

2023-2024 Broker-in-Charge Update (BICUP) Course



Student Manual Supplement

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EXTRACT

The 2023-2024 *Broker-in-Charge Update (BICUP) Course* is published by the North Carolina Real Estate Commission. This mandatory course addresses trending issues in brokerage, complaints and disciplinary actions, and law and rule changes. Further, this resource is a supplement to the 2023-2024 *BICUP*. Brokers will utilize this supplement to familiarize themselves with the relevant key points from each segment and review the Commission's responses to the discussion questions presented in the 2023-2024 *BICUP*.

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

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Segment 1

Headlining Today's News NCREC Top Complaints

SUMMARY OF IMPORTANT POINTS

- 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;
 - hold hearings on broker misconduct;
 - issue subpoenas for records and to compel attendance of witnesses to testify at hearings; and
 - impose sanctions for misconduct.
- The Commission may impose sanctions such as a:
 - 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 of time. A broker whose license is suspended still has a license but is prohibited from using it for a specified period of time.
 - reprimand which is a public statement of disapproval by the North Carolina Real Estate Commission. A broker who has been reprimanded continues to have an active license and may engage in real estate brokerage activities.
- According to Rule 58A .0601, a complaint must:
 - be in writing;
 - identify the respondent broker or firm; and
 - apprise the Commission of the facts which form the basis of the complaint.
- Upon receipt of a complaint, a Commission staff attorney in the Regulatory Affairs Division evaluates the complaint to ensure that it falls under the Commission's authority.
- A Letter Inquiry investigation is initiated when the Consumer Protection Officer (CPO) sends a Letter of Inquiry to the broker and/or brokerage against whom the complaint was filed, and any witness.

- Rule 58A .0601 requires a broker/brokerage to submit a written response within 14 days of receipt of a Letter of Inquiry. The response must include:
 - a full disclosure of the requested information and
 - copies of all requested documents.
- The Commission also conducts field investigations. Field investigations are conducted when cases require in-person interviews, trust account audits, or the examination of evidence that cannot be easily identified/obtained through written correspondence.
- The petitioner (e.g. Commission) in a contested case has the burden of proving the facts alleged in the petition (e.g. complaint) by preponderance of the evidence.
- The Commission determines probable cause by evaluating the evidence and ascertaining if there is *sufficient indication* at the conclusion of the investigation/inquiry that the broker has violated License Law and Commission rules.
- The Commission and Respondent may discuss possible settlement options in lieu of going to hearing. Further, the Commission must approve any final signed agreement or consent order.
- Regulatory Affairs receives an average of approximately 1,500 complaints each year during the last four years.
- Every complaint that is filed is evaluated to determine whether the alleged misconduct falls within the Commission’s jurisdiction under Real Estate License Law or Commission rules.
- The most common complaints received by Regulatory Affairs that are within the Commission’s scope of authority includes the following:
 - agency agreements;
 - competing offers;
 - false promises;
 - material facts;
 - trust account discrepancies; and
 - unlicensed assistants.
- During 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
 - broker who fails to respond to a Letter of Inquiry.

ANSWERS TO DISCUSSION QUESTIONS

Newsroom Roundtable on page 2

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

Answer: Over the last four years, an average of 1500 complaints have been filed with the Commission annually.

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

Answer: The types of complaints that are filed with the Commission vary. However, the most frequently filed complaints are regarding agency agreements, competing offers, false promises, material facts, trust account discrepancies, and unlicensed assistants.

Interactive News Reporting on page 2

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.

Answer: Yes. The Commission has authority to discipline the broker pursuant to N.C.G.S. §93A-6(a)(1).

- b) My HOA is increasing my homeowner association fees to hire pool management and a landscaping company. They did not hold a vote on the increase.

Answer: No. The Commission does not have the authority to discipline homeowner associations.

- c) I rent from a private owner and don't have a property manager. The owner is refusing to return my security deposit.

Answer: No. The Commission does not have the authority to discipline the private owner. However, the tenant may file a smalls claim complaint against the private owner pursuant to N.C.G.S. §42.

- d) My broker won't return my phone calls and is always very rude when I interact with them.

Answer: No. The Commission does not have the authority to discipline rude behavior.

Takin' it to the Streets on pages 12-13

I went to ABC Realty to 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 brokerage division. Therefore, they could assist me with locating a property for rent now and also assist me with purchasing a property in the future. Sam, an affiliated broker who works specifically in residential sales, assisted me with locating a rental property. During the transaction, I thought Sam represented my interest. Instead, after I signed the lease for the property, it stated that ABC Realty represented the owner 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 owner.

Answer:

Does the Commission have the authority to discipline a Respondent under the alleged facts? *Yes. The Commission has authority to discipline the Respondent under 58A .0104(a), Agency Agreements and Disclosure.*

Do the facts indicate a probable violation of License Law and Commission rules? *Yes. In accordance with Rule 58A .0104(a), every agreement for brokerage services between a broker and a buyer or tenant shall be express and shall be in writing 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. If the broker did not enter into an agency agreement with the tenant prior to the tenant signing the lease, the broker may be in violation of Rule 58A .0104(a).*

What documentation do you think the Commission will request/analyze during the investigation? *The Commission may request the following information during the investigation: copies of the written office policies of ABC Realty, the property management agreement, the lease agreement, and any electronic correspondence (emails and text messages), if applicable.*

Takin' it to the Streets on page 13

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.

Answer:

Does the Commission have the authority to discipline a Respondent under the alleged facts? *Yes. The Commission has authority to discipline the Respondent under 58A .0115, Disclosure of Offers Prohibited.*

Do the facts indicate a probable violation of License Law and Commission rules? *Yes. In accordance with Rule 58A .0115, a broker shall not disclose the price or other material terms contained in a party's offer to purchase, sell, lease, rent, or to option real property to a competing party without the express authority of the offering party. If the broker disclosed the terms of an offer without the express authority of the offering party, they may be in violation of this rule.*

What documentation do you think the Commission will request/analyze during the investigation? *The Commission may request the following information during the investigation: electronic correspondence (i.e. emails, text messages, etc.) with the seller and buyer agents or buyers if they are unrepresented, and copies of all offers.*

Takin' it to the Streets on page 14

My buyer agent informed me that the HVAC system on the property was new. Once I was under contract on the property, I had the property inspected. The home inspector indicated in the home inspection report that the HVAC system was outdated. Further, my broker stated the home inspector was incorrect because the listing agent and the seller stated the system was new. Also, my broker stated they 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 and I never received the \$5k from my buyer agent.

Answer:

Does the Commission have the authority to discipline a Respondent under the alleged facts? *Yes. The Commission has the authority to discipline the broker under N.C.G.S. §93A-6(a).*

Do the facts indicate a probable violation of License Law and Commission rules? *Yes. In accordance with N.C.G.S. §93A-6(a), brokers are prohibited from making false promises to induce, persuade, or influence an individual to perform an act they would not have otherwise performed. In this fact pattern, the buyer was reluctant to purchase a property with an outdated HVAC system. However, their buyer agent indicated that if they proceeded with purchasing the property, they would give them \$5k toward the purchase of a new system. Once the buyer consummated the transaction, the broker failed to provide the \$5k for the new system.*

What documentation do you think the Commission will request/analyze during the investigation? *The Commission may request the following information during the investigation: electronic correspondence (i.e. emails, text messages, etc.), home inspection report, addendum to agency agreement, copies of MLS listing, copies of communication with listing agent, and statements from the home inspector.*

Takin' it to the Streets on page 15

The listing agent did not tell my buyer agent that the seller's driveway encroached on the neighbor's property after they were informed by the seller. As a result, my buyer agent did not notify me of this encroachment. I asked if I should have a survey conducted on the property and 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.

Answer:

Does the Commission have the authority to discipline a Respondent under the alleged facts? *Yes. The Commission has the authority to discipline the broker under N.C.G.S. §93A-6(a)(1).*

Do the facts indicate a probable violation of License Law and Commission rules? *Yes. The facts indicate that the listing agent may be in violation of failing to discover and disclose the encroachment on a neighbor's property which is a material fact. A listing agent should take reasonable steps to verify all of the property information so they can advertise accurate data for the listing. Since the listing agent did not disclose that the property encroached on the neighbor's property, they omitted this information which is a possible violation under N.C.G.S. §93A-6(a)(1). Omission is defined as the failure to disclose material information.*

What documentation do you think the Commission will request/analyze during the investigation? *The Commission may request the following information during the investigation: written office policies for the brokerage regarding encroachments, attendance records for trainings, a list of the dates of trainings regarding encroachments, MLS listing, electronic correspondence (i.e. text messages and emails), and surveys, etc.*

Takin' it to the Streets on page 17

After entering into a contract for the 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 using their Venmo app sent it to the seller. Now I want to cancel and the seller and my buyer agent are telling me that I cannot get my due diligence fee back. My due diligence time period has not expired yet.

Answer:

Does the Commission have the authority to discipline a Respondent under the alleged facts? *Yes. The Commission has authority to discipline the broker under Rule 58A .0116(g).*

Do the facts indicate a probable violation of License Law and Commission rules? *Yes. The facts allege that the broker received the buyer's due diligence fee via the Venmo app. According to Rule 58A .0116, all monies received by a broker acting in their fiduciary capacity (hereinafter "trust money") shall be deposited in a trust or escrow account as defined in Rule 58A .0117(b) no later than three banking days following the broker's receipt of monies. Therefore, based upon these facts, it is possible that the broker may not have a trust account which is required if they are going to accept receipt of funds belonging to others.*

What documentation do you think the Commission will request/analyze during the investigation? *The Commission may request the following information during the investigation: written office policies for the brokerage regarding trust accounts, the transaction file for this owner, copies of trust account records, and electronic correspondence with the owner (i.e. text messages and emails).*

Takin' it to the Streets on page 18

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.

Answer:

Does the Commission have the authority to discipline a Respondent under the alleged facts? *Yes. The Commission has authority to discipline the buyer agent responsible for the supervision of the office assistant under N.C.G.S. §93A-1.*

Do the facts indicate a probable violation of License Law and Commission rules? *Yes. The facts indicate that the unlicensed office assistant informed the buyer to offer \$275,000 on the property and assisted the buyer with preparing the offer. An unlicensed assistant cannot advise clients on what offers to make nor complete documentation for an offer. These duties require an active real estate license. If the unlicensed office assistant participated in this illegal brokerage conduct, the supervising broker may be in violation of under N.C.G.S. §93A-1.*

What documentation do you think the Commission will request/analyze during the investigation? *The Commission may request the following information during the investigation: written office policies for the brokerage regarding unlicensed assistants, documentation regarding trainings conducted for unlicensed assistants, copies of signed documentation acknowledging receipt of permitted activities of unlicensed assistants, comparative market analysis, offers, and electronic correspondence with the owner (i.e. text messages and emails), etc.*

You Be the Investigative News Reporter on pages 23-24

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 26 blinds and he needs to replace them. He refuses to return my security deposit.

Answer: No. The Commission does not have the authority to discipline private landlords for failing to account to the tenant and disburse the tenant security deposit. However, the tenant can file a claim in Small Claims Court against the landlord pursuant to N.C.G.S. §42-52.

2. I am a licensed real estate broker. I represented a buyer in a transaction and had a cooperating 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.

Answer: No. The Commission does not have the authority to discipline a broker when the allegations in the complaint indicate there is a discrepancy regarding commission disbursements between cooperating brokerages.

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.

Answer: No. The Commission does not have the authority to discipline a BIC for indicating in their office policies that an affiliated broker may not affiliate with another brokerage. BICs have the authority to determine their office policies and procedures for their brokerage as long as the policies/procedures do not violate License Law and Commission rules.

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 the seller performed their own mold remediation. I also attended the property inspections alone. The broker never accompanied me to view the property. The broker owes me money because the property is infested with mold.

Answer: No. The Commission does not have the authority to discipline a broker who is not licensed in NC. Although the broker represented a client in a transaction in Nags Head, NC. The broker did not come to NC during the transaction. Therefore, the Commission does not have authority to discipline the broker because the allegations do not allege a possible violation of NC License Law and Commission Rules.

5. Linda is a licensed real estate broker in NC. Linda had 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 on a price, Linda and I entered into a contract 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 entered into a 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.

Answer: Yes. The Commission has the authority under N.C.G.S. §93A-6(a)(10) to discipline Linda if during the course of the investigation the Commission determines that Linda was dealing improperly, fraudulently, or dishonestly with the seller. If Linda intended to participate in a wholesale deal, as a licensed real estate broker, she must treat everyone with good faith and honesty. Therefore, Linda should have communicated truthfully with the seller regarding her intentions.

6. My HOA does not maintain the pool or common areas in my subdivision. They are increasing the fee from \$90 to \$135 in July of 2023. This fee is excessive because they are not using the money appropriately; further, they are already fining the owners for things like keeping their garbage bins outside in their yard. They are squandering my fees that I pay each month.

Answer: No. The Commission does not have the authority to discipline homeowner associations in NC.

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 we had agreed upon, 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.

Answer: No. The Commission does not have the authority to take disciplinary action against a broker for failing to disburse earned commissions subject to an Equitable Distribution Order by the Court.

8. I attempted to purchase a 2-acre parcel of land listed by Jake, a private seller. My buyer agent assisted me with preparing a contract to purchase the vacant lot. We negotiated that I would pay \$10K as a due diligence fee. However, once I paid the due diligence fee, neither I nor my buyer agent heard from Jake, the seller, again. We contacted the telephone number provided and it is no longer in service. We also sent emails and the emails came back “undeliverable.”

Answer: No. The Commission does not have authority to discipline Jake, the private seller, because he does not have a real estate license. However, the Commission does have the authority to discipline the buyer agent if during the course of the investigation the Commission finds that the buyer agent did not adhere to their fiduciary duties while representing their client according to N.C.G.S. §93-6(a)(8).

Segment 2

NCREC ON YOUR SIDE

Frequently Asked Questions

SUMMARY OF IMPORTANT POINTS

- Commission Rule 58A .0105(a)(1) indicates a broker must have the authority to advertise.
- A broker derives their authority to advertise by receiving consent from their BIC.
- A broker must include the name of the brokerage/sole proprietorship with which they are affiliated in the advertisement.
- The Commission views posts by brokers on social media as a form of advertising under Rule 58A .0105.
- The Commission *does not* have a “one-click” rule to reach broker identifying information.
- Brokers are expected to comply with federal/state laws regarding advertising content.
- Although the Commission’s advertising rule does not regulate content, if an advertisement is discriminatory in nature and violates federal/state fair housing laws, the broker may be in violation of Commission Rule 58A .1601.
- 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.
- NAR® considers the copying and publishing of another broker’s listing information advertising.
- If a REALTOR® is trying to share an advertisement on social media, they should obtain the written permission of the listing agent first to ensure compliance with the Code of Ethics.
- Rule 58A .0108(a) requires brokers to keep records of all sale, rental, and other transactions whether the transaction is pending, completed, or terminated. This includes all versions of all advertisements.

- Brokers should consider implementing the following best practices prior to advertising on social media or any media platform:
 - obtain consent of supervising BIC;
 - include name of brokerage;
 - receive written consent of owner or their authorized agent;
 - 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 to be notified when the property is posted on websites.
- The Commission allows sole proprietorships/brokerages to conduct real estate activity using an assumed business name pursuant to Rule 58A .0103(c). An individual licensee cannot use an assumed business name.
- 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.
- A sole proprietor does not have to file an Assumed Business Name Certificate if they are using their surname or last name while conducting business.
- A provisional broker may only engage and hold themselves out as a real estate broker when their license is active and they are supervised by the BIC of the brokerage with which they are affiliated.
- A full broker may hold a license on active status while not being affiliated with a BIC. However, their brokerage activities will be limited.
- If you have a North Carolina real estate license, you have achieved minimal competency to practice real estate brokerage. Therefore, a separate license is not required prior to conducting commercial real estate transactions.
- If you are a nonresident broker licensed in another jurisdiction and wish to conduct commercial brokerage activity in North Carolina, you will need to first obtain a Limited Nonresident Commercial License (LNCL) pursuant to Rule 58A .1801.
- If you are a broker, but not a member of the local REALTOR® association, you are *not* required to take Ethics training. However, if you are a member of the National Association of REALTORS®, you are required to take periodic Code of Ethics training.
- Every owner whose name is on the title to the property should sign the listing agreement with the brokerage in order for the brokerage to be sure to have the agreement of all the owners to list the property for sale.
- Every owner whose name is on the title to the property should sign the offer to purchase. However, if there are multiple owners of a property, one or more of the owners may sign the offer to purchase. Although all of the owners did 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.
- A broker must comply with License Law and Commission rules when selling their personally owned property.

- The Commission does not require the broker to disclose they have a real estate license when handling their personally owned property; 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.
- 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.

ANSWERS TO DISCUSSION QUESTIONS

Newsroom Roundtable Discussion on page 25

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

Answer: Yes. Social media is considered a form of advertising. Therefore, if a broker advertises a property on social media, the broker must ensure they are complying with Rule 58A .0105 and indicating the name of their brokerage company so the advertisement will not be considered a “blind advertisement.”

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?

Answer: No. The Commission does not have a “one-click” rule. Therefore, brokers should ensure that the name of their affiliated sole proprietorship/brokerage is in the handle of their social media posts or is displayed on the image upon first sight.

Interactive News Reporting on page 28

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

- a) NCREC uses what brokers say against them.
- b) A certain number of calls will result in an audit of that broker.
- c) *So that staff can provide accurate information based on the broker’s records.*

Answer: Commission staff will analyze a broker’s license record to ensure that an accurate response is received based upon the broker’s license status and educational history.

- d) In order to send notification to the BIC that a broker has contacted NCREC.

Takin' it to the Streets on page 29

Sally, a real estate broker with ABC Realty, practices residential brokerage. Sally is friends with Mary, who recently bought two investment properties. Mary offers to pay Sally to assist her with locating two tenants for her properties. ABC Realty does not allow affiliated brokers to practice property management; therefore, she 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 nice, relaxing place to call home? Have you ever experienced a sunrise while being at the lake? Look no further, I have the perfect 4-bedroom, 3-bath lake house for you that is available as a long-term rental.

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

Is Sally's Facebook post considered an advertisement?

Answer: Yes. The Commission considers Sally's Facebook post an advertisement because she is offering to lease a property on behalf of Mary.

If so, is she in compliance with License Law and Commission rules?

Answer: No. Sally may not be in compliance with License Law and Commission rules. According to Rule 58A .0105(a), Sally must have the consent of her BIC and indicate the name of the brokerage leasing the property in the advertisement. Sally is affiliated with ABC Realty and this brokerage does not allow affiliated brokers to practice property management. Sally knew this activity was not permissible so she did not obtain the consent of her BIC or include the name of the brokerage. Although Sally included her name and telephone number, she is not practicing brokerage as a sole proprietor and possibly may be in violation of Rule 58A .0105(a).

Takin' it to the Streets on page 33

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 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?

Answer: Pursuant to License Law and Commission 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.

Interactive News Reporting on page 39

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.**

Answer: The Commission recognizes assumed business names for sole proprietorships and licensed firms, not individual brokers according to Rule 58A .0103(c).

Takin' it to the Streets on page 45

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.

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

Answer: Yes. According to Rule 58A .0104(a), every agreement for brokerage services between a broker and an owner of the property to be the subject of the transaction shall be in writing and signed by the parties at the time of formation. Therefore, if the broker did not get the signature of all of the respective owners of the property to list the property or accept the offer, this may cause a breach of any future sales contract by the seller who signed if any owner who didn't sign does not wish to transfer title.

Could the buyer be entitled to damages?

Answer: Maybe. If the broker fails to get all of the owners to sign the listing agreement and offer, this could cause a breach of contract. Therefore, the owner(s) who did sign may have to compensate the buyer for any due diligence fees, earnest money deposit, and/or the cost of the buyer's due diligence process, per provisions in the standard 2-T sales contract.

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

Answer: Yes. There is a possible violation of Rule 58A .0104(a) when the broker listed the property but did not disclose that they were unable to obtain the signature of all of the owners in the written listing agreement prior to listing the property.

Takin' it to the Streets on page 47

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.

What rules and statutes apply?

Answer: Answers will vary.

Do all residential property owners have to follow provisions of the Tenant Security Deposit Act?

Answer: Yes. A real estate license is not required to manage your personally owned property. However, all residential landlords must follow the Tenant Security Deposit Act in N.C.G.S. §42-50. The requirements of the Act include informing the tenant of the location of the tenant security deposit, submitting interim accounting with an itemized list of deductions or the full tenant security deposit within 30 days of the termination of tenancy, and submitting a final accounting within 60 days of the termination of tenancy.

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

Answer: Yes. If a broker fails to adhere to the Tenant Security Deposit Act or Residential Rental Agreements Act, the landlord/broker may be found liable for violating License Law and Commission rules under N.C.G.S. §93A-6(a)(10).

You Be the Consumer Protection Officer on page 49

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?

Answer: Yes. *Rule 58A .0104(o) indicates that a broker with an ownership interest in a residential property cannot represent a prospective buyer. The rule carves out an exception to allow brokers who have less than a 25% ownership interest in **commercial property** to represent a buyer as long as they have full written disclosure of the broker's interest and consent to representation. Sam and Julie both own **residential property**; therefore, this exception is not applicable and Julie could not legally represent Tuck in the transaction. However, another affiliated broker with Z Realty that did not have any ownership interest in the property could have represented Tuck if Tuck consented to the broker representing him after full written disclosure that Sam and Julie owned the property.*

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?

Answer: No. *The Commission recognizes assumed business names for sole proprietorships and licensed firms, not individual brokers. Specifically, Rule 58A .0103(c) states:*

...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.

Therefore, John must use his legal name in the advertisements because he is an affiliated broker and not operating as a sole proprietorship.

Segment 3

Challenges of a Changing Market

SUMMARY OF IMPORTANT POINTS

- N.C.G.S. §93E requires anyone performing a real estate appraisal in North Carolina to be licensed as an appraiser by the North Carolina Appraisal Board.
- An appraiser is 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 valuable consideration.
- The national standards that are set by the USPAP include:
 - requirements for the development and reporting of real property appraisals; and
 - the development and reporting of an appraisal review.
- The law defines a 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.
- Licensed real estate brokers in North Carolina can perform an analysis of sales of similar recently sold properties in order to derive an indication of the probable sales price of a particular property, but not an indication of value or worth.
- The role of an appraiser is to analyze the data and the property, then report the results to their client, typically the lender.
- The appraiser's client is usually the mortgage lender, even though the buyer-borrower typically pays for the appraisal.
- The role of a broker is to advocate on behalf of their client and adhere to their fiduciary duties while providing agency representation.
- Information that brokers may commonly provide as mentioned in the NAR® article, "[The Appraiser's Role Isn't to Kill Your Deal](#)", is as follows:
 - a true legal description regarding the property;
 - a plat of survey;
 - blueprints, if the property is a new construction;
 - accurate and complete listing sheet;
 - property features and upgrades as well as parameters for competing properties and local benefits;
 - most recent real property tax bill;
 - any closed sales or listings that support the listing price; and
 - any insight on the current list price for the subject property.

- According to the NAR® article, [“5 Appraisal Topics Every Agent Should Know,”](#) the broker should communicate with the lender, not the appraiser, once an appraisal has been completed. If the broker would like to submit additional documentation and/or data for consideration, after the appraisal is complete, the broker must do so through the lender.
- If a broker thinks racial bias exists in the appraisal report, the broker should file a complaint with the North Carolina Appraisal Board, which is the state regulatory agency.
- An assumable mortgage allows a buyer to assume the rate, repayment period, current principal balance, and other terms of the seller’s existing mortgage instead of obtaining a new mortgage.
- Most conventional mortgages are not assumable because they have a due-on-sale clause in the mortgage contract.
- It is possible for a prospective buyer to assume the following types of loans if they meet certain requirements:
 - Federal Housing Administration (FHA);
 - Department of Veteran Affairs (VA); and/or
 - United States Department of Agriculture.
- If the mortgage is assumable, the mortgage contract will have an assumption clause. This assumption clause would permit the transfer of the mortgage to another party as long as they can meet the lender’s requirements.
- Lenders will evaluate the following criteria to determine whether a buyer qualifies for financing:
 - credit score and debt-to-income ratio;
 - employment history;
 - income; and
 - verification of their assets.
- The following are pros for assuming mortgages:
 - homes can be easier to sell due to a simplified home buying process;
 - a buyer saves money due to not having to pay for an appraisal; and
 - a buyer receives a lower interest rate than the current market which will save them money over the life of the loan.
- The cons of assuming mortgages are:
 - sellers may still be held liable for the assumed loan by the lender which can increase financial risk due to the possibility of buyer’s default;
 - veteran sellers possibly lose their VA entitlement which impacts their future eligibility for VA loans;
 - buyer may be required to have a large down payment or secure a 2nd mortgage, if seller has a lot of equity in the property; and
 - if the buyer needs to secure a 2nd mortgage, they must fully inform all lenders of the financing for the property.

- Owner-financing occurs when the owner of the property is willing and able to provide some or all of the financing for the prospective buyer by carrying the mortgage on the property.
- Some of the pros for owner financing are:
 - ready financing for buyers with reduced closing expenses, such as lender and appraisal fees;
 - seller's ability to earn additional fees on their money while transferring the property; and
 - seller may reduce tax liability by receiving sale proceeds over several tax years.
- The cons of owner financing may include:
 - interest rates may be typically higher than market rate for buyers;
 - the possibility of buyer defaults requiring the sellers to pursue foreclosure; and
 - the seller receives payments over the life of the loan versus all funds upfront at closing.
- Individuals who are trying to sell some equitable right or interest in the property by virtue of an existing contract which they want to assign should be careful to avoid engaging in brokerage services that require licensure.
- The real estate broker who represents the wholesaler does not have a written agreement with the owner of the property to provide brokerage services; therefore, the real estate broker of the wholesaler may not advertise the property that is the subject of the purchase contract.
- Brokers may increase their chances of liability when they only rely on the sellers' assertions when listing a property.
- The Commission will hold the listing agent responsible for the accuracy of the information in the listing description and what is communicated to the buyer and/or their respective agent.
- Information derived from material facts, the lack of surveys, and home inspection reports are some of the primary areas in which brokers incur the most liability.
- Therefore, it would be prudent for brokers to ensure they are knowledgeable about material facts and the need for surveys and home inspection reports.

ANSWERS TO DISCUSSION QUESTIONS

Newsroom Roundtable Discussion on page 51

1. Is a comparative market analysis the same as an appraisal?

Answer: *Although a comparative market analysis (CMA) is similar to the Market Data Approach used by appraisers, a CMA is NOT an appraisal. A comparative market analysis is an analysis of the sales of similar, recently sold properties to determine a probable sales price for a subject property. A comparative market analysis is done by a broker. An appraisal is an analysis, conclusion, or opinion of the value of a property also based on analysis of the sales of similar, recently sold properties by a licensed real estate appraiser. An appraiser must use independence, impartiality, and objectiveness when determining the opinion of value for the property.*

2. Can a broker communicate with an appraiser?

Answer: *Yes. A broker may communicate with an appraiser during the appraisal process. Communication is usually a one-way street from the broker to the appraiser. For example, the broker may provide property specific information and a comparative market analysis for the appraiser to consider using in the preparation of their opinion of value. However, the broker must not expect the appraiser to communicate confidential information such as the appraisal information with them. This information is sent directly to the lender. Additionally, once the appraisal is complete, if the broker has questions regarding the opinion, they must contact the lender and not the appraiser.*

Interactive Reporting on page 55

What is the difference between an appraisal and a comparative market analysis?

a) A CMA can be used to originate a mortgage loan, but an appraisal cannot be used for that purpose.

Answer: *An appraisal is used to determine the value of a property and is used by a lender to determine whether they will guarantee the mortgage loan. A CMA cannot be used to originate a mortgage loan. A CMA is an analysis of the probable sales price of a property.*

b) **An appraisal estimates value, and a CMA estimates the probable sales price.**

Answer: *Correct. 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. Brokers perform an analysis of recently sold properties (e.g. CMA) in order to derive an indication of the probable sales price of a particular property.*

- c) Standards for a CMA are set by USPAP, and standards for appraisals are set by the NCREC.

Answer: The standards for the CMA are set forth by Commission Rule 58A .2202 and the standards for appraisals are set forth by USPAP.

- d) An appraisal can be performed for a fee, but a CMA cannot be performed for a fee.

Answer: A CMA can be performed for a fee by a full broker as long as they comply with N.C.G.S. §93-83 and Rule 58A .2202. An appraisal is paid for by the prospective buyer to the lender who hires the appraiser.

Interactive News Reporting on page 56

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

- a. No, all appraisals are the same regardless of the type of financing.

Answer: Freddie Mac, Fannie Mae, FHA, USDA, and VA loans have different requirements that must be met before they can guarantee a loan; therefore, the appraiser must ensure that the property meets the specific loan requirements of the lender. The appraiser evaluates all of the data of the subject property and the lender requirements to ensure the lender has enough information about the collateral property to guarantee the loan. If the property doesn't meet the requirements, the lender will not finance the buyer's loan.

- b. No, the appraiser is not told about the type of financing the buyer is getting.

Answer: Freddie Mac, Fannie Mae, FHA, USDA, and VA loans have different requirements that must be met before they can guarantee a loan; therefore, the appraiser must ensure that the property meets the specific loan requirements of the lender. The appraiser evaluates all of the data of the subject property and the lender requirements to ensure the lender has enough information about the collateral property to guarantee the loan. If the property doesn't meet the requirements, the lender will not finance the buyer's loan.

- c. **Yes. The appraiser must comply with the requirements of the mortgage lender and guarantor.**

Answer: Correct. The appraiser must adhere to the USPAP when they are conducting an appraisal; however, the appraiser must also comply with the requirements from their client, the mortgage lender. Additionally, Freddie Mac, Fannie Mae, FHA, USDA, and VA loans have different requirements that must be met before they can guarantee a loan; therefore, the appraiser must ensure that the property meets certain additional loan requirements.

- d. Yes, it impacts the type of value the appraiser must provide.

Answer: Freddie Mac, Fannie Mae, FHA, USDA, and VA loans have different requirements that must be met before they can guarantee a loan; therefore, the appraiser must ensure that the property meets the specific loan requirements of the lender. The appraiser evaluates all of the data of the subject property and the lender requirements to ensure the lender has enough information about the collateral property to guarantee the loan. If the property doesn't meet the requirements, the lender will not finance the buyer's loan.

Interactive News Reporting on page 59

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.**

Answer: Correct. The appraiser may speak with the broker during the appraisal process and obtain additional property information and the sales contract. The broker should recommend their buyer-client to call the lender to discuss specific comparables, information, etc. The broker may speak with the lender, if the lender agrees after being contacted by the buyer-client.

- b. No, it would violate Dodd-Frank.

Answer: Brokers may communicate with appraisers and not violate Dodd-Frank, TILA, or USPAP. The appraiser may speak with the broker during the appraisal process and request additional property information and the sales contract. However, the appraiser will not provide confidential information from their client, the lender.

- c. No, it would violate the Truth-in-Lending Act.

Answer: Brokers may communicate with appraisers and not violate Dodd-Frank, TILA, or USPAP. The appraiser may speak with the broker during the appraisal process and request additional property information and the sales contract. However, the appraiser will not provide confidential information from their client, the lender.

- d. No, it would violate USPAP.

Answer: Brokers may communicate with appraisers and not violate Dodd-Frank, TILA, or USPAP. The appraiser may speak with the broker during the appraisal process and request additional property information and the sales contract. However, the appraiser will not provide confidential information from their client, the lender.

Takin' it to the Streets on page 61

Sarah lists her property for \$500K. Sue, the buyer, has been preapproved for \$505K by ABC Bank but offers \$501K for the property. ABC Bank conducts an appraisal for the property. The property appraises at \$465K. Tommy, the buyer agent, calls the appraiser to see if the recent comparables he included in the Appraisal Package were considered when the appraisal was conducted.

Is it permissible for Tommy to call the appraiser?

Answer: No. After the appraisal process is complete, Tommy must call the lender to inquire about the data used to compile the appraisal report. Tommy is not permitted to contact the appraiser directly after the appraisal process is completed.

Interactive News Reporting on page 65

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

- a) The mortgage note must have an assumption clause.
Answer: Correct. In order for a mortgage loan to be assumable, the mortgage note must have an assumption clause and the prospective buyer must be creditworthy according to the requirements set forth by the lender.
- b) The lender must agree to the assumption.
Answer: Correct. The lender must always agree to a loan assumption.
- c) The borrower has to meet the lenders creditworthy guidelines.
Answer: Correct. The borrower must be creditworthy according to the requirements set forth by the lender.
- d) So long as the borrower makes the payments on time, there are no issues.
Answer: Incorrect. Borrower must be formally approved for the loan assumption; just taking over and making the seller's payments is not adequate.

Takin' it to the Streets on page 74

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.

What concerns might the Commission have about this transaction?

Answer: *The Commission would inquire about the following: (1) whether Chad had the financial ability to consummate the transaction, (2) the seller knew Chad was going to assign the contract to Stew, and (3) whether Chad advertised/listed the property.*

Pursuant to G.S. §93A-2, Chad must have a real estate license to sell real estate. Further, in order to legally wholesale Lucy's property, Chad must state that he is selling his equitable interest in a property and does not have legal title.

You Be the Investigative News Reporter on page 80

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?

Answer: *Possibly. Joe is an unlicensed individual and does not have a real estate license in NC which is required to sell real estate under G.S. §93A-2 when it is conducted on behalf of others. Therefore, Joe may be practicing illegal brokerage when he advertises the property at 125 Church Street. Further, Joe must specify that he is selling his equitable interest in a purchase contract and not legal title to the property because he does not have an ownership interest.*

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?

Answer: *Yes. Samantha may be in violation of 58A .0104. The Rule states that a written listing agreement must be entered into by the owner and broker **prior** to the broker performing services like advertising the property. Samantha advertised the property as if she was selling the property for the owner or as if she had legal title when she was only selling her equitable interest in the purchase contract for a property. Also, the Commission encourages Samantha to inform the seller that she has a real estate license. If Samantha listed the property in her local MLS, she is a REALTOR®. Therefore, according to the REALTOR® Code of Ethics, she is required to disclose that she has a real estate license. Furthermore, she should recommend that the seller seek the advice of another broker or legal counsel prior to entering into a contract with her.*

Segment 4

Legislative Desk

Law & Rules Updates

ANSWERS TO DISCUSSION QUESTIONS

Newsroom Roundtable Discussion on page 81

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

Answer: Answers will vary.

2. What new rule changes have you heard about?

Answer: Answers will vary.

Interactive News Reporting on page 86

Can I get any 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.

Answer: If the course is approved by the NCREC and offered by a NCREC-certified education provider, 4 hours of CE credit will be awarded upon successful completion of the course. Also, a majority of these courses are already approved. However, prior to registering for the course, NC brokers must ensure that the course is approved by the North Carolina Real Estate Commission and offered by a NCREC-certified education provider.

- b) You might, but you are going to have to make a special request to get CE credit.

Answer: If the course is approved by the NCREC and offered by a NCREC-certified education provider, 4 hours of CE credit will be automatically awarded upon successful completion of the course. Also, a majority of these courses are already approved. However, prior to registering for the course, NC brokers must ensure that the course is approved by the North Carolina Real Estate Commission and offered by a NCREC-certified education provider.

- c) Any course you take that lasts at least 4 hours provides CE credit.
Answer: A broker will only receive 4 hours of CE elective credit after the successful completion of an already approved CE course that is offered by a NCREC-certified education provider.
- 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.**
Answer: Yes. However, prior to registering for the course, NC brokers must ensure that the course is approved by the North Carolina Real Estate Commission and offered by a NCREC-certified education provider. This is advantageous to brokers because the education provider is responsible for submitting their CE report to the Commission so that the Commission can award the brokers CE credit.
Also, brokers will not incur any additional costs for this information being reported to the Commission because the course is already approved. Brokers may find approved courses by:
- going to www.ncrec.gov;
 - clicking on the Education menu;
 - clicking on Search CE Course Schedule; and
 - clicking on Search Providers.

Takin' it to the Streets on page 87

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 continuing education 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 continuing education. Can she still do that?

Answer: No. See following questions for more detail.

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

Answer: No. Ashley is no longer able to certify for North Carolina CE credit that she has an active license in Oklahoma while renewing her NC real estate license.

Does it matter what education she completed in Oklahoma?

Answer: No. According to Rule 58A .1702(a), all brokers with a NC real estate license must take eight hours of continuing education courses within one year prior to the expiration of their license. Specifically, Rule 58A .1702(b) requires a broker to take four hours of elective courses and four hours of the General Update Course or the Broker-in-Charge Update Course if the broker has BIC Eligible status.

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

Answer: *No. According to Rule 58A .1702(a), all brokers with a NC real estate license must take eight hours of continuing education courses within one year prior to the expiration of their license. Specifically, Rule 58A .1702(b) requires a broker to take four hours of elective courses and four hours of the General Update Course or the Broker-in-Charge Update Course if the broker has BIC Eligible status.*

Interactive News Reporting on page 89

1. When a listing broker reviews the Residential Property and Owners' Association Disclosure Statement (hereafter referred to as "RPOADS") and knows a seller's statement is incorrect, what should the broker do?

a. Change the RPOADS and make the necessary corrections.

Answer: *The RPOADS is a seller disclosure that must remain accurate. Therefore, the seller-owner must complete the RPOADS and make the necessary corrections. The broker cannot complete the form; however, they can give the seller guidance on proper completion of the form and the importance of maintaining the accuracy of information. Additionally, the broker must discover and disclose material facts about the property, instead of relying on the RPOADS or the seller alone.*

b. Listing brokers do not need to review the RPOADS.

Answer: *The RPOADS is a seller disclosure that must remain accurate. Therefore, the seller-owner must complete the RPOADS and make the necessary corrections. The broker cannot complete the form; however, they can give the seller guidance on proper completion of the form and the importance of maintaining the accuracy of information. Additionally, the broker must discover and disclose material facts about the property, instead of relying on the RPOADS or the seller alone.*

c. Discuss the discrepancy with the seller, encourage them to correct it, and make additional disclosure if necessary.

Answer: *Correct. The RPOADS is a seller disclosure that must remain accurate. Therefore, the seller-owner must complete the RPOADS and make the necessary corrections. The broker cannot complete the form; however, they can give the seller guidance on proper completion of the form and the importance of maintaining the accuracy of information. Additionally, the broker must discover and disclose material facts about the property, instead of relying on the RPOADS or the seller alone.*

- d. The broker does not need to do anything since the RPOADS contains the seller's representations.

Answer: *The RPOADS is a seller disclosure that must remain accurate. Therefore, the seller-owner must complete the RPOADS and make the necessary corrections. The broker cannot complete the form; however, they can give the seller guidance on proper completion of the form and the importance of maintaining the accuracy of information. Additionally, the broker must discover and disclose material facts about the property, instead of relying on the RPOADS or the seller alone.*

2. Which property transfer is exempt from providing an RPOADS?

- a. Transfers involving the first sale of a dwelling never inhabited

Answer: *Correct. According to N.C.G.S. 47E-2(b), a transfer involving the first sale of a dwelling never inhabited is exempt from the RPOADS disclosure requirement.*

- b. Transfers of residential rental property when the owner has never occupied the property

Answer: *According to N.C.G.S. 47E-2(b), a transfer of residential rental property when the owner has never occupied the property is not exempt from the RPOADS disclosure requirement.*

- c. Out of state sellers who do not currently live in the property

Answer: *According to N.C.G.S. 47E-2(b), out of state sellers who do not currently live in the property are not exempt from the RPOADS disclosure requirement.*

- d. Transfers where the seller informs the buyer in writing that they are not providing the document and clearly states that the property is being transferred "as is"

Answer: *According to N.C.G.S. 47E-2(b), transfers where the seller informs the buyer in writing that they are not providing the document and clearly state that the property is being transferred "as is" are not exempt from the RPOADS disclosure requirement.*

Takin' it to the Streets on page 96

Stan is in the armed forces and a licensed real estate broker. While on active duty in Miami, Stan went home to visit his family and friends. He failed to get authorization from his commanding officer to leave the base. Once Stan returned back to the base, he was arrested and later court martialled for taking unauthorized leave. He was sentenced to 30 days in the Brig and forfeiture of a month's pay.

Does Stan have to report the military court-martial to the Commission?

a) No. Stan has not been convicted of a felony or misdemeanor.

Answer: Military court-martial convictions are reportable offenses under Rule 58A .0113.

b) Yes. Stan must report the military court-martial conviction to the Commission in accordance with Rule 58A .0113.

Answer: Correct. Military court-martial convictions are reportable offenses under Rule 58A .0113.

c) No. Stan was not disciplined by an occupational licensing agency.

Answer: Military court-martial convictions are reportable offenses under Rule 58A .0113.

d) Yes. Stan must report the military court-martial because he had to spend 30 days in the Brig and forfeit a month's pay.

Answer: Military court-martial convictions are reportable offenses under Rule 58A .0113.

Segment 5

EDUCATION UPDATE

Lifestyles Desk

ANSWERS TO DISCUSSION QUESTIONS

Newsroom Roundtable Discussion on page 101

1. Do you need to complete CE prior to renewing your license?

Answer: No. License renewal is not contingent upon a broker completing their continuing education requirements. Theoretically, a broker could renew their license on May 15th and then complete their required continuing education no later than June 10th.

2. How do you maintain a license on inactive status?

Answer: A broker who wants to maintain a license on inactive status must still pay their renewal fee of \$45 between May 15-June 30 each license year. Although the broker is renewing their license, they cannot conduct brokerage activities because their license is still inactive unless they have filed a License Activation form.

3. Why would a broker have to comply with license reinstatement requirements?

Answer: A broker must reinstate their license pursuant to Rule 58A .0505 if their license status is expired, revoked, or the broker surrendered their license. The requirements for reinstatement of a broker license varies based upon the length of time the license was expired, revoked, or surrendered.

Takin' It to the Streets on page 104

Weaklon, NC -Sam, the Qualifying Broker of See Homes, failed to complete his General Update Course and continuing education 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 June 11-June 30 due to the 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 continuing education courses.

What will be the status of Sam's broker license on July 1st?

Answer: *If Sam remembers to renew his license by June 30th, Sam's license will be inactive on July 1 due to his failure to complete CE by June 10th.*

How will Sam's broker license status impact See Homes, if at all?

Answer: *See Homes' firm license will be inactive as of July 1 because Sam, as QB, failed to complete his required CE by June 10. However, if another broker who meets the requirements under Rule 58A .0502 to be a QB can be appointed by June 30th, See Homes can avoid having to cease brokerage activities on July 1.*

Segment 6

Business News

BIC Policies

SUMMARY OF IMPORTANT POINTS

- **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, other than the BIC, who is affiliated with the firm.
- **Broker-in-Charge (BIC):** The broker who has been designated as the primary person having responsibility for the supervision and management of an office.
- **Provisional Broker (PB):** This is the entry-level license status for an individual broker license who has not completed 90-hours of the Postlicensing education program. A PB must be under the supervision of a BIC to be on active status and legally provide brokerage services.
- According to Rule 58A .0110(a), every real estate firm is required to have a broker that is designated by the Commission who meets the qualification requirements to serve as BIC of the firm's principal office and a different broker to serve in the same capacity at each branch office.
- Further, 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.
- The BIC has to be ALERT 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**.
- Policies 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.
- Written office policies must be applicable to all affiliated brokers and the BIC should uniformly enforce all of the policies.

- 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 and current 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.
- Commission staff will determine whether the BIC was aware/participated in the transaction, and/or reasonably knew or should have known about the affiliated broker's alleged actions.
- The following questions may be asked and/or documentation may be requested by Commission staff during an investigation:
 - Does the brokerage have a written policies and procedures manual?
 - Does the brokerage enter into written employment/independent contractor agreements with affiliated brokers?
 - 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.
 - 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.
 - Did the BIC enforce the firm's policy? If so, how?
 - Describe your role in the transaction that is the subject of the complaint.
 - Describe your supervision of the affiliated broker in the transaction that is the subject of the complaint.
 - 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.
 - Provide copies of all additional documentation necessary to support your position.
 - Provide any additional information you believe will help us better understand this matter.

- 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.

ANSWERS TO DISCUSSION QUESTIONS

Newsroom Roundtable Discussion on page 143

1. Does your office have a written policies and procedures manual?

Answer: Answers will vary. The Commission does not have a rule that specifically mandates each brokerage to have a written office policies and procedures manual. However, it is strongly recommended for each brokerage practice.

2. What types of things does your manual address?

Answer: Answers will vary. The Commission has provided sample topics for a brokerage to include in their written office policies and procedures. The Broker-in-Charge Best Practices Guide contains some suggestions and can be found on the Commission's website at www.ncrec.gov/Pdfs/bicguide.pdf.

Takin' it to the Streets on page 147

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.

Can the brokerage prevent affiliated brokers from affiliating with more than one brokerage?

Answer: *Yes. Although the Commission allows for full brokers to dually affiliate with multiple brokerages, the BIC of ABC Brokerage can create written office policies that restrict affiliated brokers from dually affiliating. BICs have the authority to create written office policies that are more restrictive than License Law and Commission rules. However, BICs must ensure that they are uniformly and consistently applying all of the written office policies to each affiliated broker.*

Does the Commission dictate the required office policies for brokerages?

Answer: *No. The Commission does not dictate the written office policies for brokerages. However, the Commission has created the Broker-in-Charge Best Practices Guide to assist BICs with recommendations on suggested policies they should include in their office policy manual. The Broker-in-Charge Best Practices Guide can be found on the Commission's website at www.ncrec.gov/Pdfs/bicguide.pdf*