors, assigns and agents pursuant to this Agreement, from any and all liabilities, obligations, losses, damages, claims, actions, suits, costs or expenses (including attorney fees) of whatsoever kind or nature imposed on, incurred by or asserted against Escrow Agent which in any way relate to or arise out of the execution and delivery of this Agreement and any action taken hereunder; provided, however, that Seller and Buyer shall have no such obligation to indemnify, save and hold harmless Escrow Agent for any liability incurred by, imposed upon or established against it as a result of Escrow Agent's negligence or willful misconduct.

Section 11. Closing: At or before Closing, Seller shall deliver to Buyer a special warranty deed unless otherwise specified on **Exhibit B** and other documents customarily executed or delivered by a seller in similar transactions, including without limitation, a bill of sale for any personalty listed on **Exhibit A**, an owner's affidavit, lien waiver forms (and such other lien related documentation as shall permit the Property to be conveyed free and clear of any claim for mechanics' liens) and a non-foreign status affidavit (pursuant to the Foreign Investment in Real Property Tax Act), and Buyer shall cause to be delivered the funds necessary to pay to Seller the Purchase Price. The Closing shall be conducted by Buyer's attorney or handled in such other manner as the parties hereto may mutually agree in writing. Possession shall be delivered at Closing, unless otherwise agreed herein. The Purchase Price and other funds to be disbursed pursuant to this Agreement shall not be disbursed until the Buyer's attorney's (or other designated settlement agent's) receipt of authorization to disburse all necessary funds.

Section 12. Notices: Unless otherwise provided herein, all notices and other communications which may be or are required to be given or made by any party to the other in connection herewith shall be in writing (which shall include electronic mail) and shall be deemed to have been properly given and received (i) on the date delivered in person or (ii) the date deposited in the United States mail, registered or certified, return receipt requested, to the addresses set out in Section 1(g) as to Seller, and in Section 1(h) as to Buyer, or at such other addresses as specified by written notice delivered in accordance herewith, (iii) at such time as the sender performs the final act to send such transmission, in a form capable of being processed by the receiving party's system, to any electronic mail address or facsimile number, if any, provided in Section 1(g) as to Seller, and in Section 1(h) as to Buyer or (iv) on the date deposited with a recognized overnight delivery service, addressed to the addresses set out in Section 1(g) as to Seller, and in Section 1(h) as to Buyer, or at such other addresses as specified by written notice delivered in accordance herewith. If a notice is sent by more than one method, it will be deemed received upon the earlier of the dates of receipt pursuant to this Section.

Section 13. Counterparts; Entire Agreement: This Agreement may be executed in one or more counterparts, which taken together, shall constitute one and the same original document. Copies of original signature pages of this Agreement may be exchanged via

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facsimile or e-mail, and any such copies shall constitute originals. This Agreement constitutes the sole and entire agreement among the parties hereto and no modification of this Agreement shall be binding unless in writing and signed by all parties hereto. The invalidity of one or more provisions of this Agreement shall not affect the validity of any other provisions hereof and this Agreement shall be construed and enforced as if such invalid provisions were not included.

Section 14. Enforceability: This Agreement shall become a contract when signed by both Buyer and Seller and such signing is communicated to both parties; it being expressly agreed that notice given in accordance with Section 12 is not required for effective communication for the purposes of this Section 14. The parties acknowledge and agree that: (i) the initials lines at the bottom of each page of this Agreement are merely evidence of their having reviewed the terms of each page, and (ii) the complete execution of such initials lines shall not be a condition of the effectiveness of this Agreement. This Agreement shall be binding upon and inure to the benefit of the parties, their heirs, successors and assigns and their personal representatives.

Section 15. Adverse Information and Compliance with Laws:

(a) **Seller Knowledge/Assessments:** Seller has no actual knowledge of (i) condemnation(s) affecting or contemplated with respect to the Property; (ii) actions, suits or proceedings pending or threatened against the Property; (iii) changes contemplated in any applicable laws, ordinances or restrictions affecting the Property; or (iv) governmental special assessments, either pending or confirmed, for sidewalk, paving, water, sewer, or other improvements on or adjoining the Property, and no pending or confirmed owners' association special assessments, except as follows (Insert "None" or the identification of any matters relating to (i) through (iv) above, if any):

Note: For purposes of this Agreement: (i) a "special assessment" is defined as a charge against the Property by a governmental authority in addition to ad valorem taxes and recurring governmental service fees levied with such taxes, or by an owners' association in addition to any regular assessment (dues), either of which may be a lien against the Property; a special assessment may be either pending or confirmed; (ii) a "confirmed" special assessment is defined as an assessment that has been approved by a governmental agency or an owners' association for the purpose(s) stated, whether, at the time of Closing, it is payable in a lump sum or future installments; (iii) a "pending" special assessment is defined as an assessment that is under formal consideration by a governmental agency or an owners' association but which has not been approved prior to Closing. Seller shall pay, in full at Closing, all confirmed governmental or association special assessments, provided that the amount thereof can be reasonably determined or estimated. The payment of such determined or estimated amount shall be the final payment between Buyer and Seller as to any confirmed special assessments. If the amount of any special assessment cannot be reasonably determined or estimated, the special assessment shall be deemed a pending special assessment. Buyer shall take title subject to all pending special assessments disclosed by Seller herein, if any.

(b) **Compliance:** To Seller's actual knowledge, (i) Seller has complied with all applicable laws, ordinances, regulations, statutes, rules and restrictions pertaining to or affecting the Property; (ii) performance of the Agreement will not result in the breach of, constitute any default under or result in the imposition of any lien or encumbrance upon the Property under any agreement or other instrument to which Seller is a party or by which Seller or the Property is bound; and (iii) there are no legal actions, suits or other legal or administrative proceedings pending or threatened against the Property, and Seller is not aware of any facts which might result in any such action, suit or other proceeding.

(c) **Owners' Association:** If the Property is subject to regulation by an owners' association, Seller shall deliver the following information to Buyer pursuant to Section 4 as if the same were listed therein (or Seller shall state that Seller does not have same in their possession or that such item is not applicable): (i) the name of the owners' association; (ii) the amount of regular assessments (dues); (iii) the name, address and telephone number of the president of the owners' association or of the association manager or management company; (iv) the owners' association website address; (v) the Seller's statement of account; (vi) the master insurance policy showing the coverage provided and the deductible amount; (vii) copies of any Declaration and/or Restrictive Covenants; (viii) the Rules and Regulations, (ix) the Articles of Incorporation and Bylaws of the owners' association; (x) the current financial statement and budget of the owners' association; (xi) the parking restrictions and information; and (xii) the architectural guidelines. Seller authorizes and directs any owners' association, any management company of the owners' association, any insurance company and any attorney who has previously represented the Seller to release to Buyer, Buyer's agents, representative, closing attorney or lender true and accurate copies of the foregoing items affecting the Property, including any amendments thereto.

Section 16. Survival of Representations and Warranties: All representations, warranties, covenants and agreements made by the parties hereto shall survive the Closing and delivery of the deed. Seller shall, at or within six (6) months after the Closing, and without further consideration, execute, acknowledge and deliver to Buyer such other documents and instruments, and take such other action as Buyer may reasonably request or as may be necessary to more effectively transfer to Buyer the Property described herein in accordance with this Agreement.

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Section 17. Applicable Law: This Agreement shall be construed under the laws of the state in which the Property is located. This form has only been approved for use in North Carolina.

Section 18. Assignment: This Agreement is freely assignable unless otherwise expressly provided on **Exhibit B**.

Section 19. Tax-Deferred Exchange: In the event Buyer or Seller desires to effect a tax-deferred exchange in connection with the conveyance of the Property, Buyer and Seller agree to cooperate in effecting such exchange; provided, however, that the exchanging party shall be responsible for all additional costs associated with such exchange, and provided further that a non-exchanging party shall not assume any additional liability with respect to such tax-deferred exchange. Seller and Buyer shall execute such additional documents, at no cost to the non-exchanging party, as shall be required to give effect to this provision.

Section 20. Memorandum of Contract: Upon request by either party, the parties hereto shall execute a memorandum of contract in recordable form setting forth such provisions hereof (other than the Purchase Price and other sums due) as either party may wish to incorporate. Such memorandum of contract shall contain a statement that it automatically terminates and the Property is released from any effect thereby as of a specific date to be stated in the memorandum (which specific date shall be no later than the date of Closing). The cost of recording such memorandum of contract shall be borne by the party requesting execution of same.

Section 21. Authority: Each signatory to this Agreement represents and warrants that he or she has full authority to sign this Agreement and such instruments as may be necessary to effectuate any transaction contemplated by this Agreement on behalf of the party for whom he or she signs and that his or her signature binds such party.

Section 22. Brokers: Except as expressly provided herein, Buyer and Seller agree to indemnify and hold each other harmless from any and all claims of brokers, consultants or real estate agents by, through or under the indemnifying party for fees or commissions arising out of the sale of the Property to Buyer. Buyer and Seller represent and warrant to each other that: (i) except as to the Brokers designated under Section 1(f) of this Agreement, they have not employed nor engaged any brokers, consultants or real estate agents to be involved in this transaction and (ii) that the compensation of the Brokers is established by and shall be governed by separate agreements entered into as amongst the Brokers, the Buyer and/or the Seller.

Section 23. Attorneys Fees: If legal proceedings are instituted to enforce any provision of this Agreement, the prevailing party in the proceeding shall be entitled to recover from the non-prevailing party reasonable attorneys fees and court costs incurred in connection with the proceeding.

EIFS/SYNTHETIC STUCCO: If the adjacent box is checked, Seller discloses that the Property has been clad previously (either in whole or in part) with an "exterior insulating and finishing system" commonly known as "EIFS" or "synthetic stucco". Seller makes no representations or warranties regarding such system and Buyer is advised to make its own independent determinations with respect to conditions related to or occasioned by the existence of such materials at the Property.

THE NORTH CAROLINA ASSOCIATION OF REALTORS®, INC. AND THE NORTH CAROLINA BAR ASSOCIATION MAKE NO REPRESENTATION AS TO THE LEGAL VALIDITY OR ADEQUACY OF ANY PROVISION OF THIS FORM IN ANY SPECIFIC TRANSACTION. IF YOU DO NOT UNDERSTAND THIS FORM OR FEEL THAT IT DOES NOT PROVIDE FOR YOUR LEGAL NEEDS, YOU SHOULD CONSULT A NORTH CAROLINA REAL ESTATE ATTORNEY BEFORE YOU SIGN IT.

BUYER:

SELLER:

Individual

Individual

Date: _____

Date: _____

Date: _____

Date: _____

Buyer Initials _____ Seller Initials _____

Business Entity

 (Name of Entity)
 By: _____
 Name: _____
 Title: _____
 Date: _____

Business Entity

 (Name of Entity)
 By: _____
 Name: _____
 Title: _____
 Date: _____

WIRE FRAUD WARNING

To Buyers: Before sending any wire, you should call the closing agent’s office to verify the instructions. If you receive wiring instructions for a different bank, branch location, account name or account number, they should be presumed fraudulent. Do not send any funds and contact the closing agent’s office immediately.

To Sellers: If your proceeds will be wired, it is recommended that you provide wiring instructions at closing in writing in the presence of the closing agent. If you are unable to attend closing, you may be required to send an original notarized directive to the closing agent’s office containing the wiring instructions. This directive may be sent with the deed, lien waiver and tax forms if those documents are being prepared for you by the closing agent. At a minimum, you should call the closing agent’s office to provide the wire instructions. The wire instructions should be verified over the telephone via a call to you initiated by the closing agent’s office to ensure that they are not from a fraudulent source.

Whether you are a buyer or a seller, you should call the closing agent’s office at a number that is independently obtained. To ensure that your contact is legitimate, you should not rely on a phone number in an email from the closing agent’s office, your real estate agent or anyone else.

The undersigned hereby acknowledges receipt of the Earnest Money set forth herein and agrees to hold said Earnest Money in accordance with the terms hereof.

 (Name of Escrow Agent)

Date: _____ By: _____

Escrow Agent’s contact/notice information is as follows:

 e-mail address: _____ fax number: _____

except as same may be changed pursuant to Section 12.

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AGREEMENT FOR PURCHASE AND SALE OF LAND

THIS AGREEMENT, including any and all addenda attached hereto ("Agreement"), is by and between

a(n) _____ ("Buyer"), and
(individual or State of formation and type of entity)

a (n) _____ ("Seller").
(individual or State of formation and type of entity)

(NOTE: If the Buyer or Seller is an entity, in order to form a binding agreement and complete a transaction, the entities listed as Buyer or Seller in this Agreement should be validly formed and in good standing with the Secretary of State in the State of formation of the entity.)

FOR AND IN CONSIDERATION OF THE MUTUAL PROMISES SET FORTH HEREIN AND OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, THE PARTIES HERETO AGREE AS FOLLOWS:

Section 1. Terms and Definitions: The terms listed below shall have the respective meaning given them as set forth adjacent to each term.

(a) "**Property**": (Address) _____

Plat Reference: Lot(s) _____, Block or Section _____, as shown on Plat Book or Slide _____ at Page(s) _____, County, consisting of _____ acres.

If this box is checked, "Property" shall mean that property described on **Exhibit A** attached hereto and incorporated herewith by reference,

(For information purposes: (i) the tax parcel number of the Property is: _____; and, (ii) some or all of the Property, consisting of approximately _____ acres, is described in Deed Book _____, Page No. _____, County.)

together with all buildings and improvements thereon and all fixtures and appurtenances thereto.

\$ _____ (b) "**Purchase Price**" shall mean the sum of _____ Dollars,

or, if this box is checked , Purchase Price shall mean the sum of \$ _____ per gross acre ("Price Per Acre") as determined by a survey obtained by Buyer prior to the expiration of the Examination Period ("Survey"). Buyer shall provide a copy of the Survey to Seller not later than the expiration of the Examination Period. The purchase price shall be determined by multiplying the Price Per Acre by the number of gross acres as determined by the Survey. Adjustments to the amounts due under Sections 1(b)(ii) – 1(b)(iii) shall be made, as applicable, to reflect any adjustment in the Purchase Price in accordance with this provision. The Purchase Price shall be payable on the following terms:

\$ _____ (i) "**Earnest Money**" shall mean _____ Dollars or terms as follows: _____

The Earnest Money shall be deposited in escrow with
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This form jointly approved by:
North Carolina Bar Association's Real Property Section
North Carolina Association of REALTORS®, Inc.

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_____ (name of person/entity with whom deposited- "Escrow Agent") within five (5) calendar days of the Contract Date, to be applied as part payment of the Purchase Price of the Property at Closing, or disbursed as agreed upon under the provisions of Section 10 herein. Should Buyer fail to deliver the Earnest Money by the date required hereunder, or should any check or other funds paid by Buyer be dishonored, for any reason, by the institution upon which the payment is drawn, Buyer shall have one (1) banking day after written notice of such dishonor to deliver cash, official bank check, wire transfer or electronic transfer to the Escrow Agent. If Buyer fails to deliver the required funds within one (1) banking day after written notice, then Seller may terminate this Agreement by written notice to Buyer at any time thereafter, provided Seller has not then received acknowledgement by Escrow Agent of its receipt of funds from Buyer. If the Escrow Agent has not delivered to the Seller the acknowledgement of Earnest Money on the last page of this Agreement by the calendar day following the date the Earnest Money is required to be delivered hereunder, it shall be presumed that the Earnest Money was not delivered by the required time (unless, upon the written request of Seller, Escrow Agent can provide proof of its receipt of the Earnest Money by the required time). Buyer and Seller consent to the disclosure by the Escrow Agent, to the parties to this Agreement, the Broker(s) and any Buyer lender, of any material facts pertaining to the Earnest Money.

ANY EARNEST MONEY DEPOSITED BY BUYER IN A TRUST ACCOUNT MAY BE PLACED IN AN INTEREST BEARING TRUST ACCOUNT, AND: (check only ONE box)

ANY INTEREST EARNED THEREON SHALL BE APPLIED AS PART PAYMENT OF THE PURCHASE PRICE OF THE PROPERTY AT CLOSING, OR DISBURSED AS AGREED UPON UNDER THE PROVISIONS OF SECTION 10 HEREIN. (Buyer's Taxpayer Identification Number is: _____)

ANY INTEREST EARNED THEREON SHALL BELONG TO THE ACCOUNT HOLDER IN CONSIDERATION OF THE EXPENSES INCURRED BY MAINTAINING SUCH ACCOUNT AND RECORDS ASSOCIATED THEREWITH.

\$ _____ (ii) **Delivery of a promissory note** secured by a deed of trust, said promissory note in the amount of _____ Dollars being payable over a term of _____ years, with an amortization period of _____ years, payable in monthly installments of principal, together with accrued interest on the outstanding principal balance at the rate of _____ percent (_____ %) per annum in the amount of \$ _____, with the first principal payment beginning on the first day of the month next succeeding the date of Closing, or such other terms as may be set forth on **Exhibit B**. At any time, the promissory note may be prepaid in whole or in part without penalty and without further interest on the amounts prepaid from the date of such prepayment. (NOTE: In the event of Buyer's subsequent default upon a promissory note and deed of trust given hereunder, Seller's remedies may be limited to foreclosure of the Property. If the deed of trust given hereunder is subordinated to senior financing, the material terms of such financing must be set forth on Exhibit B. If such senior financing is subsequently foreclosed, the Seller may have no remedy to recover under the note.)

\$ _____ (iii) **Cash, balance of Purchase Price**, at Closing in the amount of _____ Dollars.

Buyer, at Buyer's expense, shall be entitled to pursue qualification for and approval of any loan Buyer intends to obtain in connection with the transaction contemplated by this Agreement. (Note: Buyer's obligations under this Agreement are not conditioned upon obtaining or closing any loan. Therefore, Buyer is advised to consult with Buyer's lender prior to signing this offer to assure that the Examination Period allows sufficient time for Buyer's lender to provide Buyer sufficient information to decide whether to proceed with or terminate the transaction.)

(c) "**Closing**" shall mean the date of completion of the process detailed in Section 11 of this Agreement. Closing shall occur on or before _____ or _____

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- (d) **“Contract Date”** means the date this Agreement has been fully executed by both Buyer and Seller.
- (e) **“Examination Period”** shall mean the period beginning on the first day after the Contract Date and extending through 5:00pm (based upon time at the locale of the Property) on _____.

TIME IS OF THE ESSENCE AS TO THE EXAMINATION PERIOD.

- (f) **“Broker(s)”** shall mean: _____ (“Listing Agency”),
 _____ (“Listing Agent” – License # _____)
 Acting as: Seller’s Agent; Dual Agent
 and _____ (“Selling Agency”),
 _____ (“Selling Agent”- License # _____)
 Acting as: Buyer’s Agent; Seller’s (Sub)Agent; Dual Agent

- (g) **“Seller’s Notice Address”** shall be as follows:

 e-mail address: _____ fax number: _____
 except as same may be changed pursuant to Section 12.

- (h) **“Buyer’s Notice Address”** shall be as follows:

 e-mail address: _____ fax number: _____
 except as same may be changed pursuant to Section 12.

- (i) If this block is marked, additional terms of this Agreement are set forth on **Exhibit B** attached hereto and incorporated herein by reference. **(Note: Under North Carolina law, real estate agents are not permitted to draft conditions or contingencies to this Agreement.)**
- (j) If this block is marked, additional terms of this Agreement are set forth on the Additional Provisions Addendum (Form 581-T) attached hereto and incorporated herein by reference.
- (k) If this block is marked, additional terms of this Agreement are set forth on the Back Up Agreement Addendum (Form 581A-T) attached hereto and incorporated herein by reference.

Section 2. Sale of Property and Payment of Purchase Price: Seller agrees to sell and Buyer agrees to buy the Property for the Purchase Price.

Section 3. Proration of Expenses and Payment of Costs: Seller and Buyer agree that all property taxes (on a calendar year basis), leases, rents, mortgage payments and utilities or any other assumed liabilities as detailed on attached **Exhibit B, and/or Exhibit C, as applicable**, if any, shall be prorated as of the date of Closing. Seller shall pay for preparation of a deed and all other documents necessary to perform Seller’s obligations under this Agreement, excise tax (revenue stamps), and other conveyance fees or taxes required by law, any fees required for confirming Seller’s account payment information on owners’ association dues or assessments for payment or proration; any fees imposed by an owners’ association and/or a management company as agent of the owners’ association in connection with the transaction contemplated by this Agreement other than those fees required to be paid by Buyer in this Section 3 below, and the following:

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Buyer shall pay recording costs, costs of any title search, title insurance, survey, the cost of any inspections or investigations undertaken by Buyer under this Agreement, charges required by an owners' association declaration to be paid by Buyer for Buyer's future use and enjoyment of the Property, including, without limitation, working capital contributions, membership fees, or charges for Buyer's use of the common elements and/or services provided to Buyer, any costs or charges for determining restrictive covenant compliance, and the following:

Each party shall pay its own attorney's fees.

Deferred/Rollback Taxes: Buyer intends to continue does not intend to continue the existing present use valuation property tax deferral(s) relating to the Property. In the event the Buyer intends to continue the existing present use valuation property tax deferral(s) relating to the Property, Buyer shall be responsible for making all necessary applications for continuation of the existing present use valuation property tax deferral(s) relating to the Property and shall be responsible for payment of any deferred/rollback taxes applicable to the Property.

If Buyer does not intend to continue the existing present use valuation property tax deferral(s) relating to the Property, Seller Buyer shall be responsible for payment of any deferred/rollback taxes applicable to the Property.

Section 4. Deliveries: Seller agrees to use best efforts to deliver to Buyer, as soon as reasonably possible after the Contract Date, copies of all material information relevant to the Property in the possession of Seller, including but not limited to: information regarding matters detailed on Form 502- Land Information Worksheet, title insurance policies (and copies of any documents referenced therein), surveys, soil test reports, environmental surveys or reports, site plans, civil drawings, building plans, maintenance records and copies of all presently effective warranties or service contracts related to the Property. Seller authorizes (1) any attorney presently or previously representing Seller to release and disclose any title insurance policy in such attorney's file to Buyer and both Buyer's and Seller's agents and attorneys; and (2) the Property's title insurer or its agent to release and disclose all materials in the Property's title insurer's (or title insurer's agent's) file to Buyer and both Buyer's and Seller's agents and attorneys. If Buyer does not consummate the Closing for any reason other than Seller default, then Buyer shall return to Seller all hard copy materials delivered by Seller to Buyer pursuant to this Section 4 (or Section 7, if applicable), if any, and shall, upon Seller's request, following release of the Earnest Money, provide to Seller copies of (subject to the ownership and copyright interests of the preparer thereof) any and all studies, reports, surveys and other information relating directly to the Property prepared by or at the request of Buyer, its employees and agents, without any warranty or representation by Buyer as to the contents, accuracy or correctness thereof. Notwithstanding the above provisions regarding delivery and return of information and documentation, should there exist a separate non-disclosure, confidentiality, or similar agreement between Buyer and Seller, the terms of which conflict with this provision insofar as delivery and return of information and documentation, then the terms of such non-disclosure, confidentiality, or similar agreement shall control as to the delivery and return of information and documentation.

Section 5. Evidence of Title: Seller agrees to convey fee simple insurable title to the Property without exception for mechanics' liens, free and clear of all liens, encumbrances and defects of title other than: (a) zoning ordinances affecting the Property, (b) Leases (as defined in Section 7, if applicable) and (c) specific instruments on the public record at the Contract Date agreed to by Buyer (not objected to by Buyer prior to the end of the Examination Period), which specific instruments shall be enumerated in the deed referenced in Section 11 (items 5(a), 5(b) and 5(c) being collectively "Permitted Exceptions"); provided that Seller shall be required to satisfy, at or prior to Closing, any encumbrances that may be satisfied by the payment of a fixed sum of money, such as deeds of trust, mortgages or statutory liens. Seller shall not enter into or record any instrument that affects the Property after the Contract Date without the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed.

Section 6. Conditions: This Agreement and the rights and obligations of the parties under this Agreement are hereby made expressly conditioned upon fulfillment (or waiver by Buyer, whether explicit or implied) of the following conditions:

(a) **Title Examination:** After the Contract Date, Buyer shall, at Buyer's expense, cause a title examination to be made of the Property before the end of the Examination Period. In the event that such title examination shall show that Seller's title is not fee simple insurable, subject only to Permitted Exceptions, then Buyer shall promptly notify Seller in writing of all such title defects and exceptions, in no case later than the end of the Examination Period, and Seller shall have thirty (30) days to cure said noticed defects. If Seller does not cure the defects or objections within thirty (30) days of notice thereof, then Buyer may terminate this Agreement and receive a return of Earnest Money (notwithstanding that the Examination Period may have expired). If Buyer is to purchase title insurance, the insuring company must be licensed to do business in the state in which the Property is located. Title to the Property must be insurable at regular rates, subject only to standard exceptions and Permitted Exceptions.

(b) **Same Condition:** If the Property is not in substantially the same condition at Closing as of the date of the offer, reasonable wear and tear excepted, then the Buyer may (i) terminate this Agreement and receive a return of the Earnest Money or (ii) proceed to Closing whereupon Buyer shall be entitled to receive, in addition to the Property, any of the Seller's insurance proceeds

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payable on account of the damage or destruction applicable to the Property.

(c) **Inspections:** Buyer, its agents or representatives, at Buyer's expense and at reasonable times during normal business hours, shall have the right to enter upon the Property for the purpose of investigating matters such as those detailed on Form 502- Land Information Worksheet, conducting timber cruises, and examining and surveying the Property; provided, however, that Buyer shall not conduct any invasive testing of any nature without the prior express written approval of Seller as to each specific invasive test intended to be conducted by Buyer. Buyer shall conduct all such on-site inspections, examinations, testing, timber cruises and surveying of the Property in a good and workmanlike manner, at Buyer's expense, shall repair any damage to the Property caused by Buyer's entry and on-site inspections and shall conduct same in a manner that does not unreasonably interfere with Seller's or any tenant's use and enjoyment of the Property. In that respect, Buyer shall make reasonable efforts to undertake on-site inspections outside of the hours Seller's or any tenant's business is open to the public. Buyer shall provide Seller or any tenant (as applicable) reasonable advance notice of and Buyer shall cause its agents or representatives and third party service providers (e.g. inspectors, surveyors, etc.) to give reasonable advance notice of any entry onto the Property. Buyer shall be obligated to observe and comply with any terms of any tenant lease which conditions access to such tenant's space at the Property. Upon Seller's request, Buyer shall provide to Seller evidence of general liability insurance. Buyer shall also have a right to review and inspect all contracts or other agreements affecting or related directly to the Property and shall be entitled to review such books and records of Seller that relate directly to the operation and maintenance of the Property, provided, however, that Buyer shall not disclose any information regarding this Property (or any tenant therein) unless required by law, and the same shall be regarded as confidential, to any person, except to its attorneys, accountants, lenders and other professional advisors, in which case Buyer shall obtain their agreement to maintain such confidentiality. Buyer assumes all responsibility for the acts of itself and its agents or representatives in exercising its rights under this Section 6(c) and agrees to indemnify and hold Seller harmless from any damages resulting therefrom. This indemnification obligation of Buyer shall survive the Closing or earlier termination of this Agreement. Except as provided in Section 6(a) above, Buyer shall have from the Contract Date through the end of the Examination Period to perform the above inspections, examinations and testing. **IF BUYER CHOOSES NOT TO PURCHASE THE PROPERTY, FOR ANY REASON OR NO REASON, AND PROVIDES WRITTEN NOTICE TO SELLER THEREOF PRIOR TO THE EXPIRATION OF THE EXAMINATION PERIOD, THEN THIS AGREEMENT SHALL TERMINATE, AND BUYER SHALL RECEIVE A RETURN OF THE EARNEST MONEY.**

Section 7. Leases (Check one of the following, as applicable):

If this box is checked, Seller affirmatively represents and warrants that there are no Leases (as hereinafter defined) affecting the Property.

If this box is checked, Seller discloses that there are one or more leases affecting the Property ("Leases"), and the following provisions are hereby made a part of this Agreement.

(a) A list of all Leases shall be set forth on **Exhibit C**. Seller represents and warrants that, as of the Contract Date, there are no other Leases, oral or written, recorded or not, nor any subleases affecting the Property, except as set forth on **Exhibit C**. Unless written consent is given by Buyer, Seller will not enter in to any Lease affecting the Property nor terminate any Lease in Exhibit C during the effectiveness of this Agreement. Buyer agrees to take no action which would affect any lease in Exhibit C prior to Closing;

(b) Seller shall deliver copies of any Leases to Buyer pursuant to Section 3 as if the Leases were listed therein;

(c) Seller represents and warrants that, as of the Contract Date, there are no current defaults (or any existing situation which, with the passage of time, or the giving of notice, or both, or at the election of either landlord or tenant could constitute a default) either by Seller, as landlord, or by any tenant under any Lease ("Lease Default"). In the event there is any Lease Default as of the Contract Date, Seller agrees to provide Buyer with a detailed description of the situation in accordance with Section 3. Seller agrees not to commit a Lease Default as Landlord after the Contract Date; and agrees further to notify Buyer immediately in the event a Lease Default arises or is claimed, asserted or threatened to be asserted by either Seller or a tenant under the Lease.

(d) During the Examination Period, Buyer and Seller shall cooperate in good faith to determine if any Lease shall be terminated prior to Closing or shall continue after Closing. As to any Lease determined to continue after Closing, Seller shall deliver an assignment of Seller's interest in such Lease to Buyer in form and content acceptable to Buyer (with tenant's written consent and acknowledgement, if required under the Lease). Seller agrees to deliver such assignment of Lease at or before Closing, with any security deposits held by Seller under any Leases to be transferred or credited to Buyer at or before Closing. The assignment shall provide: (i) that Seller shall defend, indemnify and hold Buyer harmless from claims, losses, damages and liabilities (including, without limitation, court costs and attorneys' fees) asserted against or incurred by Buyer which are caused by or the result of any default by Seller under any Lease prior to the date of Closing, and (ii) that Buyer shall defend, indemnify and hold Seller harmless from claims, losses, damages and liabilities (including, without limitation, court costs and attorneys' fees) asserted against or incurred by Seller which are caused by or the result of any default by Buyer under any Lease after the date of Closing.

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(e) Seller also agrees to work diligently to obtain any tenant signatures on any estoppel certificates in such form as Buyer may reasonably request and to work diligently to obtain any subordination, nondisturbance and attornment agreements in such form as Buyer may reasonably request.

Section 8. Environmental/Physical Aspects of Property: Seller represents and warrants that it has no actual knowledge of the presence or disposal, except as in accordance with applicable law, within any structures on the Property or on the Property of hazardous or toxic waste or substances, which are defined as those substances, materials, and wastes, including, but not limited to: those substances, materials and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR Part 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302.4) and amendments thereto, or such substances, materials and wastes, which are or become regulated under any applicable local, state or federal law, including, without limitation, any material, waste or substance which is (i) petroleum, (ii) asbestos, (iii) polychlorinated biphenyls, (iv) designated as a Hazardous Substance pursuant to Section 311 of the Clean Water Act of 1977 (33 U.S.C. §1321) or listed pursuant to Section 307 of the Clean Water Act of 1977 (33 U.S.C. §1317), (v) defined as a hazardous waste pursuant to Section 1004 of the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §6903) or (vi) defined as a hazardous substance pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §9601). Seller has no actual knowledge of any contamination of the Property from such substances as may have been disposed of or stored on neighboring tracts.

Section 9. Risk of Loss/Damage/Repair: Until Closing, the risk of loss or damage to the Property, except as otherwise provided herein, shall be borne by Seller. Except as to maintaining the Property in its same condition, Seller shall have no responsibility for the repair of the Property, including any improvements, unless the parties hereto agree in writing.

Section 10. Earnest Money Disbursement: In the event that any condition hereto is not satisfied, then the Earnest Money shall be refunded to Buyer. In the event of breach of this Agreement by Seller, the Earnest Money shall be refunded to Buyer upon Buyer's request, but such return shall not affect any other remedies available to Buyer for such breach. In the event of breach of this Agreement by Buyer, the Earnest Money shall be paid to Seller as liquidated damages and as Seller's sole and exclusive remedy for such breach, but without limiting Seller's rights under Section 6(e) or Section 22 of this Agreement. It is acknowledged by the parties that payment of the Earnest Money to Seller in the event of a breach of this Agreement by Buyer is compensatory and not punitive, such amount being a reasonable estimation of the actual loss that Seller would incur as a result of such breach. The payment of the Earnest Money to Seller shall not constitute a penalty or forfeiture but actual compensation for Seller's anticipated loss, both parties acknowledging the difficulty determining Seller's actual damages for such breach.

NOTE: In the event of a dispute between Seller and Buyer over the disposition of the Earnest Money held in escrow, a licensed real estate broker is required by state law (and Escrow Agent, if not a broker, hereby agrees) to retain the Earnest Money in the Escrow Agent's trust or escrow account until Escrow Agent has obtained a written release from the parties consenting to its disposition or until disbursement is ordered by a court of competent jurisdiction. Alternatively, if a broker or an attorney licensed to practice law in North Carolina is holding the Earnest Money, the broker or attorney may deposit the disputed monies with the appropriate clerk of court in accordance with the provisions of N.C.G.S. §93A-12.

Seller and Buyer hereby agree and acknowledge that the Escrow Agent assumes no liability in connection with the holding of the Earnest Money pursuant hereto except for negligence or willful misconduct of Escrow Agent. Escrow Agent shall not be responsible for the validity, correctness or genuineness of any document or notice referred to under this Agreement. Seller and Buyer hereby agree to indemnify, protect, save and hold harmless Escrow Agent and its successors, assigns and agents pursuant to this Agreement, from any and all liabilities, obligations, losses, damages, claims, actions, suits, costs or expenses (including attorney fees) of whatsoever kind or nature imposed on, incurred by or asserted against Escrow Agent which in any way relate to or arise out of the execution and delivery of this Agreement and any action taken hereunder; provided, however, that Seller and Buyer shall have no such obligation to indemnify, save and hold harmless Escrow Agent for any liability incurred by, imposed upon or established against it as a result of Escrow Agent's negligence or willful misconduct.

Section 11. Closing: At or before Closing, Seller shall deliver to Buyer a special warranty deed unless otherwise specified on **Exhibit B** and other documents customarily executed or delivered by a seller in similar transactions, including without limitation, an owner's affidavit, lien waiver forms (and such other lien related documentation as shall permit the Property to be conveyed free and clear of any claim for mechanics' liens) and a non-foreign status affidavit (pursuant to the Foreign Investment in Real Property Tax Act), and Buyer shall cause to be delivered the funds necessary to pay to Seller the Purchase Price. The Closing shall be conducted by Buyer's attorney or handled in such other manner as the parties hereto may mutually agree in writing. Possession shall be delivered at Closing, unless otherwise agreed herein. The Purchase Price and other funds to be disbursed pursuant to this Agreement shall not be disbursed until the Buyer's attorney's (or other designated settlement agent's) receipt of authorization to disburse all necessary funds.

Section 12. Notices: Unless otherwise provided herein, all notices and other communications which may be or are required to be given or made by any party to the other in connection herewith shall be in writing (which shall include electronic mail) and shall be deemed to have been properly given and received (i) on the date delivered in person or (ii) the date deposited in the United States

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mail, registered or certified, return receipt requested, to the addresses set out in Section 1(g) as to Seller, and in Section 1(h) as to Buyer, or at such other addresses as specified by written notice delivered in accordance herewith, (iii) at such time as the sender performs the final act to send such transmission, in a form capable of being processed by the receiving party's system, to any electronic mail address or facsimile number, if any, provided in Section 1(g) as to Seller, and in Section 1(h) as to Buyer or (iv) on the date deposited with a recognized overnight delivery service, addressed to the addresses set out in Section 1(g) as to Seller, and in Section 1(h) as to Buyer, or at such other addresses as specified by written notice delivered in accordance herewith. If a notice is sent by more than one method, it will be deemed received upon the earlier of the dates of receipt pursuant to this Section.

Section 13. Counterparts; Entire Agreement: This Agreement may be executed in one or more counterparts, which taken together, shall constitute one and the same original document. Copies of original signature pages of this Agreement may be exchanged via facsimile or e-mail, and any such copies shall constitute originals. This Agreement constitutes the sole and entire agreement among the parties hereto and no modification of this Agreement shall be binding unless in writing and signed by all parties hereto. The invalidity of one or more provisions of this Agreement shall not affect the validity of any other provisions hereof and this Agreement shall be construed and enforced as if such invalid provisions were not included.

Section 14. Enforceability: This Agreement shall become a contract when signed by both Buyer and Seller and such signing is communicated to both parties; it being expressly agreed that notice given in accordance with Section 12 is not required for effective communication for the purposes of this Section 14. The parties acknowledge and agree that: (i) the initials lines at the bottom of each page of this Agreement are merely evidence of their having reviewed the terms of each page, and (ii) the complete execution of such initials lines shall not be a condition of the effectiveness of this Agreement. This Agreement shall be binding upon and inure to the benefit of the parties, their heirs, successors and assigns and their personal representatives.

Section 15. Adverse Information and Compliance with Laws:

(a) **Seller Knowledge/Assessments:** Seller has no actual knowledge of (i) condemnation(s) affecting or contemplated with respect to the Property; (ii) actions, suits or proceedings pending or threatened against the Property; (iii) changes contemplated in any applicable laws, ordinances or restrictions affecting the Property; (iv) governmental special assessments, either pending or confirmed, for sidewalk, paving, water, sewer, or other improvements on or adjoining the Property, and no pending or confirmed owners' association special assessments or (v) any caves, mineshafts, tunnels, fissures, open or abandoned wells, gravesites, pet cemeteries, animal burial pits or landfill operations (past or present) located at the Property, except as follows (Insert "None" or the identification of any matters relating to (i) through (v) above, if any):

Note: For purposes of this Agreement: (i) a "special assessment" is defined as a charge against the Property by a governmental authority in addition to ad valorem taxes and recurring governmental service fees levied with such taxes, or by an owners' association in addition to any regular assessment (dues), either of which may be a lien against the Property; a special assessment may be either pending or confirmed; (ii) a "confirmed" special assessment is defined as an assessment that has been approved by a governmental agency or an owners' association for the purpose(s) stated, whether, at the time of Closing, it is payable in a lump sum or future installments; (iii) a "pending" special assessment is defined as an assessment that is under formal consideration by a governmental agency or an owners' association but which has not been approved prior to Closing. Seller shall pay, in full at Closing, all confirmed governmental or association special assessments, provided that the amount thereof can be reasonably determined or estimated. The payment of such determined or estimated amount shall be the final payment between Buyer and Seller as to any confirmed special assessments. If the amount of any special assessment cannot be reasonably determined or estimated, the special assessment shall be deemed a pending special assessment. Buyer shall take title subject to all pending special assessments disclosed by Seller herein, if any.

(b) **Compliance:** To Seller's actual knowledge, (i) Seller has complied with all applicable laws, ordinances, regulations, statutes, rules and restrictions pertaining to or affecting the Property; (ii) performance of the Agreement will not result in the breach of, constitute any default under or result in the imposition of any lien or encumbrance upon the Property under any agreement or other instrument to which Seller is a party or by which Seller or the Property is bound; and (iii) there are no legal actions, suits or other legal or administrative proceedings pending or threatened against the Property, and Seller is not aware of any facts which might result in any such action, suit or other proceeding.

(c) **Owners' Association:** If the Property is subject to regulation by an owners' association, Seller shall deliver the following information to Buyer pursuant to Section 4 as if the same were listed therein (or Seller shall state that Seller does not have same in their possession or that such item is not applicable): (i) the name of the owners' association; (ii) the amount of regular assessments (dues); (iii) the name, address and telephone number of the president of the owners' association or of the association manager or management company; (iv) the owners' association website address; (v) the Seller's statement of account; (vi) the master insurance policy showing the coverage provided and the deductible amount; (vii) copies of any Declaration and/or Restrictive Covenants; (viii) the Rules and Regulations, (ix) the Articles of Incorporation and Bylaws of the owners' association; (x) the current financial statement

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and budget of the owners' association; (xi) the parking restrictions and information; and (xii) the architectural guidelines. Seller authorizes and directs any owners' association, any management company of the owners' association, any insurance company and any attorney who has previously represented the Seller to release to Buyer, Buyer's agents, representative, closing attorney or lender true and accurate copies of the foregoing items affecting the Property, including any amendments thereto.

Section 16. Survival of Representations and Warranties: All representations, warranties, covenants and agreements made by the parties hereto shall survive the Closing and delivery of the deed. Seller shall, at or within six (6) months after the Closing, and without further consideration, execute, acknowledge and deliver to Buyer such other documents and instruments, and take such other action as Buyer may reasonably request or as may be necessary to more effectively transfer to Buyer the Property described herein in accordance with this Agreement.

Section 17. Applicable Law: This Agreement shall be construed under the laws of the state in which the Property is located. This form has only been approved for use in North Carolina.

Section 18. Assignment: This Agreement is freely assignable unless otherwise expressly provided on Exhibit B.

Section 19. Tax-Deferred Exchange: In the event Buyer or Seller desires to effect a tax-deferred exchange in connection with the conveyance of the Property, Buyer and Seller agree to cooperate in effecting such exchange; provided, however, that the exchanging party shall be responsible for all additional costs associated with such exchange, and provided further, that a non-exchanging party shall not assume any additional liability with respect to such tax-deferred exchange. Seller and Buyer shall execute such additional documents, at no cost to the non-exchanging party, as shall be required to give effect to this provision.

Section 20. Memorandum of Contract: Upon request by either party, the parties hereto shall execute a memorandum of contract in recordable form setting forth such provisions hereof (other than the Purchase Price and other sums due) as either party may wish to incorporate. Such memorandum of contract shall contain a statement that it automatically terminates and the Property is released from any effect thereby as of a specific date to be stated in the memorandum (which specific date shall be no later than the date of Closing). The cost of recording such memorandum of contract shall be borne by the party requesting execution of same.

Section 21. Authority: Each signatory to this Agreement represents and warrants that he or she has full authority to sign this Agreement and such instruments as may be necessary to effectuate any transaction contemplated by this Agreement on behalf of the party for whom he or she signs and that his or her signature binds such party.

Section 22. Brokers: Except as expressly provided herein, Buyer and Seller agree to indemnify and hold each other harmless from any and all claims of brokers, consultants or real estate agents by, through or under the indemnifying party for fees or commissions arising out of the sale of the Property to Buyer. Buyer and Seller represent and warrant to each other that: (i) except as to the Brokers designated under Section 1(f) of this Agreement, they have not employed nor engaged any brokers, consultants or real estate agents to be involved in this transaction and (ii) that the compensation of the Brokers is established by and shall be governed by separate agreements entered into as amongst the Brokers, the Buyer and/or the Seller.

Section 23. Attorneys Fees: If legal proceedings are instituted to enforce any provision of this Agreement, the prevailing party in the proceeding shall be entitled to recover from the non-prevailing party reasonable attorneys fees and court costs incurred in connection with the proceeding.

THE NORTH CAROLINA ASSOCIATION OF REALTORS®, INC. AND THE NORTH CAROLINA BAR ASSOCIATION MAKE NO REPRESENTATION AS TO THE LEGAL VALIDITY OR ADEQUACY OF ANY PROVISION OF THIS FORM IN ANY SPECIFIC TRANSACTION. IF YOU DO NOT UNDERSTAND THIS FORM OR FEEL THAT IT DOES NOT PROVIDE FOR YOUR LEGAL NEEDS, YOU SHOULD CONSULT A NORTH CAROLINA REAL ESTATE ATTORNEY BEFORE YOU SIGN IT.

| | |
|-------------------|-------------------|
| BUYER: | SELLER: |
| Individual | Individual |
| _____ | _____ |
| Date: _____ | Date: _____ |
| _____ | _____ |
| Date: _____ | Date: _____ |

Buyer Initials _____ Seller Initials _____

Business Entity

 (Name of Entity)
 By: _____
 Name: _____
 Title: _____
 Date: _____

Business Entity

 (Name of Entity)
 By: _____
 Name: _____
 Title: _____
 Date: _____

WIRE FRAUD WARNING

To Buyers: Before sending any wire, you should call the closing agent's office to verify the instructions. If you receive wiring instructions for a different bank, branch location, account name or account number, they should be presumed fraudulent. Do not send any funds and contact the closing agent's office immediately.

To Sellers: If your proceeds will be wired, it is recommended that you provide wiring instructions at closing in writing in the presence of the closing agent. If you are unable to attend closing, you may be required to send an original notarized directive to the closing agent's office containing the wiring instructions. This directive may be sent with the deed, lien waiver and tax forms if those documents are being prepared for you by the closing agent. At a minimum, you should call the closing agent's office to provide the wire instructions. The wire instructions should be verified over the telephone via a call to you initiated by the closing agent's office to ensure that they are not from a fraudulent source.

Whether you are a buyer or a seller, you should call the closing agent's office at a number that is independently obtained. To ensure that your contact is legitimate, you should not rely on a phone number in an email from the closing agent's office, your real estate agent or anyone else.

The undersigned hereby acknowledges receipt of the Earnest Money set forth herein and agrees to hold said Earnest Money in accordance with the terms hereof.

 (Name of Escrow Agent)

Date: _____ By: _____

Escrow Agent's contact/notice information is as follows:

 e-mail address: _____ fax number: _____

except as same may be changed pursuant to Section 12.

STANDARD FORM 592L-T



VACANT LAND COMMERCIAL LEASE AGREEMENT

(Note: This form is not intended to be used as a Sublease and SHOULD NOT be used in Sublease circumstances)

THIS COMMERCIAL LEASE AGREEMENT, including any and all addenda attached hereto ("Lease"), is by and between _____, a(n) _____ ("Landlord"), (individual or State of formation and type of entity) whose address is _____, and _____, a(n) _____ ("Tenant"), (individual or State of formation and type of entity) whose address is _____

If this box is checked, the obligations of Tenant under this Lease are secured by the guaranty of _____ (name(s) of guarantor(s)) attached hereto and incorporated herein by reference. (Note: Attach Guaranty Agreement (Form 595-T) or attorney-drafted guaranty).

For and in consideration of the mutual promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

LAND

1. Landlord leases unto Tenant, and Tenant hereby leases and takes upon the terms and conditions which hereinafter appear, the following described property, including any improvements located thereon (hereinafter called the "Land"), to wit:

(Address): _____

All A portion of the property in Deed Reference: Book _____, Page No. _____, _____ County, consisting of approximately _____ acres.

Plat Reference: Lot(s) _____, Block or Section _____, as shown on Plat Book or Slide _____ at Page(s) _____, _____ County, consisting of _____ acres.

If this box is checked, Land shall mean that property described on Exhibit A attached hereto and incorporated herewith by reference.

(For information purposes only, the tax parcel number of the Land is: _____)

TERM

2. The term of this Lease shall commence on _____, 20____ ("Lease Commencement Date"), and shall end at 11:59 p.m. (based upon the time at the locale of the Land) on _____, 20____, unless sooner terminated as herein provided. The first Lease Year Anniversary shall be the date twelve (12) calendar months after the first day of the first full month immediately following the Lease Commencement Date and successive Lease Year Anniversaries shall be the date twelve (12) calendar months from the previous Lease Year Anniversary.

If this box is checked, Tenant shall have the option of renewing this Lease, upon written notice given to Landlord at least _____ days prior to the end of the then expiring term of this Lease, for _____ additional term(s) of _____ years each.

If this box is checked, Tenant shall have the option of renewing this Lease, upon written notice given to Landlord at least _____ days prior to the end of the then expiring term of this Lease, for additional term(s) as specified on Exhibit B.

Option to Lease- If this box is checked, Tenant, upon the payment of the sum of \$ _____ (which sum is not rental or security deposit hereunder, but is consideration for this Option to Lease and is non-refundable under any circumstances) shall have a period of _____ days prior to the Lease Commencement Date ("Option Period") in which to



inspect the Land and make inquiry regarding such sign regulations, zoning regulations, utility availability, private restrictions or permits or other regulatory requirements as Tenant may deem appropriate to satisfy itself as to the use of the Land for Tenant's intended purposes. Tenant shall conduct all such on-site inspections, examinations, inquiries and other review of the Land in a good and workmanlike manner, shall repair any damage to the Land caused by Tenant's entry and on-site inspections and shall conduct same in a manner that does not unreasonably interfere with Landlord's or any tenant's use and enjoyment of the Land. In that respect, Tenant shall make reasonable efforts to undertake on-site inspections outside of the hours any tenant's business is open to the public and shall give prior notice to the tenant on the Land of any entry onto the Land for the purpose of conducting inspections. Upon Landlord's request, Tenant shall provide to Landlord evidence of general liability insurance. Tenant shall also have a right to review and inspect all contracts or other agreements affecting or related directly to the Land and shall be entitled to review such books and records of Landlord that relate directly to the operation and maintenance of the Land, provided, however, that Tenant shall not disclose any information regarding the Land (or any tenant therein) unless required by law and the same shall be regarded as confidential, to any person, except to its attorneys, accountants, lenders and other professional advisors, in which case Tenant shall obtain their agreement to maintain such confidentiality. Tenant assumes all responsibility for the acts of itself, its agents or representatives in exercising its rights under this Option to Lease and agrees to indemnify and hold Seller harmless from any damages resulting therefrom. This indemnification obligation of Tenant shall survive the termination of this Option to Lease or this Lease. Tenant shall, at Tenant's expense, promptly repair any damage to the Land caused by Tenant's entry and on-site inspections. **IF TENANT CHOOSES NOT TO LEASE THE LAND, FOR ANY REASON OR NO REASON, AND PROVIDES WRITTEN NOTICE TO LANDLORD THEREOF PRIOR TO THE EXPIRATION OF THE OPTION PERIOD, THEN THIS LEASE SHALL TERMINATE AND NEITHER PARTY SHALL HAVE ANY FURTHER OBLIGATIONS HEREUNDER AND LANDLORD SHALL RETURN TO TENANT ANY RENTAL OR SECURITY DEPOSIT PAID TO LANDLORD HEREUNDER.** Tenant shall be deemed to have exercised its Option to Lease and to be bound under the terms of this Lease if (i) Tenant shall occupy the Land prior to the expiration of the Option Period, whereupon the date of occupancy shall be deemed the Lease Commencement Date, or (ii) Tenant shall not provide written notice to Landlord of its termination of this Lease prior to the expiration of the Option Period.

RENTAL

3. Beginning on _____ ("Rent Commencement Date"), Tenant agrees to pay Landlord (or its Agent as directed by Landlord), without notice, demand, deduction or set off, an annual rental of \$ _____, payable in equal monthly installments of \$ _____, in advance on the first day of each calendar month during the term hereof. Upon execution of this Lease, Tenant shall pay to Landlord the first monthly installment of rent due hereunder. Rental for any period during the term hereof which is less than one month shall be the pro-rated portion of the monthly installment of rental due, based upon a 30 day month.

If this box is checked, the annual rental payable hereunder (and accordingly the monthly installments) shall be adjusted every _____ Lease Year Anniversary by _____% over the amount then payable hereunder. In the event renewal of this Lease is provided for in Section 2 hereof and effectively exercised by Tenant, the rental adjustments provided herein shall apply to the term of the Lease so renewed, or

If this box is checked, the annual rental payable hereunder (and accordingly the monthly installments) shall be adjusted every _____ Lease Year Anniversary by the greater of: (i) _____ percent (_____%) over the amount then payable hereunder, or, (ii) the percentage increase (but not any decrease) in the numerical index of the "Consumer Price Index for All Urban Consumers" (1982-84 = 100) published by the Bureau of Labor Statistics of the United States Department of Labor ("CPI") for the immediately preceding twelve (12) month period over the amount then payable hereunder.

If this box is checked, the annual rental payable hereunder (and accordingly the monthly installments) shall be adjusted every _____ Lease Year Anniversary by \$ _____ over the amount then payable hereunder. In the event renewal of this Lease is provided for in Section 2 hereof and effectively exercised by Tenant, the rental adjustments provided herein shall apply to the term of the Lease so renewed.

If this box is checked, the annual rental payable hereunder (and accordingly the monthly installments) shall be adjusted as provided on **Exhibit B**.

If this box is checked, Tenant shall pay all rental to Landlord's Agent at the following address:

LATE CHARGES

4. If Landlord fails to receive full rental payment within _____ days after it becomes due, Tenant shall pay Landlord, as additional rental, a late charge equal to _____ percent (_____%) of the overdue amount or \$ _____ whichever is greater, plus any actual bank fees incurred for dishonored payments. The parties agree that such a late charge represents a fair and reasonable estimate of the cost Landlord will incur by reason of such late payment.

Tenant Initials _____ Landlord Initials _____

SECURITY DEPOSIT

5. Upon the execution of this Lease, Tenant shall deposit with Landlord the sum of \$ _____ as a security deposit which shall be held by Landlord as security for the full and faithful performance by Tenant of each and every term, covenant and condition of this Lease. The security deposit does not represent payment of and Tenant shall not presume application of same as payment of the last monthly installment of rental due under this Lease. Landlord shall have no obligation to segregate or otherwise account for the security deposit except as provided in this Section 5. If any of the rental or other charges or sums payable by Tenant shall be over-due and unpaid or should payments be made by Landlord on behalf of Tenant, or should Tenant fail to perform any of the terms of this Lease, then Landlord may, at its option, appropriate and apply the security deposit, or so much thereof as may be necessary, to compensate toward the payment of the rents, charges or other sums due from Tenant, or towards any loss, damage or expense sustained by Landlord resulting from such default on the part of the Tenant; and in such event Tenant upon demand shall restore the security deposit to the amount set forth above in this Section 5. In the event Tenant furnishes Landlord with proof that all utility bills and other bills of Tenant related to the Land have been paid through the date of Lease termination, and performs all of Tenant's other obligations under this Lease, the security deposit shall be returned to Tenant within sixty (60) days after the date of the expiration or sooner termination of the term of this Lease and the surrender of the Land by Tenant in compliance with the provisions of this Lease.

If this box is checked, Agent shall hold the security deposit in trust and shall be entitled to the interest, if any, thereon.

UTILITIES

6. Landlord warrants that the following utilities are available on the Land: sewer/septic water electric gas. Should Tenant wish to use any of these utilities, Tenant must pay for any connecting costs or improvements necessary to the Land for such utilities. Any improvements to the Land relating to utilities are subject to Landlord's rights in paragraphs 13 and 14 herein.

RULES AND REGULATIONS

7. If this box is checked, the rules and regulations attached hereto ("Rules and Regulations") are made a part of this Lease. Tenant agrees to comply with all Rules and Regulations of Landlord in connection with the Land which are in effect at the time of the execution of the Lease or which may be from time to time promulgated by Landlord in its reasonable discretion, provided notice of such new Rules and Regulations is given to Tenant in writing and the same are not in conflict with the terms and conditions of this Lease.

PERMITTED USE

8. The permitted use of the Land shall be: _____ ("Permitted Use"). The Land shall be used and wholly occupied by Tenant solely for the purposes of conducting the Permitted Use, and the Land shall not be used for any other purposes unless Tenant obtains Landlord's prior written approval of any change in use.

Landlord makes no representation or warranty regarding the suitability of the Land for or the legality (under zoning or other applicable ordinances) of the Permitted Use for the Land, provided however, that Landlord does represent that it has no contractual obligations with other parties which will materially interfere with or prohibit the Permitted Use of Tenant on the Land. Tenant is advised to verify whether the Land can be used for the Permitted Use prior to signing this Lease. At Tenant's sole expense, Tenant shall procure, maintain, and make available for Landlord's inspection from time to time any governmental license(s) or permit(s) required for the proper and lawful conduct of Tenant's business in the Land.

Tenant shall not cause or permit any waste to occur in the Land and shall not overload any system or utilities serving the Land. Tenant shall keep the Land, and every part thereof, in a clean and wholesome condition, free from any objectionable noises, loud music, objectionable odors, or nuisances.

TAXES AND INSURANCE

(Note: The following box should only be checked if there are no boxes checked below in Section 9.)
 If this box is checked, Tenant shall have no responsibility to reimburse Landlord for taxes or insurance.

9. Landlord shall pay all taxes (including but not limited to, ad valorem taxes, special assessments and any other governmental charges) on the Land and shall procure and pay for such commercial general liability, broad form fire and extended and special perils insurance with respect to the Land, and any improvements to the land, as Landlord in its reasonable discretion may deem appropriate. Tenant shall reimburse Landlord for all taxes and insurance as provided herein within fifteen (15) days after receipt of notice from Landlord as to the amount due. Tenant shall be solely responsible for insuring Tenant's personal and business property and for paying any taxes or governmental assessments levied thereon. Tenant shall reimburse Landlord for taxes and insurance during the term of this Lease, and any extension or renewal thereof. **If boxes are checked below, the manner of reimbursement shall be as indicated:**

Taxes

Tenant Initials _____ Landlord Initials _____

The amount by which all taxes (including but not limited to, ad valorem taxes, special assessments and any other governmental charges) on the Land for each tax year exceed all taxes on the Land for the tax year _____; or

All taxes (including but not limited to, ad valorem taxes, special assessments and any other governmental charges) on the Land for each tax year.

If one of the two boxes above is checked, then if the final Lease Year of the term fails to coincide with the tax year, any excess for the tax year during which the term ends shall be reduced by the pro rata part of such tax year beyond the Lease term. If such taxes for the year in which the Lease terminates are not ascertainable before payment of the last month's rental, then the amount of such taxes assessed against the Property for the previous tax year shall be used as a basis for determining the pro rata share, if any, to be paid by Tenant for that portion of the last Lease Year.

If one of the two boxes above is checked, Tenant shall reimburse Landlord for taxes by paying to Landlord, beginning on the Rent Commencement Date and on the first day of each calendar month during the term hereof, an amount equal to one-twelfth (1/12) of the then current tax payments for the Land. Upon receipt of bills, statements or other evidence of taxes due, Landlord shall pay or cause to be paid the taxes. If at any time the reimbursement payments by Tenant hereunder do not equal the amount of taxes paid by Landlord, Tenant shall upon demand pay to Landlord an amount equal to the deficiency or Landlord shall refund to Tenant any overpayment (as applicable) as documented by Landlord. Landlord shall have no obligation to segregate or otherwise account for the tax reimbursements paid hereunder except as provided in this Section 9.

Insurance

the excess cost of commercial general liability, broad form fire and extended and special perils insurance with respect to the Land over the cost of the first year of the Lease term for each subsequent year during the term of this Lease; or

the cost of all commercial general liability, broad form fire and extended and special perils insurance with respect to the Land.

If one of the two boxes above is checked, Tenant shall reimburse Landlord for insurance by paying to Landlord, beginning on the Rent Commencement Date and on the first day of each calendar month during the term hereof, an amount equal to one-twelfth (1/12) of the then current insurance premiums for the Land. Upon receipt of bills, statements or other evidence of insurance premiums due, Landlord shall pay or cause to be paid the insurance premiums. If at any time the reimbursement payments by Tenant hereunder do not equal the amount of insurance premiums paid by Landlord, Tenant shall upon demand pay to Landlord an amount equal to the deficiency or Landlord shall refund to Tenant any overpayment (as applicable) as documented by Landlord. Landlord shall have no obligation to segregate or otherwise account for the insurance premium reimbursements paid hereunder except as provided in this Section 9.

Provided however, notwithstanding any provision of the foregoing, that in the event Tenant's use of the Land results in an increase in the rate of insurance on the Property, Tenant shall pay to Landlord, upon demand and as additional rental, the amount of any such increase.

INSURANCE; WAIVER; INDEMNITY

10. (a) During the term of this Lease, Tenant shall maintain commercial general liability insurance coverage (occurrence coverage) with broad form contractual liability coverage and with coverage limits of not less than _____ combined single limit, per occurrence, specifically including liquor liability insurance covering consumption of alcoholic beverages by customers of Tenant should Tenant choose to sell alcoholic beverages. Such policy shall insure Tenant's performance of the indemnity provisions of this Lease, but the amount of such insurance shall not limit Tenant's liability nor relieve Tenant of any obligation hereunder. All policies of insurance provided for herein shall name as "additional insureds" Landlord, Landlord's Agent, all mortgagees of Landlord and such other individuals or entities as Landlord may from time to time designate upon written notice to Tenant. Tenant shall provide to Landlord, at least thirty (30) days prior to expiration, certificates of insurance to evidence any renewal or additional insurance procured by Tenant. Tenant shall provide evidence of all insurance required under this Lease to Landlord prior to the Lease Commencement Date.

(b) Landlord (for itself and its insurer) waives any rights, including rights of subrogation, and Tenant (for itself and its insurer) waives any rights, including rights of subrogation, each may have against the other for compensation of any loss or damage occasioned to Landlord or Tenant arising from any risk generally covered by the "all risks" insurance required to be carried by Landlord and Tenant. The foregoing waivers of subrogation shall be operative only so long as available in the State of North Carolina. The foregoing waivers shall be effective whether or not the parties maintain the insurance required to be carried pursuant to this Lease.

Tenant Initials _____ Landlord Initials _____

(c) Except as otherwise provided in Section 10(b), Tenant indemnifies Landlord for damages proximately caused by the negligence or wrongful conduct of Tenant and Tenant's employees, agents, invitees or contractors. Except as otherwise provided in Section 10(b), Landlord indemnifies Tenant for damages proximately caused by the negligence or wrongful conduct of Landlord and Landlord's employees, agents, invitees or contractors. The indemnity provisions in this Section 10 cover personal injury and property damage and shall bind the employees, agents, invitees or contractors of Landlord and Tenant (as the case may be). The indemnity obligations in this Section 10 shall survive the expiration or earlier termination of this Lease.

REPAIRS BY LANDLORD

11. Tenant shall promptly report in writing to Landlord any defective condition known to it which Landlord is required to repair or replace and failure to report such conditions shall make Tenant responsible to Landlord for any liability incurred by Landlord by reason of such conditions.

(Note: Should Landlord and Tenant need to further detail the allocation of responsibility hereunder, the Special Stipulations box at the end of the Lease should be checked and such allocation should be specified on an Exhibit B.)

REPAIRS BY TENANT

12. (a) Tenant accepts the Land in its present condition and as suited for the Permitted Use and Tenant's intended purposes. Tenant, throughout the initial term of this Lease, and any extension or renewal thereof, at its expense, shall maintain in good order and repair the Land, (except those repairs expressly required to be made by Landlord hereunder), specifically including but not limited to any building and other improvements located thereon. Tenant further agrees to care for the grounds on the Land, including the mowing of grass, care of shrubs and general landscaping. Tenant shall use only licensed contractors for repairs where such license is required. Landlord shall have the right to approve the contractor as to any repairs in excess of \$ ____.

(b) Tenant, Tenant's employees, agents, invitees or contractors shall take no action which may void any manufacturers or installers warranty with relation to the Land. Tenant shall indemnify and hold Landlord harmless from any liability, claim, demand or cause of action arising on account of Tenant's breach of the provisions of this Section 12.

ALTERATIONS

13. Tenant shall not make any alterations, additions, or improvements to the Land without Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Landlord, in connection with Landlord's consent to same, may designate any such alterations, additions, or improvements to the Land as subject to removal upon the expiration or earlier termination of this Lease, in which case, upon Landlord's written notice to Tenant to remove same at the expiration or earlier termination of this Lease, Tenant shall do so and restore the Land to the condition that existed prior to such alterations, additions, or improvements being made. Tenant shall promptly remove any alterations, additions, or improvements constructed in violation of this Section 13 upon Landlord's written request. All approved alterations, additions, and improvements will be accomplished in a good and workmanlike manner, in conformity with all applicable laws and regulations, and by a contractor approved by Landlord, free of any liens or encumbrances. Tenant has no authority to allow, will not permit, and will indemnify Landlord and hold it harmless from, any contractors', laborers', mechanics', or materialmen's liens, or any other similar liens filed against the Land in connection with any alterations, additions, or improvements to the Land.

SURRENDERING THE LAND

14. Tenant shall schedule its move date with Landlord, in writing, in advance of the expiration or earlier termination of this Lease. Tenant agrees to return the Land to Landlord at the expiration or earlier termination of this Lease in at least as good condition and repair as on the Lease Commencement Date, natural wear and tear, damage by storm, fire, lightning, earthquake or other casualty alone excepted. By written notice to Tenant, Landlord may require Tenant to remove any alterations, additions or improvements at the expiration or earlier termination of this Lease (whether or not made with Landlord's consent and whether or not designated via Section 13 as subject to removal) and to restore the Land to its prior condition as of the Lease Commencement Date, all at Tenant's expense. All alterations, additions, and improvements which Landlord has not required Tenant to remove shall become Landlord's property and shall be surrendered to Landlord upon the termination of this Lease, except that Tenant may remove any of Tenant's personal property or trade fixtures which can be removed without material damage to the Land. Tenant shall repair, at Tenant's expense, any damage to the Land caused by the removal of any such personal property or trade fixtures. **(Note: Should Landlord and Tenant need to further enumerate their intent/understanding as to the status of items or property as fixtures, trade fixtures, or personal property hereunder, the Special Stipulations box at the end of the Lease should be checked and such enumeration should be specified by listing same by category on an Exhibit B.)**

DESTRUCTION OF OR DAMAGE TO LAND

15. (a) Subject to Section 15(c) below, if the Land is substantially destroyed by storm, fire, lightning, earthquake, or other casualty, Landlord may terminate this Lease on written notice to Tenant within 60 days after such destruction and this Lease shall terminate as of the date of such destruction and rental shall be accounted for as between Landlord and Tenant as of that date.

(b) If the Landlord does not elect to terminate the Lease under Section 15(a), Landlord shall commence repairs to the Land within one hundred twenty (120) days after such occurrence and prosecute the same diligently to completion, not to exceed two

hundred seventy (270) days from the date upon which Landlord receives applicable permits and insurance proceeds. In the event Landlord shall fail to substantially complete reconstruction of the Land within said two hundred seventy (270) day period, Tenant's sole remedy shall be to terminate this Lease.

(c) In the event the Land is substantially destroyed during the last one (1) year of the Lease Term, Landlord and Tenant each shall have the option to terminate this Lease on written notice to the other of exercise thereof within sixty (60) days after such occurrence.

(d) In the event of Landlord's repairing the Land, Tenant shall continue the operation of its business on the Land during any such period to the extent reasonably practicable from the standpoint of prudent business management, and the obligation of Tenant to pay annual rental and any other sums due under this Lease shall remain in full force and effect during the period of reconstruction so long as Tenant is able to continue such operation of its business. The annual rental and other sums due under this Lease shall be abated proportionately with the degree to which Tenant's use of the Land is impaired, commencing from the date of destruction and continuing during the period of such reconstruction. Tenant shall not be entitled to any compensation or damages from Landlord for loss of use of the whole or any part of the Land, Tenant's personal property, or any inconvenience or annoyance occasioned by such damage, reconstruction, or replacement.

(e) In the event of the termination of this Lease under any of the provisions of this Section 15, both Landlord and Tenant shall be released from any liability or obligation under this Lease arising after the date of termination, except as otherwise provided for in this Lease.

GOVERNMENTAL ORDERS

16. Tenant, at its own expense, agrees to comply with: (a) any law, statute, ordinance, regulation, rule, requirement, order, court decision or procedural requirement of any governmental or quasi-governmental authority having jurisdiction over the Land, (b) the rules and regulations of any applicable governmental insurance authority or any similar body, relative to the Land and Tenant's activities therein; (c) provisions of or rules enacted pursuant to any private use restrictions, as the same may be amended from time to time and (d) the Americans with Disabilities Act (42 U.S.C.S. §12101, et seq.) and the regulations and accessibility guidelines enacted pursuant thereto, as the same may be amended from time to time. Landlord and Tenant agree, however, that if in order to comply with such requirements the cost to Tenant shall exceed a sum equal to one (1) year's rent, then Tenant may terminate this Lease by giving written notice of termination to Landlord in accordance with the terms of this Lease, which termination shall become effective sixty (60) days after receipt of such notice and which notice shall eliminate the necessity of compliance with such requirements, unless, within thirty (30) days of receiving such notice, Landlord agrees in writing to be responsible for such compliance, at its own expense, and commences compliance activity, in which case Tenant's notice given hereunder shall not terminate this Lease.

CONDEMNATION

17. (a) If the entire Land shall be appropriated or taken under the power of eminent domain by any governmental or quasi-governmental authority or under threat of and in lieu of condemnation (hereinafter, "taken" or "taking"), this Lease shall terminate as of the date of such taking, and Landlord and Tenant shall have no further liability or obligation arising under this Lease after such date, except as otherwise provided for in this Lease.

(b) If more than twenty-five percent (25%) of the Land is taken, or if by reason of any taking, regardless of the amount so taken, the remainder of the Land is not one undivided space or is rendered unusable for the Permitted Use, either Landlord or Tenant shall have the right to terminate this Lease as of the date Tenant is required to vacate the portion of the Land taken, upon giving notice of such election within thirty (30) days after receipt by Tenant from Landlord of written notice that said Land have been or will be so taken. In the event of such termination, both Landlord and Tenant shall be released from any liability or obligation under this Lease arising after the date of termination, except as otherwise provided for in this Lease.

(c) Landlord and Tenant, immediately after learning of any taking, shall give notice thereof to each other.

(d) If this Lease is not terminated on account of a taking as provided herein above, then Tenant shall continue to occupy that portion of the Land not taken and the parties shall proceed as follows: (i) at Landlord's cost and expense and as soon as reasonably possible, Landlord shall restore (or shall cause to be restored) the Land remaining to a complete unit of like quality and character as existed prior to such appropriation or taking, and (ii) the annual rent provided for in Section 3 and other sums due under the Lease shall be reduced on an equitable basis, taking into account the relative values of the portion taken as compared to the portion remaining. Tenant waives any statutory rights of termination that may arise because of any partial taking of the Land.

(e) Landlord shall be entitled to the entire condemnation award for any taking of the Land or any part thereof. Tenant's right to receive any amounts separately awarded to Tenant directly from the condemning authority for the taking of its merchandise, personal property, relocation expenses and/or interests in other than the real property taken shall not be affected in any manner by the

provisions of this Section 17, provided Tenant’s award does not reduce or affect Landlord’s award and provided further, Tenant shall have no claim for the loss of its leasehold estate.

ASSIGNMENT AND SUBLETTING

18. Tenant shall not assign this Lease or any interest hereunder or sublet the Land or any part thereof, or permit the use of the Land by any party other than the Tenant, without Landlord’s prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Tenant shall pay to Landlord, concurrently with any request for consent to assignment or sublet, a non-refundable fee of \$ _____ as payment to Landlord for its review and processing of the request. In addition, Tenant shall pay to Landlord any legal fees and expenses incurred by Landlord in connection with the proposed assignment or sublet, to the extent such amounts exceed \$ _____. Consent to any assignment or sublease shall not impair this provision and all later assignments or subleases shall be made likewise only on the prior written consent of Landlord. No sublease or assignment by Tenant shall relieve Tenant of any liability hereunder.

EVENTS OF DEFAULT

19. The happening of any one or more of the following events (hereinafter any one of which may be referred to as an “Event of Default”) during the term of this Lease, or any renewal or extension thereof, shall constitute a breach of this Lease on the part of the Tenant: (a) Tenant fails to pay when due the rental or any other monetary obligation as provided for herein; (b) Tenant abandons or vacates the Land; (c) Tenant fails to comply with or abide by and perform any non-monetary obligation imposed upon Tenant under this Lease within thirty (30) days after written notice of such breach; (d) Tenant is adjudicated bankrupt; (e) A permanent receiver is appointed for Tenant’s property and such receiver is not removed within sixty (60) days after written notice from Landlord to Tenant to obtain such removal; (f) Tenant, either voluntarily or involuntarily, takes advantage of any debt or relief proceedings under any present or future law, whereby the rent or any part thereof is, or is proposed to be, reduced or payment thereof deferred and such proceeding is not dismissed within sixty (60) days of the filing thereof; (g) Tenant makes an assignment for benefit of creditors; or (h) Tenant’s effects are levied upon or attached under process against Tenant, which is not satisfied or dissolved within thirty (30) days after written notice from Landlord to Tenant to obtain satisfaction thereof.

REMEDIES UPON DEFAULT

20. Upon the occurrence of Event of Default, Landlord may pursue any one or more of the following remedies separately or concurrently, without prejudice to any other remedy herein provided or provided by law: (a) Landlord may terminate this Lease by giving written notice to Tenant and upon such termination shall be entitled to recover from Tenant damages as may be permitted under applicable law; or (b) Landlord may terminate this Lease by giving written notice to Tenant and, upon such termination, shall be entitled to recover from the Tenant damages in an amount equal to all rental which is due and all rental which would otherwise have become due throughout the remaining term of this Lease, or any renewal or extension thereof (as if this Lease had not been terminated); or (c) Landlord, as Tenant’s agent, without terminating this Lease, may enter upon and rent the Land, in whole or in part, at the best price obtainable by reasonable effort, without advertisement and by private negotiations and for any term Landlord deems proper, with Tenant being liable to Landlord for the deficiency, if any, between Tenant’s rent hereunder and the price obtained by Landlord on reletting, provided however, that Landlord shall not be considered to be under any duty by reason of this provision to take any action to mitigate damages by reason of Tenant’s default and expressly shall have no duty to mitigate Tenant’s damages. No termination of this Lease prior to the normal ending thereof, by lapse of time or otherwise, shall affect Landlord’s right to collect rent for the period prior to termination thereof. Tenant acknowledges and understands that Landlord’s acceptance of partial rental will not waive Tenant’s breach of this Lease or limit Landlord’s rights against Tenant hereunder or Landlord’s right to evict Tenant through a summary ejectment proceeding, whether filed before or after Landlord’s acceptance of any such partial rental.

SIGNS

21. Tenant shall place no signs on the Land, except with the express written consent of the Landlord in Landlord’s sole discretion. Any consent given by Landlord shall expressly not be a representation of or warranty of any legal entitlement to signage on the Land. Any and all signs placed on the Land by Tenant shall be maintained in compliance with governmental rules and regulations governing such signs and Tenant shall be responsible to Landlord for any damage caused by installation, use or maintenance of said signs, and all damage incident to removal thereof. Any signs placed by Tenant on the Land is expressly subject to all terms of this Lease, including paragraphs 13 and 14 herein.

LANDLORD’S ENTRY OF LAND

22. Landlord may advertise the Land “For Rent” _____ days before the termination of this Lease. Landlord may enter the Land upon prior notice at reasonable hours to exhibit same to prospective purchasers or tenants, to make repairs required of Landlord under the terms hereof, for reasonable business purposes and otherwise as may be agreed by Landlord and Tenant. Landlord may enter the Land at any time without prior notice, in the event of an emergency or to make emergency repairs to the Land. Upon request of Landlord, Tenant shall provide Landlord with a functioning key to the Land and shall replace such key if the locks to the Land is changed.

Tenant Initials _____ Landlord Initials _____

QUIET ENJOYMENT

23. So long as Tenant observes and performs the covenants and agreements contained herein, it shall at all times during the Lease term peacefully and quietly have and enjoy possession of the Land, subject to the terms hereof.

HOLDING OVER

24. If Tenant remains in possession of the Land after expiration of the term hereof, Tenant shall be a tenant at sufferance and there shall be no renewal of this Lease by operation of law. In such event, commencing on the date following the date of expiration of the term, the monthly rental payable under Section 3 above shall for each month, or fraction thereof during which Tenant so remains in possession of the Land, be twice the monthly rental otherwise payable under Section 3 above.

ENVIRONMENTAL LAWS

25. (a) Tenant covenants that with respect to any Hazardous Materials (as defined below) it will comply with any and all federal, state or local laws, ordinances, rules, decrees, orders, regulations or court decisions relating to hazardous substances, hazardous materials, hazardous waste, toxic substances, environmental conditions on, under or about the Land or soil and ground water conditions, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Resource Conservation and Recovery Act, the Hazardous Materials Transportation Act, any other legal requirement concerning hazardous or toxic substances, and any amendments to the foregoing (collectively, all such matters being "Hazardous Materials Requirements"). Tenant shall remove from the Land, all Hazardous Materials that were placed on the Land by Tenant or Tenant's employees, agents, invitees or contractors, either after their use by Tenant or upon the expiration or earlier termination of this Lease, in compliance with all Hazardous Materials Requirements.

(b) Tenant shall be responsible for obtaining all necessary permits in connection with its use, storage and disposal of Hazardous Materials, and shall develop and maintain, and where necessary file with the appropriate authorities, all reports, receipts, manifest, filings, lists and invoices covering those Hazardous Materials and Tenant shall provide Landlord with copies of all such items upon request. Tenant shall provide within five (5) days after receipt thereof, copies of all notices, orders, claims or other correspondence from any federal, state or local government or agency alleging any violation of any Hazardous Materials Requirements by Tenant, or related in any manner to Hazardous Materials. In addition, Tenant shall provide Landlord with copies of all responses to such correspondence at the time of the response.

(c) Tenant hereby indemnifies and holds harmless Landlord, its successors and assigns from and against any and all losses, liabilities, damages, injuries, penalties, fines, costs, expenses and claims of any and every kind whatsoever (including attorney's fees and costs) paid, incurred or suffered by, or asserted against Landlord as a result of any claim, demand or judicial or administrative action by any person or entity (including governmental or private entities) for, with respect to, or as a direct or indirect result of, the presence on or under or the escape, seepage, leakage, spillage, discharge, emission or release from the Land of any Hazardous Materials caused by Tenant or Tenant's employees, agents, invitees or contractors. This indemnity shall also apply to any release of Hazardous Materials caused by a fire or other casualty to the Land if such Hazardous Materials were stored on the Land by Tenant, its agents, employees, invitees or successors in interest.

(d) For purposes of this Lease, "Hazardous Materials" means any chemical, compound, material, substance or other matter that: (i) is defined as a hazardous substance, hazardous material or waste, or toxic substance pursuant to any Hazardous Materials Requirements, (ii) is regulated, controlled or governed by any Hazardous Materials Requirements, (iii) is petroleum or a petroleum product, or (iv) is asbestos, formaldehyde, a radioactive material, drug, bacteria, virus, or other injurious or potentially injurious material (by itself or in combination with other materials).

(e) The warranties and indemnities contained in this Section 25 shall survive the termination of this Lease.

SUBORDINATION; ATTORNMEN; ESTOPPEL

26. (a) This Lease and all of Tenant's rights hereunder are and shall be subject and subordinate to all currently existing and future mortgages affecting the Land. Within ten (10) days after the receipt of a written request from Landlord or any Landlord mortgagee, Tenant shall confirm such subordination by executing and delivering Landlord and Landlord's mortgagee a recordable subordination agreement and such other documents as may be reasonably requested, in form and content satisfactory to Landlord and Landlord's mortgagee. Provided, however, as a condition to Tenant's obligation to execute and deliver any such subordination agreement, the applicable mortgagee must agree that mortgagee shall not unilaterally, materially alter this Lease and this Lease shall not be divested by foreclosure or other default proceedings thereunder so long as Tenant shall not be in default under the terms of this Lease beyond any applicable cure period set forth herein. Tenant acknowledges that any Landlord mortgagee has the right to subordinate at any time its interest in this Lease and the leasehold estate to that of Tenant, without Tenant's consent.

(b) If Landlord sells, transfers, or conveys its interest in the Land or this Lease, or if the same is foreclosed judicially or nonjudicially, or otherwise acquired, by a Landlord mortgagee, upon the request of Landlord or Landlord's successor, Tenant shall attorn to said successor, provided said successor accepts the Land subject to this Lease. Tenant shall, upon the request of Landlord or Landlord's successor, execute an attornment agreement confirming the same, in form and substance acceptable to Landlord or

Landlord's successor and Landlord shall thereupon be released and discharged from all its covenants and obligations under this Lease, except those obligations that have accrued prior to such sale, transfer or conveyance; and Tenant agrees to look solely to the successor in interest of Landlord for the performance of those covenants accruing after such sale, transfer or conveyance. Such agreement shall provide, among other things, that said successor shall not be bound by (a) any prepayment of more than one (1) month's rental (except the Security Deposit) or (b) any material amendment of this Lease made after the later of the Lease Commencement Date or the date that such successor's lien or interest first arose, unless said successor shall have consented to such amendment.

(c) Within ten (10) days after request from Landlord, Tenant shall execute and deliver to Landlord an estoppel certificate (to be prepared by Landlord and delivered to Tenant) with appropriate facts then in existence concerning the status of this Lease and Tenant's occupancy, and with any exceptions thereto noted in writing by Tenant. Tenant's failure to execute and deliver the Estoppel Certificate within said ten (10) day period shall be deemed to make conclusive and binding upon Tenant in favor of Landlord and any potential mortgagee or transferee the statements contained in such estoppel certificate without exception.

ABANDONMENT

27. Tenant shall not abandon the Land at any time during the Lease term. If Tenant shall abandon the Land or be dispossessed by process of law, any personal property belonging to Tenant and left on the Land, at the option of Landlord, shall be deemed abandoned, and available to Landlord to use or sell to offset any rent due or any expenses incurred by removing same and restoring the Land.

NOTICES

28. All notices required or permitted under this Lease shall be in writing and shall be personally delivered or sent by U.S. certified mail or any similar delivery service which provides tracking and delivery confirmation. Notices to Tenant shall be delivered or sent to: _____ . Notices to Landlord shall be delivered or sent to the address shown at the beginning of this Lease and notices to Agent, if any, shall be delivered or sent to the address set forth in Section 3 hereof. All notices shall be effective upon delivery. Any party may change its notice address upon written notice to the other parties, given as provided herein.

BROKERS

29. Except as expressly provided herein, Tenant and Landlord agree to indemnify and hold each other harmless from any and all claims of brokers, consultants or real estate agents by, through or under the indemnifying party for fees or commissions arising out of the lease of the Property to Tenant.

Tenant and Landlord represent and warrant to each other that: (i) except as to the brokers designated below ("Brokers"), they have not employed nor engaged any brokers, consultants or real estate agents to be involved in this transaction and (ii) that the compensation of the Brokers is established by and shall be governed by separate agreements entered into as amongst the Brokers, the Tenant and/or the Landlord.

("Listing Agency"),
("Listing Agent" - License # _____)
Acting as: Landlord's Agent; Dual Agent
and _____ ("Leasing Agency"),
("Leasing Agent"- License # _____)
Acting as: Tenant's Agent; Landlord's (Sub)Agent; Dual Agent

GENERAL TERMS

30. (a) "Landlord" as used in this Lease shall include the undersigned, its heirs, representatives, assigns and successors in title to the Land. "Agent" as used in this Lease shall mean the party designated as same in Section 3, its heirs, representatives, assigns and successors. "Tenant" shall include the undersigned and its heirs, representatives, assigns and successors, and if this Lease shall be validly assigned or sublet, shall include also Tenant's assignees or sublessees as to the Land covered by such assignment or sublease. "Landlord", "Tenant", and "Agent" include male and female, singular and plural, corporation, partnership or individual, as may fit the particular parties.

(b) No failure of Landlord to exercise any power given Landlord hereunder or to insist upon strict compliance by Tenant of its obligations hereunder and no custom or practice of the parties at variance with the terms hereof shall constitute a waiver of Landlord's right to demand exact compliance with the terms hereof. All rights, powers and privileges conferred hereunder upon parties hereto shall be cumulative and not restrictive of those given by law.

(c) **Time is of the essence in this Lease.**

(d) This Lease may be executed in one or more counterparts, which taken together, shall constitute one and the same original document. Copies of original signature pages of this Lease may be exchanged via facsimile or e-mail, and any such copies shall constitute originals. This Lease constitutes the sole and entire agreement among the parties hereto and no modification of this Lease

Tenant Initials _____ Landlord Initials _____

shall be binding unless in writing and signed by all parties hereto. The invalidity of one or more provisions of this Lease shall not affect the validity of any other provisions hereof and this Lease shall be construed and enforced as if such invalid provisions were not included.

(e) Each signatory to this Lease represents and warrants that he or she has full authority to sign this Lease and such instruments as may be necessary to effectuate any transaction contemplated by this Lease on behalf of the party for whom he or she signs and that his or her signature binds such party. The parties acknowledge and agree that: (i) the initials lines at the bottom of each page of this Lease are merely evidence of their having reviewed the terms of each page, and (ii) the complete execution of such initials lines shall not be a condition of the effectiveness of this Lease.

(f) Upon request by either Landlord or Tenant, the parties hereto shall execute a short form lease (memorandum of lease) in recordable form, setting forth such provisions hereof (other than the amount of annual rental and other sums due) as either party may wish to incorporate. The cost of recording such memorandum of lease shall be borne by the party requesting execution of same. The NC REALTOR Memorandum of Lease (Form 596-T) or an attorney-drafted memorandum of lease may be used for this purpose.

(g) If legal proceedings are instituted to enforce any provision of this Lease, the prevailing party in the proceeding shall be entitled to recover from the non-prevailing party reasonable attorneys fees and court costs incurred in connection with the proceeding.

SPECIAL STIPULATIONS

Note: Under North Carolina law, real estate agents are not permitted to draft lease provisions

- If this box is checked, additional terms of this Lease are set forth on **Exhibit B** attached hereto and incorporated herein by reference.
- If this box is checked, improvements to the Land to be provided by Landlord are set forth on **Exhibit C** attached hereto and incorporated herein by reference.

[THIS SPACE INTENTIONALLY LEFT BLANK]

Tenant Initials _____ Landlord Initials _____

THIS DOCUMENT IS A LEGAL DOCUMENT. EXECUTION OF THIS DOCUMENT HAS LEGAL CONSEQUENCES THAT COULD BE ENFORCEABLE IN A COURT OF LAW. THE NORTH CAROLINA ASSOCIATION OF REALTORS® MAKES NO REPRESENTATIONS CONCERNING THE LEGAL SUFFICIENCY, LEGAL EFFECT OR TAX CONSEQUENCES OF THIS DOCUMENT OR THE TRANSACTION TO WHICH IT RELATES AND RECOMMENDS THAT YOU CONSULT YOUR ATTORNEY.

IN WITNESS WHEREOF, the parties hereto have hereunto caused this Lease to be duly executed.

LANDLORD:

Individual

Date: _____

Date: _____

Business Entity

(Name of Firm)

By: _____

Title: _____

Date: _____

TENANT:

Individual

Date: _____

Date: _____

Business Entity

(Name of Firm)

By: _____

Title: _____

Date: _____

SAMPLE

STANDARD FORM 597



EARLY TERMINATION OF LEASE

(NOTE: This form may be used to terminate a lease on Form 592-T, Form 593-T, or Form 592L-T. It should not be used in situations where the tenant has a legal right to terminate their lease.)

Tenant: _____

Landlord: _____

Premises: _____

Real Estate Management Firm: _____

Beginning Date of Lease: _____ Ending Date of Lease: _____

This Early Termination of Lease ("Agreement") is entered into between Landlord and Tenant (the "Parties") for the purpose of terminating a rental contract ("Lease") between the Parties for the Premises prior to the end of the Term of the Lease, or any valid extension thereof. This Agreement will be effective when it has been signed by all of the Parties ("Effective Date").

AGREEMENT

(CHECK ONLY ONE OF THE FOLLOWING OPTIONS):

LEASE TO REMAIN IN EFFECT UNTIL NEW TENANT SECURED

1. Continued Compliance With Terms of Lease: Other than as specifically modified by this Agreement, all terms of the Lease will remain in full force and effect until a new tenant is procured and the new tenant's lease term begins, and Tenant agrees to comply with all Tenant's obligations under the Lease, including but not limited to, timely payment of rent, maintenance of utilities required by the Lease, allowing access to the Premises for showings, and Premises maintenance, if applicable. Tenant acknowledges and understands that Tenant's obligations shall apply both before and after Tenant vacates the Premises.

2. Move Out Date: Tenant agrees to vacate the Premises no later than *(date)* _____ at *(time)* _____ ("Move Out Date"). On or before the Move Out Date, Tenant shall comply with all duties set forth in Lease, including, but not limited to, the duty to remove all Tenant's personal property from the Premises and to return all keys and other means of access to the Premises and any amenities.

3. Effective Date of Lease Termination: The Lease shall be considered terminated upon the beginning date of a new tenant's lease term or the Ending Date of Tenant's Lease, whichever occurs sooner ("Effective Date of Lease Termination"). Following the Effective Date of Lease Termination, Landlord and Tenant shall have no further obligation to each other under the Lease except as may be specifically set forth in this Agreement.

4. Efforts to Re-Rent Premises: Landlord agrees to use reasonable efforts to re-rent the Premises in order to mitigate Landlord's damages for Tenant's early termination of the Lease.

5. Security Deposit: Upon the Effective Date of Lease Termination, Tenant's security deposit will be disposed of in accordance with the Lease. Tenant understands and acknowledges that Tenant's security deposit cannot be used to pay the last month's rent.

6. Reimbursement of Pre-Paid Rent. If a new tenant pays rent for any period of time for which Tenant has pre-paid the rent, Tenant will be reimbursed a portion of the rent pre-paid by Tenant, prorated based on the period of time paid by the new tenant.



North Carolina Association of REALTORS®, Inc.

Tenant Initials _____

LEASE TO TERMINATE ON AGREED-UPON DATE

1. **Early Termination and Move Out Date:** Landlord and Tenant agree that the Lease will terminate effective (date) _____ (“Early Termination Date”) and Tenant agrees to vacate the premises on or before that date. Tenant and Landlord shall thereafter have no further obligation to each other except as specifically set forth in this Agreement.

2. **Vacating the Premises:** On or before the Early Termination Date, Tenant shall comply with all duties set forth in Lease, including, but not limited to, the duty to remove all Tenant’s personal property from the Premises and to return all keys and other means of access to the Premises and any amenities.

3. **Continued Compliance With Terms Of Lease:** Other than as specifically modified by this Agreement, all terms of the Lease will remain in full force and effect until the Early Termination Date, and Tenant agrees to comply with all Tenant’s obligations under the Lease until the Early Termination Date, including but not limited to, timely payment of rent, maintenance of utilities required by the Lease, allowing access to the Premises for showings, and Premises maintenance, if applicable. If Tenant vacates the Premises before the Early Termination Date, Tenant acknowledges and understands that Tenant’s obligations under the Lease shall nevertheless remain in effect until the Early Termination Date.

4. **Early Termination Fee:** In consideration for Landlord’s agreement to terminate the Lease prior to its Ending Date, Tenant agrees to pay Landlord the sum of \$ _____ (“Early Termination Fee”) promptly upon signing this Agreement. The payment of the Early Termination Fee shall serve as liquidated damages and as Landlord’s sole and exclusive remedy for Tenant’s early termination of the Lease. It is acknowledged by the parties that the amount of the Early Termination Fee is compensatory and not punitive, such amount being a reasonable estimation of the actual loss that the Landlord would incur as a result of a breach of this Lease by Tenant. The payment to Landlord of the Early Termination Fee shall not constitute a penalty or forfeiture but actual compensation for Landlord’s anticipated loss. If Tenant fails to timely pay the Early Termination Fee in full, this Agreement shall be null and void and of no further force and effect.

5. **Security Deposit:** Upon the Early Termination Date, Tenant’s security deposit will be disposed of in accordance with the Lease. Tenant understands and acknowledges that Tenant’s security deposit cannot be used to pay the last month’s rent.

[SIGNATURE PAGE FOLLOWS]

THE NORTH CAROLINA ASSOCIATION OF REALTORS®, INC. MAKES NO REPRESENTATION AS TO THE LEGAL VALIDITY OR ADEQUACY OF ANY PROVISION OF THIS FORM IN ANY SPECIFIC TRANSACTION.

LANDLORD: _____

LANDLORD: _____

BY: AGENT: _____
[Name of real estate management firm]

By: _____ Individual license # _____ Date: _____
[Signature of authorized representative]

Address: _____

Telephone: _____ Fax: _____ E-mail: _____

TENANT: _____ Date: _____
[Tenant signature]

Contact information: _____
Home Work Cell Email

TENANT: _____ Date: _____
[Tenant signature]

Contact information: _____
Home Work Cell Email

TENANT: _____ Date: _____
[Tenant signature]

Contact information: _____
Home Work Cell Email

TENANT: _____ Date: _____
[Tenant signature]

Contact information: _____
Home Work Cell Email

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