

## SUBCHAPTER 58A – REAL ESTATE BROKERS

### SECTION .0100 - GENERAL BROKERAGE

#### 21 NCAC 58A .0101 PROOF OF LICENSURE

(a) The pocket card issued by the Commission annually to each broker shall be retained by the broker as evidence of licensure. Each broker shall produce a legible form of the card as proof of licensure whenever requested while engaging in real estate brokerage.

(b) Every licensed real estate business entity or firm shall prominently display its license certificate or a copy of its license certificate in each office maintained by the entity or firm. A broker-in-charge shall also display his or her license certificate in the office where he or she is broker-in-charge.

(c) A replacement real estate license or pocket card may be obtained by:

- (1) submitting a written request to the Commission that includes the broker or firm's:
  - (A) legal name;
  - (B) license number;
  - (C) physical and mailing address;
  - (D) phone number;
  - (E) email address;
  - (F) proof of legal name change pursuant to Rule .0103 of this Section, if applicable; and
  - (G) signature; and
- (2) paying a five dollar (\$5.00) duplicate license fee.

*History Note: Authority G.S. 93A-3(c); 93A-4;  
Eff. February 1, 1976;  
Readopted Eff. September 30, 1977;  
Amended Eff. July 1, 2017; July 1, 2005; April 1, 2004; October 1, 2000; September 1, 1998;  
August 1, 1998; April 1, 1997; February 1, 1989;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018.*

#### 21 NCAC 58A .0102 BRANCH OFFICE

*History Note: Authority G.S. 93A-3(c);  
Eff. February 1, 1976;  
Readopted Eff. September 30, 1977;  
Amended Eff. September 1, 1983;  
Repealed Eff. May 1, 1984.*

#### 21 NCAC 58A .0103 BROKER NAME AND ADDRESS

(a) Upon initial licensure, every broker shall notify the Commission of the broker's current personal name, firm name, trade name, residence address, firm address, telephone number, and email address. All addresses provided to the Commission shall be sufficiently descriptive to enable the Commission to correspond with and locate the broker.

(b) Every broker shall notify the Commission in writing of each change of personal name, firm name, trade name, residence address, firm address, telephone number, and email address within 10 days of said change. A broker notifying the Commission of a change of legal name or firm name shall also provide evidence of a legal name change for either the individual or firm, such as a court order or name change amendment from the Secretary of State's Office.

(c) In the event that any broker shall advertise or operate in any manner using a name different from the name under which the broker is licensed, the broker shall first file an assumed name certificate in compliance with G.S. 66-71.4 and shall notify the Commission in writing of the use of such a firm name or assumed name. An 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.

(d) A broker shall not include the name of a provisional broker or an unlicensed person in the legal or assumed name of a sole proprietorship, partnership, or business entity other than a corporation or limited liability company. No broker shall use a business name that includes the name of any current or former broker without the permission of that broker or that broker's authorized representative.

*History Note: Authority G.S. 55B-5; 66-68; 93A-3(c); 93A-6(a)(1); Eff. February 1, 1976; Readopted Eff. September 30, 1977; Amended Eff. July 1, 2017; July 1, 2016; April 1, 2013; August 1, 1998; February 1, 1989; May 1, 1984; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018.*

## **21 NCAC 58A .0104 AGENCY AGREEMENTS AND DISCLOSURE**

(a) Every agreement for brokerage services in a real estate transaction and every agreement for services connected with the management of a property owners association shall be in writing and signed by the parties thereto. Every agreement for brokerage services between a broker and an owner of the property to be the subject of a transaction shall be in writing and signed by the parties at the time of its formation. Every agreement for brokerage services between a broker and a buyer or tenant shall be express and shall be in writing and signed by the parties thereto not later than the time one of the parties makes an offer to purchase, sell, rent, lease, or exchange real estate to another. However, every agreement between a broker and a buyer or tenant that seeks to bind the buyer or tenant for a period of time or to restrict the buyer's or tenant's right to work with other agents or without an agent shall be in writing and signed by the parties thereto from its formation. A broker shall not continue to represent a buyer or tenant without a written, signed agreement when such agreement is required by this Rule. Every written agreement for brokerage services of any kind in a real estate transaction shall be for a definite period of time, shall include the broker's license number, and shall provide for its termination without prior notice at the expiration of that period, except that an agency agreement between a landlord and broker to procure tenants or receive rents for the landlord's property may allow for automatic renewal so long as the landlord may terminate with notice at the end of any contract period and any subsequent renewals. Every written agreement for brokerage services that includes a penalty for early termination shall set forth such a provision in a clear and conspicuous manner that shall distinguish it from other provisions of the agreement. For the purposes of this Rule, an agreement between brokers to cooperate or share compensation shall not be considered an agreement for brokerage services and, except as required by Rule .1807 of this Subchapter, need not be memorialized in writing.

(b) Every listing agreement, written buyer agency agreement, or other written agreement for brokerage services in a real estate transaction shall contain the following provision: "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." The provision shall be set forth in a clear and conspicuous manner that shall distinguish it from other provisions of the agreement. For the purposes of this Rule, the term, "familial status" shall be defined as it is in G.S. 41A-3(1b).

(c) In every real estate sales transaction, a broker shall, at first substantial contact with a prospective buyer or seller, provide the prospective buyer or seller with a copy of the publication "Working with Real Estate Agents," set forth the broker's name and license number thereon, review the publication with the buyer or seller, and determine whether the agent will act as the agent of the buyer or seller in the transaction. If the first substantial contact with a prospective buyer or seller occurs by telephone or other electronic means of communication where it is not practical to provide the "Working with Real Estate Agents" publication, the broker shall at the earliest opportunity thereafter, but in no event later than three days from the date of first substantial contact, mail or otherwise transmit a copy of the publication to the prospective buyer or seller and review it with him or her at the earliest practicable opportunity thereafter. For the purposes of this Rule, "first substantial contact" shall include contacts between a broker and a consumer where the consumer or broker begins to act as though an agency relationship exists and the consumer begins to disclose to the broker personal or confidential information. The "Working with Real Estate Agents" publication may be obtained on the Commission's website at [www.ncrec.gov](http://www.ncrec.gov) or upon request to the Commission.

(d) A real estate broker representing one party in a transaction shall not undertake to represent another party in the transaction without the written authority of each party. The written authority shall be obtained upon the formation of the relationship except when a buyer or tenant is represented by a broker without a written agreement in conformity with the requirements of Paragraph (a) of this Rule. Under such circumstances, the written authority for dual agency shall be reduced to writing not later than the time that one of the parties represented by the broker makes an offer to purchase, sell, rent, lease, or exchange real estate to another party.

(e) In every real estate sales transaction, a broker working directly with a prospective buyer as a seller's agent or subagent shall disclose in writing to the prospective buyer at the first substantial contact with the prospective buyer that the broker represents the interests of the seller. The written disclosure shall include the broker's license number.

If the first substantial contact occurs by telephone or by means of other electronic communication where it is not practical to provide written disclosure, the broker shall immediately disclose by similar means whom he or she represents and shall immediately mail or otherwise transmit a copy of the written disclosure to the buyer. In no event shall the broker mail or transmit a copy of the written disclosure to the buyer later than three days from the date of first substantial contact with the buyer.

(f) In every real estate sales transaction, a broker representing a buyer shall, at the initial contact with the seller or seller's agent, disclose to the seller or seller's agent that the broker represents the buyer's interests. In addition, in every real estate sales transaction other than auctions, the broker shall, no later than the time of delivery of an offer to the seller or seller's agent, provide the seller or seller's agent with a written confirmation disclosing that he or she represents the interests of the buyer. The written confirmation may be made in the buyer's offer to purchase and shall include the broker's license number.

(g) The provisions of Paragraphs (c), (d) and (e) of this Rule do not apply to real estate brokers representing sellers in auction sales transactions.

(h) A broker representing a buyer in an auction sale transaction shall, no later than the time of execution of a written agreement memorializing the buyer's contract to purchase, provide the seller or seller's agent with a written confirmation disclosing that he or she represents the interests of the buyer. The written confirmation may be made in the written agreement.

(i) A firm that represents more than one party in the same real estate transaction is a dual agent and, through the brokers associated with the firm, shall disclose its dual agency to the parties.

(j) When a firm represents both the buyer and seller in the same real estate transaction, the firm may, with the prior express approval of its buyer and seller clients, designate one or more individual brokers associated with the firm to represent only the interests of the seller and one or more other individual brokers associated with the firm to represent only the interests of the buyer in the transaction. The authority for designated agency shall be reduced to writing not later than the time that the parties are required to reduce their dual agency agreement to writing in accordance with Paragraph (d) of this Rule. An individual broker shall not be so designated and shall not undertake to represent only the interests of one party if the broker has actually received confidential information concerning the other party in connection with the transaction. A broker-in-charge shall not act as a designated broker for a party in a real estate sales transaction when a provisional broker under his or her supervision will act as a designated broker for another party with a competing interest.

(k) When a firm acting as a dual agent designates an individual broker to represent the seller, the broker so designated shall represent only the interest of the seller and shall not, without the seller's permission, disclose to the buyer or a broker designated to represent the buyer:

- (1) that the seller may agree to a price, terms, or any conditions of sale other than those established by the seller;
- (2) the seller's motivation for engaging in the transaction unless disclosure is otherwise required by statute or rule; and
- (3) any information about the seller that the seller has identified as confidential unless disclosure of the information is otherwise required by statute or rule.

(l) When a firm acting as a dual agent designates an individual broker to represent the buyer, the broker so designated shall represent only the interest of the buyer and shall not, without the buyer's permission, disclose to the seller or a broker designated to represent the seller:

- (1) that the buyer may agree to a price, terms, or any conditions of sale other than those established by the seller;
- (2) the buyer's motivation for engaging in the transaction unless disclosure is otherwise required by statute or rule; and
- (3) any information about the buyer that the buyer has identified as confidential unless disclosure of the information is otherwise required by statute or rule.

(m) A broker designated to represent a buyer or seller in accordance with Paragraph (j) of this Rule shall disclose the identity of all of the brokers so designated to both the buyer and the seller. The disclosure shall take place no later than the presentation of the first offer to purchase or sell.

(n) When an individual broker represents both the buyer and seller in the same real estate sales transaction pursuant to a written agreement authorizing dual agency, the parties may provide in the written agreement that the broker shall not disclose the following information about one party to the other without permission from the party about whom the information pertains:

- (1) that a party may agree to a price, terms, or any conditions of sale 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 that the party has identified as confidential, unless disclosure is otherwise required by statute or rule.

(o) 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 percent 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. A firm listing a property owned by a broker affiliated with the firm may represent a buyer of that property so long as any individual broker representing the buyer on behalf of the firm does not have an ownership interest in the property and the buyer consents to the representation after full written disclosure of the broker's ownership interest.

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

*History Note: Authority G.S. 41A-3(1b); 41A-4(a); 93A-3(c); 93A-6(a); Eff. February 1, 1976; Readopted Eff. September 30, 1977; Amended Eff. July 1, 2015; July 1, 2014; July 1, 2009; July 1, 2008; April 1, 2006; July 1, 2005; July 1, 2004; April 1, 2004; September 1, 2002; July 1, 2001; October 1, 2000; August 1, 1998; July 1, 1997; August 1, 1996; July 1, 1995; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018.*

## **21 NCAC 58A .0105 ADVERTISING**

(a) Authority to Advertise.

- (1) A broker shall not advertise any brokerage service or the sale, purchase, exchange, rent, or lease of real estate for another or others without the consent of his or her broker-in-charge and without including in the advertisement the name of the firm or sole proprietorship with which the broker is affiliated.
- (2) A broker shall not display a "for sale" or "for rent" sign on any real estate or otherwise advertise any real estate without the written consent of the owner or the owner's authorized agent.

(b) Blind Ads. A broker shall not advertise the sale, purchase, exchange, rent, or lease of real estate for others in a manner indicating the offer to sell, purchase, exchange, rent, or lease is being made by the broker's principal only. Every such advertisement shall indicate that it is the advertisement of a broker or firm and shall not be confined to publication of only contact information, such as a post office box number, telephone number, street address, internet web address, or e-mail address.

(c) A person licensed as a limited nonresident commercial broker shall comply with the provisions of Rule .1809 of this Subchapter in connection with all advertising concerning or relating to his or her status as a North Carolina broker.

*History Note: Authority G.S. 93A-2(a1); 93A-3(c); Eff. February 1, 1976; Readopted Eff. September 30, 1977; Amended Eff. July 1, 2015; April 1, 2013; July 1, 2009; January 1, 2008; April 1, 2006; July 1, 2004; October 1, 2000; August 1, 1998; April 1, 1997; July 1, 1989; February 1, 1989; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018; Amended Eff. July 1, 2021; July 1, 2018.*

## **21 NCAC 58A .0106 DELIVERY OF INSTRUMENTS**

(a) Except as provided in Paragraph (b) of this Rule, every broker shall deliver a copy of any written agency agreement, contract, offer, lease, rental agreement, option, or other related transaction document to their customer or client within three days of the broker's receipt of the executed document.

(b) A broker may be relieved of the duty to deliver copies of leases or rental agreements to a property owner pursuant to Paragraph (a) of this Rule if the broker:

- (1) obtains the prior written authority of the property owner to enter into and retain copies of leases or rental agreements on behalf of the property owner;
- (2) executes the lease or rental agreement on a pre-printed form, the material terms of which may not be changed by the broker without prior approval by the property owner, except as may be required by law; and
- (3) delivers to the property owner an accounting within 45 days following the date of execution of the lease or rental agreement that identifies:
  - (A) the leased property;
  - (B) the name, phone number, and home address of each tenant; and
  - (C) the rental rates and rents collected.

(c) Paragraph (b) of this Rule notwithstanding, upon the request of a property owner, a broker shall deliver a copy of any lease or rental agreement within five days.

*History Note: Authority G.S. 93A-3(c);  
Eff. February 1, 1976;  
Readopted Eff. September 30, 1977;  
Amended Eff. July 1, 2017; July 1, 2005; July 1, 2001; October 1, 2000; May 1, 1990; July 1, 1989; February 1, 1989;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018;  
Amended Eff. July 1, 2018.*

## **21 NCAC 58A .0107 HANDLING AND ACCOUNTING OF FUNDS**

*History Note: Authority G.S. 93A-3(c); 93A-9;  
Eff. February 1, 1976;  
Readopted Eff. September 30, 1977;  
Amended Eff. January 1, 2012; April 1, 2006; July 1, 2005; July 1, 2004; July 1, 2003; September 1, 2002; August 1, 2000; August 1, 1998; July 1, 1996; July 1, 1993; May 1, 1990.  
Repealed Eff. April 1, 2013.*

## **21 NCAC 58A .0108 RETENTION OF RECORDS**

(a) Brokers shall retain records of all sales, rental, and other transactions conducted in such capacity, whether the transaction is pending, completed, or terminated. The broker shall retain records for three years after all funds held by the broker in connection with the transaction have been disbursed to the proper party or parties or the conclusion of the transaction, whichever occurs later. If the broker's agency agreement is terminated prior to the conclusion of the transaction, the broker shall retain such records for three years after the termination of the agency agreement or the disbursement of all funds held by or paid to the broker in connection with the transaction, whichever occurs later.

(b) Records shall include copies of the following:

- (1) contracts of sale;
- (2) written leases;
- (3) agency contracts;
- (4) options;
- (5) offers to purchase;
- (6) trust or escrow records;
- (7) earnest money receipts;
- (8) disclosure documents;
- (9) closing statements;
- (10) brokerage cooperation agreements;

- (11) declarations of affiliation;
  - (12) broker price opinions and comparative market analyses prepared pursuant to G.S. 93A, Article 6, including any notes and supporting documentation;
  - (13) sketches, calculations, photos, and other documentation used or relied upon to determine square footage;
  - (14) advertising used to market a property; and
  - (15) any other records pertaining to real estate transactions.
- (c) All records shall be made available for inspection and reproduction by the Commission or its authorized representatives without prior notice.
- (d) Brokers shall provide a copy of the written agency disclosure and acknowledgement thereof when applicable, written agency agreement, contract, offer, lease, rental agreement, option, or other related transaction document to the firm or sole proprietorship with which they are affiliated within three days of receipt.

*History Note: Authority G.S. 93A-3(c);  
Eff. February 1, 1976;  
Readopted Eff. September 30, 1977;  
Amended Eff. July 1, 2004; September 1, 2002; August 1, 1998; February 1, 1989; February 1, 1998;  
Temporary Amendment Eff. October 1, 2012;  
Amended Eff. July 1, 2018; July 1, 2016; April 1, 2013;  
Readopted Eff. July 1, 2019.*

#### **21 NCAC 58A .0109      BROKERAGE FEES AND COMPENSATION**

- (a) A licensee shall not receive, either directly or indirectly, any commission, rebate or other valuable consideration of more than nominal value from a vendor or a supplier of goods and services for an expenditure made on behalf of the licensee's principal in a real estate transaction without the written consent of the licensee's principal.
- (b) A licensee shall not receive, either directly or indirectly, any commission, rebate, or other valuable consideration of more than nominal value for services which the licensee recommends, procures, or arranges relating to a real estate transaction for a party, without full and timely disclosure to such party.
- (c) In a real estate sales transaction, a broker shall not receive any compensation, incentive, bonus, rebate, or other consideration of more than nominal value:
- (1) from his principal unless the compensation, incentive, bonus, rebate, or other consideration is provided for in a written agency contract prepared in conformity with the requirements of 21 NCAC 58A .0104.
  - (2) from any other party or person unless the broker provides full and timely disclosure of the incentive, bonus, rebate, or other consideration, or the promise or expectation thereof to the broker's principal. The disclosure may be made orally, but must be confirmed in writing before the principal makes or accepts an offer to buy or sell.
- (d) Full disclosure shall include a description of the compensation, incentive, bonus, rebate, or other consideration including its value and the identity of the person or party by whom it will or may be paid. A disclosure is timely when it is made in sufficient time to aid a reasonable person's decision-making.
- (e) Nothing in this rule shall be construed to require a broker to disclose to a person not his principal the compensation the broker expects to receive from his principal or to disclose to his principal the compensation the broker expects to receive from the broker's employing broker. For the purpose of this Rule, nominal value means of insignificant, token, or merely symbolic worth.
- (f) The Commission shall not act as a board of arbitration and shall not compel parties to settle disputes concerning such matters as the rate of commissions, the division of commissions, pay of brokers, and similar matters.
- (g) Except as provided in (h) of this rule, a licensee shall not undertake in any manner, any arrangement, contract, plan or other course of conduct, to compensate or share compensation with unlicensed persons or entities for any acts performed in North Carolina for which licensure by the Commission is required.
- (h) A broker may pay or promise to pay consideration to a travel agent in return for procuring a tenant for a vacation rental as defined by the Vacation Rental Act if:
- (1) the travel agent only introduces the tenant to the broker, but does not otherwise engage in any activity which would require a real estate license;
  - (2) the introduction by the travel agent is made in the regular course of the travel agent's business; and

- (3) the travel agent has not solicited, handled or received any monies in connection with the vacation rental.

For the purpose of this Rule, a travel agent is any person or entity who is primarily engaged in the business of acting as an intermediary between persons who purchase air, land, and ocean travel services and the providers of such services. A travel agent is also any other person or entity who is permitted to handle and sell tickets for air travel by the Airlines Reporting Corporation (ARC). Payments authorized hereunder shall be made only after the conclusion of the vacation rental tenancy. Prior to the creation of a binding vacation rental agreement, the broker shall provide a tenant introduced by a travel agent a written statement advising him or her to rely only upon the agreement and the broker's representations about the transaction. The broker shall keep for a period of three years records of a payment made to a travel agent including records identifying the tenant, the travel agent and their addresses, the property and dates of the tenancy, and the amount paid.

(i) Nothing in this Rule shall be construed to permit a licensee to accept any fee, kickback or other valuable consideration that is prohibited by the Real Estate Settlement Procedures Act (12 USC 2601 et. seq.) or any rules and regulations promulgated by the United States Department of Housing and Urban Development pursuant to said Act or to fail to make any disclosure required by said Act or rules.

*History Note: Authority G.S. 93A-3(c) ; 93A-6(a)(1); 93A-6(a)(4);  
Eff. February 1, 1976;  
Readopted Eff. September 30, 1977;  
Amended Eff. October 1, 2008; April 1, 2006; July 1, 2005; September 1, 2002; August 1, 2000;  
August 1, 1998; April 1, 1997; July 1, 1989; November 1, 1987;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018.*

## **21 NCAC 58A .0110 BROKER-IN-CHARGE**

(a) Every real estate firm shall designate one BIC for its principal office and one BIC for each of its branch offices. No office of a firm shall have more than one designated BIC. A BIC shall not serve as BIC for more than one office unless each of those offices share the same physical office space and delivery address.

(b) Every sole proprietorship shall designate a BIC if the sole proprietorship:

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

(c) A licensed real estate firm shall not be required to have a BIC if it:

- (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.

(d) A broker who maintains a trust or escrow account for the sole purpose of holding residential tenant security deposits received by the broker on properties owned by the broker in compliance with G.S. 42-50 shall not be required to be a BIC.

(e) In order for a broker to designate as a BIC for a sole proprietor, real estate firm, or branch office, a broker shall apply for BIC Eligible status by submitting an application on a form available on the Commission's website. The BIC Eligible status form shall include the broker's:

- (1) name;
- (2) license number;
- (3) telephone number;
- (4) email address;
- (5) criminal history and history of occupational license disciplinary actions;
- (6) certification of compliance with G.S. 93A-4.2, including that:
  - (A) his or her broker license is on active status;
  - (B) the broker has obtained at least two years of real estate brokerage experience equivalent to 40 hours per week within the previous five years or shall be a North Carolina licensed

- attorney with a practice that consisted primarily of handling real estate closings and related matters in North Carolina for three years immediately preceding application; and
- (C) the broker completed the 12-hour Broker-in-Charge Course no earlier than one year prior to application and no later than 120 days after application; and
- (7) signature.
- (f) A broker who holds BIC Eligible status shall submit a form to become the designated BIC for a sole proprietor, real estate firm, or branch office. The BIC designation form shall include:
- (1) the broker's:
    - (A) name;
    - (B) license number;
    - (C) telephone number;
    - (D) email address; and
    - (E) criminal history and history of occupational license disciplinary actions; and
  - (2) the firm's:
    - (A) name; and
    - (B) license number, if applicable;
- (g) A designated BIC shall:
- (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 records 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 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 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 G.S. 93A-2(c)(6).
- (h) A broker holding BIC Eligible status shall take the Broker-in-Charge Update Course during the license year of designation, unless the broker has satisfied the requirements of Rule .1702 of this Subchapter prior to designation.
- (i) A broker's BIC Eligible status shall terminate if the broker:
- (1) made any false statements or presented any false, incomplete, or incorrect information in connection with an application;
  - (2) fails to complete the 12-hour Broker-in-Charge Course pursuant to Paragraph (e) of this Rule;
  - (3) fails to renew his or her broker license pursuant to Rule .0503 of this Subchapter, or the broker's license has been suspended, revoked, or surrendered; or
  - (4) fails to complete the Broker-in-Charge Update Course and a four credit hour elective course pursuant to Rules .1702 and .1711 of this Subchapter, if applicable.
- (j) In order to regain BIC Eligible status after a broker's BIC Eligible status terminates, the broker shall complete the 12-hour Broker-in-Charge Course prior to application and then submit a BIC Eligible status form pursuant to Paragraph (e) of this Rule.
- (k) A nonresident commercial real estate broker licensed under the provisions of Section .1800 of this Subchapter shall not act as or serve in the capacity of a broker-in-charge of a firm or office in North Carolina.
- (l) A broker shall not be granted BIC Eligible status or designated as BIC of a firm if there is a pending Commission investigation against the broker.

*History Note:* Authority G.S. 93A-2; 93A-3(c); 93A-4; 93A-4.2; 93A-9; 93A-38.5; Eff. September 1, 1983;



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*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018;*  
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## **21 NCAC 58A .0111 DRAFTING LEGAL INSTRUMENTS**

(a) A broker acting as an agent in a real estate transaction shall not draft offers, sales contracts, options, leases, promissory notes, deeds, deeds of trust or other legal instruments by which the rights of others are secured; however, a broker may complete preprinted offers, option contracts, sales contracts or lease forms in a real estate transaction when authorized or directed to do so by the parties.

(b) A broker may use electronic, computer, or word processing equipment to store preprinted offer and sales contract forms which comply with Rule .0112, as well as preprinted option and lease forms, and may use such equipment to complete and print offer, contract and lease documents. Provided, however, a broker shall not alter the preprinted form before it is presented to the parties. If the parties propose to delete or change any word or provision in the form, the form must be marked to indicate the change or deletion made. The language of the form shall not be modified, rewritten, or changed by the broker or their clerical employees unless directed to do so by the parties.

(c) Nothing contained in this Rule shall be construed to prohibit a broker from making written notes, memoranda or correspondence recording the negotiations of the parties to a real estate transaction when such notes, memoranda or correspondence do not themselves constitute binding agreements or other legal instruments.

*History Note: Authority G.S. 93A-3(c);  
Eff. July 1, 1988;  
Amended Eff. April 1, 2013; April 1, 2006; October 1, 2000; February 1, 1989;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018.*

## **21 NCAC 58A .0112 OFFERS AND SALES CONTRACTS**

(a) A broker acting as an agent in a real estate transaction shall not use a preprinted offer or sales contract form unless the form describes or specifically requires the entry of the following information:

- (1) the names of the buyer and seller;
- (2) a legal description of the real property sufficient to identify and distinguish it from all other property;
- (3) an itemization of any personal property to be included in the transaction;
- (4) the purchase price and manner of payment;
- (5) any portion of the purchase price that will be paid by a promissory note, including the amount, interest rate, payment terms, whether or not the note is to be secured, and any other terms contained in the promissory note deemed material by the parties;
- (6) any portion of the purchase price that is to be paid by the assumption of an existing loan, including the amount of such loan, costs to be paid by the buyer or seller, the interest rate and number of discount points and a condition that the buyer must be able to qualify for the assumption of the loan and must make every reasonable effort to qualify for the assumption of the loan;
- (7) the amount of earnest money, if any, the method of payment, the name of the broker or firm that will serve as escrow agent, an acknowledgment of earnest money receipt by the escrow agent, and the criteria for determining disposition of the earnest money, including disputed earnest money, consistent with Commission Rule .0116 of this Subchapter;
- (8) any loan that must be obtained by the buyer as a condition of the contract, including the amount and type of loan, interest rate and number of discount points, loan term, and who shall pay loan closing costs, and a condition that the buyer shall make every reasonable effort to obtain the loan;
- (9) a general statement of the buyer's intended use of the property and a condition that such use must not be prohibited by private restriction or governmental regulation;
- (10) the amount and purpose of any special assessment to which the property is subject and the responsibility of the parties for any unpaid charges;
- (11) the date for closing and transfer of possession;
- (12) the signatures of the buyer and seller;

- (13) the date of offer and acceptance;
  - (14) a provision that title to the property must be delivered at closing by general warranty deed and must be fee simple marketable title, free of all encumbrances except ad valorem taxes for the current year, utility easements, and any other encumbrances specifically approved by the buyer or a provision otherwise describing the estate to be conveyed with encumbrances, and the form of conveyance;
  - (15) the items to be prorated or adjusted at closing;
  - (16) who shall pay closing expenses;
  - (17) the buyer's right to inspect the property prior to closing and who shall pay for repairs and improvements, if any;
  - (18) a provision that the property shall at closing be in substantially the same condition as on the date of the offer (reasonable wear and tear excepted), or a description of the required property condition at closing;
  - (19) a provision setting forth the identity of each real estate agent and firm involved in the transaction and disclosing the party each agent and firm represents; and
  - (20) any other provisions or disclosures required by statute or rule.
- (b) A broker acting as an agent in a real estate transaction shall not use a preprinted offer or sales contract form containing:
- (1) any provision concerning the payment of a commission or compensation, including the forfeiture of earnest money, to any broker or firm; or
  - (2) any provision that attempts to disclaim the liability of a broker for his or her representations in connection with the transaction.

A broker or anyone acting for or at the direction of the broker shall not insert or cause such provisions or terms to be inserted into any such preprinted form, even at the direction of the parties or their attorneys.

(c) The provisions of this Rule shall apply only to preprinted offer and sales contract forms which a broker acting as an agent in a real estate transaction proposes for use by the buyer and seller. Nothing contained in this Rule shall be construed to prohibit the buyer and seller in a real estate transaction from altering, amending or deleting any provision in a form offer to purchase or contract nor shall this Rule be construed to limit the rights of the buyer and seller to draft their own offers or contracts or to have the same drafted by an attorney at law.

*History Note: Authority G.S. 93A-3(c);  
Eff. July 1, 1988;  
Amended Eff. July 1, 2014; July 1, 2010; July 1, 2009; April 1, 2006; October 1, 2000; July 1, 1995; July 1, 1989; February 1, 1989;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018.*

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

- (a) 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](http://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.

*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; Amended Eff. July 1, 2023.*

## **21 NCAC 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 disclose. A material fact is a fact that a reasonable person would recognize as relevant to a purchaser in deciding to purchase the property the suppression of which could reasonably result in a different decision.

*History Note:* Authority G.S. 47E-4(b); 47E-4(b1); 93A-3(c); 93A-6;  
Eff. October 1, 1998;  
Amended Eff. July 1, 2014; January 1, 2013; January 1, 2012; July 1, 2010; July 1, 2009;  
January 1, 2008; July 1, 2006; September 1, 2002; July 1, 2000;  
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, 2021; July 1, 2018.

#### **21 NCAC 58A .0115 DISCLOSURE OF OFFERS PROHIBITED**

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.

*History Note:* Authority G.S. 93A-3(c); 93A-6;  
Eff. July 1, 2008;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1,  
2018.

#### **21 NCAC 58A .0116 HANDLING OF TRUST MONEY**

(a) Except as provided in Paragraph (b) of this Rule, all monies received by a broker acting in his or her fiduciary capacity (hereinafter "trust money") shall be deposited in a trust or escrow account as defined in Rule .0117(b) of this Section no later than three banking days following the broker's receipt of such monies.

(b) Exceptions to the requirements of Paragraph (a):

- (1) All monies received by a provisional broker shall be delivered upon receipt to the broker with whom he or she is affiliated.
- (2) All monies received by a non-resident commercial broker shall be delivered as required by Rule .1808 of this Subchapter.
- (3) Earnest money or tenant security deposits paid by means other than currency and received by a broker in connection with a pending offer to purchase or lease shall be deposited in a trust or escrow account no later than three days following acceptance of the offer to purchase or lease; the date of acceptance of the offer or lease shall be set forth in the purchase or lease agreement.
- (4) A broker may accept custody of a check or other negotiable instrument made payable to the seller of real property as payment for an option or due diligence fee, or to the designated escrow agent in a sales transaction, but only for the purpose of delivering the instrument to the seller or designated escrow agent. While the instrument is in the custody of the broker, the broker shall, according to the instructions of the buyer, either deliver it to the named payee or return it to the buyer. The broker shall safeguard the instrument and be responsible to the parties on the instrument for its safe delivery as required by this Rule. A broker shall not retain an instrument for more than three business days after the acceptance of the option or other sales contract.

(c) Prior to depositing trust money into a trust or escrow account that bears interest, the broker having custody over the money shall first secure written authorization from all parties having an interest in the money. Such authorization shall specify and set forth in a conspicuous manner how and to whom the interest shall be disbursed.

(d) In the event of a dispute between buyer and seller or landlord and tenant over the return or forfeiture of any deposit other than a residential tenant security deposit held by the broker, the broker shall retain the deposit in a trust or escrow account until the broker has obtained a written release from the parties consenting to its disposition or until disbursement is ordered by a court of competent jurisdiction. Alternatively, the broker may deposit the disputed monies with the appropriate Clerk of Superior Court in accordance with the provisions of G.S. 93A-12. If it appears that one of the parties has abandoned his or her claim to the funds, the broker may disburse the money to the other claimant according to the written agreement. Before doing so, however, the broker must first make a reasonable effort to notify the absent party and provide that party with an opportunity to renew his or her claim to the funds. Tenant security deposits shall be disposed of in accordance with G.S. 42-50 through 56 and G.S. 42A-18.

(e) A broker may transfer an earnest money deposit from his or her trust or escrow account to the closing attorney or other settlement agent no more than 10 days prior to the anticipated settlement date. A broker shall not disburse prior to settlement any earnest money in his or her possession for any other purpose without the written consent of the parties.

(f) A broker shall not disburse trust money to or on behalf of a client in an amount exceeding the balance of trust money belonging to the client and held in the trust account.

(g) Every broker shall safeguard any money or property of others that comes into the broker's possession in a manner consistent with the Real Estate License Law and Commission rules. A broker shall not convert the money or property of others to his or her own use, apply such money or property to a purpose other than that it was intended for, or permit or assist any other person in the conversion or misapplication of such money or property.

*History Note: Authority G.S. 93A-3(c); 93A-6;  
Eff. April 1, 2013;  
Amended Eff. July 1, 2015;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018.*

#### **21 NCAC 58A .0117 ACCOUNTING FOR TRUST MONEY**

(a) A broker shall create, maintain and retain records sufficient to identify the ownership of all funds belonging to others. Such records shall be sufficient to show proper deposit and disbursement of such funds into and from a trust or escrow account and to verify the accuracy and proper use of the trust or escrow account.

(b) A trust or escrow account shall satisfy the requirements of G.S. 93A-6(g) and shall be designated as a "Trust Account" or "Escrow Account." All bank statements, deposit tickets and checks drawn on said account shall bear the words "Trust Account" or "Escrow Account." A trust account shall provide for the full withdrawal of funds on demand without prior notice and without penalty or deduction to the funds.

(c) A broker shall create, maintain or retain, as required by Rule .0108 of this Section, the following records:

- (1) bank statements;
- (2) canceled checks and other evidence or memoranda of payments from the trust or escrow account, whether by transfer between accounts, wire payments, or payments by electronic means, that shall be referenced to the corresponding journal entry or check stub entries and to the corresponding sales transaction ledgers or for rental transactions, the corresponding property or owner ledgers. Checks and other evidence or memoranda of payments from the account shall identify the payee by name and shall bear a notation identifying the purpose of the disbursement. When a payment is used to disburse funds for more than one sales transaction, owner, or property, the check or other evidence or memoranda of payment shall bear a notation identifying each sales transaction, owner, or property for which disbursement is made, including the amount disbursed for each, and the corresponding sales transaction, property, or owner ledger entries. When necessary, the check notation may refer to the required information recorded on a supplemental disbursement worksheet that shall be cross-referenced to the corresponding check or payment. In lieu of retaining canceled checks, a broker may retain digitally imaged copies of the canceled checks or substitute checks provided that such images are legible reproductions of the front and back of such instruments with no smaller images than 1.1875 x 3.0 inches and provided that the broker's bank retains for a period of at least five years the original checks, "substitute checks" as described in 12 C.F.R. 229.51 or the capacity to provide substitute checks as described in 12 C.F.R. 229.51 and makes the original or substitute checks available to the broker and the Commission upon request. The description of "substitute checks" contained in 12 C.F.R. 229.51 is incorporated by referencing, including subsequent amendments and additions. The regulation may be accessed at [www.gpo.gov](http://www.gpo.gov) at no charge.
- (3) deposit tickets or other evidence or memoranda of deposits or payments into the account, whether by transfer between accounts, wire payments, or payments by electronic means:
  - (A) for a sales transaction, the deposit ticket or other evidence or memoranda of deposits or payments into the account shall identify the purpose and remitter of the funds deposited, the property, the parties involved, and a reference to the corresponding sales transaction ledger;
  - (B) for a rental transaction, the deposit ticket or other evidence or memoranda of deposits or payments into the account shall identify the purpose and remitter of the funds deposited, the tenant, and the corresponding property or owner ledger;
  - (C) for deposits of funds belonging to or collected on behalf of a property owner association, the deposit ticket or other evidence or memoranda of deposits or payments into the

- account shall identify the property or property interest for which the payment is made, the property or interest owner, the remitter, and the purpose of the payment;
- (D) when a single deposit ticket or payment is used to deposit funds collected for more than one sales transaction, property owner, or property, the required information may either be recorded on the ticket or other evidence or memoranda of deposits or payments into the account for each sales transaction, owner, or property, or it may refer to the same information recorded on a supplemental deposit worksheet that shall be cross-referenced to the corresponding deposit ticket;
- (4) a separate ledger for each sales transaction, for each property or owner of property managed by the broker and for company funds held in the trust account:
- (A) the ledger for a sales transaction shall identify the property, the parties to the transaction, the amount, date, and purpose of the deposits and from whom received, the amount, date, check number, and purpose of disbursements and to whom paid, and the running balance of funds on deposit for each deposit and disbursement entry;
  - (B) the ledger for a rental transaction shall identify the particular property or owner of property, the tenant, the amount, date, and purpose of the deposits and from whom received, the amount, date, check number, and purpose of disbursements and to whom paid, and the running balance of funds on deposit for each deposit and disbursement entry. Monies held as tenant security deposits in connection with rental transactions may be accounted for on a separate tenant security deposit ledger for each property or owner of property managed by the broker. For each security deposit, the tenant security deposit ledger shall identify the remitter, the date the deposit was paid, the amount, the tenant, landlord, and subject property as well as the check number, amount, date, payee, purpose and a running balance for each disbursement. When tenant security deposit monies are accounted for on a separate ledger as provided in this Rule, deposit tickets, canceled checks and supplemental worksheets shall reference the corresponding tenant security deposit ledger entries;
  - (C) a broker may maintain a maximum of one hundred dollars (\$100.00) in company funds in a trust account for the purpose of paying service charges incurred by the account. In the event that the services charges exceed one hundred dollars (\$100.00) monthly, the broker may deposit an amount each month sufficient to cover the service charges. A broker shall maintain a separate ledger for company funds held in the trust account identifying the date, amount and running balance for each deposit and disbursement;
- (5) a general journal, check register or check stubs identifying in chronological order each bank deposit and disbursement of monies to and from the trust or escrow account, including the amount and date of each deposit and a reference to the corresponding deposit ticket and any supplemental deposit worksheet, and the amount, date, check number, and purpose of disbursements and to whom paid. The journal or check stubs shall also show a running balance for each entry into the account;
- (6) a payment record for each property or interest for which funds are collected and deposited into a property owner association trust account as required by Rule .0118 of this Section. Payment record(s) shall identify the amount, date, remitter, and purpose of payments received, the amount and nature of the obligation for which payments are made, and the amount of any balance due or delinquency;
- (7) copies of earnest money checks, due diligence fee checks, receipts for cash payments, contracts, and closing statements in sales transactions;
- (8) copies of leases, security deposit checks, property management agreements, property management statements, and receipts for cash payments in leasing transactions;
- (9) copies of covenants, bylaws, minutes, management agreements and periodic statements relating to the management of property owner associations;
- (10) copies of invoices, bills, and contracts paid from the trust account; and
- (11) copies of any documents not otherwise described in this Rule that are necessary to verify and explain record entries.
- (d) Records of all receipts and disbursements of trust or escrow monies shall be maintained in such a manner as to create an audit trail from deposit tickets and canceled checks to check stubs or journals and to the ledger sheets.

(e) Brokers shall reconcile their trust or escrow accounts monthly. The trust account reconciliation shall be performed in the following manner as of a specific cutoff date selected by the broker:

- (1) a trial balance shall be prepared showing a list of the property or owner ledgers, their balances, and the total of all of the property or owner ledger balances as of the cutoff date;
- (2) a bank statement shall be reconciled by deducting from the statement's ending balance the amount of any outstanding checks and then adding to the balance the amount of any deposits-in-transit as of the cutoff date; and
- (3) the trial balance, reconciled bank statement balance, and the journal balance shall be compared as of the cutoff date. If the amounts on the trial balance, journal balance and reconciled bank balance do not agree, the broker shall investigate the reason for any variation between the balances and make the necessary corrections to bring the balances into agreement.

A broker shall maintain and retain a worksheet for each monthly trust account reconciliation showing the balance of the journal or check stubs, the trial balance and the reconciled bank statement balance to be in agreement as of the cutoff date.

(f) In addition to the records required by Paragraph (c) of this Rule, a broker acting as agent for the landlord of a residential property used for vacation rentals shall create and maintain either a subsidiary ledger sheet for each property or owner of such properties on which all funds collected and disbursed are identified in categories by purpose or an accounts payable ledger for each owner or property and each vendor to whom trust monies are due. If a broker maintains a subsidiary ledger, the broker shall reconcile the subsidiary ledgers to the corresponding property or property owner ledger on a monthly basis. If a broker maintains an accounts payable ledger, the broker shall record on the ledger monies collected on behalf of the owner or property identifying the date of receipt of the trust monies, from whom the monies were received, rental dates, and the corresponding property or owner ledger entry including the amount to be disbursed for each and the purpose of the disbursement. The broker may also maintain an accounts payable ledger in the format described above for vacation rental tenant security deposit monies and vacation rental advance payments.

(g) Upon the written request of a client, a broker shall, no later than ten days after receipt of the request, furnish the client with copies of any records retained as required by Rule .0108 of this Section that pertain to the transaction to which the client was a party.

(h) All trust or escrow account records shall be made available for inspection by the Commission or its authorized representatives in accordance with Rule .0108 of this Section.

*History Note: Authority G.S. 93A-3(c); 93A-6;  
Eff. April 1, 2013;  
Amended Eff. July 1, 2014;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018.*

## **21 NCAC 58A .0118 TRUST MONEY BELONGING TO PROPERTY OWNERS' ASSOCIATIONS**

(a) The funds of a property owners' association, when collected, maintained, disbursed or otherwise controlled by a broker, are trust money and shall be treated as such in the manner required by Rules .0116 and .0117 of this Section. Such trust money shall be deposited into and maintained in a trust or escrow account dedicated exclusively for trust money belonging to a single property owners' association and shall not be commingled with funds belonging to other property owners' associations or other persons or parties. A broker who undertakes to act as manager of a property owners' association or as the custodian of trust money belonging to a property owners' association shall provide the association with periodic statements that report the balance of association trust money in the broker's possession or control and account for the trust money the broker has received and disbursed on behalf of the association. Such statements must be made in accordance with the broker's agreement with the association, but not less frequently than every 90 days.

(b) A broker who receives trust money belonging to a property owners' association in his or her capacity as an officer of the association in a residential development in which the broker is a property owner and for which the broker receives no compensation is exempt from the requirements of Rules .0116 and .0117 of this Section. However, the broker shall not convert trust money belonging to the association to his or her own use, apply such money or property to a purpose other than that for which it was intended or permit or assist any other person in the conversion or misapplication of such money or property.

*History Note: Authority G.S. 93A-3(c); 93A-6;*

*Eff. April 1, 2013;*  
*Amended Eff. July 1, 2014;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018.*

**21 NCAC 58A .0119 MINERAL AND OIL AND GAS RIGHTS MANDATORY DISCLOSURE STATEMENT**

(a) Every owner of real property subject to a transfer of the type governed by G.S. 47E-1 and 47E-2(b) shall complete a disclosure statement form prescribed by the Commission and designated "Mineral and Oil and Gas Rights Mandatory Disclosure Statement," and shall furnish a copy of the completed form to a purchaser as required by G.S. 47E-4.1. The form shall bear the seal of the North Carolina Real Estate Commission and shall include the following:

- (1) instructions to property owners regarding transactions when the disclosure statement is required;
- (2) the text and format of the disclosure statement form as required by G.S. 47E-4.1(a);
- (3) a note to purchasers regarding their rights under G.S. 47E-5 in the event they are not provided with a disclosure statement as required by G.S. 47E-4.1;
- (4) the identification of the subject property and the parties to the transaction;
- (5) an acknowledgment by the owner(s) that the disclosure statement is true and correct as of the date signed; and
- (6) an acknowledgment by the buyer(s) of the receipt of a copy of the disclosure statement.

(b) The disclosure statement form described in Paragraph (a) of this Rule shall be available on the Commission's website at [www.ncrec.gov](http://www.ncrec.gov) or upon request to the Commission.

(c) The disclosure statement form described in Paragraph (a) of this Rule may be reproduced, but the text of the form shall not be altered or amended in any way.

(d) Every broker representing a party in a real estate transaction governed by G.S. 47E-1 and 47E-2(b) shall inform each client of the client's rights and obligations under G.S. Chapter 47E.

(e) The disclosure statement form described in Paragraph (a) of this Rule applies to all contracts executed on or after January 1, 2015.

*History Note: Authority G.S. 47E-4.1; 47E-4.1(b); 47E-5; 47E-8; 93A-3(c); 93A-6;*  
*Temporary Adoption Eff. January 1, 2015;*  
*Eff. July 1, 2015.*

**21 NCAC 58A .0120 PROHIBITED ACTS**

(a) A broker shall not require or demand of any escrow agent or attorney that a broker's commission be split with or paid to another person or entity.

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

(c) 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.

(d) A broker shall not conduct brokerage activities or otherwise promote their status as a real estate broker in any manner that discriminates on the basis of race, color, religion, national origin, sex, familial status, or disability.

*History Note: Authority G.S. 93A-3(c); 93A-6;*  
*Eff. July 1, 2021.*

**SECTION .0200 - GENERAL PROVISIONS**

**21 NCAC 58A .0201 DEFINITIONS**

**21 NCAC 58A .0202 BOARD: DESCRIPTION: OFFICES**

**21 NCAC 58A .0203 MAILING ADDRESS**

**21 NCAC 58A .0204 PURPOSE**

*History Note: Authority G.S. 93A-3(a),(c),(d);*



*Eff. February 1, 1976;*  
*Readopted Eff. September 30, 1977;*  
*Amended Eff. April 11, 1980; September 1, 1979;*  
*Repealed Eff. June 1, 1981.*

## **SECTION .0300 – APPLICATION FOR LICENSE**

### **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.

*History Note: Authority G.S. 93A-3(c); 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;*  
*Amended Eff. July 1, 2023.*

### **21 NCAC 58A .0302 LICENSE APPLICATION AND FEE**

(a) The fee for an original application of a broker or firm license shall be one hundred dollars (\$100.00).

(b) An applicant shall update information provided in connection with a license application in writing to the Commission or submit a new application form that includes the updated information without request by the Commission to ensure that the information provided in the application is current and accurate. Failure to submit updated information prior to the issuance of a license may result in disciplinary action against a broker or firm in accordance with G.S. 93A-6(b)(1). Upon the request of the Commission, an applicant shall submit updated information or provide additional information necessary to complete the application within 45 days of the request or the license application shall be canceled.

(c) The license application of an individual shall be canceled if the applicant fails to:

- (1) pass a scheduled license examination within 180 days of filing a complete application pursuant to Rule .0301 of this Section; or
- (2) appear for and take any scheduled examination without having the applicant's examination postponed or absence excused pursuant to Rule .0401 of this Subchapter.

*History Note: Authority G.S. 93A-4; 93A-6(b)(1); 93A-9;*  
*Eff. February 1, 1976;*  
*Readopted Eff. September 30, 1977;*

*Amended Eff. July 1, 2017; April 1, 2006; July 1, 2004; April 1, 2004; July 1, 2003; October 1, 2000; August 1, 1998; July 1, 1998; July 1, 1996; February 1, 1989;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018;*  
*Amended Eff. July 1, 2020.*

## **21 NCAC 58A .0303 PAYMENT OF APPLICATION FEES**

*History Note: Authority G.S. 93A-3(c); 93A-4(a),(d);*  
*Eff. February 1, 1976;*  
*Readopted Eff. September 30, 1977;*  
*Amended Eff. April 1, 2004; July 1, 2000; December 1, 1985;*  
*Expired Eff. June 1, 2018 pursuant to G.S. 150B-21.3A.*

## **21 NCAC 58A .0304 WAIVER OF 75-HOUR PRELICENSING EDUCATION REQUIREMENT**

The Commission shall grant a waiver of the 75-hour education program pursuant to G.S. 93A-4(a) if an applicant submits:

- (1) an application pursuant to Rule .0301 of this Section;
- (2) a written request for a waiver of the 75-hour education program; and either
- (3) a transcript and copy of a baccalaureate or higher degree in the field of real estate, real estate brokerage, real estate finance, real estate development, or a law degree conferred on the applicant from any college or university accredited by a college accrediting body recognized by the U. S. Department of Education; or
- (4) a course completion certificate or transcript evidencing the completion of a prelicensing education program in another state that:
  - (a) consisted of at least 75-hours of instruction;
  - (b) was completed within one year prior to license application while the applicant was a resident of said state; and
  - (c) is parallel to the topics and timings described in the Commission's Prelicensing course syllabus.

*History Note: Authority G.S. 93A-4;*  
*Eff. July 1, 1993;*  
*Amended Eff. July 1, 2017; April 1, 2006; October 1, 2000;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018.*

## **21 NCAC 58A .0305 PETITION FOR PREDETERMINATION**

(a) An individual who wishes to file a petition for a predetermination of whether the individual's criminal history will likely disqualify the individual from obtaining a real estate license shall submit a petition on the Commission's website.

(b) The petition shall include the petitioner's:

- (1) legal name;
- (2) mailing, physical, and email addresses;
- (3) social security number;
- (4) date of birth;
- (5) telephone number;
- (6) places of residence for the past seven years;
- (7) employment history since the date the crime was committed;
- (8) criminal record report prepared no more than 60 days prior to the date of petition;
- (9) written statement describing the circumstances surrounding the commission of the crime(s);
- (10) written statement of any rehabilitation efforts, if applicable;
- (11) rehabilitative drug or alcohol treatments, if applicable;
- (12) Certificate of Relief granted pursuant to G.S. 15A-173.2, if applicable;
- (13) affidavits or other written documents, including character references, that the petitioner intends to submit for review;

- (14) certification; and
  - (15) signature.
- (c) The fee for a petition for predetermination shall be forty-five dollars (\$45.00).

*History Note: Authority G.S. 93A-4; 93B-8.1;  
Temporary Adoption Eff. December 3, 2019;  
Eff. July 1, 2020.*

## **SECTION .0400 - EXAMINATIONS**

### **21 NCAC 58A .0401 SCHEDULING EXAMINATIONS**

- (a) An applicant who is required and qualified to take the licensing examination shall be provided a notice of examination eligibility that shall be valid for a period of 180 days and for a single administration of the licensing examination. Upon receipt of the notice of examination eligibility, the applicant shall contact the Commission's authorized testing service to pay for and schedule the examination in accordance with procedures established by the testing service. The testing service will schedule applicants for examination by computer at their choice of one of the testing locations and will notify applicants of the time and place of their examinations.
- (b) An applicant may postpone a scheduled examination provided the applicant makes the request for postponement directly to the Commission's authorized testing service in accordance with procedures established by the testing service. An applicant's examination shall not be postponed beyond the 180 day period allowed for taking the examination without first refileing another complete application with the Commission. A request to postpone a scheduled licensing examination without complying with the procedures for re-applying for examination described in Rule .0403 of this Section shall be granted only once unless the applicant satisfies the requirements for obtaining an excused absence stated in Paragraph (c) of this Rule.
- (c) An applicant may be granted an excused absence from a scheduled examination if the applicant provides evidence that the absence was the direct result of an emergency situation or condition which was beyond the applicant's control and which could not have been reasonably foreseen by the applicant. A request for an excused absence must be promptly made in writing and must be supported by documentation verifying the reason for the absence. The request must be submitted directly to the testing service in accordance with procedures established by the testing service. A request for an excused absence from an examination shall be denied if the applicant cannot be rescheduled and examined prior to expiration of the 180 day period allowed for taking the examination without first refileing another complete application with the Commission.

*History Note: Authority G.S. 93A-4(b),(d);  
Eff. February 1, 1976;  
Readopted Eff. September 30, 1977;  
Amended Eff. April 1, 2004; October 1, 2000; July 1, 1996; July 1, 1989; February 1, 1989;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1,  
2018.*

### **21 NCAC 58A .0402 EXAMINATION SUBJECT MATTER, FORMAT, AND PASSING SCORES**

- (a) The real estate licensing examination shall test applicants on the following general subject areas:
- (1) real estate law;
  - (2) real estate brokerage law and practices;
  - (3) the Real Estate License Law, rules of the Commission, and the Commission's trust account guidelines;
  - (4) real estate finance;
  - (5) real estate valuation (appraisal);
  - (6) real estate mathematics; and
  - (7) related subject areas.
- (b) The real estate licensing examination shall consist of two sections, a "national" section on general real estate law, principles, and practices and a "state" section on North Carolina real estate law, principles, and practices. Unless the "national" section is waived by the Commission for an applicant based on its authority under G.S. 93A-9, an applicant shall pass both sections of the examination in order to pass the examination.
- (c) In order to pass the real estate licensing examination, an applicant shall attain a score for each required section of the examination that is at least equal to the passing score established by the Commission for each section of the

examination in compliance with psychometric standards for establishing passing scores for occupational licensing examinations as set forth in the "Standards for Educational and Psychological Testing" jointly promulgated by the American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education. The "Standards for Educational and Psychological Testing" are incorporated by referencing, including subsequent amendments and editions. A copy of the "Standards for Educational and Psychological Testing" is available for inspection at the North Carolina Real Estate Commission's office, whose address is posted on its website at [www.ncrec.gov](http://www.ncrec.gov). Copies of the "Standards for Educational and Psychological Testing" may be ordered from the American Education Research Association through its website at [www.aera.net](http://www.aera.net) at a charge of sixty-nine dollars and ninety-five cents (\$69.95) per copy plus shipping.

(d) An applicant who passes one or both sections of the examination will receive only a score of "pass" for the section(s) passed; however, an applicant who fails one or both sections of the examination shall be informed of their actual score for the section(s) failed. An applicant who is required to pass both sections of the examination shall do so within his or her 180-day examination eligibility period, and if the applicant passes only one section during his or her 180-day examination eligibility period, then that passing score shall not be recognized if the applicant subsequently re-applies to the Commission for a license.

(e) A passing examination score obtained by a license applicant for both sections of the examination, or for the "state" section if that is the only section an applicant is required to pass, shall be recognized as valid for a period of one year from the date the examination was passed. During this time, the applicant shall satisfy any remaining requirements for licensure that were pending at the time of examination. The running of the one-year period shall be tolled upon mailing the applicant the letter set forth in 21 NCAC 58A .0616(c) informing the applicant that his or her moral character is in question, and shall resume running when the applicant's application is either approved for license issuance, denied, or withdrawn. The application of an applicant with a passing examination score who fails to satisfy all remaining requirements for licensure within one year shall be canceled and the applicant shall be required to reapply and satisfy all requirements for licensure, including retaking and passing the license examination, in order to be eligible for licensure.

*History Note: Authority G.S. 93A-3(c); 93A-4(b); 93A-4(d);  
Eff. February 1, 1976;  
Readopted Eff. September 30, 1977;  
Amended Eff. July 1, 2015; January 1, 2012; April 1, 2006; July 1, 2000; July 1, 1996; July 1, 1989; December 1, 1985; May 1, 1982; April 11, 1980;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018.*

#### **21 NCAC 58A .0403 RE-APPLYING FOR EXAMINATION**

(a) An individual whose license application has been canceled pursuant to Rule .0302(c) of this Subchapter and whose 180 day examination eligibility period has expired who wishes to be rescheduled for the real estate license examination must re-apply to the Commission by filing a complete license application as described in Rule .0301 of this Subchapter and paying the prescribed application fee. Subsequent examinations shall then be scheduled in accordance with Rule .0401 of this Section.

(b) An individual whose license application has been canceled pursuant to Rule .0302(c) of this Subchapter who wishes to be rescheduled for the license examination before the expiration of his or her 180 day examination eligibility period may utilize an abbreviated electronic license application and examination rescheduling procedure by directly contacting the Commission's authorized testing service, paying both the license application fee and the examination fee to the testing service, and following the testing service's established procedures.

(c) An applicant who fails one or both sections of the license examination shall not be allowed to retake the failed section(s) of the examination for at least 10 calendar days.

*History Note: Authority G.S. 93A-4(b),(d);  
Eff. February 1, 1976;  
Readopted Eff. September 30, 1977;  
Amended Eff. February 1, 1988; December 1, 1985; April 11, 1980;  
Temporary Amendment Eff. April 24, 1995 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;  
Amended Eff. January 1, 2012; April 1, 2004; October 1, 2000; August 1, 1995.*

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

#### **21 NCAC 58A .0404 EXAMINATION RELATED CONDUCT**

(a) When taking a license examination, an applicant shall not:

- (1) cheat or attempt to cheat on the examination by any means, including giving or receiving assistance or using notes of any type;
- (2) communicate with any person other than an examination supervisor for any purpose in any manner;
- (3) have in his or her possession or utilize in any manner study materials or notes or any device that may be used to:
  - (A) communicate with others;
  - (B) access information; or
  - (C) record or store photographs, visual images, audio or other information about the examination;
- (4) have in his or her possession or utilize a calculator that:
  - (A) permits the storage, entry or retrieval of alphabetic characters; or
  - (B) is not silent, hand-held and either battery-powered or solar-powered;
- (5) have in his or her possession a wallet, pocketbook, bag or similar item that can be used to store materials prohibited by this Rule;
- (6) refuse to demonstrate to the examination supervisor that pockets on any item of clothing do not contain materials prohibited by this Rule;
- (7) leave or attempt to leave the testing area with any materials provided for the purpose of taking the examination or with any information, notes or other information about the content of the examination; or
- (8) refuse to comply with the instructions of the Commission and the Commission's test provider for taking the examination; or
- (9) disrupt in any manner the administration of the examination.

(b) Violation of this Rule shall result in dismissal from an examination, invalidation of examination scores, forfeiture of examination and application fees and denial of a real estate license, as well as for disciplinary action if the applicant has been issued a license.

*History Note: Authority G.S. 93A-4(d);  
Eff. December 1, 1985;  
Amended Eff. July 1, 2014; April 1, 2006; July 1, 2000;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018.*

#### **21 NCAC 58A .0405 CONFIDENTIALITY OF EXAMINATIONS**

Licensing examinations are confidential. No applicant or licensee shall obtain, attempt to obtain, receive, or communicate to other persons examination questions or answers. Violation of this Rule is grounds for denial of a real estate license if the violator is an applicant and disciplinary action if the violator is a licensee or becomes a licensee prior to the discovery of the violation by the Commission.

*History Note: Authority G.S. 93A-3(c); 93A-4(d); 93A-6;  
Eff. December 1, 1985;  
Amended Eff. January 1, 2012; July 1, 2009;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018.*

#### **21 NCAC 58A .0406 EXAMINATION REVIEW**

*History Note: Authority G.S. 93A-4(d);  
Eff. December 1, 1985;  
Amended Eff. April 1, 2006; October 1, 2000; July 1, 1989; February 1, 1989;  
Repealed Eff. January 1, 2012.*

## SECTION .0500 - LICENSING

### 21 NCAC 58A .0501 CHARACTER

*History Note: Authority G.S. 93A-4(b),(d);  
Eff. February 1, 1976;  
Readopted Eff. September 30, 1977;  
Amended Eff. October 1, 2000; July 1, 1989; February 1, 1989; May 1, 1984; September 1, 1979;  
Repealed Eff. July 1, 2003.*

### 21 NCAC 58A .0502 FIRM LICENSING

- (a) Every business entity other than a sole proprietorship shall apply for and obtain from the Commission a firm license prior to engaging in business as a real estate broker.
- (b) An entity that changes its business form other than by conversion shall submit a new firm license application upon making the change and obtain a new firm license. An entity that converts to a different business entity in conformity with and pursuant to applicable North Carolina General Statutes shall not be required to apply for a new license. However, such converted entity shall provide the information required by this Rule in writing to the Commission within 10 days of the conversion and shall include the duplicate license fee pursuant to Rule .0101(c) of this Subchapter.
- (c) Firm license application forms shall be available on the Commission's website or upon request to the Commission and shall require the applicant to set forth:
- (1) the legal name of the entity;
  - (2) the name under which the entity will do business;
  - (3) the type of business entity;
  - (4) the address of its principal office;
  - (5) the entity's NC Secretary of State Identification Number if it is required to be registered with the Office of the NC Secretary of State;
  - (6) each federally insured depository institution lawfully doing business in this State where the entity's trust account(s) will be held, if applicable;
  - (7) the name, real estate license number, and signature of the proposed qualifying broker for the firm;
  - (8) the address of and name of the proposed broker-in-charge for each office as defined in Rule .0110(a) of this Subchapter, along with a completed broker-in-charge designation form described in Rule .0110(f) of this Subchapter for each proposed broker-in-charge;
  - (9) any past criminal conviction of and any pending criminal charge against any principal in the company or any proposed broker-in-charge;
  - (10) any past revocation, suspension, or denial of a business or professional license of any principal in the company or any proposed broker-in-charge;
  - (11) if a general partnership, a description of the applicant entity, including a copy of its written partnership agreement or if no written agreement exists, a written description of the rights and duties of the partners, and the name of each partner. If a partner is an entity rather than a natural person, the name of each officer, partner, or manager of that entity, or any entity therein;
  - (12) if a limited liability company, a description of the applicant entity, including a copy of its written operating agreement or if no written agreement exists, a written description of the rights and duties of the managers, and the name of each manager. If a manager is an entity rather than a natural person, the name of each officer, partner, or manager of that entity, or any entity therein;
  - (13) if a business entity other than a corporation, limited liability company, or partnership, a description of the organization of the applicant entity, including a copy of its organizational documents evidencing its authority to engage in real estate brokerage;
  - (14) if a foreign business entity, a Certificate of Authority to transact business in North Carolina issued by the NC Secretary of State and an executed consent to service of process and pleadings; and
  - (15) any other information required by this Rule.
- (d) When the authority of a business entity to engage in the real estate business is unclear in the application or in law, the Commission shall require the applicant to declare in the firm license application that the applicant's organizational documents authorize the firm to engage in the real estate business and to submit organizational documents, addresses of affiliated persons, and similar information. For purposes of this Rule, the term "principal,"

when it refers to a person or entity, means any person or entity owning 10 percent or more of the business entity, or who is an officer, director, manager, member, partner, or who holds any other comparable position.

(e) After filing a firm license application with the Commission, the entity shall be licensed provided that it:

- (1) has one principal holding a broker license on active status in good standing who will serve as the qualifying broker; and
- (2) employs and is directed by personnel licensed as a broker in accordance with this Chapter.

The qualifying broker of a partnership of any kind shall be a general partner of the partnership; the qualifying broker of a limited liability company shall be a manager of the company; and the qualifying broker of a corporation shall be an officer of the corporation. A licensed business entity may serve as the qualifying broker of another licensed business entity if the qualifying broker-entity has as its qualifying broker a natural person who is licensed as a broker. The natural person who is qualifying broker shall assure to the Commission the performance of the qualifying broker's duties with regard to both entities. A provisional broker may not serve as a qualifying broker.

(f) The licensing of a business entity shall not be construed to extend to the licensing of its partners, managers, members, directors, officers, employees or other persons acting for the entity in their individual capacities regardless of whether they are engaged in furthering the business of the licensed entity.

(g) The qualifying broker of a business entity shall assume responsibility for:

- (1) designating and assuring that there is at all times a broker-in-charge for each office and branch office of the entity as "office" and "branch office" are defined in Rule .0110(a) of this Subchapter;
- (2) renewing the real estate broker license of the entity;
- (3) retaining the firm's current pocket card at the firm and producing it as proof of firm licensure upon request and maintaining a photocopy of the firm license certificate and pocket card at each branch office thereof;
- (4) notifying the Commission of any change of business address or legal or trade name of the entity and the registration of any assumed business name adopted by the entity for its use;
- (5) notifying the Commission in writing of any change of his or her status as qualifying broker within 10 days following the change;
- (6) securing and preserving the transaction and trust account records of the firm whenever there is a change of broker-in-charge at the firm or any office thereof and notifying the Commission if the trust account records are out of balance or have not been reconciled as required by Rule .0117 of this Subchapter;
- (7) retaining and preserving the transaction and trust account records of the firm upon termination of his or her status as qualifying broker until a new qualifying broker has been designated with the Commission or, if no new qualifying broker is designated, for the period of time records are required to be retained by Rule .0108 of this Subchapter;
- (8) notifying the Commission if, upon the termination of his or her status as qualifying broker, the firm's transaction and trust account records cannot be retained or preserved or if the trust account records are out of balance or have not been reconciled as required by Rule .0117 of this Subchapter; and
- (9) notifying the Commission regarding any revenue suspension, revocation of Certificate of Authority, or administrative dissolution of the entity by the NC Secretary of State within 10 days of the suspension, revocation, or dissolution.

(h) Every licensed business entity and every entity applying for licensure shall conform to all the requirements imposed upon it by the North Carolina General Statutes for its continued existence and authority to do business in North Carolina. Failure to conform to such requirements shall be grounds for disciplinary action or denial of the entity's application for licensure.

(i) Upon receipt of notice from an entity or agency of this State that a licensed entity has ceased to exist or that its authority to engage in business in this State has been terminated by operation of law, the Commission shall cancel the license of the entity.

*History Note: Authority G.S. 55-11A-04; 93A-3(c); 93A-4; Eff. February 1, 1976; Readopted Eff. September 30, 1977; Amended Eff. July 1, 2017; July 1, 2015; July 1, 2014; July 1, 2009; January 1, 2008; April 1, 2006; July 1, 2005; April 1, 2004; July 1, 2003; October 1, 2000; August 1, 1998; January 1, 1997; July 1, 1994; May 1, 1990;*

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

#### **21 NCAC 58A .0503 LICENSE RENEWAL**

(a) All real estate licenses issued by the Commission under G.S. 93A, Article 1 shall expire on June 30 following issuance. Any broker desiring renewal of his or her license shall renew on the Commission's website within 45 days prior to license expiration and shall submit a renewal fee of forty-five dollars (\$45.00).

(b) During the renewal process, every individual broker shall provide an email address to be used by the Commission. The email address may be designated by the broker as private in order to be exempt from public records disclosures pursuant to G.S. 93A-4(b2).

(c) During the renewal process, every designated broker-in-charge shall disclose:

- (1) each federally insured depository institution lawfully doing business in this State where the trust account(s) for the broker-in-charge or the entity for which the broker-in-charge is designated is held, if applicable; and
- (2) any criminal conviction or occupational license disciplinary action that occurred within the previous year.

*History Note: Authority G.S. 93A-3(c); 93A-4; 93A-6; 93A-38.5;  
Eff. February 1, 1976;  
Readopted Eff. September 30, 1977;  
Amended Eff. July 1, 1994; February 1, 1991; February 1, 1989;  
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; July 1, 2014; April 1, 2013; April 1, 2006; January 1, 2006; July 1, 2004; December 4, 2002; April 1, 1997; July 1, 1996; August 1, 1995;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018;  
Amended Eff. July 1, 2021; July 1, 2018.*

#### **21 NCAC 58A .0504 ACTIVE AND INACTIVE LICENSE STATUS**

(a) Except for licenses that have expired or that have been revoked, suspended or surrendered, all licenses issued by the Commission shall be designated as being either on active status or inactive status. Subject to compliance with Rule .0110 of this Subchapter, the holder of a license on active status may engage in any activity requiring a real estate license and may be compensated for the provision of any lawful real estate brokerage service. The holder of a license on inactive status shall not engage in any activity requiring a real estate license, including the referral for compensation of a prospective seller, buyer, landlord or tenant to another real estate broker or any other party. A broker holding a license on inactive status must renew the license and pay the prescribed license renewal fee in order to continue to hold the license. The Commission may take disciplinary action against a broker holding a license on inactive status for any violation of G.S. 93A or any rule adopted by the Commission, including the offense of engaging in an activity for which a license is required.

(b) A license issued to a provisional broker shall, upon initial licensure, be assigned to inactive status. A license issued to a firm or a broker other than a provisional broker shall be assigned to active status. Except for persons licensed under the provisions of Section .1800 of this Subchapter, a broker may change the status of his or her license from active to inactive status by submitting a written request to the Commission. A provisional broker's license shall be assigned by the Commission to inactive status when the provisional broker is not under the active, direct supervision of a broker-in-charge. A firm's license shall be assigned by the Commission to inactive status when the firm does not have a qualifying broker with an active license. Except for persons licensed under the provisions of Section .1800 of this Subchapter, a broker shall also be assigned to inactive status if, upon the second renewal of his or her license following initial licensure, or upon any subsequent renewal, he or she has not satisfied the continuing education requirement described in Rule .1702 of this Subchapter.

(c) A provisional broker with an inactive license who desires to have the license placed on active status must comply with the procedures prescribed in Rule .0506 of this Section.

(d) A broker, other than a provisional broker, with an inactive license who desires to have the license placed on active status shall file with the Commission a request for license activation on a form provided by the Commission containing identifying information about the broker, a statement that the broker has satisfied the continuing education requirements prescribed by Rule .1703 of this Subchapter, the name and address of any broker-in-charge,



the date of the request, and the signature of the broker. Upon the mailing or delivery of this form, the broker's status will be considered to be active. If the broker is eligible for license activation, the Commission shall send a written acknowledgement of the license activation to the broker and his or her affiliated broker-in-charge, if any. If neither the broker nor his or her affiliated broker-in-charge receive from the Commission a written acknowledgment of the license activation within 30 days of the date shown on the form, the broker shall immediately terminate his or her real estate brokerage activities pending receipt of the written acknowledgment from the Commission. If either the broker or his or her affiliated broker-in-charge, if any, is notified that he or she is not eligible for license activation due to a continuing education deficiency, the broker shall terminate all real estate brokerage activities until such time as the continuing education deficiency is satisfied and a new request for license activation is submitted to the Commission.

(e) Upon an active, non-provisional broker's affiliation with a firm and broker-in-charge, the broker-in-charge of the office where the broker will be engaged in the real estate business shall notify the Commission of the affiliation on a form provided by the Commission containing identifying information about the affiliating broker and the broker-in-charge, and the signature of the broker-in-charge. If neither the broker nor the broker-in-charge receive from the Commission a written acknowledgment of the license affiliation within 30 days of the date shown on the form, the broker and his or her broker-in-charge shall cease representing the broker as being affiliated with such broker-in-charge pending receipt of the written acknowledgment from the Commission.

(f) A firm with an inactive license which desires to have its license placed on active status shall file with the Commission a request for license activation containing identifying information about the firm and its qualifying broker and satisfy the requirements of Rule .0110 of this Subchapter. If the qualifying broker has an inactive license, he or she must satisfy the requirements of Paragraph (d) of this Rule. Upon the mailing or delivery of the completed form by the qualifying broker, the firm may engage in real estate brokerage activities requiring a license; however, if the firm's qualifying broker does not receive from the Commission a written acknowledgment of the license activation within 30 days of the date shown on the form, the firm shall immediately terminate its real estate brokerage activities pending receipt of the written acknowledgment from the Commission. If the qualifying broker is notified that the firm is not eligible for license activation due to a continuing education deficiency on the part of the qualifying broker, the firm must terminate all real estate brokerage activities until such time as the continuing education deficiency is satisfied and a new request for license activation is submitted to the Commission.

(g) A person licensed as a broker under Section .1800 of this Subchapter shall maintain his or her license on active status at all times as required by Rule .1804 of this Subchapter.

*History Note: Authority G.S. 93A-3(c); 93A-4(d); 93A-4.1; 93A-6; 93A-9; Eff. February 1, 1976; Readopted Eff. September 30, 1977; Amended Eff. April 1, 2013; February 1, 2012; January 1, 2012; July 1, 2009; April 1, 2006; July 1, 2005; July 1, 2004; October 1, 2000; April 1, 1997; July 1, 1996; July 1, 1995; July 1, 1994; February 1, 1989; December 1, 1985; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018.*

## **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 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).

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

## **21 NCAC 58A .0506 PROVISIONAL BROKER TO BE SUPERVISED BY BROKER-IN-CHARGE**

(a) A provisional broker may engage in or hold himself or herself out as engaging in activities requiring a real estate license only while his or her license is on active status pursuant to Rule .0504 of this Section and he or she is supervised by the broker-in-charge of the real estate firm or office with which the provisional broker is affiliated. A provisional broker shall be supervised by only one broker-in-charge at a time except that a provisional broker may be supervised by no more than two brokers-in-charge of two licensed affiliated firms located in the same physical location and acting as co-listing or co-selling agents in real estate transactions. When a provisional broker is supervised by more than one broker-in-charge, both brokers-in-charge shall bear all supervision responsibility at all times.

(b) Upon a provisional broker's affiliation with a real estate broker or brokerage firm, the broker-in-charge of the office where the provisional broker will be engaged in the real estate business shall file with the Commission a License Activation and Broker Affiliation form that 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.

(c) Upon the submission of the License Activation and Broker Affiliation form, the provisional broker may engage in real estate brokerage activities requiring a license under the supervision of the broker-in-charge; however, if the provisional broker and broker-in-charge do not receive from the Commission a written acknowledgment of the provisional broker supervision notification and, if appropriate, the request for license activation, within 30 days of the date shown on the form, the provisional broker shall cease all real estate brokerage activities pending receipt of the written acknowledgment from the Commission.

(d) 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.

(e) Upon the termination of the supervisory relationship between a provisional broker and his or her broker-in-charge, the provisional broker and the broker-in-charge shall provide written notification of the date of termination to the Commission not later than 10 days following the termination.

*History Note:* Authority G.S. 93A-2(a1); 93A-2(a2); 93A-3; 93A-9;  
Eff. February 1, 1976;  
Readopted Eff. September 30, 1977;  
Amended Eff. April 1, 2013; April 1, 2006; July 1, 2005; July 1, 2004; October 1, 2000; August 1, 1998; July 1, 1996; July 1, 1995; July 1, 1993;  
Readopted Eff. July 1, 2019;  
Amended Eff. July 1, 2020.

#### **21 NCAC 58A .0507 PAYMENT OF FEES**

Checks, credit cards, and other forms of payment given the Commission for fees due which are returned unpaid shall be considered cause for license denial, suspension, or revocation.

*History Note:* Authority G.S. 93A-3(c); 93A-4(c),(d); 150A-11;  
Eff. February 1, 1976;  
Readopted Eff. September 30, 1977;  
Amended Eff. September 1, 2002; May 1, 1984;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018.

#### **21 NCAC 58A .0508 DUPLICATE LICENSE FEE**

*History Note:* Authority G.S. 93A-3(c); 93A-4(c),(d); 150A-11;  
Eff. February 1, 1976;  
Readopted Eff. September 30, 1977;

*Repealed Eff. May 1, 1984.*

**21 NCAC 58A .0509      DUPLICATE LICENSE FEE**

*History Note:      Authority G.S. 93A-4(c),(d);  
Eff. December 1, 1985;  
Amended Eff. February 1, 1989;  
Repealed Eff. July 1, 2017.*

**21 NCAC 58A .0510      CANCELLATION OF SALESPERSON LICENSE UPON BROKER LICENSURE**

*History Note:      Authority G.S. 93A-3(c); 93A-4(d);  
Eff. July 1, 1996;  
Amended Eff. October 1, 2000;  
Repealed Eff. April 1, 2006.*

**21 NCAC 58A .0511      LICENSING OF PERSONS LICENSED IN ANOTHER JURISDICTION**

(a) For purposes of this Rule, "Jurisdiction" shall mean a state, territory, or possession of the United States or Canada.

(b) An individual seeking a real estate license who, at the time of application, holds a current real estate salesperson or broker license in another jurisdiction that has been on active status in good standing within the three years prior to application may satisfy the 75-hour prelicensing education program and examination requirements prescribed in G.S. 93A-4 by electing to either:

- (1) pass the "State" section of that examination. A person qualifying for licensure under this provision shall be issued a North Carolina broker license on a status comparable to the category of license held by the person in the jurisdiction where the qualifying license is held; or
- (2) be issued a North Carolina broker license on provisional status only and then comply with the provisions of G.S. 93A-4(a1).

(c) Brokers who were licensed in North Carolina by reciprocity shall be entitled to retain such license indefinitely, unless suspended, revoked, or surrendered pursuant to G.S. 93A-6, so long as the license is renewed or is reinstated pursuant to Rule .0505 of this Section.

(d) A military-trained or military spouse applicant seeking a temporary practice permit shall submit an application on a form available on the Commission's website. The military-trained or military spouse temporary permit application shall include applicant's:

- (1) legal name;
- (2) mailing, physical, and email address;
- (3) telephone number;
- (4) social security number;
- (5) date of birth;
- (6) criminal background report prepared within six months of application;
- (7) occupational licensing history, including any disciplinary actions;
- (8) pending liens or judgements;
- (9) certification of equivalent training or experience, by submission of either a:
  - (A) military occupational specialty certificate that is substantially equivalent to or exceeds the requirements for licensure;
  - (B) certification that the applicant has engaged in the active practice of brokerage for at least two of the five years preceding the date of the application; or
  - (C) certification, issued within six months of application, of a current real estate salesperson or broker license in another jurisdiction that has been on active status within 3 years of application;
- (10) certification; and
- (11) signature.

(e) An applicant who is issued a temporary practice permit pursuant to Paragraph (d) of this Rule shall remain a provisional broker for the duration of the permit.

*History Note:      Authority G.S. 93A-3(c); 93A-4; 93A-4.1; 93A-9(a); 93B-15.1;*

*Eff. January 1, 2012;*  
*Amended Eff. April 1, 2013; February 1, 2012;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1,*  
*2018;*  
*Amended Eff. July 1, 2018.*

**21 NCAC 58A .0512 DEATH OR INCAPACITY OF SOLE PROPRIETOR**

(a) If a licensed real estate broker engaged in business as a sole proprietor pursuant to G.S. 93A-2(a) dies or becomes incapacitated, the Commission shall issue a temporary license to the executor or administrator of the estate of the deceased sole proprietor broker or to the court-appointed fiduciary of the incapacitated sole proprietor broker upon receipt of the following:

- (1) a written notification to the Commission of the date of the broker's death or disability; and
- (2) a certified copy of the court order appointing the executor, administrator, or fiduciary.

(b) A temporary license shall be valid only for the purpose of distributing trust money held or paying commissions owed by the sole proprietor broker at the time of death or incapacity, but shall not otherwise entitle the holder to undertake any action for which a real estate license is required.

(c) The temporary license shall be valid for one year from issuance.

*History Note: Authority G.S. 93A-2;*  
*Eff. July 1, 2018.*

**SECTION .0600 – REAL ESTATE COMMISSION HEARINGS**

**21 NCAC 58A .0601 COMPLAINTS/INQUIRIES/MOTIONS/OTHER PLEADINGS**

(a) Any individual may file a complaint against a broker at any time. A complaint shall:

- (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.

(b) A complaint may be amended by submitting the revised complaint in writing to the Commission.

(c) When investigating a complaint, the scope of the Commission's investigation shall not be limited only to matters alleged in the complaint.

(d) All answers, motions, or other pleadings relating to contested cases before the Commission shall be:

- (1) in writing or made during the hearing as a matter of record; and
- (2) apprise the Commission of the matters it alleges or answers.

(e) During the course of an investigation, any broker that receives a Letter of Inquiry from the Commission shall submit a written response within 14 days of receipt. The Commission, through its legal counsel or other staff, may send a broker a Letter of Inquiry requesting a response. The Letter of Inquiry, or attachments thereto, shall set forth the subject matter being investigated. The response shall include:

- (1) a disclosure of all requested information; and
- (2) copies of all requested documents.

(f) Persons who make complaints are not parties to contested cases, but may be witnesses.

*History Note: Authority G.S. 93A-3(c); 93A-6(a); 150B-38(h);*  
*Eff. February 1, 1976;*  
*Readopted Eff. September 30, 1977;*  
*Amended Eff. July 1, 2000; August 1, 1998; May 1, 1992; February 1, 1989; November 1, 1987;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1,*  
*2018;*  
*Amended Eff. July 1, 2019.*

**21 NCAC 58A .0602 PRIMA FACIE CASE**

*History Note: Authority G.S. 93A-3(c); 93A-6(a); 150A-11;*  
*Eff. February 1, 1976;*  
*Readopted Eff. September 30, 1977;*  
*Amended Eff. April 22, 1980;*

*Repealed Eff. September 1, 1983.*

**21 NCAC 58A .0603      REQUEST FOR HEARING**  
**21 NCAC 58A .0604      NOTICE OF HEARING**  
**21 NCAC 58A .0605      WHO SHALL HEAR CONTESTED CASES**  
**21 NCAC 58A .0606      FAILURE TO APPEAR**

*History Note:      Authority G.S. 93A-3(c); 150A-11; 150A-25(a);  
Eff. February 1, 1976;  
Readopted Eff. September 30, 1977;  
Repealed Eff. May 1, 1984.*

**21 NCAC 58A .0607      PETITION TO REOPEN PROCEEDING**

(a) After a final decision has been reached by the Commission in a contested case, a party may petition the Commission to reconsider a case. Petitions will not be granted except when the petitioner can show that the reasons for reconsidering the case are to introduce newly discovered evidence which was not presented at the initial hearing because of some justifiable, excusable or unavoidable circumstance. Upon the running of the 30 day period for seeking judicial review, such petitions will have no effect.

(b) Decisions on petitions to reopen cases are within the discretion of the Commission.

*History Note:      Authority G.S. 150B-38(h);  
Eff. February 1, 1976;  
Readopted Eff. September 30, 1977;  
Amended Eff. February 1, 1989; May 1, 1984;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018.*

**21 NCAC 58A .0608      ANSWER**

*History Note:      Authority G.S. 93A-3(c); 150A-11; 150A-25(b);  
Eff. February 1, 1976;  
Repealed Eff. May 1, 1984.*

**21 NCAC 58A .0609      INTERVENTION**

*History Note:      Authority G.S. 93A-3(c); 150A-11; 150A-23(d);  
Eff. February 1, 1976;  
Readopted Eff. September 30, 1977;  
Amended Eff. May 1, 1984;  
Repealed Eff. February 1, 1989.*

**21 NCAC 58A .0610      SUBPOENAS**

(a) Subpoenas issued in preparation for, or in the conduct of, a contested case pending before the Commission shall be issued in the name of the Commission and shall be signed by the Commission's legal counsel, chairman, vice chairman, the officer presiding at the hearing if a member of the Commission other than the chairman or vice chairman has been designated to preside.

(b) After a notice of hearing in a contested case has been issued and served upon a respondent or, in a case concerning an application for licensure, the applicant, the respondent, or the attorney for the respondent or applicant may request subpoenas for the attendance of witnesses and the production of evidence. The subpoenas may be signed by the respondent or applicant, or the respondent's or applicant's attorney.

(c) All subpoenas issued in connection with a contested case pending before the Commission shall be on a form approved by the Commission. Subpoena forms shall be provided by the Commission without charge upon request.

(d) Motions to quash a subpoena issued in preparation for, or in connection with, a contested case pending before the Commission shall be submitted to the Commission in writing and shall clearly state the grounds therefor. The disposition of any motion to quash a subpoena shall be made by the chairman of the Commission in his or her

discretion. If the chairman is unavailable, then the vice chairman or other Commission member designated to preside over the hearing may dispose of such a motion in the chairman's place.

*History Note:* Authority G.S. 93A-6(a); 150B-38(h); 150B-39(c); 150B-40;  
Eff. February 1, 1976;  
Readopted Eff. September 30, 1977;  
Amended Eff. October 1, 2000; August 1, 1996; May 1, 1992; February 1, 1989; May 1, 1984;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018.

## **21 NCAC 58A .0611 ANSWERS AND OTHER PLEADINGS**

*History Note:* Authority G.S. 93A-3(c); 150B-11;  
Eff. July 1, 1988;  
Repealed Eff. February 1, 1989.

## **21 NCAC 58A .0612 PRESIDING OFFICER**

The Commission may designate any of its members to preside over the hearing in a contested case. When no designation is made, the Chairman of the Commission shall preside, or, in his or her absence, the Vice Chairman shall preside. The presiding officer shall rule on motions or other requests made in a contested case prior to the conduct of the hearing in that case except when the ruling on the motion would be dispositive of the case. When the ruling on a motion or request would be dispositive of the case, the presiding officer shall make no ruling and the motion or request shall be determined by a majority of the Commission.

*History Note:* Authority G.S. 93A-3(c); 150B-40(b);  
Eff. May 1, 1992;  
Amended Eff. October 1, 2000;  
Readopted Eff. July 1, 2019.

## **21 NCAC 58A .0613 SCOPE**

*History Note:* Authority G.S. 93A-3(c);  
Eff. May 1, 1992;  
Repealed Eff. August 1, 1998.

## **21 NCAC 58A .0614 SUMMARY SUSPENSION**

(a) If the Commission finds that the public health, safety, or welfare requires emergency action, it may, pursuant to G.S. 150B-3(c), summarily suspend a license without a hearing or opportunity for the licensee to be heard. A motion for summary suspension shall be presented to the Chairman of the Commission by counsel for the State and may be presented ex parte. The motion shall be supported by an affidavit of a person with first-hand knowledge of the facts alleged which require emergency action.

(b) The Commission shall, when it summarily suspends a license, immediately schedule a hearing, to occur at the earliest practicable date, on the merits of the charges set out in a notice of hearing issued contemporaneously with the order of summary suspension. The motion, supporting affidavit, order for summary suspension and notice of hearing shall be served on the licensee as soon as possible and the summary suspension shall be effective no earlier than the date of service of the summary suspension order on the licensee. The order of summary suspension shall remain in effect until the Commission vacates it.

(c) A summarily suspended licensee may petition the Commission to vacate the summary suspension order. If the Chairman of the Commission finds that the summary suspension order was issued in error or on insufficient factual grounds to justify emergency action, the Chairman of the Commission may vacate the summary suspension order.

(d) Neither an order of summary suspension nor a denial of a motion to vacate an order of summary suspension is a final agency decision.

*History Note:* Authority G.S. 93A-6(a); 150B-3(c);  
Eff. August 1, 1998;

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

#### **21 NCAC 58A .0615 SETTLEMENTS**

The Commission may consider disposing of any contested matter before it by consent order or upon stipulation of the respondent and the Commission's legal counsel. The Commission may approve or reject any proposal to dispose of a contested matter by consent or stipulation, however, any matter to which a respondent and the Commission's legal counsel have stipulated which is rejected by the Commission shall not thereafter bind the parties or the Commission. Except as may be otherwise allowed by the presiding officer, all proposals to dispose of a contested matter must be in written form and signed by the respondent not later than two days prior to the date set for the hearing of the matter, excluding any days during which the Commission's offices are closed.

*History Note: Authority G.S. 93A-3(d); 93A-6(a); 150B-38(h);  
Eff. July 1, 2000;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018.*

#### **21 NCAC 58A .0616 PROCEDURES FOR REQUESTING HEARINGS WHEN APPLICANT'S CHARACTER IS IN QUESTION**

(a) When the moral character of an applicant for licensure or approval is in question, the applicant shall not be licensed or approved until the applicant has affirmatively demonstrated that the applicant possesses the requisite honesty, truthfulness, integrity, good moral character, and general fitness, including mental and emotional fitness, necessary to protect the public interest and promote public confidence in the real estate brokerage business. For the purposes of this Rule, applicant means any person or entity making application for licensure as a real estate broker or for licensure or approval as an instructor.

(b) When the applicant is an entity, it shall be directed and controlled by persons who possess the requisite honesty, truthfulness, integrity, good moral character, and general fitness, including mental and emotional fitness, necessary to protect the public interest and promote public confidence in the real estate brokerage business.

(c) When the character of an applicant is in question, the Commission shall defer action upon the application until the applicant is notified by letter. The letter informing the applicant that his or her moral character is in question shall be sent by certified mail, return receipt requested, to the address shown upon the application. The applicant shall have 60 days from the date of receipt of this letter to request a hearing before the Commission. If the applicant fails to request a hearing within this time or if a properly addressed letter is returned to the Commission undelivered, applicant's right to a hearing shall be considered waived and the application shall be deemed denied. If the applicant makes a timely request for a hearing in accordance with the provisions of this Rule, the Commission shall provide the applicant with a Notice of Hearing and hearing as required by G.S. 150B, Article 3A.

(d) Nothing in this Rule shall be interpreted to prevent an unsuccessful applicant from reapplying for licensure or approval if such application is otherwise permitted by law.

*History Note: Authority G.S. 93A-4;  
Eff. September 1, 2002;  
Amended Eff. April 1, 2013; January 1, 2012; April 1, 2006;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018;  
Amended Eff. July 1, 2020.*

### **SECTION .0700 - PETITIONS FOR RULES**

#### **21 NCAC 58A .0701 PETITION FOR RULE-MAKING HEARINGS**

(a) Any person wishing to file a petition requesting the adoption, amendment or repeal of a rule by the Commission shall file a written petition with the executive director.

(b) The petition shall include the following information:

- (1) name, address and occupation of petitioner;
- (2) a summary of the proposed action (adoption, amendment, or repeal of a rule or rules);
- (3) a draft of the proposed rule or other action;
- (4) a complete statement of the reason for the proposed action; and



- (5) an identification of the persons or class of persons most likely to be affected by the proposed action.
- (c) The Commission shall decide whether to allow or deny a rule-making petition.

*History Note:* Authority G.S. 150B-16;  
Eff. February 1, 1976;  
Readopted Eff. September 30, 1977;  
Amended Eff. February 1, 1989; May 1, 1984;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018.

**21 NCAC 58A .0702 DISPOSITION OF PETITIONS**  
**21 NCAC 58A .0703 ADDITIONAL INFORMATION**

*History Note:* Authority G.S. 93A-3(c); 150A-12; 150A-16;  
Eff. February 1, 1976;  
Readopted Eff. September 30, 1977;  
Repealed Eff. May 1, 1984.

**SECTION .0800 - RULE MAKING**

**21 NCAC 58A .0801 REQUEST TO PARTICIPATE**

*History Note:* Authority G.S. 93A-3(c); 150A-11; 150A-12(e);  
Eff. February 1, 1976;  
Readopted Eff. September 30, 1977;  
Repealed Eff. May 1, 1984.

**21 NCAC 58A .0802 WRITTEN SUBMISSIONS**  
**21 NCAC 58A .0803 PRESIDING OFFICER: POWERS AND DUTIES**

*History Note:* Authority G.S. 93A-3(c); 150B-12;  
Eff. February 1, 1976;  
Readopted Eff. September 30, 1977;  
Amended Eff. February 1, 1989; May 1, 1984;  
Expired Eff. June 1, 2018 pursuant to G.S. 150B-21.3A.

**21 NCAC 58A .0804 STATEMENT OF REASONS FOR DECISION**

*History Note:* Authority G.S. 93A-3(c); 150A-11; 150A-12(e);  
Eff. February 1, 1976;  
Readopted Eff. September 30, 1977;  
Repealed Eff. May 1, 1984.

**21 NCAC 58A .0805 RECORD OF PROCEEDINGS**

*History Note:* Authority G.S. 93A-3(c); 150B-12;  
Eff. February 1, 1976;  
Readopted Eff. September 30, 1977;  
Amended Eff. February 1, 1989; November 1, 1987;  
Expired Eff. June 1, 2018 pursuant to G.S. 150B-21.3A.

**SECTION .0900 - DECLARATORY RULINGS**

## **21 NCAC 58A .0901      SUBJECTS OF DECLARATORY RULINGS**

*History Note:      Authority G.S. 93A-3(c); 150A-17;  
Eff. February 1, 1976;  
Readopted Eff. September 30, 1977;  
Repealed Eff. May 1, 1984.*

## **21 NCAC 58A .0902      REQUESTS FOR RULINGS: DISPOSITION OF REQUESTS**

(a) All requests for declaratory rulings shall be written and filed with the Commission. The request must contain the following information:

- (1) the name, address and signature of petitioner;
- (2) a concise statement of the manner in which petitioner is aggrieved by the rule or statute in question, or its potential application to him or her;
- (3) a statement of the interpretation given the statute or rule in question by petitioner;
- (4) a statement of the reasons, including any legal authorities, in support of the interpretation given the statute or rule by petitioner.

(b) The Commission shall either deny the request, stating the reasons therefore, or issue a declaratory ruling. The Commission may deny a request for a declaratory ruling when the Commission determines that:

- (1) the petition does not comply with the requirements of Paragraph (a) of this Rule;
- (2) the subject matter is one concerning which the Commission is without authority to make a decision binding the agency or the petitioner;
- (3) the petitioner is not aggrieved by the rule or statute in question or otherwise has insufficient interest in the subject matter of the request;
- (4) there is reason to believe that the petitioner or some other person or entity materially connected to the subject matter of the request is acting in violation of the real estate license law or the rules adopted by the Commission; or
- (5) the subject matter of the request is the subject of litigation, legislation, or rulemaking.

(c) The Commission shall not issue a declaratory ruling when the petitioner or his or her request is the subject of, or materially related to, an investigation by the Real Estate Commission or contested case before the Commission.

*History Note:      Authority G.S. 93A-3(c); 150B-4(a);  
Eff. February 1, 1976;  
Readopted Eff. September 30, 1977;  
Amended Eff. April 1, 2006; October 1, 2000; May 1, 1992; February 1, 1989; May 1, 1984;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018.*

## **21 NCAC 58A .0903      DISPOSITION OF REQUESTS**

## **21 NCAC 58A .0904      APPLICABILITY OF RULING**

*History Note:      Authority G.S. 93A-3(c); 150A-17;  
Eff. February 1, 1976;  
Readopted Eff. September 30, 1977;  
Repealed Eff. May 1, 1984.*

## **21 NCAC 58A .0905      RECORD OF RULING**

*History Note:      Authority G.S. 93A-3(c); 150B-17;  
Eff. February 1, 1976;  
Readopted Eff. September 30, 1977;  
Amended Eff. November 1, 1987;  
Expired Eff. June 1, 2018 pursuant to G.S. 150B-21.3A.*

## **SECTION .1000 - SCHOOLS**

This Section .1000 of Title 21 Subchapter 58A of the North Carolina Administrative Code (T21.58A .1000); SCHOOLS; has been transferred and recodified to Section .0100 of Title 21 Subchapter 58C of the North Carolina Administrative Code (T21.58C .0100), effective November 27, 1989.

## **SECTION .1100 - REAL ESTATE PRE-LICENSING COURSES**

### **21 NCAC 58A .1101      PURPOSE AND APPLICABILITY**

*History Note:*      Authority G.S. 93A-4(a),(d);  
                            Eff. September 1, 1979;  
                            Amended Eff. February 1, 1989; September 1, 1984;  
                            Transferred and Recodified to 21 NCAC 58C .0301 Eff. November 27, 1989.

### **21 NCAC 58A .1102      PROGRAM STRUCTURING**

*History Note:*      Authority G.S. 93A-4(a),(d);  
                            Eff. September 1, 1979;  
                            Amended Eff. February 1, 1989; September 1, 1984; September 1, 1983; January 1, 1981;  
                            Transferred and Recodified to 21 NCAC 58C .0302 Eff. November 27, 1989.

### **21 NCAC 58A .1103      COURSE DURATION**

*History Note:*      Authority G.S. 93A-4(a),(d);  
                            Eff. September 1, 1979;  
                            Amended Eff. September 1, 1984;  
                            Repealed Eff. February 1, 1989.

### **21 NCAC 58A .1104      COURSE CONTENT**

*History Note:*      Authority G.S. 93A-4(a),(d);  
                            Eff. September 1, 1979;  
                            Amended Eff. February 1, 1989; November 1, 1987; May 1, 1987; September 1, 1984;  
                            Transferred and Recodified to 21 NCAC 58C .0303 Eff. November 27, 1989.

### **21 NCAC 58A .1105      COURSE COMPLETION STANDARDS**

*History Note:*      Authority G.S. 93A-4(a),(d);  
                            Eff. September 1, 1979;  
                            Amended Eff. April 1, 1987; September 1, 1984;  
                            Recodified Paragraphs (d) and (e) to Rule 58A .1113 (a) and (b) Eff. January 6, 1989;  
                            Amended Eff. February 1, 1989;  
                            Transferred and Recodified to 21 NCAC 58C .0304 Eff. November 27, 1989.

### **21 NCAC 58A .1106      EXAMINATIONS**

*History Note:*      Authority G.S. 93A-4(a),(d);  
                            Eff. September 1, 1979;  
                            Amended Eff. September 1, 1983;  
                            Repealed Eff. September 1, 1984.

### **21 NCAC 58A .1107      COURSE SCHEDULING**

*History Note:*      Authority G.S. 93A-4(a),(d);  
                            Eff. September 1, 1979;  
                            Amended Eff. February 1, 1989; August 1, 1980;

*Transferred and Recodified to 21 NCAC 58C .0305 Eff. November 27, 1989.*

**21 NCAC 58A .1108 TEXTBOOKS**

*History Note: Authority G.S. 93A-4(a),(d);  
Eff. September 1, 1979;  
Amended Eff. February 1, 1989; September 1, 1984; September 1, 1983;  
Transferred and Recodified to 21 NCAC 58C .0306 Eff. November 27, 1989.*

**21 NCAC 58A .1109 INSTRUCTORS**

*History Note: Authority G.S. 93A-4(a),(d);  
Eff. September 1, 1979;  
Amended Eff. February 1, 1989; September 1, 1984; January 1, 1981;  
Transferred and Recodified to 21 NCAC 58C .0307 Eff. November 27, 1989.*

**21 NCAC 58A .1110 CHANGES IN COURSE DURATION: TEXTBOOKS: PRIMARY INSTRUCTORS**

*History Note: Authority G.S. 93A-4(a),(d);  
Eff. September 1, 1979;  
Repealed Eff. January 1, 1981.*

**21 NCAC 58A .1111 CERTIFICATION OF COURSE COMPLETION**

*History Note: Authority G.S. 93A-4(a),(d);  
Eff. September 1, 1979;  
Amended Eff. February 1, 1989; September 1, 1984; January 1, 1981;  
Transferred and Recodified to 21 NCAC 58C .0309 Eff. November 27, 1989.*

**21 NCAC 58A .1112 COURSES PRIOR TO SEPTEMBER 1, 1979**

*History Note: Authority G.S. 93A-4(a),(d);  
Eff. September 1, 1979;  
Repealed Eff. January 1, 1981.*

**21 NCAC 58A .1113 COURSE RECORDS**

*History Note: Authority G.S. 93A-4(a),(d);  
Eff. September 1, 1984;  
Recodified from Rule 58A .1105 (d) and (e) Eff. January 6, 1989;  
Transferred and Recodified to 21 NCAC 58C .0310 Eff. November 27, 1989.*

**SECTION .1200 - CERTIFICATION OF REAL ESTATE INSTRUCTORS**

- 21 NCAC 58A .1201 APPLICABILITY: REQUIREMENT FOR CERTIFICATION**
- 21 NCAC 58A .1202 APPLICATION FOR INSTRUCTOR CERTIFICATION**
- 21 NCAC 58A .1203 CRITERIA FOR CERTIFICATION**
- 21 NCAC 58A .1204 DURATION OF CERTIFICATION**
- 21 NCAC 58A .1205 DENIAL: REVOCATION: SUSPENSION OF INSTRUCTOR CERTIFICATION**

*History Note: Authority G.S. 93A-4(a),(d);  
Eff. September 1, 1979;  
Amended Eff. November 1, 1987; April 1, 1987; September 1, 1984; January 1, 1981;  
Repealed Eff. February 1, 1989.*

**21 NCAC 58A .1206      CHANGES IN SCHOOL AFFILIATION OR ADDRESS**

*History Note:*    Authority G.S. 93A-4(a),(d);  
                          Eff. January 1, 1981;  
                          Amended Eff. November 1, 1987;  
                          Repealed Eff. February 1, 1989.

**SECTION .1300 - PRIVATE REAL ESTATE SCHOOLS**

**21 NCAC 58A .1301      APPLICABILITY**

*History Note:*    Authority G.S. 93A-4(a),(d); 93A-33;  
                          Eff. October 1, 1980;  
                          Amended Eff. February 1, 1989; December 1, 1987;  
                          Transferred and Recodified to 21 NCAC 58C .0201 Eff. November 27, 1989.

**21 NCAC 58A .1302      APPLICATION FOR ORIGINAL LICENSE**

*History Note:*    Authority G.S. 93A-4(a),(d); 93A-33;  
                          Eff. October 1, 1980;  
                          Repealed Eff. December 1, 1987.

**21 NCAC 58A .1303      SCHOOL NAME**

*History Note:*    Authority G.S. 93A-4(a),(d); 93A-33;  
                          Eff. October 1, 1980;  
                          Amended Eff. September 1, 1984;  
                          Transferred and Recodified to 21 NCAC 58C .0203 Eff. November 27, 1989.

**21 NCAC 58A .1304      COURSES**

*History Note:*    Authority G.S. 93A-4(a),(d); 93A-33;  
                          Eff. October 1, 1980;  
                          Amended Eff. February 1, 1989; September 1, 1984;  
                          Transferred and Recodified to 21 NCAC 58C .0204 Eff. November 27, 1989.

**21 NCAC 58A .1305      ADDITIONAL COURSE OFFERINGS**

*History Note:*    Authority G.S. 93A-4(a),(d); 93A-33;  
                          Eff. October 1, 1980;  
                          Amended Eff. February 1, 1989; November 1, 1987;  
                          Transferred and Recodified to 21 NCAC 58C .0205 Eff. November 27, 1989.

**21 NCAC 58A .1306      ADMINISTRATION**

*History Note:*    Authority G.S. 93A-4(a),(d); 93A-33;  
                          Eff. October 1, 1980;  
                          Amended Eff. April 1, 1987;  
                          Transferred and Recodified to 21 NCAC 58C .0206 Eff. November 27, 1989.

**21 NCAC 58A .1307      FACILITIES AND EQUIPMENT**

*History Note:*    Authority G.S. 93A-4(a),(d); 93A-33;  
                          Eff. October 1, 1980;

*Amended Eff. February 1, 1989; November 1, 1987; September 1, 1984;  
Transferred and Recodified to 21 NCAC 58C .0207 Eff. November 27, 1989.*

**21 NCAC 58A .1308 BULLETINS**

*History Note: Authority G.S. 93A-4(a),(d); 93A-33;  
Eff. October 1, 1980;  
Amended Eff. December 1, 1987;  
Transferred and Recodified to 21 NCAC 58C .0208 Eff. November 27, 1989.*

**21 NCAC 58A .1309 ENROLLMENT CONTRACTS**

*History Note: Authority G.S. 93A-4(a),(d); 93A-33;  
Eff. October 1, 1980;  
Transferred and Recodified to 21 NCAC 58C .0209 Eff. November 27, 1989.*

**21 NCAC 58A .1310 ADMISSIONS POLICY AND PRACTICE**

*History Note: Authority G.S. 93A-4(a),(d); 93A-33;  
Eff. October 1, 1980;  
Transferred and Recodified to 21 NCAC 58C .0210 Eff. November 27, 1989.*

**21 NCAC 58A .1311 RECORDS**

*History Note: Authority G.S. 93A-4(a),(d); 93A-33;  
Eff. October 1, 1980;  
Amended Eff. February 1, 1989; September 1, 1984;  
Transferred and Recodified to 21 NCAC 58C .0211 Eff. November 27, 1989.*

**21 NCAC 58A .1312 ENFORCEMENT OF INSTITUTIONAL STANDARDS**

*History Note: Authority G.S. 93A-4(a),(d); 93A-33;  
Eff. October 1, 1980;  
Transferred and Recodified to 21 NCAC 58C .0212 Eff. November 27, 1989.*

**21 NCAC 58A .1313 PERFORMANCE BOND**

*History Note: Authority G.S. 93A-4(a),(d); 93A-33;  
Eff. October 1, 1980;  
Amended Eff. December 1, 1987;  
Transferred and Recodified to 21 NCAC 58C .0213 Eff. November 27, 1989.*

**21 NCAC 58A .1314 ADVERTISING AND RECRUITMENT ACTIVITIES**

*History Note: Authority G.S. 93A-4(a),(d); 93A-33;  
Eff. October 1, 1980;  
Amended Eff. February 1, 1989; April 1, 1987; September 1, 1984;  
Transferred and Recodified to 21 NCAC 58C .0214 Eff. November 27, 1989.*

**21 NCAC 58A .1315 QUARTERLY REPORTS**

*History Note: Authority G.S. 93A-4(a),(d); 93A-33;  
Eff. October 1, 1980;  
Amended Eff. September 1, 1984;  
Transferred and Recodified to 21 NCAC 58C .0215 Eff. November 27, 1989.*

## **21 NCAC 58A .1316 CHANGES DURING THE LICENSING PERIOD**

*History Note:* Authority G.S. 93A-4(a),(d); 93A-33;  
Eff. October 1, 1980;  
Amended Eff. February 1, 1989; September 1, 1984;  
Transferred and Recodified to 21 NCAC 58C .0216 Eff. November 27, 1989.

## **21 NCAC 58A .1317 RENEWAL OF LICENSES**

*History Note:* Authority G.S. 93A-4(a),(d); 93A-33;  
Eff. October 1, 1980;  
Amended Eff. February 1, 1989; December 1, 1987;  
Transferred and Recodified to 21 NCAC 58C .0217 Eff. November 27, 1989.

## **21 NCAC 58A .1318 LICENSING EXAM CONFIDENTIALITY: SCHOOL PERFORM./LICENSING**

*History Note:* Authority G.S. 93A-4(a),(d); 93A-33;  
Eff. October 1, 1980;  
Amended Eff. April 1, 1987; September 1, 1984;  
Transferred and Recodified to 21 NCAC 58C .0218 Eff. November 27, 1989.

## **SECTION .1400 – REAL ESTATE EDUCATION AND RECOVERY FUND**

### **21 NCAC 58A .1401 APPLICATION FOR PAYMENT**

(a) Any person or entity desiring to obtain payment from the Real Estate Education and Recovery Fund shall file an application with the Commission on a form provided by the Commission. The form shall require the following information concerning the applicant and the claim: the applicant's name and address, the amount of the claim, a description of the acts of the broker which constitute the grounds for the claim and a statement that all court proceedings are concluded. With the form, the applicant shall submit copies of the civil complaint, judgment, and the return of execution marked as unsatisfied. If the application is incomplete or not filed in correct form, or if the Commission is without jurisdiction over the claim or the parties, counsel for the Commission may file a motion to dismiss the application. The Commission shall conduct a hearing on the motion at which the only issues to be determined shall be whether the application is complete or in correct form or whether the Commission has jurisdiction over the claim or the parties.

(b) Forms for application for payment from the Real Estate Education and Recovery Fund shall be available from the Commission on request.

*History Note:* Authority G.S. 93A-3(c); 93A-17;  
Eff. February 1, 1988;  
Amended Eff. April 1, 2013; September 1, 2002;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018.

### **21 NCAC 58A .1402 MULTIPLE CLAIMS**

(a) If at any time the Commission has notice of more than one application or potential claim for payment from the Real Estate Education and Recovery Fund arising out of the conduct of a single broker, the Commission may, in its discretion, direct that all applications filed before a date determined by the Commission be consolidated for hearing and payment.

(b) Upon directing that claims be consolidated as provided in Paragraph (a) of this Rule, the Commission shall issue to the broker and the applicants and potential claimants an Order of Consolidation setting forth the deadline for filing all applications to be consolidated. Upon the passing of the deadline, the Commission may, in its discretion, either extend the deadline or issue to the broker and all applicants a notice of the time, date and place set for the hearing on the consolidated applications.

(c) In exercising its discretion as provided in Paragraphs (a) and (b) of this Rule, the Commission shall consider the following factors:

- (1) the number of claim applications or potential claims of which it has notice;

- (2) the amount of each claim;
- (3) the status of the underlying civil action in each claim;
- (4) the length of time each claim has been pending since the Commission first received notice of the claim; and
- (5) whether consolidation of such claims or the extension of the deadline for filing applications to be consolidated will promote the fair and efficient administration and payment of monies from the Real Estate Education and Recovery Fund.

*History Note:* Authority G.S. 93A-16(d); 93A-17; 93A-20;  
 Eff. February 1, 1988;  
 Amended Eff. May 1, 2013; July 1, 2000; February 1, 1989;  
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018.

**21 NCAC 58A .1403 NOTICE OF HEARING: ORDER/PAYT FROM/REAL ESTATE EDUCATION AND RECOVERY FUND**

- (a) The Commission shall give notice of the time, place and date of a hearing on a claim for payment from the Real Estate Education and Recovery Fund to any applicant and the broker.
- (b) After conducting a hearing, the Commission shall issue an order either authorizing payment or denying the claim, in whole or in part. This order shall be served upon the broker and any applicant.
- (c) The existence of subsequent notices of potential claims or subsequent applications shall not be considered by the Commission in the issuance of an Order for Payment in those cases where the award is allowable but must be reduced pursuant to the provisions of G.S. 93A-21.

*History Note:* Authority G.S. 93A-16(d); 93A-20;  
 Eff. February 1, 1988;  
 Amended Eff. April 1, 2013; February 1, 1989;  
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018.

**21 NCAC 58A .1404 EXHAUSTED LIABILITY LIMITS**

Applications for payment from the Real Estate Education and Recovery Fund received or considered by the Commission after the liability of the Real Estate Education and Recovery Fund as described in G.S. 93A-21 has been exhausted shall be dismissed.

*History Note:* Authority G.S. 93A-3(c); 93A-21;  
 Eff. February 1, 1988;  
 Amended Eff. April 1, 2013; February 1, 1989;  
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018.

**SECTION .1500 - FORMS**

**21 NCAC 58A .1501 LICENSING AND GENERAL BROKERAGE FORMS**

*History Note:* Authority G.S. 93A-4(d); 150B-11(1);  
 Eff. July 1, 1989;  
 Repealed Eff. July 1, 1998.

**21 NCAC 58A .1502 FORMS FOR SCHOOL APPROVAL OR LICENSURE**

*History Note:* Authority G.S. 93A-4(d); 150B-11(1);  
 Eff. July 1, 1989;  
 Amended Eff. May 1, 1990;  
 Repealed Eff. July 1, 1998.



## **SECTION .1600 - DISCRIMINATORY PRACTICES PROHIBITED**

### **21 NCAC 58A .1601 FAIR HOUSING**

Conduct by a licensee which violates the provisions of the State Fair Housing Act constitutes improper conduct in violation of G.S. 93A-6(a)(10).

*History Note:* Authority G.S. 41A-4; 41A-5; 41A-6; 93A-3(c);  
Eff. July 1, 1989;  
Amended Eff. April 1, 1997;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018.

## **SECTION .1700 – MANDATORY CONTINUING EDUCATION**

### **21 NCAC 58A .1701 PURPOSE AND APPLICABILITY**

This Section describes the continuing education requirement for real estate brokers authorized by G.S. 93A-38.5, establishes the continuing education requirement to change a license from inactive status to active status, establishes attendance requirements for continuing education courses, establishes the criteria and procedures relating to obtaining an extension of time to complete the continuing education requirement, establishes the criteria for obtaining continuing education credit for an unapproved course or related educational activity, and addresses other similar matters.

*History Note:* Authority G.S. 93A-3(c); 93A-38.5;  
Eff. July 1, 1994;  
Amended Eff. April 1, 2006; October 1, 2000;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018;  
Amended Eff. September 1, 2022.

### **21 NCAC 58A .1702 CONTINUING EDUCATION REQUIREMENT**

(a) Except as provided in Rules .1708 and .1711 of this Section, a broker shall complete eight credit hours of real estate continuing education courses approved pursuant to 21 NCAC 58H within one year prior to the expiration of the 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."

(b) A BIC or broker who takes the General Update Course rather than the Broker-In-Charge Update Course shall receive continuing education credit for taking such course only for the purpose of retaining his or her license on active status and shall not be considered to have satisfied the requirement to take the Broker-In-Charge Update Course in order to retain his or her BIC Eligible status.

(c) Continuing education courses shall be completed upon the second renewal following the initial licensure and upon each subsequent annual renewal.

(d) The broker shall provide the course completion certificate upon request of the Commission.

(e) No continuing education shall be required to renew a broker license on inactive status. In order to change a license from inactive status to active status, the broker shall satisfy the continuing education requirement described in Rule .1703 of this Section.

(f) No continuing education shall be required for a broker who is a member of the U.S. Congress or the North Carolina General Assembly in order to renew his or her license on active status.

(g) For purposes of this Rule, the terms "active status" and "inactive status" shall have the same definition as those in Rule .0504 of this Subchapter.

(h) For continuing education purposes, the term "initial licensure" shall include the first time that a license of a particular type is issued to a person, the reinstatement of a canceled, revoked or surrendered license, and any license expired for more than six months.

*History Note:* Authority G.S. 93A-3(c); 93A-4.1;  
Eff. July 1, 1994;  
Amended Eff. July 1, 2017; July 1, 2014; April 1, 2006; July 1, 2005; April 1, 2004; October 1, 2000; August 1, 1998; July 1, 1996;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018;  
Amended Eff. July 1, 2018.

#### **21 NCAC 58A .1703 CONTINUING EDUCATION FOR LICENSE ACTIVATION**

(a) A broker requesting to change an inactive license to active status on or after the broker's second license renewal following his or her initial licensure shall have completed the continuing education as described in Paragraph (b) or (c) of this Rule, whichever is appropriate.

(b) If the inactive broker's license has not been on active status since the preceding July 1 and the broker has a deficiency in his or her continuing education record for the previous license period, the broker shall make up the deficiency and satisfy the continuing education requirement pursuant to Rule .1702 of this Section for the current license period in order to activate the license. Any deficiency may be made up by completing, during the current license period or previous license period, approved continuing education elective courses; however, such courses shall not be credited toward the continuing education requirement for the current license period. When crediting elective courses for purposes of making up a continuing education deficiency, the maximum number of credit hours that will be awarded for any course is four hours.

(c) If a broker's license has been on inactive status for more than two years and the broker has a deficiency in his or her continuing education record, the broker shall:

- (1) cure the continuing education deficiency for the current license year; and
- (2) complete two Postlicensing courses no more than six months prior to activation.

*History Note:* Authority G.S. 93A-3(c); 93A-4.1;  
Eff. July 1, 1994;  
Amended Eff. July 1, 2017; April 1, 2006; July 1, 2000; 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, 2018.

#### **21 NCAC 58A .1704 NO CREDIT FOR PRELICENSING OR POSTLICENSING COURSES**

No credit toward the continuing education requirement shall be awarded for completing a real estate prelicensing or postlicensing course.

*History Note:* Authority G.S. 93A-3(c); 93A-4.1;  
Eff. July 1, 1994;  
Amended Eff. April 1, 2006.  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018.

#### **21 NCAC 58A .1705 ATTENDANCE AND PARTICIPATION REQUIREMENTS**

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

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

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

- (1) approved by the instructor; and
- (2) for circumstances beyond the broker's control that could not have been reasonably foreseen by the broker, such as:
  - (A) an illness;

- (B) a family emergency; or
- (C) acts of God.

*History Note:* Authority G.S. 93A-3(c); 93A-38.5;  
Eff. July 1, 1994;  
Amended Eff. July 1, 2017; July 1, 2010;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018;  
Amended Eff. July 1, 2023; January 1, 2020.

#### **21 NCAC 58A .1706 REPETITION OF COURSES**

A continuing education course may be taken only once for continuing education credit within a single license period.

*History Note:* Authority G.S. 93A-3(c); 93A-4A;  
Eff. July 1, 1994;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018.

#### **21 NCAC 58A .1707 ELECTIVE COURSE CARRY-OVER CREDIT**

A maximum of four hours of continuing education credit for an approved elective course taken during the current license period may be carried over to satisfy the continuing education elective requirement for the next following license period if the licensee receives no continuing education elective credit for the course toward the elective requirement for the current license period or the previous license period. However, if a continuing education elective course is used to wholly or partially satisfy the elective requirement for the current or previous license period, then any excess hours completed in such course which are not needed to satisfy the four-hour elective requirement for that license period may not be carried forward and applied toward the elective requirement for the next following license period.

*History Note:* Authority G.S. 93A-3(c); 93A-4A;  
Eff. July 1, 1994;  
Amended Eff. July 1, 1995;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018.

#### **21 NCAC 58A .1708 EQUIVALENT CREDIT**

(a) 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.

(b) 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.

(c) 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 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.

(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.

*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.*

#### **21 NCAC 58A .1709 EXTENSIONS OF TIME TO COMPLETE CONTINUING EDUCATION**

(a) A broker on active status may request an extension of time to satisfy the continuing education requirement for the current license period if the broker was unable to obtain the necessary education due to an incapacitating illness, military deployment, or other circumstance that existed for a portion of the license period and that constituted a severe hardship.

(b) Requests for an extension of time shall be submitted on a form available on the Commission's website that requires the broker to set out the broker's name, mailing address, license number, telephone number, email address, and a description of the incapacitating illness or other circumstance. The requesting broker shall submit, along with the form, supporting documentation, such as a written physician's statement, deployment orders, or other corroborative evidence, demonstrating that compliance with the continuing education requirement would have been impossible or burdensome.

(c) All requests for an extension of time shall be received by the Commission by 5:00 p.m. on June 10 of the licensing period for which the extension is sought.

(d) If an extension of time is granted, the broker shall be permitted to renew his or her license on active status. The broker's license shall automatically change to inactive status if the broker fails to satisfy the continuing education requirement prior to the end of the extension period.

(e) In no event shall an extension of time be granted that extends the continuing education requirement deadline beyond June 10 of the license year following the license year in which the request is made.

*History Note: Authority G.S. 93A-3(c); 93A-4.1; Eff. July 1, 1994; Amended Eff. July 1, 2017; August 1, 2014; October 1, 2000; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018.*

#### **21 NCAC 58A .1710 DENIAL OR WITHDRAWAL OF CONTINUING EDUCATION CREDIT**

(a) The Commission shall deny continuing education credit claimed by a broker or reported by an education provider for a broker, and shall withdraw continuing education credit previously awarded by the Commission to a broker upon finding that the broker:

- (1) or education provider provided incorrect or incomplete information to the Commission concerning continuing education completed by the broker;
- (2) failed to comply with the attendance requirement established by Rule .1705 of this Section; or
- (3) was mistakenly awarded continuing education credit due to an administrative error.

(b) If an administrative error or an incorrect report by an education provider results in the denial or withdrawal of continuing education credit for a broker, the Commission shall, upon the written request of the broker, grant the broker an extension of time to satisfy the continuing education requirement.

(c) A broker who obtains or attempts to obtain continuing education credit through misrepresentation of fact, dishonesty, or other improper conduct shall be subject to disciplinary action pursuant to G.S. 93A-6.

*History Note:* Authority G.S. 93A-3(c); 93A-38.5;  
Eff. July 1, 1994;  
Amended Eff. July 1, 2017; 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.

## **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;  
Repealed Eff. July 1, 2023.

### **21 NCAC 58A .1712 BROKER-IN-CHARGE COURSE**

(a) The Broker-in-Charge Course is a 12-hour educational course that is required for a broker to attain BIC Eligible status under Rule .0110 of this Subchapter.

(b) In order to receive credit for completing the Broker-in-Charge Course, a broker shall:

- (1) personally perform all work required to complete the course; and
- (2) complete the 12-hour Broker-in-Charge Course no later than 30 days after the broker registers for the course and no later than the following June 10, whichever comes first.

(c) Upon completion of the 12-hour Broker-in-Charge Course, a broker shall receive four credit hours of elective continuing education. The four credit hours will be awarded in the license year in which the broker completes the 12-hour Broker-in-Charge Course.

*History Note:* Authority G.S. 93A-3(c); 93A-38.5; 93A-4.2;  
Eff. January 1, 2020;  
Amended Eff. July 1, 2022.

## **SECTION .1800 - LIMITED NONRESIDENT COMMERCIAL LICENSING**

### **21 NCAC 58A .1801 GENERAL PROVISIONS**

(a) 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.

(b) Corporations, business associations and entities shall be ineligible for licensure under this Section.

(c) Nothing in this Section shall be construed to limit the rights of any person duly licensed as a real estate broker in North Carolina under the provisions of G.S. 93A-4 or 93A-9(a).

*History Note:* Authority G.S. 93A-4; 93A-9;  
Eff. July 1, 2004;  
Amended Eff. April 1, 2006;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018.

### **21 NCAC 58A .1802 DEFINITIONS**

For the purposes of this Section:

- (1) "Commercial Real Estate" means any real property or interest therein, whether freehold or non-freehold, which at the time the property or interest is made the subject of an agreement for brokerage services:
  - (a) is lawfully used primarily for sales, office, research, institutional, 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 Subitem (1)(a) of this Rule by a zoning ordinance adopted pursuant to the provisions of G.S. 153A, Article 18 or G.S. 160A, Article 19 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 Subitem (1)(a) of this Rule 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 Subitem (1)(a) of this Rule by the parties to any contract, lease, option, or offer to make any contract, lease, or option.
- (2) "Qualifying state" means the state or territory of the United States where an applicant for, and the holder of, a limited nonresident commercial license issued under this Section is licensed in good standing as a real estate broker or salesperson. The qualifying state must be the state or territory where the applicant or limited nonresident commercial licensee maintains his or her primary place of business as a real estate broker or salesperson. Under no circumstances may North Carolina be a qualifying state.

*History Note:* Authority G.S. 93A-4; 93A-9;  
Eff. July 1, 2004;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018.

#### **21 NCAC 58A .1803 REQUIREMENTS FOR LICENSURE; APPLICATION AND FEE**

(a) A person desiring to obtain a broker license under this Section shall demonstrate to the Real Estate Commission that:

- (1) he or she is a resident of a state or territory of the United States other than North Carolina;
- (2) he or she is licensed as a real estate broker or salesperson in a qualifying state and that said license is on active status and not in abeyance for any reason. If licensed as a salesperson, he or she shall also demonstrate that he or she is acting under the supervision of a broker in accordance with the applicable governing statutes or regulations in the qualifying state; and
- (3) he or she possesses the requisite honesty, truthfulness, integrity, and moral character for licensure as a broker in North Carolina.

A person applying for licensure under this Section shall not be required to show that the state or territory where he or she is currently licensed offers reciprocal licensing privileges to North Carolina brokers.

(b) A person desiring to be licensed under this Section shall submit an application on a form prescribed by the Commission and shall show the Commission that he or she has satisfied the requirements set forth in Paragraph (a) of this Rule. In connection with his or her application a person applying for licensure under this Rule shall provide the Commission with a certification of license history from the qualifying state where he or she is licensed. He or she shall also provide the Commission with a report of his or her criminal history from the service designated by the Commission. An applicant for licensure under this Section shall be required to update his or her application as required by Rule .0302(c) of this Subchapter.

(c) The fee for persons applying for licensure under this Section shall be one hundred dollars (\$100.00) and shall be paid in the form of a certified check, bank check, cashier's check, money order, or by credit card. Once paid, the application fee shall be non-refundable.

(d) If the Commission has received a complete application and the required application fee and if the Commission is satisfied that the applicant possesses the moral character necessary for licensure, the Commission shall issue to the applicant a limited nonresident commercial real estate broker license.

*History Note:* Authority G.S. 93A-4; 93A-9;  
Eff. July 1, 2004;  
Amended Eff. April 1, 2006;

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

#### **21 NCAC 58A .1804 ACTIVE STATUS**

Broker licenses issued under this Section shall be issued on active status and shall remain valid only so long as the licensee's license in the qualifying state remains valid and on active status. In addition, a license issued to a salesperson under this Section shall remain valid only while the salesperson is acting under the supervision of a real estate broker in accordance with the applicable laws and rules in the qualifying state. Individuals licensed under this Section shall immediately notify the Commission if his or her license in the qualifying state lapses or expires, is suspended or revoked, made inactive, or is placed in abeyance for any reason.

*History Note: Authority G.S. 93A-4; 93A-9;  
Eff. July 1, 2004;  
Amended Eff. April 1, 2006;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018.*

#### **21 NCAC 58A .1805 RENEWAL**

(a) A license issued under this Section shall expire on June 30 following issuance unless it is renewed in accordance with the provisions of Rule .0503 and .1711 of this Subchapter.

(b) The Commission shall not renew a license issued under this Section unless the licensee has demonstrated that he or she has complied with the requirements of Paragraph (a) of this Rule and that his or her license in the qualifying state is on active status in good standing and is not lapsed, expired, suspended, revoked, or in abeyance for any reason.

*History Note: Authority G.S. 93A-4; 93A-9;  
Eff. July 1, 2004;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018.*

#### **21 NCAC 58A .1806 LIMITATIONS**

(a) A person licensed under this Section may act as a real estate broker in this state only if:

- (1) he or she does not reside in North Carolina;
- (2) the real property interest which is the subject of any transaction in connection with which he or she acts as a broker in this state is commercial real estate as that term is defined in Rule .1802 of this Section; and
- (3) he or she is affiliated with a resident North Carolina real estate broker as required in Rule .1807 of this Section.

(b) A nonresident commercial real estate broker licensed under the provisions of Section .1800 of this Subchapter shall not act as or serve in the capacity of a broker-in-charge of a firm or office in North Carolina.

*History Note: Authority G.S. 93A-4; 93A-9;  
Eff. July 1, 2004;  
Amended Eff. April 1, 2006;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018.*

#### **21 NCAC 58A .1807 AFFILIATION WITH RESIDENT BROKER**

(a) No person licensed under G.S. 93A-9(b) shall enter North Carolina to perform any act or service for which licensure as a real broker is required unless he or she has first entered into a brokerage cooperation agreement and declaration of affiliation with an individual who is a resident in North Carolina licensed as a North Carolina real estate broker.

(b) A brokerage cooperation agreement as contemplated by this Rule shall be in writing and signed by the resident North Carolina broker and the non-resident commercial licensee. It shall contain:

- (1) the material terms of the agreement between the signatory licenses;

- (2) a description of the agency relationships, if any, which are created by the agreement among the nonresident commercial licensee, the resident North Carolina broker, and the parties each represents;
  - (3) a description of the property or the identity of the parties and other information sufficient to identify the transaction which is the subject of the affiliation agreement; and
  - (4) a definite expiration date.
- (c) A declaration of affiliation shall be written and on the form provided by the Commission and shall identify the nonresident commercial licensee and the affiliated resident North Carolina licensee. It shall also contain a description of the duties and obligations of each as required by the North Carolina Real Estate License Law and rules adopted by the Commission. The declaration of affiliation may be a part of the brokerage cooperation agreement or separate from it.
- (d) A nonresident commercial licensee may affiliate with more than one resident North Carolina broker at any time. However, a nonresident commercial licensee may be affiliated with only one resident North Carolina broker in a single transaction.
- (e) A resident North Carolina broker who enters into a brokerage cooperation agreement and declaration of affiliation with a nonresident commercial licensee shall:
- (1) verify that the nonresident commercial licensee is licensed in North Carolina;
  - (2) actively and directly supervise the nonresident commercial licensee in a manner which reasonably insures that the nonresident commercial licensee complies with the North Carolina Real Estate License Law and rules adopted by the Commission;
  - (3) promptly notify the Commission if the nonresident commercial licensee violates the Real Estate License Law or rules adopted by the Commission;
  - (4) insure that records are retained in accordance with the requirements of the Real Estate License Law and rules adopted by the Commission; and
  - (5) maintain his or her license on active status continuously for the duration of the brokerage cooperation agreement and the declaration of affiliation.
- (f) The nonresident commercial licensee and the affiliated resident North Carolina broker shall each retain in his or her records a copy of brokerage cooperation agreements and declarations of affiliation from the time of their creation and for at least three years following their expiration. Such records shall be made available for inspection and reproduction by the Commission or its authorized representatives without prior notice.

*History Note: Authority G.S. 93A-4; 93A-9; Eff. July 1, 2004; Amended Eff. April 1, 2006; July 1, 2005; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018.*

## **21 NCAC 58A .1808 TRUST MONIES**

A nonresident commercial broker acting as real estate broker in North Carolina shall deliver to the North Carolina resident broker with whom he or she is affiliated all money belonging to others received in connection with the nonresident commercial broker's acts or services as a broker. Upon receipt of the funds, the resident North Carolina broker shall cause the funds to be deposited in a trust account in accordance with the provisions of Rule .0116 of this Subchapter.

*History Note: Authority G.S. 93A-4; 93A-6(d); 93A-6(g); 93A-9; Eff. July 1, 2004; Amended Eff. July 1, 2014; April 1, 2006; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018.*

## **21 NCAC 58A .1809 ADVERTISING**

In all advertising involving a nonresident commercial licensee's conduct as a North Carolina real estate broker and in any representation of such person's licensure in North Carolina, the advertising or representation shall conspicuously identify the nonresident commercial licensee as a "Limited Nonresident Commercial Real Estate Broker".



*History Note:* Authority G.S. 93A-4; 93A-9;  
Eff. July 1, 2004;  
Amended Eff. April 1, 2006;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018.

#### **21 NCAC 58A .1810 PAYMENT OF FEES**

Commissions, fees, or other compensation earned by a nonresident commercial licensee shall not be paid directly to the licensee if said licensee is employed by or working for a real estate broker or firm. Instead, such fees or compensation shall be paid to the licensee's employing broker or firm.

*History Note:* Authority G.S. 93A-4; 93A-9;  
Eff. July 1, 2004;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018.

### **SECTION .1900 – POST-LICENSING EDUCATION**

#### **21 NCAC 58A .1901 PURPOSE AND APPLICABILITY**

This Section prescribes specific procedures relating to the postlicensing education requirement for real estate brokers as prescribed by G.S. 93A-4(a1).

*History Note:* Authority G.S. 93A-4;  
Eff. April 1, 2006;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018.

#### **21 NCAC 58A .1902 POSTLICENSING EDUCATION REQUIREMENT**

(a) The 90-hour Postlicensing education program pursuant to G.S. 93A-4(a1) shall consist of the following three 30 instructional hour courses prescribed by the Commission:

- (1) Postlicensing Course 301;
- (2) Postlicensing Course 302; and
- (3) Postlicensing Course 303.

(b) A provisional broker as described in G.S. 93A-4(a1) shall complete all Postlicensing courses pursuant to Paragraph (a) of this Rule within 18 months following the date of initial licensure.

(c) If a provisional broker fails to complete the required Postlicensing courses pursuant to Paragraph (b) of this Rule, the provisional broker's license shall be placed on inactive status.

(d) A provisional broker seeking to activate a license that was placed on inactive status pursuant to Paragraph (c) of this Rule shall:

- (1) complete all three Postlicensing Courses described in Paragraph (a) of this Rule within the previous two years;
- (2) satisfy the continuing education requirements for license activation described in Rule .1703 of this Subchapter; and
- (3) file an activation form with the Commission pursuant to Rule .0504 of this Subchapter.

*History Note:* Authority G.S. 93A-4; 93A-4(a1);  
Eff. April 1, 2006;  
Amended Eff. January 1, 2012;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018;  
Amended Eff. July 1, 2020.

#### **21 NCAC 58A .1903 EXTENSIONS OF TIME TO COMPLETE POSTLICENSING EDUCATION**

*History Note:* Authority G.S. 93A-4;  
Eff. April 1, 2006;

*Amended Eff. January 1, 2012;*

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

*Repealed Eff. July 1, 2020.*

**21 NCAC 58A .1904 DENIAL OR WITHDRAWAL OF POSTLICENSING EDUCATION CREDIT**

(a) The Commission may deny Postlicensing education credit claimed by a provisional broker or reported by an education provider for a provisional broker, and may withdraw Postlicensing education credit previously awarded by the Commission to a provisional broker and make appropriate license status changes for that broker upon finding that the provisional broker:

- (1) or education provider provided incorrect or incomplete information to the Commission concerning Postlicensing education completed by the provisional broker;
- (2) failed to comply with the attendance requirement pursuant to 21 NCAC 58H .0207; or
- (3) was mistakenly awarded Postlicensing education credit due to an administrative error.

(b) When Postlicensing education credit is denied or withdrawn by the Commission under Paragraph (a) of this Rule, the provisional broker shall remain responsible for satisfying the Postlicensing education requirement in G.S. 93A-4(a1).

(c) A broker who obtains or attempts to obtain Postlicensing education credit through misrepresentation of fact, dishonesty or other improper conduct is subject to disciplinary action pursuant to G.S. 93A-6.

*History Note: Authority G.S. 93A-4;*

*Eff. April 1, 2006;*

*Amended Eff. July 1, 2017; July 1, 2009;*

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

*Amended Eff. July 1, 2020.*

**21 NCAC 58A .1905 WAIVER OF 90-HOUR POSTLICENSING EDUCATION REQUIREMENT**

(a) A provisional North Carolina real estate broker may apply for a waiver of one or more of the three 30-hour Postlicensing courses described in Rule .1902 of this Section in the following circumstances:

- (1) the broker has obtained equivalent education to the Commission's Postlicensing course(s) pursuant to Rule .1902 of this Section. In this case, the waiver request shall include the course(s):
  - (A) jurisdiction of delivery;
  - (B) title;
  - (C) credit hours earned;
  - (D) beginning and end dates; and
  - (E) subject matter description.
- (2) the broker has obtained experience equivalent to 40 hours per week as a licensed broker or salesperson in another state for at least five of the seven years immediately prior to application for waiver, which shall include the applicant's:
  - (A) employer;
  - (B) title at employer;
  - (C) dates of employment;
  - (D) hours per week devoted to brokerage;
  - (E) approximate number of transactions;
  - (F) areas of practice;
  - (G) approximate percentage of time devoted to each area of practice;
  - (H) description of applicant's role and duties;
  - (I) managing broker's name, telephone number, and email address; and
  - (J) official certification of licensure issued within the six months preceding application from a jurisdiction within a state, territory, or possession of the United States or Canada in which the applicant holds a current real estate license that has been active within the three years prior to application.
- (3) the broker has obtained experience equivalent to 40 hours per week as a licensed North Carolina attorney practicing in real estate matters for the two years immediately preceding application, which shall include the applicant's:

- (A) firm or practice name;
- (B) law license number;
- (C) dates of employment;
- (D) hours per week devoted to real estate law practice;
- (E) approximate number of closings conducted;
- (F) description of practice; and
- (G) manager or supervising attorney's name, telephone number, and email address, if applicable.

(b) The Commission shall not consider education or experience obtained in violation of any law or rule as fulfilling the requirements for waiver of the 90-hour postlicensing education requirement.

(c) A broker shall be ineligible for a waiver of the 90-hour postlicensing education requirement if the broker was issued a license pursuant to Rule .0511(b)(2) of this Section.

*History Note:* Authority G.S. 93A-4(a1);  
Eff. July 1, 2017;  
Amended Eff. July 1, 2019.

## **SECTION .2000 - ANNUAL REPORTS**

### **21 NCAC 58A .2001 FILING**

*History Note:* Authority G.S. 93B-2(d);  
Eff. July 1, 2010;  
Expired Eff. June 1, 2018 pursuant to G.S. 150B-21.3A.

### **21 NCAC 58A .2002 ESCROW ACCOUNT**

(a) The Commission shall establish an escrow account or accounts with a financial institution or institutions lawfully doing business in this State into which the Commission shall deposit and hold fees tendered during any period of time when, pursuant to G.S. 93B-2(d), the Commission's authority to expend funds has been suspended. The Commission shall keep funds deposited into its escrow account or accounts segregated from other assets, monies, and receipts for the duration of the suspension of the Commission's authority to expend funds.

(b) The Commission may deposit into and maintain in its escrow account such monies as may be required to avoid or eliminate costs associated with the account or accounts.

*History Note:* Authority G.S. 93B-2(d);  
Eff. July 1, 2010;  
Readopted Eff. July 1, 2019.

## **SECTION .2100 - BROKERS IN MILITARY SERVICE**

### **21 NCAC 58A .2101 APPLICABILITY**

This Section shall apply to every broker whose license is not revoked, suspended, or surrendered, or who is otherwise the subject of a disciplinary order, and who is eligible for an extension of time to file a tax return under the provisions of G.S. 105-249.2 and 26 U.S.C. 7508.

*History Note:* Authority G.S. 93B-15(b);  
Eff. July 1, 2010;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018;  
Amended Eff. July 1, 2018.

### **21 NCAC 58A .2102 POSTPONEMENT OF FEES**

(a) A Broker described in 21 NCAC 58A .2101 shall not be required to pay renewal fees accrued during the time to be disregarded described in 26 U.S.C. 7508 until the June 30 immediately following the end of such time. The provisions of 21 NCAC 58A .0504 notwithstanding, during such time and until the June 30 immediately thereafter, the license of a broker other than a provisional broker shall remain on active status. During such time, the license of

a provisional broker shall not expire, but shall remain on active status only if the provisional broker remains under the supervision of a broker-in-charge.

(b) All fees postponed by operation of this subsection shall be due and payable on June 30 immediately following the time to be disregarded as described in 26 U.S.C. 7508.

*History Note:* Authority G.S. 93A-3(c); 93B-15(b);  
Eff. July 1, 2010;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018.

#### **21 NCAC 58A .2103 POSTPONEMENT OF CONTINUING EDUCATION**

(a) A broker described by 21 NCAC 58A .2101 shall not be required to complete the continuing education required as a condition of license renewal for any June 30 license expiration date if that date falls during the time to be disregarded described in 26 U.S.C. 7508 until the June 10 immediately following the end of such time to be disregarded. If such time ends on or after May 1, the broker shall have until September 1 of the same year to complete the required continuing education.

(b) If a broker entitled to a postponement of continuing education under this Rule accumulates a deficiency in his or her continuing education of 16 or more hours because of the length of the time to be disregarded under 26 U.S.C. 7508, the broker may satisfy the deficiency by satisfying the requirements of 21 NCAC 58A .1703(c) established for an inactive broker returning to active status.

(c) The license of a broker entitled to postponement of continuing education under this Rule shall not be placed on inactive status for failure to complete continuing education until the deadline for completion set out in Paragraph (a) of this Rule has passed.

*History Note:* Authority G.S. 93A-3(c); 93B-15(b);  
Eff. July 1, 2010;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018.

#### **21 NCAC 58A .2104 POSTPONEMENT OF POSTLICENSING EDUCATION**

A broker described by Rule .2101 of this Section who is a provisional broker shall not be required to complete any postlicensing education during the period to be disregarded under 26 U.S.C. 7508 until the 180th day following the ending of such period. The broker's license shall not be placed on inactive status or cancelled for his or her failure to complete the required postlicensing education prior to the deadline established in this Rule.

*History Note:* Authority G.S. 93A-3(c); 93B-15(b);  
Eff. July 1, 2010;  
Amended Eff. July 1, 2016;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018.

#### **21 NCAC 58A .2105 PROOF OF ELIGIBILITY**

It shall be the responsibility of every broker eligible for the postponement of fees and education requirements established by this Section to demonstrate his or her eligibility and the beginning and ending of the time to be disregarded as described in 26 U.S.C. 7508.

*History Note:* Authority G.S. 93A-3(c); 93B-15(b);  
Eff. July 1, 2010;  
Amended Eff. July 1, 2016;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018.

### **SECTION .2200 - BROKER PRICE OPINIONS AND COMPARATIVE MARKET ANALYSES**

#### **21 NCAC 58A .2201 APPLICABILITY**

This Section applies to broker price opinions and comparative market analyses provided for a fee by a real estate broker whose license is not on provisional status pursuant to Article 6, Chapter 93A of the General Statutes.

*History Note: Authority G.S. 93A-83(d);  
Temporary Adoption Eff. October 1, 2012;  
Eff. April 1, 2013;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018.*

## **21 NCAC 58A .2202 STANDARDS**

- (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.

*History Note: Authority G.S. 93A-83(d);  
Temporary Adoption Eff. October 1, 2012;  
Eff. April 1, 2013;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018.*