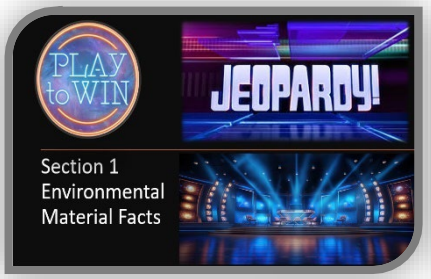
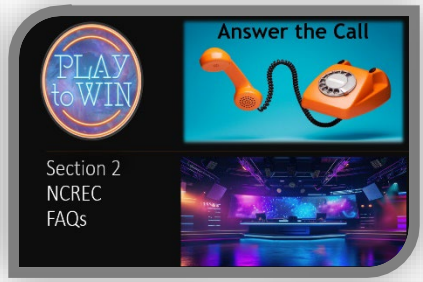
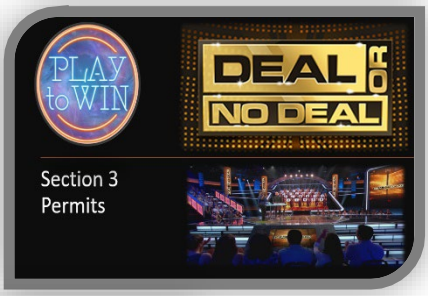
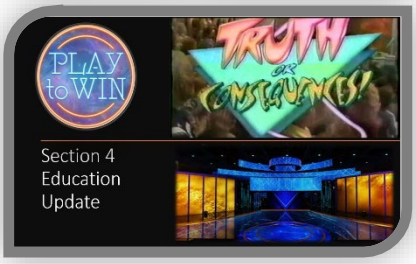
2024-2025
General Update (GENUP) Course









Student Manual

Welcome to the 2024-2025 Mandatory Update

The North Carolina Real Estate Commission is honored and excited to bring you the General Update (GENUP) and Broker-in-Charge Update (BICUP) courses for the 2024-2025 season.

NCREC realizes that the Update courses form the core of continuing education for North Carolina brokers every year. They are the product of months of work, decades of experience, and the time, energy and efforts of many people throughout the Education & Licensing and Regulatory Affairs Divisions.

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

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

This year's course is titled "Playing to Win" and is built around a game show theme. We did this to maximize engagement in the courses and to create lots of opportunities for interaction between the instructor and the students. We know students learn best when they are engaged and having fun. For the first time ever, we have powered this year's UPDATE courses with AI tools to create better quality videos and to be more innovative in the conveyance of information. There are also multiple resources shared in the course.

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

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

Kizzy Crawford Heath, M.A.Ed., JD, DREI
Assistant Director of Education & Licensing

INTRODUCTION

The *2024-2025 General Update (GENUP) Course* is a four (4) hour* course that must be completed by all provisional and non-provisional brokers who are not Brokers-in-Charge and/or do not have *BIC-Eligible* status and who wish to renew their licenses on active status on July 1, 2025, for the 2025-2026 license year.

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

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

Development and Delivery

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

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

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

Commission Rule 58A .1705: Attendance & Participation Requirements

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

(1) attend at least 90 percent of the scheduled instructional hours for the course;

(2) provide the broker's legal name and license number to the education provider;

(3) present the broker's pocket card or photo identification card, if necessary; 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.

Comments and Complaints

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

North Carolina Real Estate Commission
Education and Licensing Division
P.O. Box 17100
Raleigh, NC 27619-7100
Email address: educ@ncrec.gov

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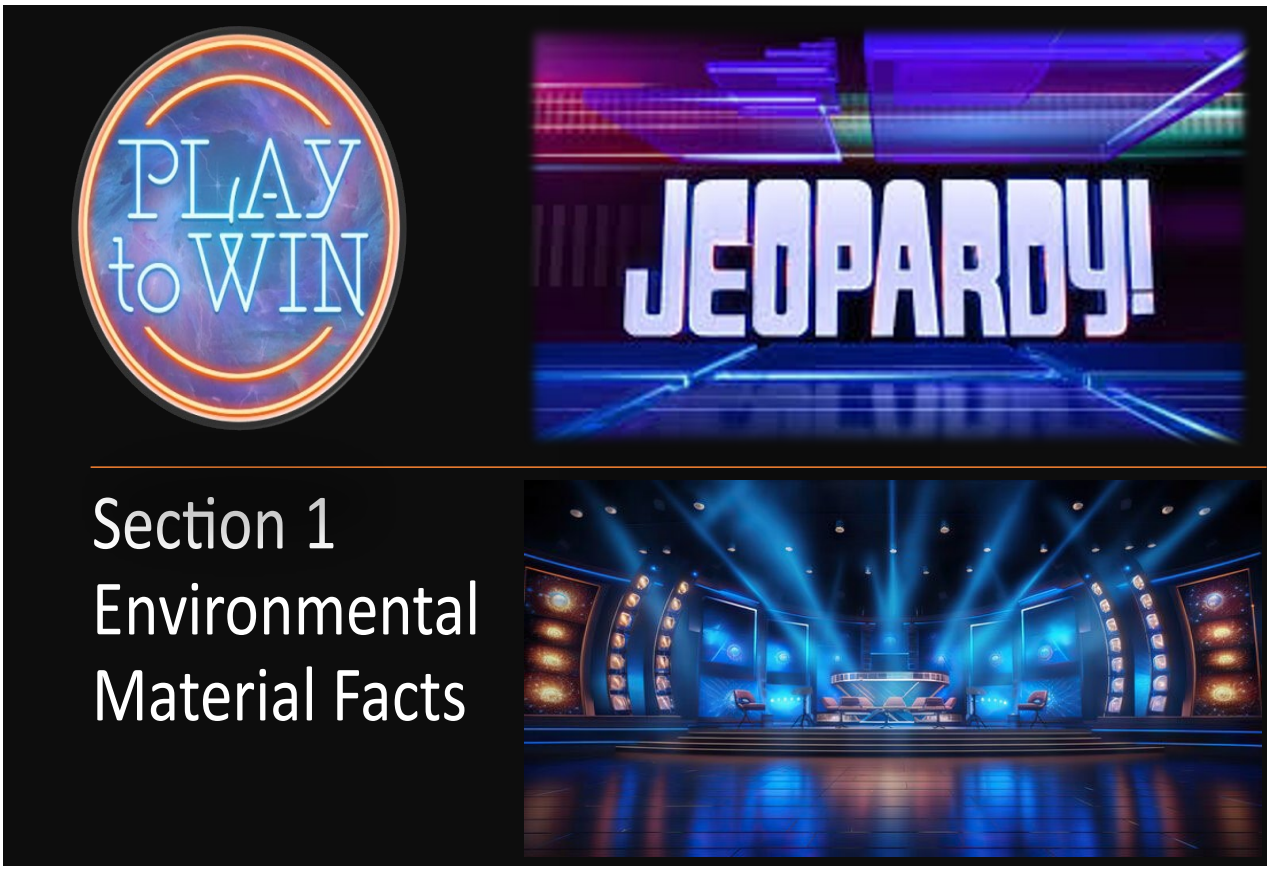
Section 1

ENVIRONMENTAL MATERIAL FACTS



LEARNING OBJECTIVES

After completing this Section, you should be able to:

- define a material fact;
- explain the categories of material facts;
- identify red flags that indicate possible material facts; and
- explain the responsibilities of a broker for discovery and disclosure of material facts.

TERMINOLOGY

Material Fact: Any fact that could affect a reasonable person's decision to buy, sell, or lease property is considered a material fact and must be disclosed by a broker to the parties in the transaction regardless of the broker's agency role within the transaction.

Uniform Commercial Code: According to the Library of Congress, the Uniform Commercial Code (i.e., "UCC") is a collection of proposed model laws, drafted by the American Law Institute and national Conference of Commissioners on Uniform State Laws that is meant to serve as a guide for state legislatures when they draft statutes involving commercial contracts and related dealings.

MATERIAL FACTS

Definition

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

Material facts could include information such as a property:

- is located in a flood zone,
- has an unpermitted bedroom,
- is located in a neighborhood with restrictive covenants,
- has a malfunctioning electrical system, or
- has polybutylene pipes that have leaked in the past.

The facts referenced above are just a few examples of material facts that could affect a reasonable person's decision to buy, sell, or lease property. Regardless of the nature of the material fact, it is imperative for a broker to actively look for and voluntarily disclose material facts to all the parties in the transaction in a timely manner regardless of their agency role within the transaction.

This category includes external facts that affect the use, desirability, or value of the property

The Commission considers "material facts" to include at least the following categories, regardless of which party an agent represents in the transaction.

1. ***Facts about the property itself***. This category includes various substantial property issues that are within the property lines. The issues include, but are not restricted to, significant defects or abnormalities like structural issues, malfunctioning systems, roof leaks, as well as drainage or flooding issues.
2. ***Facts that relate directly to the property***. This category includes factors outside the property lines that affect the use, desirability, or value of a property. Some external factors may include, but are not limited to, impending zoning changes, the presence of restrictive covenants, plans to widen an adjacent street, or plans to construct a shopping center on an adjacent property.
3. ***Facts directly affecting the principal's ability to complete the transaction***. This category includes any fact that could adversely affect the ability of the principal (seller or buyer) to complete the transaction. Facts may include the buyer's inability to qualify for a loan, a buyer's inability to close on a property without first selling their currently owned home, OR a seller's inability to convey clear title.
4. ***Facts that are known to be of special importance to a party***. This category includes innumerable facts that may not be typical or normally deemed "material." However, when a broker is aware of their particular significance or relevance to a party, they become material facts that must be discovered and disclosed. For example, a buyer inquiring about zoning regulations and the impact it may cause to their home-based business or a buyer explicitly stating they would like to purchase a property in a subdivision that has a community pool and clubhouse are examples of facts of special importance to a party.

When a buyer or seller communicates a particular interest to a broker regarding a property, the broker is obligated to discover and disclose all facts associated with that specific interest. This is highly important because it holds significance to the buyer and transforms into a material fact that must discovered and disclosed.

These two words summarize a broker's obligation when it comes to material facts

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Discovery

Brokers have the affirmative responsibility to timely discover and disclose material facts to all parties in a transaction. Additionally, brokers are expected to take reasonable steps to determine important details about a property to ensure it will meet their clients' needs/wants.

Listing agents must:

- accurately compile all information about a listed property necessary to market the property;
- obtain specific details that are of particular interest to the seller-clients; and
- adhere to disclosure requirements for potential buyers.

On the other hand, buyer agents are expected to:

- assist their buyer-clients with obtaining property-specific information;
- question the accuracy of information advertised by a seller's agent when a competent buyer agent should suspect there may be an error, and
- obtain specific details that are of particular interest to the buyers.

This standard is used by NCREC to evaluate whether a broker should have known about a particular material fact

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The Commission uses the Reasonableness Standard to evaluate a broker's duty to discover and disclose material facts. This Standard dictates that a broker has a duty to discover and disclose any particular material fact if a reasonably knowledgeable and prudent broker would have discovered the fact during the course of the transaction.

Even if a broker is unaware of a material fact, the Commission may take disciplinary action if it deems that a reasonably prudent broker should have known the fact exists. N.C.G.S. §93A-6(a)(1), (8), and (10) authorizes the Commission to pursue disciplinary action against a broker who misrepresents or omits a material fact or who is unworthy or incompetent to act as a real estate broker in a manner as to endanger the interest of the public, or who engages in any other conduct which constitutes improper, fraudulent or dishonest dealing, respectively. Consequently, every broker must exercise reasonable care and diligence to timely discover and disclose all material facts to all parties in the transaction.

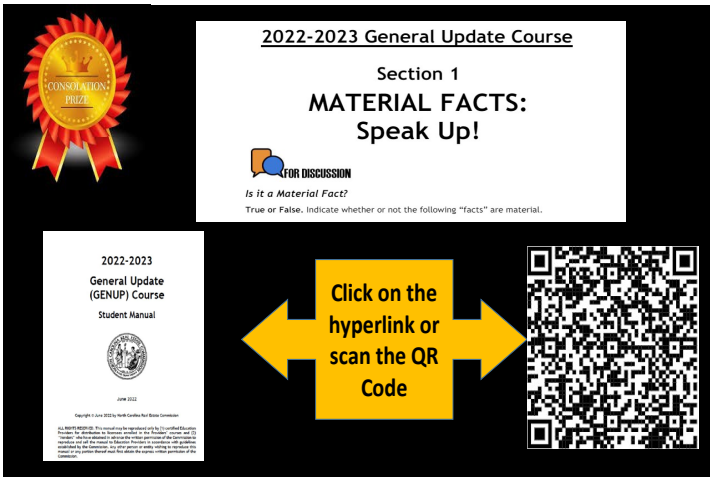
NOTE: The Commission expects brokers to discover material facts about properties, even those being sold "AS IS," and disclose this information to all parties in the transaction.

Relevant Information

In accordance with agency law, an agent must disclose to the principal any information that has the potential to affect the principal's rights, duties, and interests or impact their decision in the transaction. Information that an agent must disclose to their principal includes:

- the other party's willingness to accept a price or terms differing from those initially stated,
- the other party's motivations for participating in the transaction, and
- any other known confidential information that could impact the principal's rights and interests or influence their decision in the transaction.

NOTE: An agent must communicate all relevant information to their principal, even if the information does not rise to the level of being a material fact.



Agents should be aware that there are some state and fair housing law exemptions for the disclosure of certain facts. An explanation of these facts that may seem material but are ***not***, can be found in the 2022-2023 Material Facts section of the General Update Course.

Responsibilities of Brokers

A broker is obligated to discover and disclose material facts to all interested parties in the transaction, irrespective of whom they represent. This mandatory disclosure of material facts includes disclosure of:

- facts about and affecting the property of which the broker is aware,
- facts about and affecting the property of which the broker should reasonably be aware, and
- information that is considered common knowledge.

Facts Known to Brokers

The following questions are instrumental in assisting brokers with comprehending their duties to discover and disclose material facts to all parties in the transaction regardless of whom they represent.

- ***What if a broker notices cracks in the wall of a property? Does the broker have to disclose this information?*** Yes. The broker must disclose the existence of the cracks in the wall. The cracks are considered a red flag and require further inquiry to determine the cause and discover if remediation of the issue(s) has occurred.

- ***Does a broker have a duty to disclose the cracks in the wall even if they represent the seller?*** Yes. Even though the broker represents the seller, the broker is still obligated to explain to/inform the seller of the broker's obligation to disclose material facts, such as the cracks in the walls, to all parties in the transaction.
- ***What if the seller instructs the broker not to disclose the cracks in the wall?*** The broker must not follow the seller's instructions because they are not lawful. A broker's discovery and disclosure of material facts is not contingent upon whether they receive permission from their client to disclose this information. The discovery and disclosure of material facts is a mandatory disclosure under N.C.G.S. §93A-6(a)(1). If the broker obeys the seller and does not disclose the cracks in the wall, the broker may be in violation of the Statute and subject to disciplinary action.
- ***What if a buyer agent is informed of the cracks in the wall and the listing agent and/or seller, had no prior knowledge of this material fact? Must the buyer agent inform the listing agent and/or seller of this information?*** Yes. Although the buyer agent may reasonably rely on the property information that is provided by the listing agent, they are not absolved of the personal responsibility to discover and disclose material facts about the property. Therefore, if a buyer agent is made aware of any material facts during their research or inquiry on a property, they must disclose that information to all parties in the transaction, not just their buyer.
- ***What if a buyer agent discovers an issue that might rise to the level of a material fact during a showing? Must the buyer agent inform the listing agent of this information?*** Yes. If a buyer agent discovers an issue during a showing, they should notify the listing agent of the potential issue. The listing agent should then notify the seller, investigate the issue, and encourage the seller to have it evaluated by a professional if needed.
    - If an offer is presented while the listing agent is actively working to determine if the issue is material, the listing agent should disclose the potential issue to the buyer agent and inform them that the issue is currently being investigated.
- ***Once a broker has determined that a material fact or potential material fact exists, what should they do?*** The broker must disclose the material fact or potential material fact to their client/customer so they can possess the adequate knowledge to:
    - make an intelligent decision regarding the property,
    - negotiate repair services, or
    - decide to terminate the offer or contract.

- ***Should a broker still disclose the material fact or potential material fact if it is going to scare off buyers?*** Yes. A broker does not have a choice regarding whether they disclose material facts to buyers. The Statute states that material facts must be disclosed to all parties in the transaction.
- If a broker is debating whether they should disclose the existence of material facts, they should ask themselves the following questions:
    - Would you like to be the subject of a disciplinary investigation?
    - Would you like to be a defendant in a civil lawsuit?

A broker who thinks that a transaction will close quicker without disclosing material facts to all parties will more than likely become the subject of a disciplinary action or civil lawsuit due to their failure to follow the law. Brokers should volunteer disclosure of material facts to all parties during the transaction rather than possibly defending their license later.

Reasonable Knowledge about Material Facts

In the Commission's Bulletin article, "What is Common Knowledge," it states that the Commission determines whether a broker knew the existence of a material fact by analyzing documents, reviewing written correspondence, and conducting interviews with individuals involved in the transaction. Also, the Commission examines public records and analyzes relevant educational resources to determine whether a broker should reasonably have known a material fact about a property.

The article elaborates that the Commission uses the Reasonableness Standard to assess a broker's duty in discovering and disclosing material facts. According to this Standard, a broker is obliged to discover and disclose any material fact that a reasonably knowledgeable and prudent broker would have discovered during the transaction.

Common Knowledge

Common knowledge is information that is widely or generally known to everyone or nearly everyone in a community. Therefore, a reasonably prudent broker is expected to possess common knowledge related to the area in which they practice brokerage. In an effort to practice brokerage competently, a reasonably prudent broker would possess common knowledge regarding:

- geographic competence;
    - The broker should have knowledge and familiarity with the geographic area including business developments, economic changes, and zoning and planning development. Brokers can develop geographic competence in a variety of ways such as researching the area, taking continuing education courses, completing professional development classes, or possessing previous knowledge from residing in the area.
- market knowledge; and
    - The broker should have knowledge regarding the market including information such as economic, social, and environmental influences that may affect the value of property. Also, knowledge of appreciation rates, property prices, and demographic statistics are important.
- industry standards for real estate specialty areas (e.g., residential, short-sales, commercial, etc.)
    - The broker should have knowledge of the typical transaction cycles for the types of specialties in which they practice. Also, the broker should be familiar with the terminology and transaction documents and/or forms that are used for each specialty area.

To maintain current/accurate knowledge, a broker should:

- read the local newspaper;
- watch the local news;
- attend city/municipality meetings and/or review agenda notes;
- network/communicate with other brokers/professionals in real estate in the area; and
- routinely review information regarding zoning and local ordinances.

Responsibilities of Listing Agent

A listing agent has the responsibility to confirm the accuracy of the property data and discover material facts upon acquiring the listing. The listing agent can gather accurate property data and discover material facts by:

- conducting a visual inspection of the property,
- asking the seller questions about the property,
- talking to neighboring property owners or tenants, and
- obtaining copies of documentation regarding repairs and renovations.

Also, brokers must recognize that the Commission will hold the listing agent responsible for maintaining the accuracy of the property information. This includes property information that is:

- communicated directly to cooperating brokers and/or buyers,
- included in the remarks section of the Multiple Listing Service (MLS);
- changed during the listing period, and
- included in advertisements.

NOTE: A seller's completion of the Residential Property and Owners' Association Disclosure Statement (hereafter "*RPOADS"*) does not void a broker's duty to discover and disclose material facts. For clarity, if a seller marks "No Representation" on the RPOADS and the listing agent is aware of a material fact, the listing agent continues to have a duty to disclose the material fact to prospective buyers and/or their agents.

Disclosure of Material Facts MUST be Timely

As it pertains to the disclosure of material facts, a listing agent must ensure they timely disclose material facts to all parties in the transaction. Timely disclosure is informing prospective buyers regarding any issues/problems as soon as possible, which allows them to make an informed decision regarding whether to submit an offer or proceed with the property purchase.

If the listing agent becomes aware of a material fact after the property is under contract, it remains important for the listing agent to immediately disclose the existence of the material fact(s) to all parties in the transaction.

Although the disclosure of material facts is of paramount importance to the parties in the transaction, the Commission does not have a specific rule that mandates how the disclosure of the material facts must take place.

A broker may disclose material facts by:

- including information in the public remarks section of the MLS listing,
- attaching supplemental documentation to the listing with a note in Public Remarks to see the attached documents,
- email, and/or
- text message.

Brokers may verbally disclose the existence of material facts, but then it is difficult to prove the disclosure occurred. As a best practice, brokers should disclose material facts in writing and confirm that the broker representing the opposing party has seen the written disclosure.

Best Practices for Listing Agents

The following are best practices for listing agents to consider prior to listing a property to ensure they are adhering to the mandatory duty to discover and disclose material facts:

- state their duty to discover and disclose material facts under License Law and Commission rules to clients and/or consumers,
- evaluate and conduct a preliminary inspection of the property to determine if any "red flags" exist before making any statements about the property,
- research any issues on the property to determine if they were repaired and the likelihood of the issue existing in the future,
- interview the seller about repair timelines and obtain records and receipts,
- determine whether required permits were obtained,
- determine the seller's willingness to repair a defect if it exists, and
- disclose the material fact to all parties in the transactions.

NOTE: Brokers cannot use the Doctrine of Caveat Emptor as a defense to avoid disclosure of material facts. A broker must volunteer the disclosure of all material facts that the broker knows or reasonably should know to all interested parties in the transaction in a timely manner even though North Carolina is a buyer beware state.

Responsibilities of Buyer Agents

The buyer agent is tasked with the responsibility of investigating the possible presence of material facts on behalf of their client. Typically, a buyer agent can rely on the accuracy of property information provided by the listing agent, whether presented on a listing information sheet or in an MLS.

The buyer agent is generally not expected to verify the accuracy of property information supplied by the listing agent. However, the buyer agent must adhere to the Reasonableness Standard. Therefore, a buyer agent is not automatically excluded from liability if they relied on inaccurate information from the listing agent that was suspicious. If the buyer agent reasonably suspects that the property information provided by the listing agent is inaccurate, the buyer agent must conduct or recommend further research.

Moreover, buyer agents are obligated to verify issues identified by their clients as material, such as the existence of restrictive covenants or previous occupancy by pets. A reasonably prudent buyer agent would review a property's transaction history and, if the property was previously under contract, inquire about the property's inspection history, specifically if it has been recently inspected, and if so, request information on any defects listed in the home inspection report.

Further, if a property has been owned for a short period of time, the buyer agent should inquire with the seller if they are a flipper or investor. If the seller is a flipper/investor, the buyer agent should request copies of all invoices for renovations and verify whether the vendors were licensed contractors and pulled the appropriate permits.

In an effort to assist their buyer clients with making informed decisions regarding a transaction, buyer agents should adhere to the following best practices:

- research zoning codes/use restrictions of a property,
- determine facts of special importance to their client,
- research property-specific information,
- visually inspect and evaluate a property for possible issues, and
- ask the listing agent about the presence of material facts.

Red Flags

As brokers are visually inspecting a property, they may notice the existence of "red flags." A "red flag" is the presence of any fact or issue that should make a reasonably prudent broker suspect that the information provided by another party may be incorrect or incomplete.

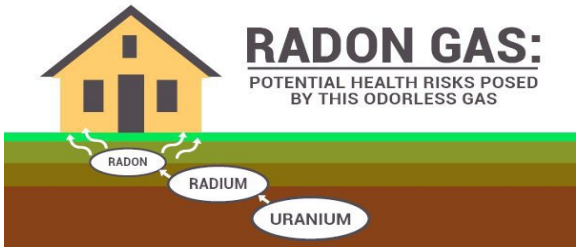
If a broker notices "red flags," (i.e., leaks, stains on the ceilings, cracks in the wall, inaccurate square footage measurements, etc.) a broker must conduct more research and use due diligence to determine the severity of the issue and the effect that these "red flags" might have on their client's decision regarding the property. The broker may complete additional property-specific research by:

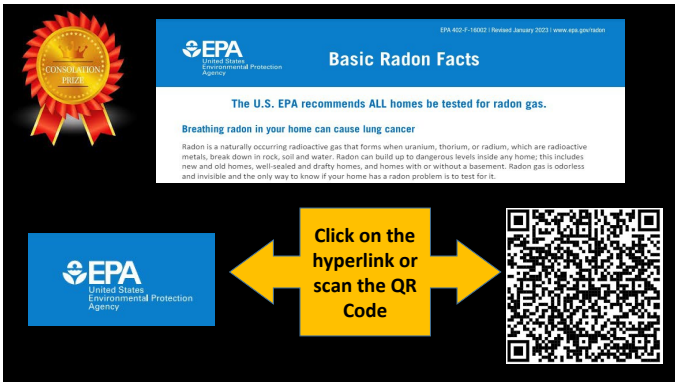
- asking the owner, if unrepresented, or the listing agent about known issues with the property,
- measuring the property or hiring a vendor to measure the property if a discrepancy in square footage is suspected,
- asking the owner, if unrepresented, or the listing agent for service records for repairs conducted on the property,
- researching the existence of septic permits and building permits with local municipalities, or
- advising the client to hire an inspector and/or contractor to estimate and/or repair issues.

RADON

What is Radon?

Radon is a naturally occurring, colorless, odorless, and radioactive gas that is present in the majority of soils and rocks. It results from the natural breakdown of uranium, thorium, or radium which are radioactive metals in rock, soil, and water.





According to the Environmental Protection Agency's *Basic Facts on Radon,* radon can build up to dangerous levels inside any building, including new and old homes, well-sealed and drafty homes, and homes with or without a basement.

This is the only way to know if a building has a problem with radon gas

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Fact or Myth:

1. **Scientists** are not sure that radon is a problem.
2. **Fact or Myth:** Radon testing is difficult and time-consuming.
3. **Fact or Myth:** Buildings with radon problems cannot be mitigated.
4. **Fact or Myth:** Radon only affects certain types of homes.

Is Radon Dangerous?

Considered to be the biggest health risk of radon exposure

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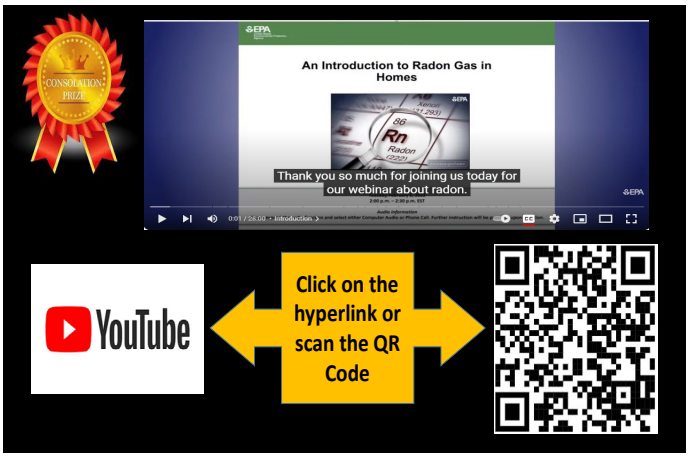
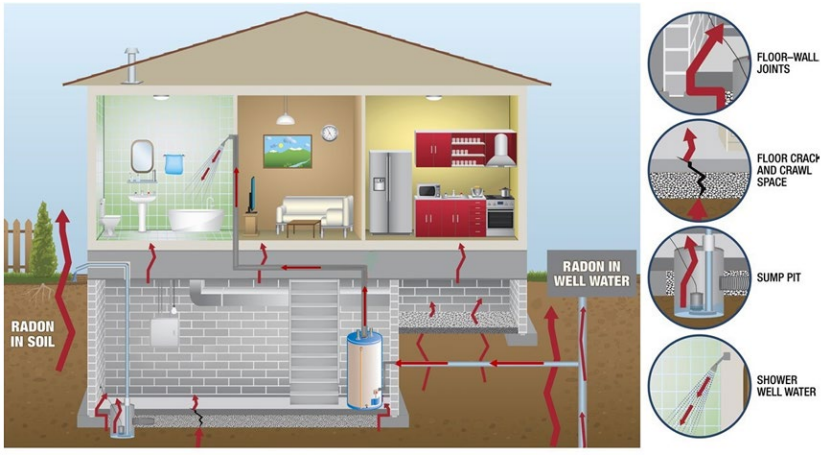
According to the United States Environmental Protection Agency (EPA), radon is the number one cause of lung cancer among non-smokers. Overall, radon is the second leading cause of lung cancer and is responsible for about 21,000 deaths each year. Radon has been found in every state and radon levels in homes can vary greatly, even adjacent homes may have differing levels.

The EPA, in conjunction with Kansas State University, created a webinar that provides basic facts about radon (i.e., what it is, what it does, and how to reduce it, etc.). The webinar, "*An Introduction to Radon Gas in Homes*" can be viewed here.



It is important for brokers to know how radon actually enters a home. According to *Reducing the Risk from Radon: Information and Interventions, A Guide for Health Care Providers,"* the magnitude of radon concentration indoors depends primarily on the amount of radon produced in the underlying soil and bedrock, the soil permeability, and the building's construction. Also, the soil composition under and around the house affects radon levels and the way in which the radon moves toward a house.

Essentially, radon gas can enter a home from the soil through cracks or pores in hollow-block walls and can sometimes be emitted from concrete. While radon concentrations are generally highest in basements and ground floor rooms that are in contact with the soil, radon levels often are high in main floor and upper rooms as well. Radon gas may also be released by well water during showers and other household activities. In comparison, the radon gas released by well water is a smaller risk than radon gas from soil.



Radium, which naturally occurs in soils and rocks from the radioactive decay of uranium, produces radon gas that can move through the soil into a home or other building through these common entry points. Because the air pressure inside a home is often lower than the pressure in the soil around the foundation and basement floor slab, radon is easily drawn into a home due to these air pressure differences.

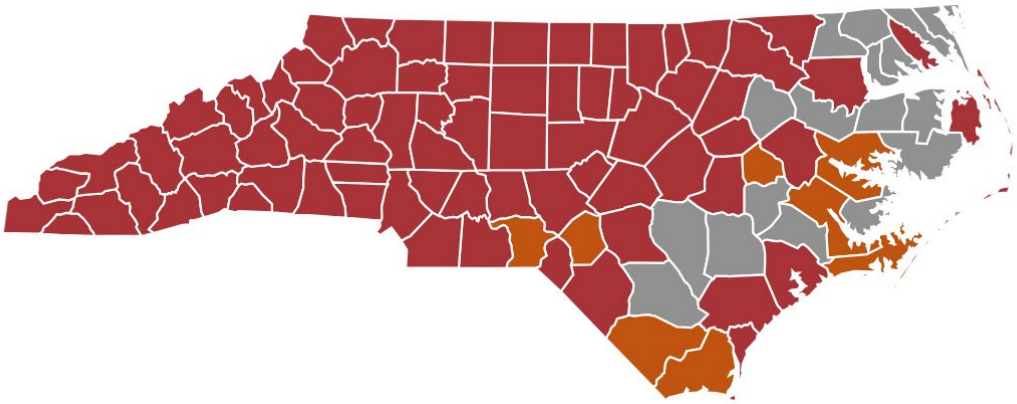
Where is Radon Gas the Most Prevalent?

According to the United States Center for Disease Control and Prevention's Environment Public Health Tracking Network, the following map illustrates the radon levels that have been recorded in each North Carolina county.

Legend

- Red – A county with a least one radon building test that measured at or above 4picoCuries per Liter of air
- Orange – A county with at least one radon building test that measured between 2 to 3.9 picoCuries per Liter of air
- Grey – A county with at least one radon building test that measured at or below 1.9 picoCuries per Liter of air

NOTE: Data provided by the Center for Disease Control and Prevention indicates that 77 of the 100 counties in North Carolina have indoor radon air levels above the action level of 4pCi/L.



NOTE: According to the North Carolina Department of Health and Human Services, 450 people die in NC every year from radon-induced lung cancer.

Is Radon a Material Fact?

The level at which if attained or exceeded makes radon a material fact

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In North Carolina, a radon level equal to or exceeding 4.0 pCi/L is a material fact. Pursuant to N.C.G.S. §93A-6(a)(1), a broker must always disclose material facts. Additionally, if a broker knows, or reasonably should know, that a property's radon level meets or exceeds 4.0 pCi/L, the broker must disclose that fact to all parties in the transaction.

During most sales transactions involving a residential dwelling, the sellers complete the Residential Property and Owners' Association Disclosure Statement (hereafter, ***RPOADS)*** about the property and provide it to prospective buyers.

Question ***F1*** on the ***RPOADS*** asks:

> *Is there hazardous or toxic substance, material, or product (such as asbestos, formaldehyde, radon gas, methane gas, lead-based paint) that exceed government safety standards located on or which otherwise affect the property?*

As with all questions on the ***RPOADS*****,** the seller may answer:

- **Yes**, indicating the seller has knowledge of a problem;
- **No**, indicating the seller has no actual knowledge of any problem; or
- **No Representation**, indicating the seller chooses not to disclose the conditions or characteristics of the property, even if the seller has actual knowledge of them or should have known of them.

NOTE: The statutory requirement for brokers to discover and disclose material facts applies in all sales and lease transactions. Therefore, if a broker involved in property management is aware or reasonably should know that a property's radon level exceeds 4.0pCi/L, the broker is obligated to disclose this information to all tenants and prospective tenants.

1. **Fact or Myth:** Radon is only a problem in certain parts of the country.
2. **Fact or Myth:** A neighbor's radon test result is a good indication of whether your home has a radon problem.
3. **Fact or Myth:** Everyone should not test well water for radon.
4. **Fact or Myth**: It is difficult to sell a home where radon problems have been discovered.
5. **Fact or Myth:** I have lived in my home for so long, it does not make sense to take action now.

Measuring Radon

Radon is measured in picocuries per liter of air (pCi/L), which is a measurement of radioactivity. In the United States, the average indoor radon level is about 1.3 pCi/L. The average outdoor level is about .4 pCi/L. The United States Surgeon General and EPA recommend remediation for homes with radon levels at or above 4 pCi/L. The EPA strongly recommends that homeowners with radon levels between 2 pCi/l and 4pCi/L remediate their radon issue as well.

Testing for Radon

Radon testing is very easy and readily available. If a building has a radon problem, it can be mitigated. The radon test is simple and can inform you if a property has a high radon level. The duration of radon testing lasts between 2 and 7 days and the analysis of the radon test results takes approximately two weeks.

This simple device can reduce dangerous levels of radon gas

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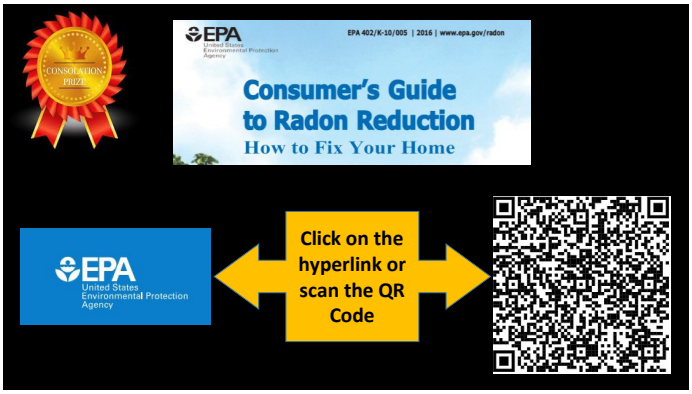
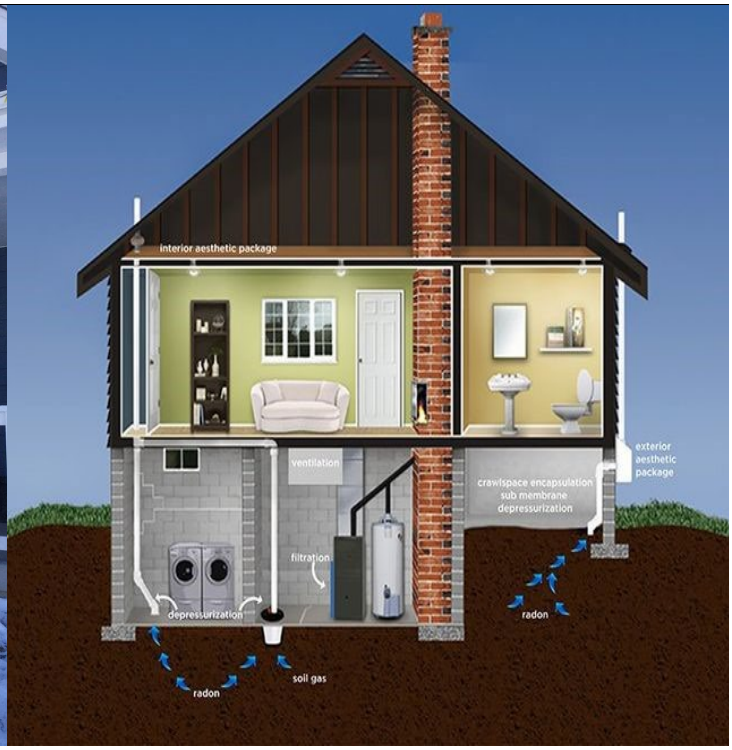
Radon Reduction

What is one approach for reducing radon levels in a home?



The dominant approach for reducing radon levels in a home involves the installation of a vent pipe system equipped with a fan. This radon mitigation system effectively draws radon from beneath the building and directs it outdoors. The system is known as an active soil depressurization system and does not require any major changes to the home. The system can be installed in homes with or without basements, as well as homes with crawlspaces. The EPA discusses active soil depressurization systems in its *Consumer's Guide to Radon Reduction.*

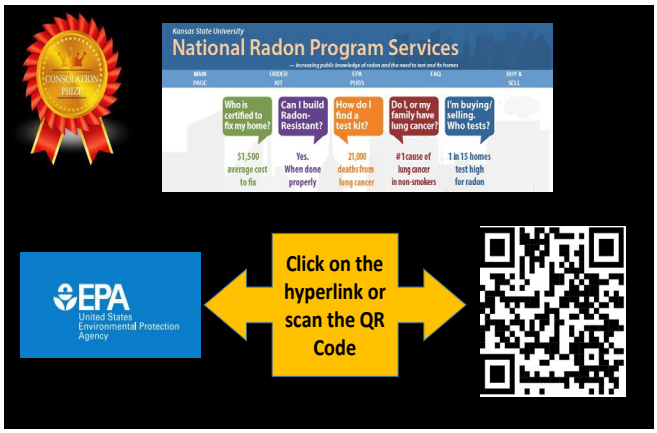
Radon Mitigation System



Radon Test Kits

Individuals can get an easy-to-use radon test kit by:

- buying a test kit online or at your local home improvement or hardware store;
- ordering a test kit at www.sosradon.org or by calling 1-800-SOS-RADON; or
- requesting a test kit from your state radon program, which also has information on radon testing companies and laboratories in your area.



As a best practice, there are some resources that brokers can use to assist them in educating their clients/customers regarding the possible presence of radon gas in homes or prospective properties for purchase. The following video, "Breathing Easy: What Home Buyers and Sellers Should Know About Radon," provides an informative, educational perspective on the many aspects of radon gas. This video covers crucial elements such as radon science, lung cancer risks, testing, remediation procedures, and disclosure responsibilities.

Brokers can use this engaging video as an educational tool to empower clients/customers with essential information about radon gas. This information will allow them to make an informed decision in their real estate transaction and contribute to ensuring a safer living environment.

Radon Resources

EPA has the following radon resources available for prospective buyers and prospective sellers:

- Radon Protection: Buying a Newly Built Home
- Radon Protection: Building a Home
- Radon-Resistant New Construction
- Radon and Real Estate Resources
- Home Buyer's/Seller's Guide to Radon
- Consumer's Guide to Radon Reduction: How to Fix Your Home
- Who is Qualified to Test or Fix My Home?
- Radon Guide for Tenants

SOLAR PANELS

The desire to incorporate energy-efficient and eco-friendly environments has led some property owners to install solar panel systems on their properties. A recent survey conducted by Rocket Homes indicates that solar panels were the most desired eco-friendly home upgrade in 2023.

This is what buyers and sellers should rely on regarding the effect of solar panels on a home's value

Despite being the "most desired" ecofriendly home upgrade in 2023, the impact that solar panels may or may not have on a home's value is a complicated issue. Therefore, brokers should be very cautious about making any representations to EITHER party about the value, benefits, or detriments of solar panels. Brokers should advise their clients/consumers to get an appraisal.

Due to solar panels being a popular eco-friendly upgrade, brokers should inquire about the installation, financing, warranties, and power output for the property's solar system, if applicable, during a transaction.

Solar Panels Case Study

Mark, a listing agent, listed Tamara's property in the MLS. Tamara marked "No Representation" on the ***RPOADS*** regarding the solar panels.

In the public remarks section of the MLS, Mark didn't state that the solar panels were leased. However, he indicated the property was energy-efficient due to the solar panels.

Charlize, a prospective buyer, did not find out about the loan on the solar panels until she was under contract with Tamara. She did not want to purchase a property that had a lease for the solar panels, so she terminated the contract during the Due Diligence Period.

What, if anything, did Mark do wrong?

Whether the solar panels are owned, leased, or financed, listing agents must disclose this information when they list a property for sale to avoid a claim of misrepresentation.

Are the existence of solar panels a Material Fact?

These two things regarding solar panels add complexity to a sale or transfer of the property

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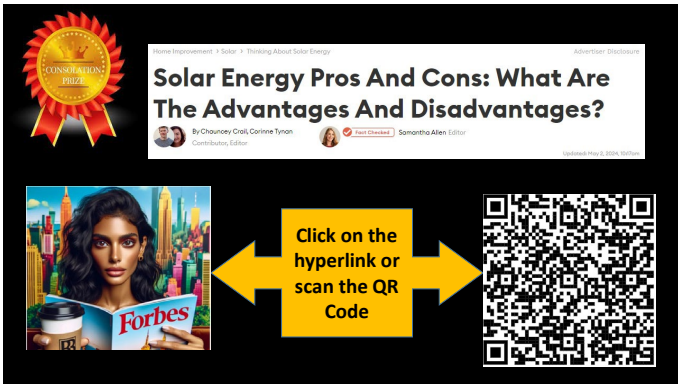
The presence of solar panels on a property may be considered a material fact because it may affect a principal's ability to convey clear title. Therefore, brokers must discover information about the solar panels (i.e., whether they are leased, owned, or financed) and disclose this information and other information pertaining to the solar panels to all parties in the transaction in adherence to N.C.G.S. §93A-6(a)(1).

Solar Panel Benefits and Detriments

Solar panels can be beneficial for homeowners due to the potential offsetting of energy costs. However, prior to acquiring a property with solar panels, prospective buyers should be aware of the benefits and detriments of solar panels before consummating the sale.



According to the article, *Solar Panels Pros and Cons: What Are The Advantages and Disadvantages?*, written by Forbes, individuals should weigh the pros and cons before making an informed decision.

Advantages Of Solar Energy	Disadvantages Of Solar Energy
Decreases use of non-renewable resources	High upfront costs
Reduces power bill	Sunlight dependent
Energy independence	Space constraints
Long-term savings	Environmental impact of manufacturing
Low-maintenance	Difficulty with relocation
Benefits the community	Scarcity of materials
Diverse Uses	Disposal/recycling options may be limited
Power prices are rising	
Tech is improving and prices are decreasing	

Possible benefits of solar panels include:

- renewable energy source,
    - Solar panels minimize the usage of fossil fuels.
- reduction in electric bill,
    - Solar panels help consumers power their homes without purchasing electricity from a power grid.
- energy independence,
    - Solar panels use battery systems to maintain power during non-daylight hours.
- increased home values, and
    - According to National Renewable Energy Laboratory, ever dollar a solar panel saves you on electric bills, increases the value of your home by $20. Homes with solar panels sell for four percent higher than those without them.
- benefits the community.
    - Net metering allows consumers to sell excess electricity their panels produce back to the utility company, further reducing the amount of the utility bill and utilization of fossil fuels.

Possible detriments of solar panels include:

- the high cost of solar panels,
    - Solar panel installation requires an investment of approximately $18,000 before accounting for incentives and the federal solar tax credit.
- sunlight dependency,
    - Solar panels cannot produce power without sunlight. So, consumers in areas with less-than-ideal sun exposure or poor weather may have difficulty producing power.
- difficult installation,
    - Solar panel installation requires an individual to be on the roof of a property and comfortable working with electricity. Therefore, solar panel installation may be too complex for a do-it-yourself project.
- space constraints, and
    - Solar panels and wiring take up space.
- the environmental impact of manufacturing.
    - The production of solar technology has its environmental downsides, as the mining of materials and manufacturing of solar panels creates a considerable amount of greenhouse gas.

Solar panels can be beneficial when marketing a property for sale. For instance, some of the benefits that may be advertised include low energy costs and clean energy.

Acquiring a property with existing solar panels means that the prospective buyer needs to become familiar with the configuration of the system and acquaint themselves with the details of the system prior to concluding the purchase.

NOTE: Brokers should not offer their advice/opinions on the benefits or detriments of solar panels. However, brokers should advise individuals to get a professional inspection and/or opinion regarding purchasing a property with solar panels. Brokers who offer their opinions on the benefits and/or detriments of solar panels may risk making misrepresentations or omissions while conveying or refraining from providing information about the property.

Some questions that brokers may want to ask the listing agent/seller prior to making an offer are:

1. What percentage of power consumption does the system offset?
2. Which company carried out the installation of the solar panels?
3. What brand manufactured the solar panels and what's the efficiency?
4. What are the warranty conditions for the system?
5. What is projected life span and cost of replacement & maintenance?
6. What are terms of any lease?
7. What are terms of any financing statement?
8. What are the details of any power company agreement?

Furthermore, while inquiries are being made regarding the solar panel system, brokers should ask whether the solar panels are owned, leased, or financed. Solar panel installations are expensive. Therefore, owners may choose to lease the solar panels from a solar company and pay a flat monthly fee or enter into a power purchase agreement, where the owner pays a fixed rate for each generated kilowatt-hour based on the use of the solar panel equipment installed by the third party.

According to the article, "Selling a House with Solar Panels: Everything You Need To Know," solar panels that are leased or installed via a power purchase agreement are not factored into the sellers' property value due to the lack of ownership in the equipment.

Brokers should inquire with the seller and lessor of the solar panels how the solar lease will be handled if the property is being sold before the end of the lease or power purchase agreement. The options that prospective sellers and prospective buyers must consider about the solar panels while negotiating the transaction are:

- prepayment terms/penalties,
- assignment/assumption of contract, and
- purchase options.

What if the seller has a loan for the solar panels?

If the seller has a loan on the solar panels, the broker should inquire about existence of a Uniform Commercial Contract (UCC-1) Financing Statement on the real property. The UCC-1 is filed by the creditor to provide notice to interested third parties that they have a security interest in a debtor's personal property.

Depending upon the contract terms, the seller's solar panel loan may need to be paid off at or prior to closing or the prospective buyer may be willing to assume the obligation with the solar company if assignment of the solar panel contract is permissible. Title to the property cannot be conveyed without either the lien being paid off or the loan being assumed.

NOTE: *Can solar panels be removed?* Solar panels are fixtures; however, if a seller expresses their intent to take the solar panels in the contract, they may do so as long as they return the roof back to its original condition.

NOTE: In the Legal Q&A, "Is the seller required to pay off a loan on their solar panels?," NC REALTORS® states that brokers who are involved in a transaction that includes solar panels that are not encumbered by a lien, need to make sure that there is a clear understanding between the parties as to how the panels will be handled as a part of the transaction. Moreover, the understanding should be clearly reflected in the written contract between them.

Some suggested best practices for listing agents are:

- ask the seller about the existence of solar panels;
- determine the type of solar panels;
- analyze the challenges that may be associated with listing a property with solar panels;
- ask whether the solar panels are owned, leased, or financed;
- recommend the seller seek the advice of counsel regarding paying off the solar panel loan or transferring the lease to the prospective buyer; and
- provide accurate information about the lease or financing terms, or ownership of the solar panels in the property description when advertising.

The time when a prospective buyer should be provided with details about solar panels

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Some best practices for buyer agents are:

- ask the listing agent about the status of the solar panels;
- recommend prospective buyers seek the advice of counsel regarding assuming a solar panel loan or transference of a lease agreement; and
- inquire about the status of warranties, if applicable, that may transfer with the solar panels.

In conclusion, if solar panels are owned by a third-party leasing company, prospective buyers should thoroughly review the lease agreement and ensure they are comfortable with its term before proceeding in the transaction. Alternatively, buyers can opt to have the panels removed, returning the house to sole reliance on the electric grid. Be aware that removal of the panels should prompt conversation about assuring the structural integrity of the roof. Basically, evaluating the nuances of the solar panel system is vital for making informed decision in such transactions.

NOTE: Essentially, brokers SHOULD NOT review and advise individuals on lease or finance documents. Further, they should not encourage parties to sign or enter additional documents regarding leasing or purchasing solar panels.

Prospective buyers may desire to purchase a property with solar panels due to the financial benefits; however, they should conduct their due diligence on the configuration and financing of the solar panel system.

INSURANCE COVERAGE

A recent activity of the North Carolina Department of Insurance of which brokers should be aware

The North Carolina Rate Bureau represents companies that write insurance policies in the state and is a separate entity from the North Carolina Department of Insurance. On Wednesday, January 3, 2024, the North Carolina Rate Bureau filed a rate filing with the North Carolina Department of Insurance asking for an average statewide increase in homeowner's insurance rates of 42.2%, effective August 1, 2024.

On February 6, 2024, Insurance Commissioner Mike Causey rejected the insurance companies' average 42.2% rate hike request. The Insurance Commissioner issued a Notice of Hearing for October 7, 2024, and cited the proposed rate increase as excessive and unfairly discriminatory.

NOTE: On May 30, 2024, Commissioner Causey announced that in response to the request for a 42.2% rate hike, that negotiations with carriers in NC had been concluded with an 8% dwelling rate which will go into effect on November 1, 2024.

Do you think a reasonably prudent broker practicing real estate in North Carolina should be aware of proposed insurance rate increases for homeowners? Yes. Depending upon the geographic area in which a broker practices, they should be familiar with the differences between standard homeowner's insurance policies and unique regional insurance concerns.

Basic Homeowner's Insurance Coverages

The North Carolina Department of Insurance created a "Consumer's Guide to Homeowner's Insurance" for North Carolina consumers to assist them with making informed choices when purchasing homeowner's insurance.

Homeowner's insurance is usually a comprehensive policy that combines property and casualty coverages, which offer numerous benefits to consumers. If a consumer bundles various insurance coverages into a single policy, the insurance premium may cost less than purchasing the various coverages separately.

Insurance coverage is personalized for the homeowner to safeguard the property against a wide range of perils associated with owning or renting a home, such as fire or theft.

North Carolina does not mandate homeowner's insurance; however, it may be required by a mortgage lender. Similarly, landlords may require and/or recommend renters to acquire insurance to protect their personal belongings and cover liability for their actions while renting the property. Beyond property protection, homeowner's insurance also shields against liability for accidents which may cause injury or property damage to others. This includes coverage for medical expenses for individuals injured on your property.

However, it's important to note that homeowner's insurance doesn't cover losses from specific natural disasters like floods, earthquakes, mudslides, or landslides. For coverage options regarding these perils, it is advisable to consult an insurance agent.

Usually, a homeowner's policy contains two sections, one for property coverage and one for liability coverage. The usual coverage included in a homeowner's policy is as follows:

- Dwelling
  - Protects your house and attached structures
- Other structures
  - Other structures on the property that are not attached, like a tool shed or detached garage
- Personal Property
  - Contents of your home and personal belongings
- Loss of Use
  - Additional living expenses acquired if you are not able to live in the home
- Personal Liability
  - Provides coverage if resident of the household is legally responsible for an injury to another person
- Medical Payment to Others
  - Pays for reasonable medical expenses for a person injured on your property

Also, an individual may choose to get optional coverage by adding endorsements or riders to their policy. Depending upon the property type and location, an endorsement may be recommended by an insurance agent. Sample endorsements may include refrigerated property coverage and inflation guard.

Insurance Coverage is NOT Automatic

This report contains the claims history for a specific property

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Homeowners should also be aware that numerous factors influence the cost of a homeowner's insurance premium. These factors include the following:

- an individual's credit score,
- Comprehensive Loss Underwriting Exchange (CLUE) reports and history of insurance claims,
- neighborhood and crime statistics,
- building material availability,
- geographic location risks
- condition and age of the home, and
- flood certifications, etc.

All the factors listed above and more can greatly affect the issuance of a policy, declination to write a policy, or an increase in a previously quoted premium late in a transaction.

BEST Practices for Brokers

Brokers can assist their clients with making an informed decision regarding insurance coverage by educating them on the factors that influence the writing or declination of an insurance policy. Additionally, brokers may want to:

- discuss the benefits/needs for insurance coverage, and
- encourage buyers to get insurance quotes early.

NOTE: Brokers should remind buyers that they should not rely on the fact that a seller was able to obtain coverage on the property. The buyer and seller will have different variables affecting their proposed quote for insurance coverage, like their credit.

Separate deductibles and policies are usually necessary to cover these two events

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Coastal Areas

Article 45, Essential Property Insurance for Beach Area Property, provides that the General Assembly declares that essential property insurance is necessary for the economic welfare of the beach and coastal areas in the State of North Carolina for homeowners and commercial owners to obtain financing for the purchase and improvement of their property.

In North Carolina, typical "inland" homeowner's insurance includes basic protection for damage resulting from fire, smoke, theft, vandalism, and weather-related events like wind, hail, and lightning. On the contrary, coastal homeowner's insurance policies cover salt, wind, and flooding damage that are risk factors that require additional insurance coverage at additional cost. Coastal insurance policies have provisions for storm damage, like hurricanes. Additionally, it is customary for coastal properties to have separate deductibles for weather-related events like storms and flooding.

Specifically, N.C.G.S. §58-45-5(2), defines a *coastal area* as:

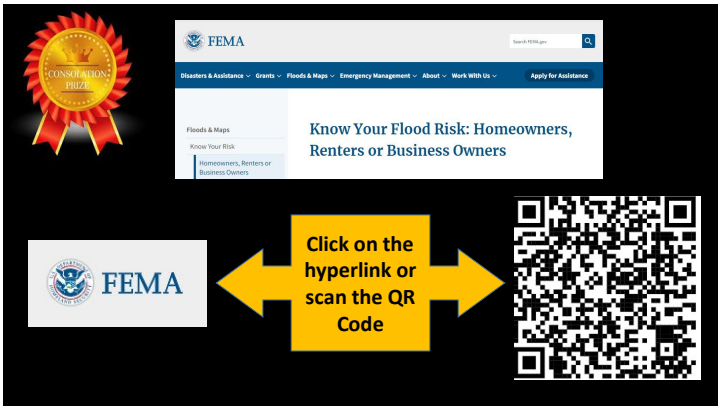
> *All of that area of the State of North Carolina comprising the following counties: Beaufort, Brunswick, Camden, Carteret, Chowan, Craven, Currituck, Dare, Hyde, Jones, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Tyrell, and Washington. "Coastal area" does not include the portions of these counties that lie within the beach area* in N.C.G.S. §58-45-5(2b).

The Commission has created a resource for consumers entitled, "Questions and Answers on: Purchasing Coastal Real Estate in North Carolina," to assist individuals with making an informed choice regarding whether to purchase a property in a coastal area.

The Commission does not expect brokers to answer insurance questions regarding potential rate quotes, deductibles, and possible coverage options for a property. However, the Commission expects brokers to know the purpose of homeowner's insurance policies and the type of coverage that is customary in the area. A broker should also encourage their buyer client to investigate their insurance needs and benefits of coverage.

NOTE: The Commission does not expect brokers to step outside of their area of real estate brokerage to answer homeowner's insurance related questions. If a client/consumer has insurance related questions, the broker should strongly recommend for the client/consumer to speak with a licensed insurance North Carolina agent.

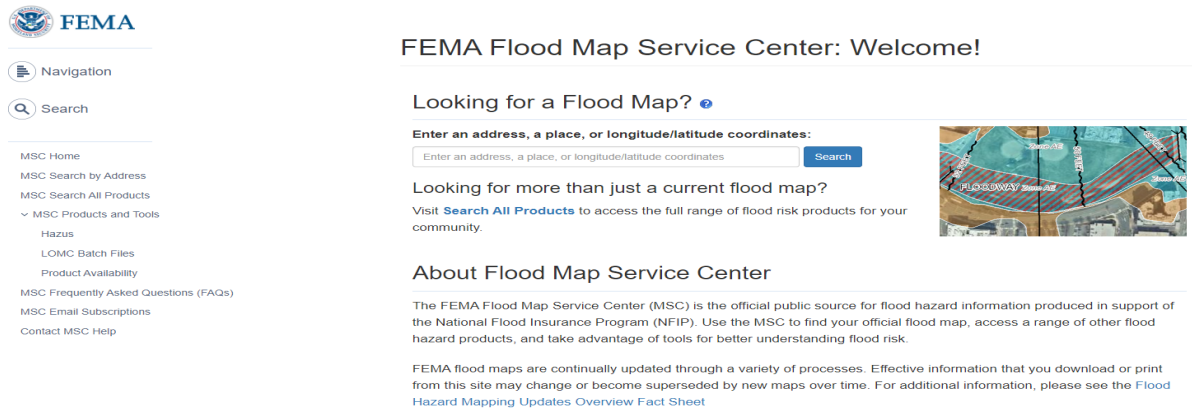
Flood Zones



According to the Federal Emergency Management Agency (FEMA), floods are unpredictable and can occur naturally almost anywhere. Although river and coastal flooding are two of the most common types of flooding, heavy rains, poor drainage, and nearby construction projects can also put a property at risk for flooding. In the article, "Know Your Flood Risk: Homeowners, Renters or Business Owners," FEMA indicates that flooding remains the country's number one disaster and can potentially affect every property. Therefore, the article helps people to understand and navigate the flood risk while providing needed resources and information to homeowners, renters, and business owners so they can:

- R: Reduce Their Risk
- I: Insure Their Risk
- S: Share Information on Risk
- K: Know Their Risk and Their Community's Risk.

FEMA provides and maintains updates on property information and whether the property area has a high risk of flooding. The FEMA Flood Map Service Center (MSC) is the official online location to find all flood hazard mapping products created under the National Flood Insurance Program.



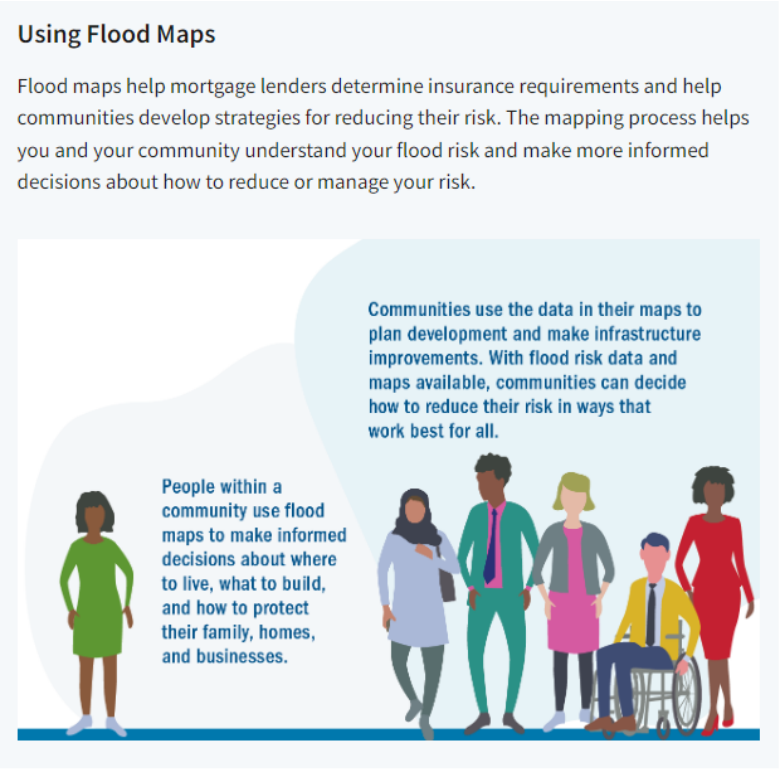
Broker's Responsibility

The Commission expects brokers to know or research whether a property they have listed or inquired about is in a flood zone. If a property is in a flood zone, this is a material fact because it relates directly to the property and may impact its use, desirability, or value. Therefore, the broker must disclose this information to all parties in the transaction.

Further, brokers should be familiar with the types of flood zones, properties that have the potential for flooding, and the need to obtain flood insurance if the mortgage is backed by the government or insurance is required by the mortgage lender. FEMA has provided an explanation of the twelve flood zones (e.g., Zone A – Zone VE and V1-30) on its website.

For a property located in a flood zone or near a body of water, a broker should inquire about the property's flood history and disclose flooding events to prospective buyers and tenants.

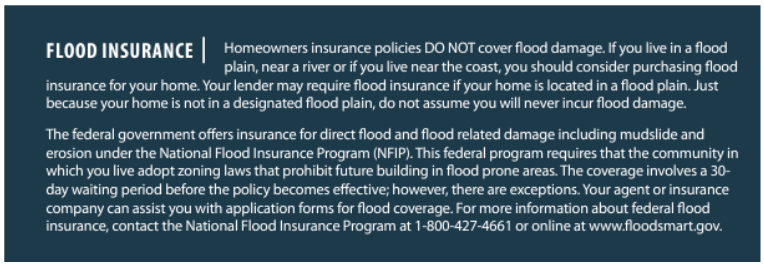
A broker should never assume or lead their buyer-client to believe that the buyer's lender will not require flood insurance simply because the seller's lender did not require flood insurance when the seller purchased the property.



Brokers should comprehend that floods do not follow city limits or property lines. Using a flood map enables an individual to see the relationship between the property and the areas with the highest risk of flooding. FEMA indicates there is no such thing as a "no-risk zone," but some areas have a lower or moderate risk for flooding.

NOTE: Flood maps show how likely it is for an area to flood. Any area with a 1% chance or higher of experiencing a flood each year is considered to have a high risk. Essentially, those areas have at least a one-in-four chance of flooding during a 30-year mortgage. If an individual has questions about flood maps and insurance, they may contact the FEMA Mapping and Insurance eXchange (FMIX).

Flood Insurance



According to the Consumer's Guide to Homeowner's Insurance in North Carolina, homeowner's insurance policies DO NOT cover flood damage. If you live in a flood plain, near a river, or near the coast, you should consider purchasing flood insurance for your home. Also, individuals should know that even if a property is not located in a designated flood plain, they should not assume that the property will never experience flood damage.

The National Flood Insurance Program (NFIP) is managed by FEMA and is delivered to the public by a network of more than 50 insurance companies and NFIP Direct.

Flood insurance is available to anyone living in one of the almost 23,000 participating NFIP communities. Homes and business in high-risk flood areas with mortgages from government-backed lenders are required to have flood insurance.

Consumers may purchase flood insurance by calling their insurance company/agent. If they need help with finding a provider, they can go to FloodSmart.gov/flood-insurance-provider or call NFIP at 877-336-2627.

AIRPORTS

Under North Carolina License Law, N.C.G.S. §93A-6(a)(1), brokers are subject to disciplinary action for making any willful or negligent misrepresentation or any willful or negligent omission of material fact. Therefore, brokers are expected to discover and disclose material facts regarding a property.

Federal law requires the FAA to make maps available regarding this aspect of airports

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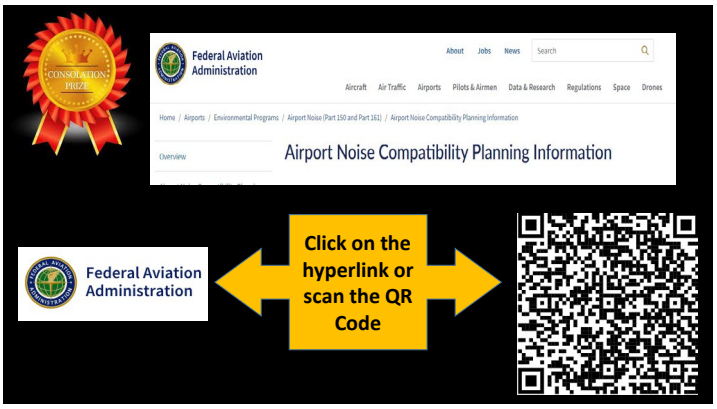

Is a property located near an airport a material fact? Yes. Brokers need to evaluate whether proximity of an airport is a fact that affects the use, desirability, or value of the property. Further, the Vision 100-Century of Aviation Reauthorization Act (Public Law 108-176) requires the Federal Aviation Administration (hereafter known as "FAA") to make noise exposure and land use information from noise exposure maps [prepared under 14 CFR part 150] available to the public via the Internet. Additionally, brokers should know where to access these noise contour maps that outline the areas most affected by noise.

If a property is near an airport, the traffic patterns, proximity to the airport, and the noise that may be audible from the aircraft at the property may be considered pivotal information that requires disclosure. It is quite possible that a reasonably prudent person may conjecture that increased noise and traffic patterns may impact the typical use and enjoyment of the property, thus, impacting the property's value.

Questions about commercial noise are posed to the seller in this required form

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Residential Property and Owners' Association Disclosure Statement

Rule 58A .0114(a) mandates that all owners of real property subject to a transfer governed by Chapter 47E of the North Carolina General Statutes must complete the Residential Property and Owners' Association Disclosure Statement (hereafter referred to as ***RPOADS***) and provide a copy to the buyer.

The Residential Property Disclosure Act requires most residential property owners to complete a disclosure form for prospective purchasers. In North Carolina, sellers have the discretion to sell a property without making representations regarding its condition or whether previous owners severed mineral, oil, and gas rights. Basically, owners have three options when completing ***RPOADS***, "***Yes***," "***No***," or **"No Representation."** Thus, the Residential Property Disclosure Act is regarded as a voluntary disclosure law.

Brokers are expected to educate their clients on the Residential Property Disclosure Act and the requirements under the law. However, brokers can't advise a client on how to answer a question on the disclosure statement.

As it pertains to airports, ***RPOADS*** question F4 asks the following:

> ***Is there any noise, odor, smoke, etc., from commercial, industrial, or military sources that affects the property?***

North Carolina is a caveat emptor state (e.g., buyer beware). Therefore, the seller's obligations for disclosure to prospective buyers is limited unless that seller is a broker. Basically, in question "*F4*", a seller may choose to mark "Yes," "No," or "No Representation."

These specific maps regarding airport noise are helpful for disclosure

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However, according to the Raleigh-Durham International Airport's (hereafter referred to as "RDU") *Frequently Asked Questions*, all residential dwellings that are within areas where the sound energy is equal to or above an annual average daily decibel level of 55 decibels as depicted on the RDU Composite Noise Contour Map, and that are being listed for resale, must include noise disclosure as part of the sales contract. If the noise exposure is below 55 decibels as depicted on the RDU Composite Noise Contour map, then noise disclosure is not required even if flight tracks exist overhead.

For clarity, a broker must disclose the existence of noise from the airport regardless of the response the seller provides on the ***RPOADS***.

NOTE: The RDU Composite Noise Contour Map does not indicate all areas where aircraft noise will be observed on the ground. The map shows areas expected to experience average noise impacts above 55 db DNL (Day Night Noise Level- areas inside the green contour on the map.) Brokers should also know that aircraft and their associated noise can be observed outside of these contours depicted on the map.

Common Questions for Brokers

Brokers may receive several questions from clients/consumers regarding the noise that may be audible while at the property or regarding the lack of aircraft noise disclosure. Two common questions brokers may receive are:

1. How can I determine the impact of noise when purchasing a home?
2. Why wasn't I provided an aircraft noise disclosure?

In an effort to adhere to their fiduciary duties to advise their clients, brokers should recommend that individuals actually spend time at the property at different intervals to evaluate the actual noise impacting the property prior to purchase. According to RDU's *Real Estate Information*, the peak times to observe air traffic are early mornings between 6:00AM and 9:00AM and evenings between 5:30PM and 9:00PM. However, aircraft arrive and depart from RDU 24 hours a day, 365 days a year.

Additionally, brokers who are selling properties in proximity to the RDU airport should possess the geographic competence to advise individuals about the RDU Flight Tracking System that displays daily flight paths in relation to specific addresses. The instructions on how individuals can view the flight paths are as follows:

- click on the house-shaped icon in the left sidebar to enter the property address, and
- click on the icon shaped like a line graph in the left sidebar to select radar (flight) tracks to view at set time periods throughout the day.

RDU Frequently Asked Questions also provides additional clarification regarding flight tracks, aircraft restrictions, and approaches to the runway upon landing. If brokers/individuals have further questions about aircraft noise disclosure, they may call the Noise Office at RDU at 919-840-2100 ext. 3.

To reiterate, if a seller indicates ***"No Representation"*** regarding aircraft noise about the property, but the broker knows or reasonably should know of the presence of aircraft noise, the broker is obligated to disclose this information to potential buyers. The broker must disclose such information even if the seller expresses a desire for it to remain undisclosed. To assist individuals with disclosing aircraft noise disclosures, RDU has provided a sample "Aircraft Noise Notification" that may be used. The samples are provided on the next two pages and can be accessed online for Durham and Wake counties.

NOTE: The Residential Property Disclosure Act does not alter a broker's obligation under License Law and Commission rules to actively discover and disclose material facts to all parties in the transaction, regardless of who they represent.

Homeowners near airports receive these documents from nearby airport authorities

AIRCRAFT NOISE NOTIFICATION

Dear Property Owner:

You are listed by the Durham County Tax Office as the owner of a parcel of land located within the general area surrounding Raleigh-Durham International Airport (RDU) that is exposed to average aircraft noise levels which exceed typical ground-based, or background, noise. The map displays that area and shows contours of equal average aircraft noise exposure associated with current flight operations at the airport. Sites closer to the airport are exposed to higher average noise levels than those farther away.

The purpose of this notice is to advise you that exposure to aircraft noise may affect the usability of some land for certain types of noise sensitive uses, including residential use. Persons who are sensitive to aircraft noise should satisfy themselves before buying the property that exposure to such noise will not materially affect their ability to use and enjoy land whose purchase they may be considering.

The Raleigh-Durham Airport Authority has and, upon request, will provide information which may be helpful to property owners and prospective purchasers in assessing the likely effect of aircraft noise on the use of land they own or are considering purchasing.

You also are advised that the "Residential Property Disclosure Act" (N.C.G.S. Chapter 47E) was enacted by the North Carolina General Assembly and became effective January 1, 1996. That law requires the owners of residential real property to disclose to prospective purchasers the existence of certain conditions associated with the property no later than the time an offer to purchase, exchange or option the property is made, or an option to purchase the property pursuant to a lease with an option to purchase is exercised.

Among the conditions that must be disclosed to and acknowledged by the prospective purchaser are any notice from any governmental agency affecting the property. The Airport Authority is a governmental agency. THIS NOTICE SERVES AS YOUR NOTICE OF POTENTIAL AIRCRAFT NOISE IMPACT UPON YOUR PROPERTY AND SHOULD BE DISCLOSED TO ALL PROSPECTIVE PURCHASERS WHO MAY BE CON-SIDERING USE OF THE PROPERTY FOR A RESIDENTIAL PURPOSE.

For additional information or if you have questions or need assistance, please call the RDU Noise Officer at 919-840-2100, ext. 3 between 9:00 a.m. and 5:00 p.m. Monday-Friday or view the noise web site at www.rduaircraftnoise.com or write to:

Noise Officer
Raleigh-Durham Airport Authority
P. O. Box 80001
RDU Airport, North Carolina 27623-0001

AIRCRAFT NOISE NOTIFICATION

Dear Property Owner:

You are listed by the Wake County Tax Office as the owner of a parcel of land located within the general area surrounding Raleigh-Durham International Airport (RDU) that is exposed to average aircraft noise levels which exceed typical ground-based, or background, noise. The map displays that area and shows contours of equal average aircraft noise exposure associated with current flight operations at the airport. Sites closer to the airport are exposed to higher average noise levels than those farther away.

The purpose of this notice is to advise you that exposure to aircraft noise may affect the usability of some land for certain types of noise sensitive uses, including residential use. Persons who are sensitive to aircraft noise should satisfy themselves before buying the property that exposure to such noise will not materially affect their ability to use and enjoy land whose purchase they may be considering.

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For additional information or if you have questions or need assistance, please call the RDU Noise Officer at 919-840-2100, ext. 3 between 9:00 a.m. and 5:00 p.m. Monday-Friday or view the noise web site at www.rduaircraftnoise.com or write to:

Noise Officer
Raleigh-Durham Airport Authority
P. O. Box 80001
RDU Airport, North Carolina 27623-0001

Section 2

NCREC's FREQUENTLY ASKED QUESTIONS

LEARNING OBJECTIVES

After completing this Section, you should be able to:

- identify the most frequently asked questions; and
- explain the Commission's responses to the most frequently asked questions.

TERMINOLOGY

Due Diligence Fee: A negotiated amount of money paid by the buyer directly to the seller in exchange for the buyer's unilateral right to terminate the contract.

Home Inspection: An evaluation of the visible and accessible systems and components of a residence (i.e., plumbing, electrical, roof, etc.) by a licensed home inspector and is intended to give the client (usually a homebuyer) an understanding of the condition of the residence on the day it is inspected.

Trust Account: A business checking account that is separate from company operating funds, contains monies belonging to others, is fully insured, is custodial (i.e., in the name of the broker or brokerage company), and funds are available on demand.

Unlicensed Assistant: A person who does not hold an active NC real estate license assists a BIC, team, group, or individual licensee with administrative real estate tasks. An unlicensed assistant is prohibited from performing activities that require an active license. The BIC, in conjunction with the employing licensed individual, group, team, is responsible for all acts of any unlicensed assistant.

INTERACTING WITH THE COMMISSION

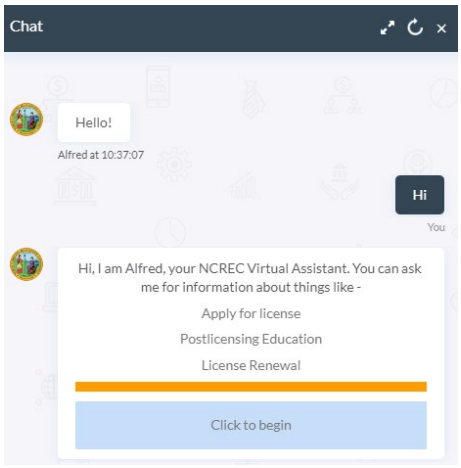
The North Carolina Real Estate Commission (hereafter known as "Commission") provides brokers with several convenient options to ensure they are able to effectively communicate with staff members.

Generally, brokers have three options to communicate with Commission staff:

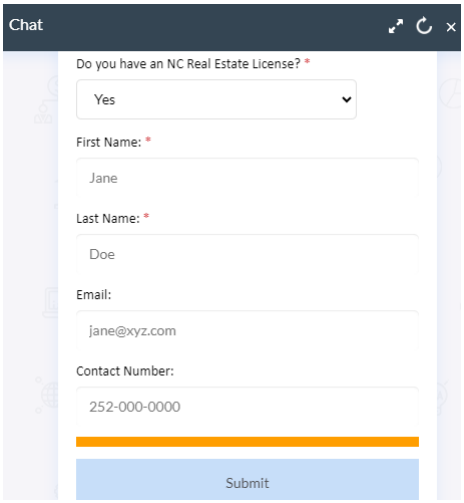
- telephone;
- email; and/or
- the website.

For brokers who prefer a direct form of communication, the Commission accepts phone calls Monday-Friday from 8:30AM-5:00PM and has provided consumers/brokers with the opportunity to interact with our Chatbot, Alfred, on the Commission's website.

NOTE: In Regulatory Affairs, a caller is asked to provide their name, license number (if licensed) and a phone number and we call them back, usually the same day.



Alfred, the Chatbot, allows the Commission to use artificial intelligence and natural language from resources like our License Law and Commission rules, *North Carolina Real Estate Manual*, and *Real Estate Licensing in North Carolina* to offer personalized assistance and accurate responses to consumers/brokers.



Further, *Alfred* will be able to answer the most frequently asked questions regarding licensure and continuing education requirements in North Carolina using proactive engagement and tailored responses which will contribute to the Commission's efficiency.

Brokers may also call the Commission to speak directly with a License Specialist or Information Officer when they need guidance on licensure, form submission, or interpretation of License Law while conducting brokerage activity.

In the *2023-2024 Update Course*, we explained that the Commission receives an average of 500 telephone calls and 1,000 emails a day. Although a great majority of broker inquiries are requests for information on licensure and form processing; we still answer a variety of questions that pertain to brokerage activity as well.

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

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

Due to the high call volume, it may sometimes be necessary for a broker to leave their phone number, license number, and description or purpose of their call so that a call ticket may be assigned, and they receive a return call from a Commission staff member.

I have some questions that I need to ask, but the last time that I called, the person I spoke with would not provide information unless I gave them my license number. I don't want to do that. I think you are just trying to catch me doing something wrong so you can initiate a complaint against me.

How many calls can I make before you do that? Are you putting me on a list or something? Why do you want my license number anyhow?

The Commission asks for your license number for at least 3 reasons:

- To be able to look at your actual license record for accuracy in the response
- To create a record of the phone call to improve NCREC services
- To document the discussion for the protection of the broker

I was calling to see if you could help me. I found a webinar about the Working with Real Estate Agents Disclosure on the Commission's website. I was thinking that it would be a great tool to use with my new brokers in an orientation that I do regularly. How do I get approval to use links or materials to Commission resources on my website or communications to my brokers or my clients?

Brokers do not need approval from the Commission to use links and/or resources on their website or communications to clients. Brokers can find on the Commission's website a dedicated Resources page that includes information about *Frequently Asked Questions*, *Fair Housing*, *Trust Accounts*, and a *Video Library*. Additionally, brokers can search for disciplinary sanctions and submit appropriate forms as well.

NOTE: The Commission ensures that brokers have a variety of options to communicate efficiently with Staff.

UNLICENSED ASSISTANTS

My brother has asked for my help in collecting rent from his tenants, handling maintenance requests, and handling payment for expenses associated with the property. I am going to charge him for these services. I am a CPA. Do I need a real estate license?

N.C.G.S. §93A-2

N.C.G.S. §93A-2 is the law that dictates when a real estate broker license is required in North Carolina.

G.S. 93A-2(a) defines a real estate broker as one who:

1) lists, buys, sells, auctions, leases, rents, leases, or offers to do any of the foregoing, or otherwise negotiates the purchase, sale, or exchange of real estate or improvements thereon [LLBEANS],
2) for others,
3) for compensation, valuable consideration, or the promise thereof.

Thus, "brokerage" is:

1) listing, buying, selling, auctioning, leasing, renting, or offering to do any of the foregoing, or otherwise negotiating the purchase, sale or exchange of real estate for improvements thereon,
2) for others,
3) for compensation or consideration.

Property Management

Property management involves the leasing or renting of real property. Therefore, in North Carolina, N.C.G.S. §93A-2(a) requires a commercial or residential property manager to be an actively licensed real estate broker.

On the other hand, License Law and Commission rules does not prohibit unlicensed property owners from personally leasing properties they own. However, they may not give any compensation to unlicensed friends, siblings, etc. to assist in leasing their properties, including collection of rents, or showing properties to prospective tenants. For clarity, only titled owners of real property may buy, lease, sell, or exchange their property without having an active broker license.

Licensing Exception for Salaried Employees of a Broker Engaging in Property Management

License Law permits brokers who engage in property management to hire unlicensed salaried (i.e., W-2) employees to assist with specified leasing activities.

These unlicensed salaried employees may be onsite at an apartment complex that the broker has agreed to manage or may show single family homes the broker has listed for lease (not sale) to prospective tenants.

Unlicensed, salaried employees are not permitted to negotiate issues such as lease terms, rental amount, partial payment of tenant security deposit, etc. Such issues require a license and must be referred to the broker.

N.C.G.S. §93A-2(c)(6) states that the provisions of N.C.G.S. 93A-1 and N.C.G.S. 93A-2 do not apply to and do not include:

> *Any salaried person employed by a licensed real estate broker, for and on behalf of the owner of any real estate or the improvements thereon, which the licensed broker has contracted to manage for the owner, if the salaried employee's employment is limited to:*

- exhibiting rental units on the managed property to prospective tenants;
- providing the prospective tenants with standard information about the lease of the units;
- accepting applications for lease of the units;
- completing and executing preprinted form leases; and
- accepting security deposits and rental payments for the units only when the deposits and rental payments are made payable to the broker employed by the owner.

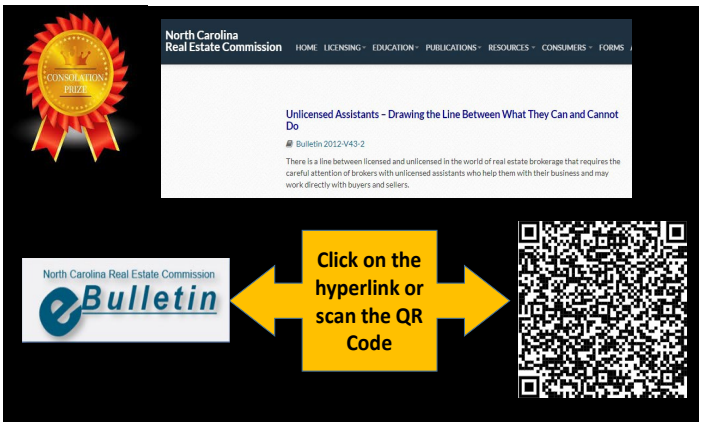
The salaried employee **shall not** negotiate or sign a property management agreement, **shall not** negotiate the amount of security deposits or rental payments and **shall not** negotiate leases or any rental agreements on behalf of the owner or broker.

However, when a licensed broker hires a W-2 employee in property management, the law provides an unlicensed assistant some flexibility to engage in some tasks that would generally require a real estate license.

For example, the salaried, unlicensed assistant of a broker may legally show a property that the broker has listed for lease to prospective tenants. This is permissible due to the exception in N.C.G.S. §93A-2(c)(6). However, an unlicensed assistant may NOT show a property for sale because this activity does not fall under the exception listed under the law.

NOTE: In vacation rental transactions as defined by N.C.G.S. §42A-4(6), the employee may offer a prospective tenant a rental price and term from a preprinted schedule that sets forth prices, terms, and the conditions and limitations under which they may be offered.

The schedule shall be written and provided by the employee's employing broker with the written authority of the landlord.



The Commission has published an article entitled, "Unlicensed Assistants- Drawing the Line Between What They Can and Cannot Do" to assist brokers/companies with ensuring that unlicensed assistants do not *cross the line* and engage in unpermitted brokerage activities while working.

The following chart specifies the permitted activities related to property management that a salaried unlicensed assistant may perform.

NOTE: Only W-2 employees of a licensed broker engaging in property management will qualify for the N.C.G.S. §93A-2(c)(6) exception.

Permitted Activities related to Property Management	
Unlicensed, salaried assistants MAY:	**ONLY licensed brokers MAY:**
Act as a courier at the direction of a broker	Solicit or negotiate management contracts from prospective clients
Coordinate or confirm appointments between brokers and other persons	Prepare information to be placed in promotional material or advertisements for properties for sale or lease
Schedule appointments for showing properties listed for rent	Discuss or explain management agreements, leases, or other similar matters with persons outside the firm
Show rental properties managed by the broker to prospective tenants	Negotiate the amount of rent, deposits, or other lease provisions in connection with properties listed for rent by the firm
Complete and execute preprinted form leases for rental property managed by the firm	Determine the deductions from a tenant security deposit
Answer basic questions from prospective tenants and others about listed properties if the broker has provided the information in promotional materials	Hold themselves out as licensed brokers
Receive and forward phone calls, texts and emails to the employing broker or other licensees in a firm	
Submit listings and changes to a MLS provider, but only if the listing or change is based upon data supplied by a broker	
Assist a broker with inspecting rental properties	
Research and obtain copies of documents in the public domain, such as the Registers of Deeds, Clerks of Court, or tax offices	
Obtain keys for listed properties	
Record and deposit trust monies under the close supervision of the office broker-in-charge (BIC)	
Type in lease forms with information provided by brokers	
Check license renewal records and other personnel information pertaining to brokers at the direction of the BIC	
Prepare checks and otherwise act as bookkeeper for the firm's operating account under the close supervision of the BIC	
Place "For Rent" signs on property at the direction of a broker	
Order and supervise routine and minor repairs at the direction of a broker	

BICs and Unlicensed Assistants

I am a Broker-in-Charge (BIC). I have never used unlicensed assistants in my office. One of my affiliated brokers wants to hire an unlicensed assistant. Because the affiliated broker is an independent contractor, I am going to require them to supervise and be responsible for anything improper that may occur with the unlicensed assistant.

They are going to pay their assistant directly and be responsible for the training. If I get that agreement in writing, am I protected as the BIC?

The designated BIC is the primary person the Commission considers responsible for the supervision/management of a brokerage company. Therefore, the BIC has the responsibility to supervise affiliated brokers, employees, and others who perform duties on behalf of the brokerage including unlicensed assistants that are employed by the company or affiliated brokers.

A BIC must:

- provide guidance on the office policies regarding activities that may be performed by unlicensed assistants,
- ensure unlicensed assistants comprehend that engaging in activity that requires a real estate license is not permitted,
- communicate regularly with unlicensed assistants and monitor their compliance with office policies, License Law, and Commission rules, and
- make affiliated brokers aware of their responsibility to supervise unlicensed assistants.

NOTE: Pursuant to N.C.G.S. §93A-6(b)(4), the Commission may suspend or revoke any license issued under the provisions of this Chapter or reprimand or censure any licensee when:

> *…the broker's unlicensed employee, who is exempt from the provisions of this Chapter under G.S. 93A-2(c)6), has committed, in the regular course of business, any act which, if committed by the broker, would constitute a violation of G.S. 93A-6(a) for which the broker could be disciplined.*

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

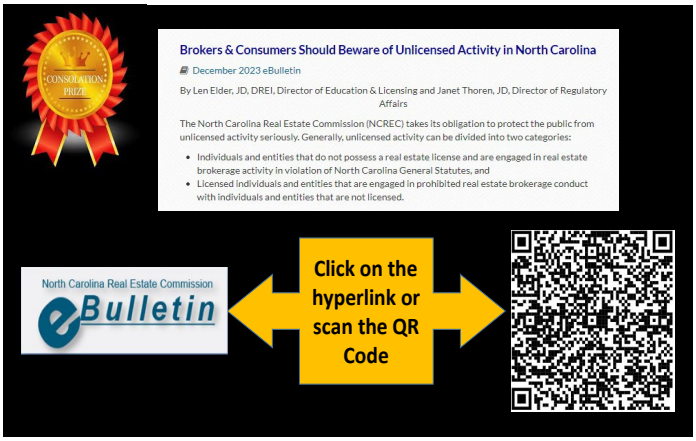
- are illegal,
- violate License Law and Commission rules, and/or
- violate state and federal laws,

the BIC and/or affiliated broker may be held liable for the conduct of the unlicensed assistant. Further, to reduce risk and ensure unlicensed assistants are not participating

in brokerage activities, a prudent BIC will implement training programs and provide educational resources for the unlicensed assistants employed by the company and/or affiliated brokers.

These training programs and resources should provide the unlicensed assistants with information that explains the obligations they must adhere to (e.g., fair housing, handling of trust money, etc.) while performing duties on behalf of the company and/or affiliated broker.

Moreover, the Commission believes that all licensees should have at least a basic understanding of property management and the functions of a property manager.



NOTE: The Commission informed brokers and consumers about the various types of unlicensed activity in the December 2023 eBulletin article, "Brokers & Consumers Should Beware of Unlicensed Activity in North Carolina."

CONCERNS REGARDING ADVERTISING BEDROOMS

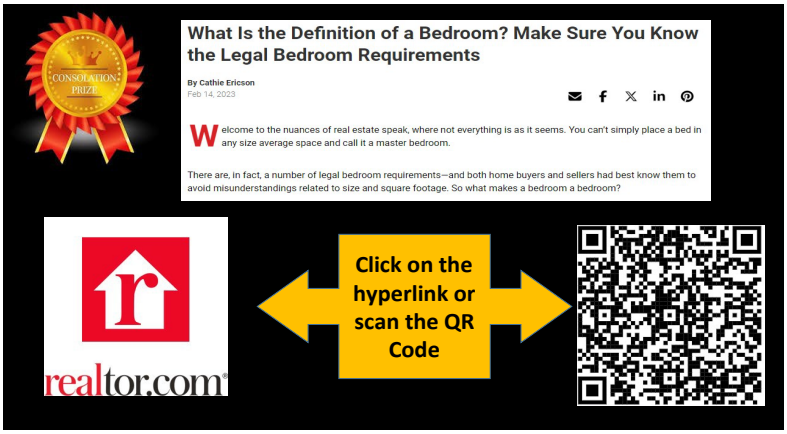
I just came from a listing appointment. The owner bought the home as a 3-bedroom home 5 years ago. They did a lot of remodeling and converted an upstairs attic area and a den into bedrooms. Both rooms have a closet, exterior windows, and a door. Since they are using it as a 5-bedroom home, can I advertise it that way?

I am looking for the Commission rule on what constitutes a bedroom and I can't find it. Can you help me? What is considered a bedroom?

The Commission has no formal definition for the term, *bedroom*, for a residential property. Therefore, brokers should check the building codes for the municipalities in which they are practicing brokerage. The building codes will provide some guidance on determining what is considered a bedroom in that geographic area. On March 20, 2019, the NC Department of Insurance provided a definition of a bedroom in *Section 202 of the 2018 Residential Code.*

It states that bedroom is a *sleeping room*. The definition for a *sleeping room* is a room designated as a sleeping or bedroom on the plans and permit application. Therefore, contrary to commonly held belief, a room with a closet and/or a room with a window properly sized for an emergency escape opening does not automatically constitute a bedroom. Therefore, only the room that meets the definition in the Code is considered a bedroom.

As mentioned previously, the legal requirements for bedrooms will vary by locality; however, brokers can use the following questions in the article [“What is the Definition of a Bedroom? Make Sure You know the Legal Bedroom Requirements”] to assist them when contacting the municipality regarding what constitutes a bedroom in that jurisdiction.



- Is there a minimum bedroom size?
- Is there a minimum horizontal square footage?
- Does there have to be two means of egress from the bedroom?
- Is there a minimum ceiling height?
- Is there a minimum window size?
- Is the bedroom required to have a heating and cooling element?

NOTE: According to the Bulletin article, *Septic Permits - A Refresher,* when the septic permit is available and indicates the number of bedrooms the system has the capacity to service, the broker may only advertise that number of bedrooms. If a broker knowingly advertises more bedrooms than permitted, this may be considered a misrepresentation. Further, the advertisement may encourage the overuse of the system by suggesting occupancy by more people than the septic system was designed to handle.

Additionally, the article indicates that issues in locating records can arise when the original septic permits recorded under the original builder or owner's name and that information is unknown. In those instances, given the difficulty of verifying the permitted number of bedrooms, a broker should research tax records. If the property appears to have four bedrooms but the tax records indicate three bedrooms, that could indicate a septic permit's limit. Ultimately, in cases when the permit cannot be located, brokers should disclose what they know: namely, that the property has an on-site septic system, but the system permit was not located.

INSPECTION REPORT

I am a listing agent. A previous potential buyer conducted a home inspection and then cancelled the transaction due to financing issues. I have a second potential buyer for the property and their buyer agent is insisting I give them the previous home inspection report. Do I have to comply with this request?

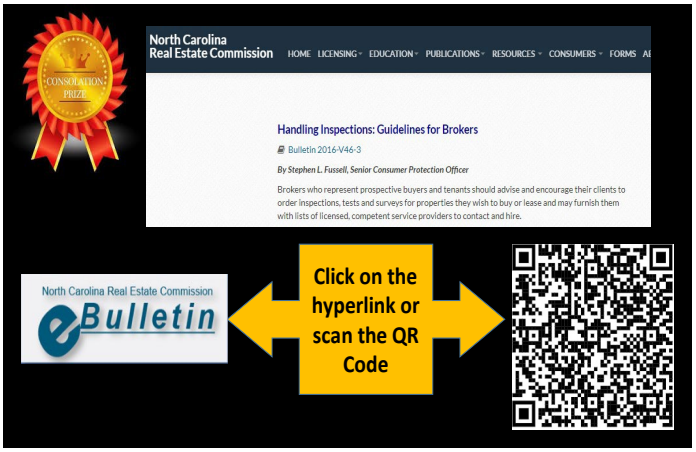
No, the broker does not have to give the actual home inspection report to the second potential buyer unless the seller instructs them to; however, the broker is obligated to disclose all material facts that are contained in the home inspection report.

The North Carolina Real Estate Commission and the North Carolina General Statutes do not require a homebuyer to conduct a home inspection. Although a home inspection is not required, a homebuyer can gain an understanding of the condition of the home (i.e., defective systems) by hiring a licensed home inspector.

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

As a caveat, homebuyers should understand that all home inspectors are not created equal and may have varying levels of experience within the house (i.e., HVAC, plumbing, electrical, etc.)

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



The Commission published the Bulletin article, *Handling Inspections: Guidelines for Brokers*, to assist brokers with managing the inspection process.

NOTE: If a broker advises a buyer to conduct a home inspection and the client declines, a prudent broker will document the fact that the buyer ignored the broker's recommendation and chose not to order an inspection.

Receipt of Home Inspection Report

When a broker receives a home inspection report on behalf of a client, they should share the entire report with the client and thoroughly review it [with the client]. If the broker or client have any questions about items discussed in the report, they should ask for clarification or an explanation from the inspector.

If, upon reviewing the report, the buyer decides to request repairs, the broker should assist the buyer in preparing the appropriate request form/agreement and submitting the request(s) to the seller in a timely manner.

The broker should make the buyer aware of the seller's obligations. For clarity, there is no requirement for a seller to make repairs, unless the seller agrees to do so. If the buyer and seller are using the Standard Form 2T-Offer to Purchase and Contract Form, the broker should also explain the Due Diligence Period and the buyer's unilateral right to terminate the contract during that time.

Previous Buyer's Home Inspection Report

Can a seller share a home inspection report of a previous buyer?

Yes. When a homebuyer hires an inspector to evaluate a home, the findings within the home inspection report and the information on the summary page are considered confidential information. However, once the buyer shares or disseminates this information to a seller or listing agent, the report is no longer confidential.

If a buyer decides to terminate the contract, some of the findings of the home inspection report may be considered material facts and must be disclosed to all current and future parties.

If the buyer has provided a copy of the home inspection report and/or summary page to the listing agent, then the listing agent can, but is not required to, provide the actual inspection report and summary page to other prospective buyers. However, the listing agent is required to disclose any material facts discovered by the inspection.

North Carolina License Law and Commission rules require material facts to be disclosed. Therefore, the listing agent must disclose all the material facts to the buyer agents and/or buyers interested in the home, even if the seller opposes this disclosure. In the Legal Q&A, *Is an Inspection Report a material fact that must be disclosed?,* NC REALTORS® further clarifies that the listing agent is not required to disclose the actual report or the existence of the inspection report. The inspection report, itself, is not a material fact.

NOTE: Brokers must follow their client's directions in regard to the distribution of the actual home inspection report. However, it is mandatory that brokers disclose any and all material facts.

Home Inspection Report: Material Facts

If the listing agent becomes aware of a material fact via a home inspection report provided by a prospective buyer, that agent must disclose this information. Additionally, the listing agent needs to read the report, if provided to them, to see what is "material" and what is not. However, for clarity, all material facts must be disclosed.

A listing agent should timely disclose the existence of material facts to all parties in a transaction. Timely disclosure means that prospective buyers are provided the information in plenty of time to make an informed choice as to whether to make an offer on and/or continue with the purchase of the property.

Also, in the article, *Timely Disclosure of Material facts to a Back-Up Buyer*, NC REALTORS® further clarifies that a back-up buyer should have the same opportunity to decide whether to exercise the right to terminate the back-up contract due to the known material facts.

Therefore, this means that the listing agent should disclose the existence of material facts to the back-up buyer and/or their buyer agent before the back-up buyer is officially notified that the back-up contract has become primary. Further, if the listing agent does not disclose the material facts to the back-up buyer, the back-up buyer may have a right to claim a refund of the due diligence fee and other monies paid due to the omission of material facts.

If a listing agent or buyer agent becomes aware of a material fact after a listed property has gone under contract, the fact should be disclosed immediately to all parties to the transaction.

Consequently, if a home inspection report lists issues with a property, the listing agent should disclose the existence of the defect(s) to all prospective buyers and/or their agents, including backup offers.

The listing and buyer brokers have an affirmative duty to disclose all material facts to clients and customers. Consequently, a broker must disclose any issues identified on the inspection report; however, the broker should not attempt to step outside of their area of expertise by interpreting the condition of the property.

As noted in Section 1, the Doctrine of Caveat Emptor cannot be used by a broker as a defense not to disclose material facts. North Carolina is a "buyer beware" state; however, License Law and Commission rules require a broker to disclose all material facts that the broker knows or reasonably should know to all interested persons in the

transaction in a timely manner. This holds true even when the seller and/or listing agent disagrees with the findings of a licensed home inspector.

NOTE: The Commission provided guidance on how brokers should manage the process of home inspections in the 2019-2020 Update Course. You can read the section entitled, Home Inspections, here. Also, the Commission has the *Questions & Answers on: Home Inspections* and *Questions & Answers on: Due Diligence for Residential Buyers* brochures available as resources for brokers and consumers.

DUE DILIGENCE FEES

I am having trouble with a battle between a listing agent and the buyer I represent. My buyer wants to do additional inspections regarding a home. We are under contract.

The listing agent told us that we cannot do any more inspections because our due diligence period has expired. Is it correct that my buyer can't do any more inspections?

It depends. To clarify whether a buyer has the right to continue conducting due diligence regarding a property for which they are under contract, a review of the contractual terms is necessary. If the parties have used Standard Form 2T-Offer to Purchase and Contract, then the buyer may continue conducting due diligence after the expiration of the Due Diligence Period according to Paragraph 8.

Paragraph 8(c), Access to the Property, states the following:

> *Seller shall provide reasonable access to the property through the earlier of Closing or possession by buyer, including, but not limited to, allowing Buyer and/or Buyer's agents or representatives, an opportunity to (i) conduct Due Diligence, (ii) verify the satisfactory completion of negotiated repairs/improvements, and (iii) conduct a final walk-through inspection of the property. Seller's obligation includes providing existing utilities operating at Seller's cost, including any connections and de-winterizing.*

Although according to Standard form 2T-Offer to Purchase and Contract, Paragraph 8(c), the seller must provide the buyer reasonable access to the property, the buyer has some limitations on their right to terminate the contract after the expiration of the Due Diligence Period according to Paragraph 4.

According to the Standard Form 2T- Offer to Purchase and Contract, a due diligence fee is:

> *…a negotiated amount, if any, paid by Buyer to Seller with this Contract for Buyer's right to terminate the Contract for any reason or no reason during the Due Diligence Period.*

Therefore, if the buyer wishes to continue investigating the property after the Due Diligence Period (DDP) and decides to terminate the contract, it would not fall under the "easy exit" terms of the DDP and may even be construed as a breach of contract.

I ***want to know if you think I need to file a complaint against a listing agent. I represent a buyer who was interested in multiple properties. Because they were uncertain as to which one they wanted to move forward on purchasing, we did not tender any negotiated due diligence fee with our 2T Offer to Purchase and Contract. More than one seller accepted. On the property the buyer chose not to buy, we sent a cancellation notice. Now the listing agent is threatening my buyer that if they don't pay, the seller is going to sue them.***

I think this is harassment. My buyer has a right to cancel. Now, the listing agent isn't returning my calls. Can I file a complaint?

NOTE: The Commission strongly discourages buyer agents from submitting offers on multiple properties for their buyer clients. If a buyer is unable or unwilling to buy all of the properties for which they would like to submit an offer, then the buyer agent should submit one offer for the property in which the buyer is most interested.

Standard Form 2T-Offer to Purchase and Contract, Paragraph 1(d), indicates the Due Diligence Fee is ***made payable and delivered*** to the seller on the effective date of the contract. The effective date of the contract is the date that: (1) the last one of Buyer and Seller has signed or initialed the offer or the final counteroffer, if any (2) such signing or initialing is communicated to the party making the offer or counteroffer, as the case may be. Therefore, the buyer in the "Answer the Call" scenario may owe due diligence fees on all accepted offers, even if they exercise their right to terminate.

In October of 2019, the Commission published the eBulletin article, *Due Diligence Fees - how and when they must be delivered?* to assist brokers with understanding Due Diligence Fees and the delivery to the seller.

While we are discussing due diligence fees, it is important to note that the *North Carolina Real Estate Manual* indicates the mailbox rule is a method of communicating acceptance of an offer; it does not apply to any other situation. Therefore, the Due Diligence Fee is not considered delivered when dropped in a mailbox because the due diligence fee is not governed by the mailbox rule.

NOTE: The *Manual* also indicates that the mailbox rule is of less importance than it once was, but the principle of law remains the same. Basically, once an accepted offer has been mailed, it is considered accepted as of that date and time.

ADVERTISING: UNAFFILIATED BROKERS

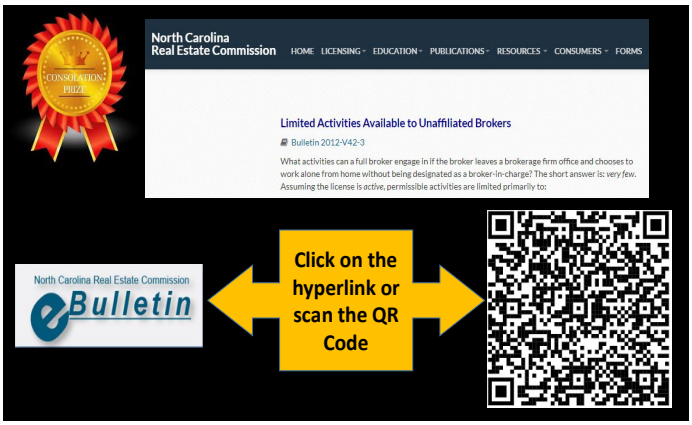
I was calling because I want to know if I can help a family member. I am a sole proprietor unaffiliated with a broker-in-charge. My license is active. My sister wants to sell her house. Can I represent her in the listing, advertising, and marketing of her property?

If a broker is active and not affiliated with a BIC, they are only permitted to do the following:

- receive referral fees,
- sell, buy, or lease property for themselves, and
- represent a prospective buyer or prospective tenant *so long as* the broker did not solicit the business.

Also, pursuant to Commission Rule 58A .0110(b), a broker who chooses to conduct brokerage activities as a *sole proprietor*, but does not want to act as a BIC cannot:

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



NOTE: The Commission published the Bulletin article, *Limited Activities Available to Unaffiliated Brokers*, to assist individuals with differentiating between the permitted activities of brokers affiliated with a Broker-in-Charge versus the limited, permissible activities of unaffiliated brokers.

INTEREST BEARING TRUST ACCOUNTS

I am a BIC and have served as the BIC for Enterprise Realty for the past 4 years. When I became the BIC and opened the trust account, I completed the Commission's 4-hour Basic Trust Account Procedures course. Do I have to retake that course every 3 years?

Rule 58A .0110(g)(9) specifies that a BIC must take the Basic Trust Account Procedures Course within 120 days of assuming a trust account. This subsection further indicates that a BIC is not required to complete the course more than once in a three-year period. Although the BIC is not required to complete the course again, the Commission does not prohibit them from taking the course again for additional information.

Trust money is:

- ANY funds belonging to others
- Received by a real estate licensee
- Acting as an agent in a fiduciary capacity related to a real estate transaction.

Funds that may be considered trust money include (but are not limited to):

- earnest money deposits;
- rent payments;
- final settlement payments;
- tenant security deposits;
- homeowner association (HOA) dues;
- advance rental deposits; and
- funds used to maintain owners' properties.

A brokerage company or sole proprietorship does not have to have a trust account if it does not hold money belonging to others while acting as a licensee in a real estate transaction. However, if a company does elect to hold trust money, Rule 58A .0116

requires monies belonging to others to be deposited into a trust account…no later than three banking days following the broker's receipt of such monies…" except as provided in subparagraph (b). The exceptions in Rule 58A .0116(b) are:

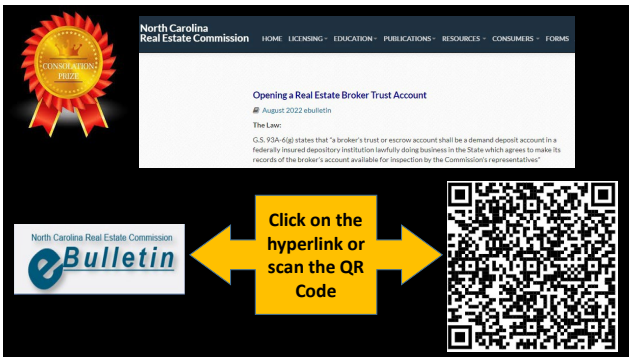
- all monies received by provisional brokers must be delivered upon receipt to their BIC;
- all monies received by a non-resident commercial broker must be delivered to the North Carolina affiliated/supervising broker for deposit in the resident broker's trust account; and
- check/negotiable instruments for earnest money and tenant security deposits payable to the broker/company may be held and safeguarded by a broker during contract/lease negotiations but must be deposited in a trust account not later than three banking days following acceptance of the offer to purchase or lease agreement. *If the deposit is tendered in cash, then it must be deposited no later than three banking days following receipt, even if no contract has been signed.*

Trust Accounts: Interest Earned

It is permissible for brokers to have interest-bearing trust accounts where the interest belongs to the broker, so long as they comply with the requirements in Rule 58A .0116(c), namely:

1. the broker first obtains written authorization from the persons for whom they hold the funds to deposit the funds into an interest-bearing account;
2. the authorization must clearly specify how and to whom the interest will be disbursed; and
3. the written authorization must be printed in a manner that will draw attention to the authorization and distinguish it from other provisions of the instrument (for example, italics, **boldface type**, underlining, a blank ____ to be filled in with the name of the party to whom the interest will be paid or some similar means).

Brokers earning interest in their brokerage trust accounts must transfer the accumulated interest from their trust account to their operating account each month upon receipt of the bank statement indicating the amount of interest credited to avoid commingling monies that belong to the broker with monies belonging to others (i.e., trust funds).



NOTE: The Commission has published two Bulletin articles, Opening a Real Estate Broker Trust Account and Avoid These 10 Common Mistakes to Make Trust Account Management Trouble Free to assist brokers/companies with managing their trust accounts.

AGENCY AGREEMENTS AND CONFIDENTIALITY

I am hoping you can help me with a tough decision. I previously listed a property at 123 Eveningstar Drive. The property did not sell, and the listing expired 90 days ago. It is now relisted by another brokerage. I have a buyer interested in purchasing it. Do I have to keep my previous discussions with the seller when I represented them confidential, or must I share then with the buyer?

An agency relationship is created when one person (i.e., principal) authorizes another person (i.e., agent) to handle certain matters on behalf of the principal.

Therefore, brokers must act as fiduciaries for their principals while conducting real estate transactions. A fiduciary is a person who acts for another in a relationship of trust and who is obligated to act in the other's best interests, placing the other's interests before any self-interest.

Under common law, a fiduciary must:

- be **loyal** to the principal and preserve personal, confidential information about the principal;
- operate in **good faith** to promote the principals' interests; and
- **disclose all facts** to the principal that may influence the principal's decision.

Although a broker must act as a fiduciary during the agency relationship, the relationship may be terminated by mutual agreement by the parties, by consummation of the transaction, or by the passing of the expiration date specified in the contract.

Further, a real estate broker has no continuing duty to the principal after the termination of their agency contract, absent some agreement to the contrary or other "unusual circumstances." After the expiration date specified in the listing or buyer agency contract has passed, or a transaction has been successfully concluded, the broker usually has no further obligation to that principal.

Under certain circumstances, however, a broker will have obligations to the principal that continue even after the formal termination of their relationship. If in the agency contract with the principal, an agent expressly promises to perform some act or service after the expiration date, then the broker will be expected to keep their express promise. A continuing obligation also may be implied. For example, an agent who still holds a client's money after the termination of the agency relationship still owes the client the duty to safeguard and account for the money.

Another common example where a broker's obligations to the principal would survive the formal termination date in the agency contract is in a sales transaction when the listing or buyer agency contract expires after the buyer and seller have entered into a contract, but before the transaction has closed. Under such circumstances, the broker will continue to owe agency duties to the buyer or seller client until the transaction either closes or terminates in some other way.

Also, some courts have held that a real estate agent's fiduciary duties also survive the termination of the agency relationship in certain transactions where the agent seeks to deal on their own behalf with former principals. In such circumstances, the courts have held that real estate brokers have a continuing duty of loyalty and good faith to the former principals to the extent that the brokers may not use their former position of confidence to profit or gain an unfair advantage over former clients.

In the absence of special circumstances similar to (1) express promise or implied obligation, (2) pending transaction at termination date of agency agreement, or (3) self-dealing, the termination or expiration of the agency contract ends a real estate agent's duty to a principal. Therefore, the broker may later represent a new client whose interests compete with those of the broker's former client.

NOTE: Under agency law, it is appropriate for a broker to share with a new client any information from a previous client that may help them in their current transaction. It not only is appropriate for the broker to share the information about the sellers' situation with the buyer, but the broker is obligated under agency law to do so. It is also important to keep in mind that the real estate company firm license and the affiliated broker's license must be on active status at all times during the period in which services are rendered.

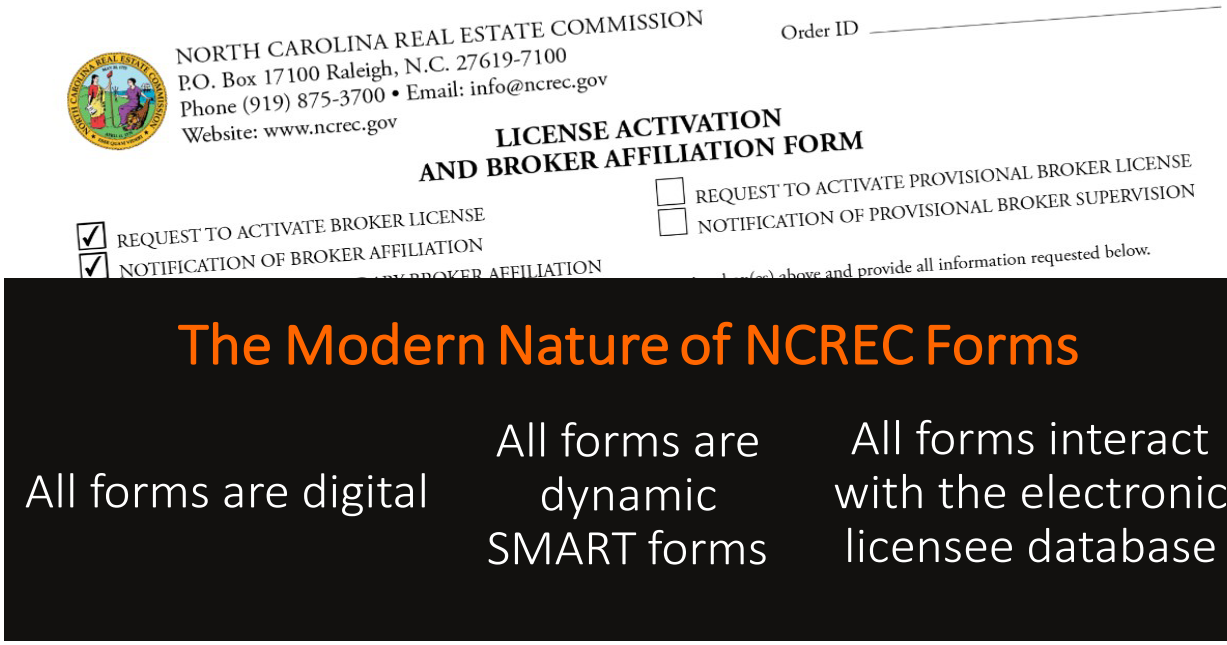
COMMISSION FORMS

After meeting with my CPA, they suggested I set up an LLC for my real estate business. I created an entity with the Secretary of State and submitted a request for a firm license that I was trying to obtain for compensation only.

I accidentally put the BIC of my current firm as the BIC of my LLC. How do I fix this mistake?

The Commission has adopted the usage of digital forms for efficiency in responding to brokers' request to change their names, brokerage affiliations, and/or activate their licenses.

These digital forms are dynamic. Basically, subsequent questions populate based upon the individual's response to the previous question. Therefore, this adaptive feature streamlines data entry by reducing errors by users which enhances Commission staff efficiency. Further, brokers provide their license number while completing the form. Therefore, the digital forms are integrated with the Commission's electronic license record database. Due to the integration of the form with the broker's license record, Commission staff can easily review the form, supplemental documentation, and the history of the broker while accessing the license record. Also, this integration allows Commission staff the ability to find information more quickly and reduce the amount of time it takes to process a form.



Brokers who accidentally submit inaccurate/erroneous information should promptly try to correct the mistake. Therefore, brokers should:

- refrain from emailing the wrong form back to the Commission
- not contact the Commission and attempt to make changes with a telephone call or email
- complete a new form
- review the accuracy of the information in the form prior to submission
    - do not use "autofill" in the form

NOTE: Each form that is submitted to the Commission is processed separately by Commission staff.

Also, the Commission utilizes interactive forms for brokers to request new BIC affiliations, terminate existing BIC affiliations, and notify the Commission of changes in Qualifying Brokers, etc. Commission staff utilizes the information in the forms to process the requested changes. Therefore, brokers should provide accurate information.

NOTE: Moreover, Rule 58A .0103(b) states every broker shall notify the Commission in writing of each change of personal name or email address within 10 days of said change. Further, the Commission is a consumer protection agency. Therefore, accurate information helps us protect consumers from potential harm of being misled because they depend upon our agency having reliable, accurate data about brokers.

Submission of Correct Forms

The Commission expects brokers to submit the correct form related to the type of change they are requesting for their license record. Further, at the beginning of each form, the Commission has provided a brief description of the form and the requirements for completion.

It is essential that brokers read the forms thoroughly to ensure that they are affiliating or terminating with the correct brokerage, and/or designating themselves as BIC of appropriate entities while not affecting the affiliations of other brokers.

I am a provisional broker, and I would like to affiliate with ABC Brokerage. What do I need to do?

Brokers who wish to affiliate their license with a BIC must electronically complete the License Activation and Affiliation Form (2.08) and submit it to the Commission.

Upon submission of the form, a provisional broker is certifying that they are engaged in the business of real estate under the supervision of the BIC named on the form, and that they will engage in acts which require a real estate license only while under the active, direct supervision of that named BIC.

Additionally, the BIC is also certifying that the provisional broker named on the form (as of the date shown) is engaged in the business of a real estate provisional broker under their active, personal supervision and will remain under their supervision until subsequent written notice is given to the Real Estate Commission. The BIC also certifies that 30 calendar days following the date shown on this form, such provisional broker shall discontinue any and all license activity in the event the named BIC has not received from the Commission a *Notice of License Record Change* as proof of receipt and acceptance of this form.

The License Activation and Affiliation Form (2.08) also is applicable to "Full" brokers. You can review all the instructions regarding activation and affiliation for provisional brokers and "Full" brokers here.

NOTE: Be aware that submission of a new broker affiliation form does not automatically terminate any current affiliation. Submission of a Request to Terminate Affiliation is needed to remove the current affiliation.

I would like to terminate my affiliation with John Wick, the BIC of ABC Brokerage. Which form do I need to submit to the Commission?

If a broker wishes to terminate their affiliation with a firm or sole proprietorship, they must submit the Request to Terminate Your Affiliation with a Firm or Sole Proprietorship, Form 2.22. The Commission will process the form within 3-5 business days and brokers will be emailed a *Notice of License Record Change* acknowledging the requested change. If brokers do not receive a Notice within 30 days, they will need to contact the Commission and inquire about the status of their form submission.

Before a BIC submits a Request to Terminate Your Affiliation with a Firm or Sole Proprietorship, Form 2.22, they should consider that the submission will affect all licensees currently under their supervision at the office. Basically, provisional brokers will be placed on inactive status and "full" brokers will remain on active status at their home addresses but will no longer be affiliated with the firm or sole proprietorship.

Therefore, to prevent this, the new BIC should submit a new properly completed Request for BIC Eligible Status and/or Broker-in-Charge Designation (REC 2.25) **PRIOR** to the outgoing BIC submitting the Request to Terminate Your Affiliation with a Firm or Sole Proprietorship, Form 2.22.

Be aware that brokers are confusing two forms: the Request to Terminate Your Affiliation with a Firm or Sole Proprietorship (Form 2.22) and the Request to Remove Licensee From Broker Supervision (Form 2.13). Form 2.22 is used by an individual broker to terminate their own affiliation with a firm or sole proprietorship and Form 2.13 is used by a BIC to remove a full or provisional broker from being affiliated with that BIC.

NOTE: It is imperative for brokers to comprehend that prior to submitting a form, they are certifying the accuracy of the information. Therefore, the Commission may use the submission of inaccurate information as evidence against a broker in a disciplinary action.

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Section 3

Permits

LEARNING OBJECTIVES

After completing this Section, you should be able to:

- identify repairs, additions, renovations, and/or improvements that may require a permit, and
- explain the requirements for general contractors in North Carolina.

TERMINOLOGY

- **General Contractor:** Pursuant to N.C.G.S. § 87-1, a general contractor is defined as a person, firm, or corporation who manages or oversees construction projects where the cost of the project is $40,000 or greater. The State General Contractors license is not required if the total cost of a project is under $40,000.
- **Permit:** An official written statement/document from a municipality or jurisdiction that provides the named party authorization to do a specific activity.

PERMITS

When did North Carolina first require building permits?

North Carolina requires permits in the North Carolina Building Code. It serves as a pivotal regulatory framework ensuring safety, and protecting life, health, and property within the state. The Building Code has been recognized as a cornerstone of construction standards, because of the comprehensive guidelines.

In 1933, Section 1.34 of the North Carolina Building Code outlined the process for obtaining building permits and ensuring compliance with construction standards. Prior to commencing construction, property owners had to apply for a permit from the building inspector and stipulate their adherence to the Code and local ordinances.

Throughout construction, the inspector periodically examined the work to verify compliance with state and local regulations. After construction was completed, the inspector conducted a final assessment and issued a "compliance certificate" if the construction of the building met the requirements. Further, the inspector maintained records for approved buildings.

Currently, N.C.G.S. §160D-1110-1112 regulates the authorization, expiration, and changes in the scope of work regarding building permits. According to the Commission eBulletin article, "Building Permit- A Broker's Responsibility," the process of obtaining building permits for original construction, additions, renovations, and repairs is governed by the regulations set forth by county and/or municipal building inspection offices.

These requirements, which can be intricate and subject to change over time, may vary widely from one jurisdiction to another.

For clarity, North Carolina has over 550 municipalities and 100 counties. Therefore, it is important to note that the Commission does not task brokers with having to know or recall all the intricacies of the building permit requirements for all counties and municipalities. However, as part of their duty to discover and disclose material facts, brokers are obligated to verify information, including whether changes to the property are permitted or non-permitted. Therefore, a reasonable prudent broker would contact the county and/or municipality in the area(s) in which they practice real estate brokerage to obtain this information.

While navigating real estate brokerage, it is customary for brokers to encounter a myriad of questions in which they attempt to seek clarity and guidance. Therefore, the following frequently asked questions (FAQs) serve as a valuable resource for responses to common inquiries.

When is a permit required in North Carolina?

- Building Permit Required

  - No person or corporation shall locate, erect, construct, enlarge, alter, repair, demolish, or relocate any building or change the type of occupancy without first obtaining the required permits for the specific work from the Inspections Department having jurisdiction.

- Electrical Permit Required

  - An electrical permit is required for the installation, extension, alteration, or general repair of any electrical wiring, devices, appliances, or equipment.
  - Exception: in any one- or two-family dwelling unit, a permit shall not be required for repair or replacement of electrical lighting fixtures or devices (such as receptacles and lighting switches having the same voltage and the same or less amperage) as long as the work is performed by a person licensed under G.S.87-43.

- Plumbing Permit Required

  - A plumbing permit is required for the installation, extension, relocation, replacement, or general repair of any plumbing system.
  - Exception: plumbing permits shall not be required for minor repairs or replacements of plumbing fixtures provided such repairs or replacements do not disrupt the original water supply, waste, or ventilation systems.

- Mechanical/HVAC Permit Required

  - Mechanical/HVAC permit is required for the installation, extension, relocation, replacement, and general repair of any heating, ventilation, or air-conditioning system (HVAC).
  - A PTAC (Package Terminal Air Conditioner) requires a mechanical permit be obtained before installation; however, a licensed mechanical contractor is not required to install the unit. If any electrical wiring is added for the unit, an electrical permit and a licensed electrician will be required as well for the wiring.
  - A permit is required to convert a gas appliance to a different type of gas, such as converting a liquid propane (LP) appliance to natural gas.

Also, a permit shall be in writing and contain a provision that the work done shall comply with the State Building Code and all other applicable state and local laws, ordinances, and regulations.

NOTE: Brokers should contact the local government office where the property is located to become familiar with how to obtain a permit.

When is a permit generally <u>not</u> required?

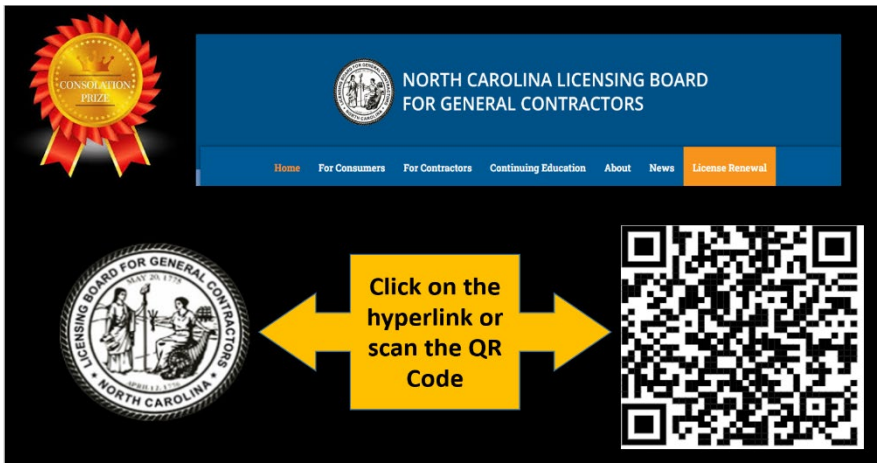
- Nonstructural work where the total project cost is less than $40,000 in any single-family residence unless the work involves new or altered plumbing systems, mechanical systems, or electrical systems
- Farm buildings outside the jurisdiction of any municipality
- Residential accessory buildings where no dimension exceeds 12 feet
- The replacement of windows, doors, and exterior siding in residential structures
- The replacement of pickets, railings, stair treads, and decking of residential porches and exterior decks
- Replacement of a water heater in one- or two-family dwellings, provided:
    - the energy use rate or thermal input is not greater than that of the water heater which is being replaced
    - there is no change in fuel, energy source, location, routing, or sizing of venting and piping
    - The work is performed by a licensed plumbing contractor and installed in accordance with the current edition of the North Carolina State Building Code
- In one- or two-family dwellings, the repair or replacement of electrical lighting fixtures or devices, such as receptacles and switches: the replacement is required to be the same voltage and the same or less amperage, with the work being performed by a licensed electrical contractor

NOTE: Local building codes may be more stringent than state building codes and may require permits in some of the above situations.

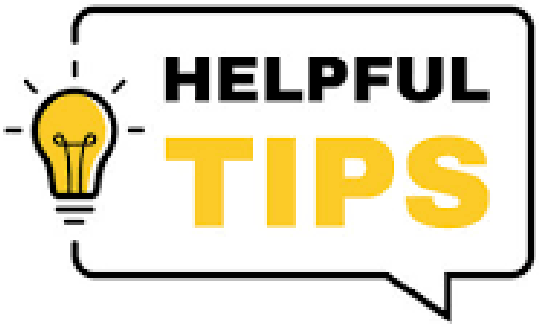
GENERAL CONTRACTOR LICENSING REQUIREMENTS

N.C.G.S. § 87-1 was amended on October 1, 2023.

Under this revision, any construction project involving the building of structures, highways, public utilities, grading, or other improvements with a cost equal to or exceeding forty thousand dollars ($40,000) necessitates a valid North Carolina General Contractor license. Conversely, projects with total costs below this threshold do not require a general contractor license in the state.



Therefore, the North Carolina Licensing Board for General Contractors recommends consumers verify the licensure of contractors prior to beginning a project by using this link (https://portal.nclbgc.org/Public/Search).



Additionally, the North Carolina Licensing Board for General Contractors has provided consumers with some important tips to protect them from substantial financial loss and emotional stress when hiring a general contractor. The tips are as follows:

1. Plan your project

   Thoroughly outline your project requirements and identify the professionals needed to execute it. Recognize that each project is unique, with some necessitating the expertise of licensed contractors. Reach out to your local permitting office to ascertain whether permits are necessary to ensure compliance with building codes.
2. Get several estimates

   When reviewing quotes from various contractors, avoid solely focusing on the total cost. Assess the cost, quantity, and quality of materials outlined in each estimate. Ensure that the estimate encompasses the comprehensive price, specified materials, payment schedule, and projected timeline for completing the project.
3. Verify the contractor's license

   In North Carolina, a general contractor must hold a license for contracts valued at $40,000 or more. Verify the licensing status of any contractor you are considering working with here.

4. Check at least 3 references

   Request written references from your contractor. Reach out to each reference and inquire about their satisfaction with the contractor's work, as well as whether the contractor adhered to the agreed-upon schedule and contract terms.
5. Require a written contract

   The contract should include a comprehensive outline of the tasks to be performed, the materials to be utilized, and the equipment to be installed. Ensure there's a payment schedule and a timeline delineating when the work will be finalized. It's crucial to fully understand the contract before signing it. Any modifications should be documented in writing.
6. Don’t make a large down payment

   The initial down payment required to commence work should be kept minimal. Be cautious of contractors requesting a sizable down payment under the pretense of purchasing materials to initiate your project.
7. Make payments as work is completed

   Establish a payment schedule that aligns with the progress of the work being done. Refrain from paying for unfinished tasks and avoid making payments in cash.
8. Monitor the job in progress

   Regularly monitor the progress of the work. Contractors should prominently display permits while the work is ongoing.
9. Don’t make the final payment until the job is complete

When does work need to be done by a licensed general contractor?

A general contractor licensed in North Carolina must perform all work where the total construction cost is $40,000 or more. Furthermore, any person who is paid to manage a project where the total construction cost is $40,000 or more must also be a North Carolina licensed general contractor. An unlicensed contractor may perform work where the project cost is less than $40,000. Any person may act without a license as their own general contractor for construction of a home, addition, or accessory structure if they own the property and will personally occupy the structure for at least 12 months after project completion.

Moreover, the following alterations, repairs, and/or improvements require a licensed contractor:

- Plumbing, Heating, Air Conditioning, Sprinkler, Licensed Contractor Required
    - A licensed plumbing, heating, and air conditioning contractor is required to alter, replace, or relocate plumbing or heating and air conditioning. Homeowners without a license may perform their own plumbing or HVAC work if they own the property and will personally occupy the structure for at least 12 months following completion.
- Electrical Contractor License Required
    - A licensed electrical contractor is required for all installation, construction, maintenance, or repair of electrical wiring, devices, appliances, or equipment. Homeowners without a license may perform their own electrical work if they own the property and will personally occupy the structure for at least 12 months following completion.

N.C.G.S. §160A-1110 governs when permits are required under the North Carolina State Building Code and any other local laws.

Do building permits expire?

According to state law, a permit will automatically expire six months after issuance unless actual work has commenced on the project. If the work begins on time but is abandoned or stopped for a period of 12 months, the original permit expires and a new permit will need to be obtained before work resumes.

North Carolina law empowers inspectors to conduct as many inspections as necessary to ensure compliance with relevant state and local laws, ordinances, regulations, and permit terms. Further, upon the completion of all work, a final inspection must be conducted by an inspector. If the inspector determines that the work aligns with applicable laws, ordinances, and permit terms, the inspector will issue a certificate of compliance.

If the plans/specifications of the project change, can I deviate from what is permissible under the issued permit?

Once a building permit is issued, any changes or deviations from the application, plans, specifications, or permit terms are not allowed unless explicitly permitted by the State Building Code. Also, approval from the appropriate inspection department is needed for any proposed changes or deviations.

Is there an exemption from obtaining permits for property owners?

Nearly all property owners must adhere to state and local permitting regulations, with a few exceptions for owners of one- or two- family units.

Is there an exemption for property owners from general contracting requirements?

Although property owners are not exempt from obtaining permits for the property, owners can construct or alter a building on their land without a general contractor license if the building is solely for their own and their family's occupancy, provided they obtain all required permits.

To secure permits, the owner must submit an affidavit to the local inspection department affirming ownership, personal oversight of construction, and personal presence for all inspections. Similarly, if an owner decides to "install, alter, or restore" plumbing or heating/cooling systems, they can do so without holding a plumbing or heating license, provided the building will be owner-occupied and all necessary permits are obtained.

However, if an owner fails to occupy the building for at least 12 months after completion, it's assumed they lacked the necessary intent.

If the building will **not** be owner-occupied, anyone who installs plumbing, heating, or fire sprinkler systems on property initially intended for sale or rental is considered to be engaged in plumbing, heating, or fire sprinkler contracting, must hold the appropriate license pursuant to N.C.G.S. § 87-21(5).

The plumbing, heating/cooling, and fire sprinkler licensing regulations also provide exemptions from licensure for individuals conducting "minor repairs or minor replacements" on an already installed plumbing or HVAC system. However, any work involving repairs, replacements, or alterations to an existing fire sprinkler system must be completed by a licensed fire sprinkler contractor. In the context of plumbing and heating, "minor repairs" or "minor replacements" are defined as the replacement of

parts in an installed system that do not require change in energy source, fuel type, or alterations to venting or piping.

These parts may include a compressor, coil, contactor, motor, or capacitor, as specified in G.S. 87-21(c). Similarly, mirroring the provisions of plumbing and heating contractor regulations, the electrical contractor regulations exempt individuals from licensure if they are performing electrical work wiring, device maintenance, alterations, or repairs on their own property, provided the property is not intended for rent, lease, or sale at the time, as stated in G.S. 87-43.1 (5a).

Are there any other exceptions to the permit requirements?

N.C.G.S. § 160D-1110(c) states the general exception for single-family residences, farm buildings, or commercial buildings is that no permit is required for any construction, installation, repair, replacement, or alteration costing $40,000 or less unless the work involves any of the following:

- addition, repair, or replacement of load bearing structures,
- addition or change in the design of plumbing,
- addition, replacement, or change in the design of heating, air conditioning, or electrical wiring, devices, appliances, or equipment, other than like-kind replacement of electrical devices and lighting fixtures,
- use of materials not permitted by the North Carolina State Building Code, and
- addition of roofing, excluding replacement.

BUILDING PERMITS: RENOVATED PROPERTIES

In the realm of home renovations, it's not uncommon for homeowners to opt out of obtaining a permit from their county and/or municipality building inspection department. Some homeowners bypass obtaining a permit because they perceive the approval process to be cumbersome, expensive, or both. However, the lack of required permits can pose significant challenges, particularly when individuals desire to sell their property.

According to the article, "Building Permits – A Broker's Responsibility," when listing properties for sellers, especially flipped properties, brokers should inquire about all renovations, additions, and repairs made during their client's ownership. They should also make efforts to obtain vendor invoices detailing the work, dates, and contractors who completed the project. Most importantly, brokers should contact the local building inspection office to confirm if permits and licenses were required and obtain copies if issued. If a broker discovers that the seller didn't obtain necessary permits or hire licensed professionals when required, the broker must disclose this to all potential

buyers, regardless of the seller's decision to disclose this information on the *Residential Property Owners' Association and Disclosure Statement* (*RPOADS*).

A great example of a broker failing to discover and disclose unpermitted work to potential buyers is evident in the "Case Study: Even the Beautiful Ones Can Be Ugly."

A broker listed a 1960s property as fully renovated, which enticed a first-time buyer. The property was advertised as being totally renovated, which included all new flooring, bathroom tub, toilet, roof, HVAC system, kitchen cabinets, and countertops. The seller marked "No Representation" for all questions on the *Residential Property Owners Association and Disclosure Statement* (RPOADS). The first-time buyer placed an offer on the property and it went under contract.

During due diligence, inspections uncovered serious issues, such as termite damage, HVAC failure, and siding problems. The buyer made the seller aware of the issues and asked to see the permits. The seller indicated that all renovations were cosmetic and did not require permits because the project cost less than $40,000. The buyer continued with the transaction and closed on the property. After moving into the home, the problems mentioned during due diligence became serious and ultimately very costly. As a result, the buyer reported over 21 claims to the insurance company during their first year of home ownership.

The insurance company conducted its own investigation and determined that the renovations were not performed by licensed contractors nor were permits pulled for the work. Therefore, the insurance company cancelled the buyer's homeowners insurance policy.

Did the listing broker fail to discover and disclose material facts?

_____

Did the buyer agent fail to discover and disclose material facts?

_____

Best Practices

Listing brokers have the responsibility to research whether necessary permits were obtained for any renovations or improvements made to a property prior to listing the property. Therefore, brokers should consider utilizing the following questions, as mentioned in the "Case Study: Even the Beautiful Ones Can Be Ugly," to determine with the seller whether a property has the appropriate permits for any renovations and/or improvements.

1. Who did the repairs and renovations?
2. Do you have invoices or receipts?
3. What was the total cost of the repairs and/or renovations?
4. Were permits required?
5. Were permits obtained?

Brokers are instrumental in educating their clients/consumers about the need to comply with county and/or municipality permit requirements. Also, it is important for brokers to communicate to property owners that adherence to these regulations is necessary when performing electrical, plumbing, and HVAC work on a property. Further, property owners who proceed with renovations and/or improvements without the necessary permits may expose themselves to legal repercussions and jeopardize their homeowners insurance coverage.

What should a broker do if a necessary permit is not available?

If brokers are unable to retrieve building and other permits, they should disclose that the renovations/improvements were conducted, specify that a permit could not be obtained, document the research that was conducted to pull the permit, and discover and disclose this information to all parties in the transaction. Additionally, a broker should speak with their BIC regarding their inability to locate a building permit and adhere to whatever brokerage policies are in place.

NOTE: All information that the broker documents regarding required permits and their research should be included in the transaction file.

Questions to Consider

Instructions: Read the following questions to determine whether a permit will be required. The repairs, renovations, and/or additions are being performed to an existing single-family structure, unless otherwise noted.

1. Is a permit required to add a window or door?

   _____

2. Is a permit required to add an outside deck?

   _____

3. Is a permit required to install a water purification system?

   _____

4. Is a permit required to replace a HVAC system?

   _____

5. Is a permit required to add a light fixture or receptacle?

   _____

6. Is a permit required for adding insulation to a crawl space?

   _____

7. Is a permit required if a licensed contractor replaces a water heater pursuant to State Building Code requirements, has the same capacity and energy usage as the predecessor, within no change in fuel, energy source, location, etc.?

   _____

8. Is a permit required for installing hardwood floors?

   _____

9. Is a permit required for minor repairs to HVAC system that don't change the energy source, fuel type, or routing, or sizing of venting or piping?

   _____

10. Is a permit required for replacing a toilet that will be connected to existing lines and there is no installation, extension, or general repair of the plumbing itself?

    _____

11. Is a permit required when removing a load-bearing wall from a residence?

    _____

12. Is a permit required to add an attic fan?

    _____

13. Is a permit required to remodel a kitchen?

    _____

14. Is a permit required when adding a disappearing staircase to the attic?

    _____

15. Is a permit required to replace steps to a porch/deck?

    _____

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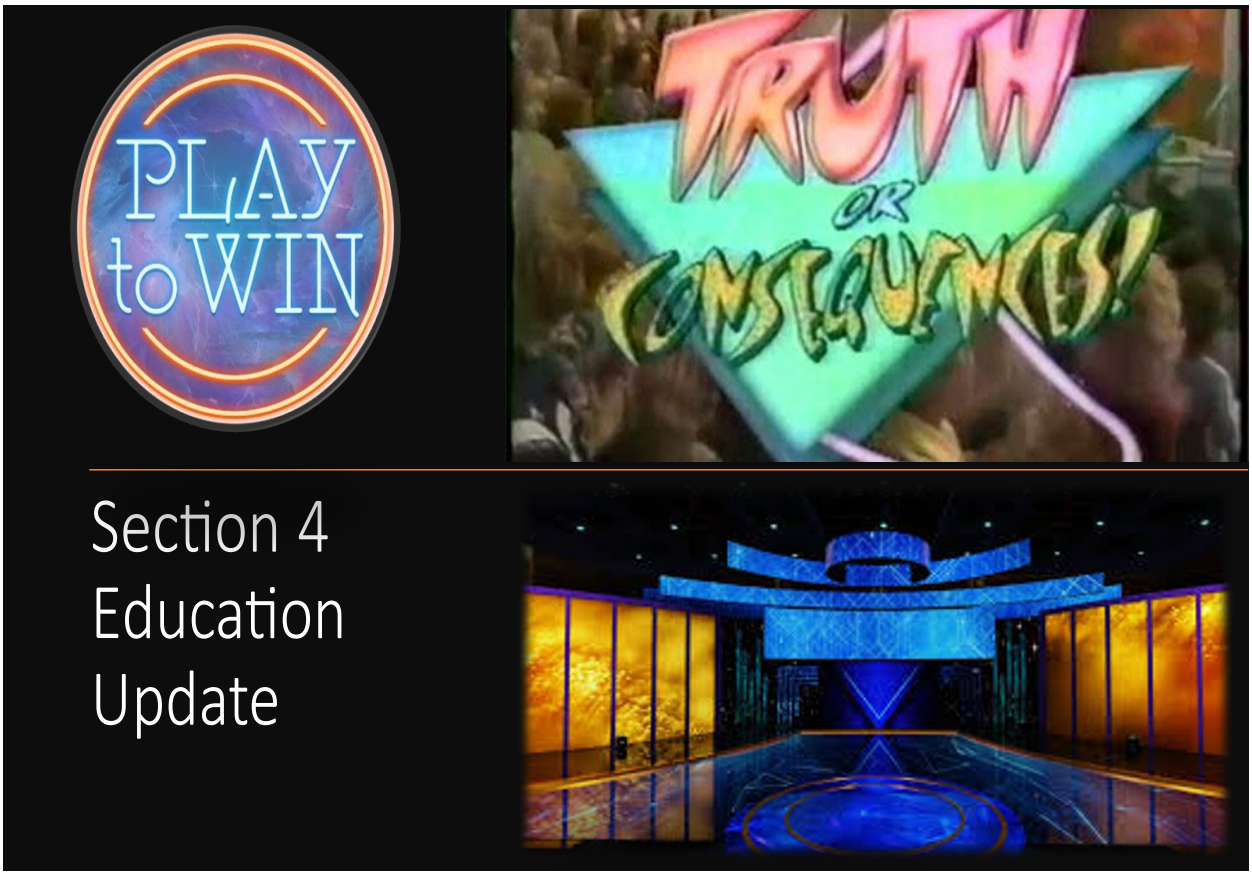
Section 4

LICENSING & EDUCATION UPDATE



LEARNING OBJECTIVES

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

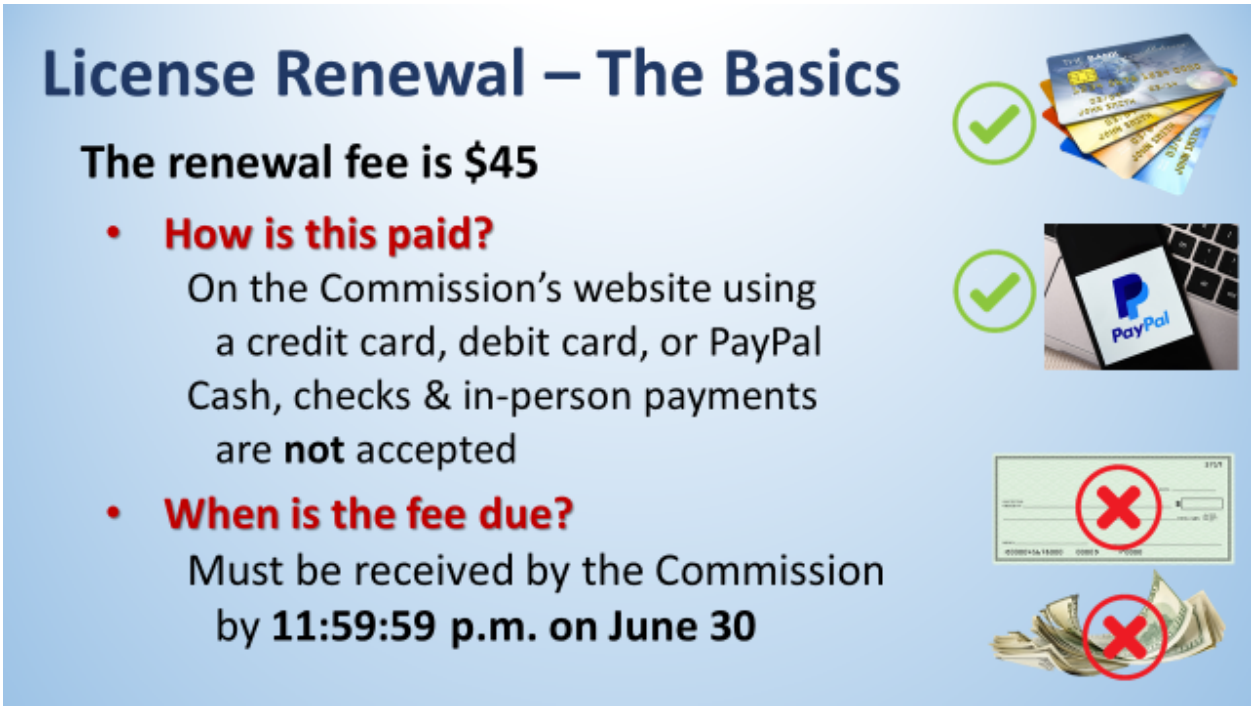
- describe when a broker, qualifying broker, and BIC must renew their license, and
- explain the differences between an expired and an inactive license.

LICENSE RENEWALS

Brokers, firms, and Limited Nonresident Commercial (LNCL) licensees must renew their real estate license each year during the statutory 45-day renewal period of May 15-June 30. The annual renewal fee is $45.00 and must be:

- paid online via the Commission's website, and
- received by the Commission by 11:59:59 pm on June 30.

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



NOTE: Don't wait until the last minute on June 30th to renew your license. If the Commission's website is down, your Internet or power is down, or something else prevents you from renewing, then your license will expire and you will have to deal with the consequences that result from your failure to renew in a timely manner, no later than June 30th.

True/False

1. ***I can renew my broker license before I complete my continuing education courses.***

   TRUE. The annual license renewal period is May 15-June 30. There is not a License Law and Commission rule that requires a broker to complete continuing education courses prior to renewing their license. Therefore, a broker may choose to renew their license ***prior*** to completing continuing education courses.

   License renewal is **not** contingent upon a broker completing their continuing education requirements. Theoretically, a broker wishing to maintain an active license could renew their license on May 15th and then complete their required continuing education no later than June 10th.

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

2. ***I can complete my continuing education courses prior to renewing my license.***

   TRUE. A broker may choose to complete their continuing education courses prior to renewing their real estate license. The Commission does not require a broker to renew their license prior to completing continuing education nor mandate completion of continuing education courses prior to submitting a license renewal. It is up to the broker to decide when to take CE and renew their license. However, to maintain an active license status, a broker must complete continuing education courses by June 10 **and** renew their license online during the annual May 15-June 30 renewal period.

3. ***I am the Qualifying Broker/Broker-in-Charge of my firm. I must renew both my individual license and the firm license.***

   TRUE. A broker who is both Broker-in-Charge (BIC) and Qualifying Broker (QB) of a firm is responsible for renewing **both** their individual broker license and the firm license during the annual May 15-June 30 renewal period.

   - As designated BIC of the firm, if the broker fails to renew their individual broker license:
     - the BIC is removed, and all affiliated brokers will be unaffiliated;
     - all previously affiliated full brokers maintain active status at their home address;
     - the licenses of all previously affiliated provisional brokers will go inactive;
     - the firm license will remain active, but no brokerage activities can be performed in the name of the firm until a new BIC is designated; and
     - all broker affiliations and agency agreements will have to be reestablished under a new BIC.

   - As QB of the firm, if the broker fails to renew their individual broker license:
     - the firm license will go to inactive status;
     - the BIC is removed, and all affiliated brokers will be unaffiliated;
     - all previously affiliated full brokers will maintain active status at their home address;
     - the licenses of all previously affiliated provisional brokers will go inactive; and
     - all brokerage activity on behalf of the firm would cease until a new QB is named, a new BIC is designated, and all broker affiliations and agency agreements are reestablished.

   - The QB broker renews their individual license, but fails to renew the firm license:
     - the firm license expires;
     - the BIC is removed, and all affiliated brokers will be unaffiliated;

- all previously affiliated full brokers maintain active status at their home address;
- the licenses of all previously affiliated provisional brokers will go inactive;
- all brokerage activity on behalf of the firm would cease until a new firm application is approved; and
- a new BIC is designated and all broker affiliations and agency agreements must be reestablished prior to performing any brokerage activity on behalf of the reinstated firm.

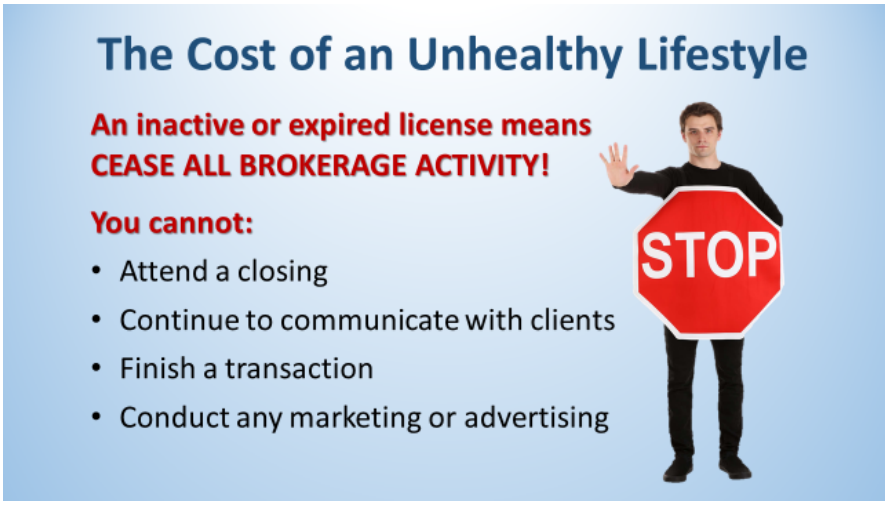
4. ***I do not have to renew my license if it is inactive.***

   FALSE. Although a broker may intentionally place their license on inactive status, the broker should still renew their license each year to ensure they retain a license in the event they would like to practice brokerage in the future. If a broker wants to activate their inactive license, the broker would need to meet the educational requirements under Rules 58A .0504(d) and .1702(a)-(b), respectively. If they do not renew the inactive license, it will expire; thus, requiring them to requalify for licensure if they ever wish to practice real estate brokerage again.

5. ***I can complete my pending transaction even if I did not renew my license.***

   FALSE. If your license expires on June 30 due to non-renewal, you cannot engage in **any** brokerage activities beginning July 1. This includes attending a closing for a client's transaction that was pending before the license expired; your brokerage company would have to send another affiliated broker to represent the company's client. You may not resume brokerage practice until your license is reinstated, back on "active" status, and affiliated with a BIC.

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



EXPIRED AND INACTIVE LICENSURE

To lawfully engage in brokerage activity, an individual or entity must have a CURRENT real estate broker license on ACTIVE STATUS at the time the broker provides the brokerage services.

6. ***I can place a referral to receive referral fees with an inactive license.***

   FALSE. A broker must have a current, active license at the time of performing brokerage activity, including placing a referral in order to legally receive **any** referral fees because that is a brokerage activity. A broker who has an active license has completed the appropriate 8 hours of continuing education by June 10 each year and has timely renewed their broker license by June 30.

7. ***I was licensed in March 2024 as a provisional broker. I have to take CE by June 2025.***

   TRUE. Rule 58A .1702(c) indicates that, to maintain eligibility for an active license, annual CE courses shall be completed upon the second renewal following the initial licensure and upon each subsequent annual renewal. In the scenario above, the broker who was licensed in March 2024 would renew their broker license for the first time by June 30, 2024; no CE is required for the 1st renewal. The second renewal of their license would occur on or before June 30, 2025, and, therefore, the broker must complete CE prior to June 10, 2025, to maintain eligibility for an active license. If the broker does not complete the required 8 hours of CE by June 10, the license would renew on inactive status.

   NOTE: Provisional brokers must also timely complete Postlicensing education based on date of initial licensure and be affiliated with a BIC to maintain active license status.

Provisional Brokers and non-BIC Eligible Brokers	**Brokers with BIC Eligible status/BIC Designation**
GenUp (General Update) AND ONE Commission-approved Elective Between July 1 – June 10	BICUP (Broker-in-Charge Update) AND ONE Commission-approved Elective Between July 1 – June 10

8. ***I have to take Postlicensing education and CE even if I haven't affiliated with a BIC.***

   TRUE. Per Rule 58A .1902(b), a provisional broker must complete their Postlicensing education within 18 months of initial licensure (not date of license activation) to remove the provisional status from their license record. To achieve and maintain active license status, a provisional broker must be supervised by a BIC and timely complete all Postlicensing courses. However, if a provisional broker chooses to remain on inactive status, they should be strongly encouraged to complete their Postlicensing education and annual CE courses to be eligible to easily activate their license. Although CE is not required to renew a license on inactive status, activation requirements, per Rule 58A .1703, of a broker's license with a CE delinquency are quite stringent.

9. ***I can take CE with an inactive license.***

   TRUE. Rule 58A .1702(e) indicates a broker is not required to take CE while their license is on inactive status. However, the broker may take CE while their license is on inactive status in preparation to easily achieve active status under Rule 58A .1703.

10. ***I will receive CE credit for successfully completing a Postlicensing course.***

    FALSE. Postlicensing courses do not provide CE credit, per Rule 58A .1704.

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

    FALSE. Courses taken by brokers to satisfy education requirements for other states or other license types, such as appraisal or home inspection, cannot be submitted for equivalent CE credit in NC. According to amended Rule 58A .1708, the Commission limits CE equivalent waivers to approved real estate educators. An approved instructor may receive CE equivalent credit for teaching a Commission Update Course, teaching a Commission-approved CE elective for the first time, or developing a CE course that is approved by the Commission. Instructors must submit a complete waiver application prior to June 17 specifying how they meet the requirements under this Rule, with an application fee of $50 for the new course approval option.

12. ***I can automatically get a waiver for Postlicensing courses***.

FALSE. Rule 58A .1905 provides the requirements for the Commission to issue a waiver for Postlicensing education. A broker may apply for a waiver of one or more of the three 30-hour Postlicensing courses in the following circumstances:

- *the broker has obtained equivalent education to the Commission's Postlicensing courses pursuant to Rule 58A .1902;*
- *the broker has obtained experience equivalent to 40 hours per week as a licensed broker or salesperson in another state for a least 5 of the 7 years immediately prior to waiver request; or*
- *the broker has worked 40 hours per week as a licensed North Carolina attorney practicing real estate matters for two years preceding waiver request.*

The broker must meet the requirements set forth under this Rule and include supporting documentation in their application for a Postlicensing education waiver.

Per Rule 58A .1905(c), a broker is not eligible for a waiver of any NC Postlicensing education, if the broker was issued an NC real estate license without passing the NC license examination.

13. ***I can renew the firm license even if the Qualifying Broker's license is expired***.

FALSE. The firm must have a QB whose license is on active status. As long as the firm has an actively licensed QB, and the firm's license is timely renewed, the firm license will remain active. If the QB's license expires or becomes inactive on July 1, the firm's license will also be inactive, meaning no brokers may engage in brokerage under the firm's name. While losing an actively licensed BIC only takes an individual office down, ***losing an actively licensed QB takes the entire firm down***.

In such case, the firm license cannot be activated until either the QB's license has returned to active status, or the firm appoints a new actively licensed QB. Note that even if the firm license is active, the firm cannot legally perform brokerage at any office location without a designated BIC.

14. ***A Qualifying Broker must complete CE even if they are not actively practicing brokerage.***

    TRUE. For a broker to remain a QB for a firm, the broker must take CE to maintain an active license. Every broker who wishes to maintain active status must pay their license renewal fee during the annual May 15-June 30 renewal period each license year and complete the appropriate CE by June 10. If the QB failed to complete the appropriate CE course by June 10, the firm could appoint a new actively licensed QB by June 30 to avoid having the firm license go inactive on July 1.

    NOTE: Please review the Guide below for how to reinstate an expired broker license and/or activate an inactive license.

Broker License Reactivation / Reinstatement Guide

Many licensees contact the Commission, education providers, and instructors with questions about how to get their real estate license "up to date." The correct answer requires properly determining 3 things:

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

Distinguishing Between Inactive or Expired

NCREC strongly recommends that when licensees have questions about their license status, they contact a Commission License Service Specialist. The License Services Specialist can examine the licensee's record and properly advise them of the process necessary to achieve their goals.

Whether a licensee is attempting to "fix" an inactive status or expired status, every single action requires the licensee to first cure any CE deficiency that may exist in their license record.

When the Broker License is Inactive

Cause of the Inactivity	Length of Inactivity	Process Required Per Rule
Provisional Broker inactive due ONLY to non-affiliation	Any length of time	**Per Rule 58A .0506** • File Form 2.08 – License Activation and Broker Affiliation
Provisional Broker inactive due to failing to complete Post within 18 months	Any length of time	**Per Rule 58A .1902** • Complete all three 30-hour Postlicensing courses within 2 years of filing the License Activation and Broker Affiliation form • File Form 2.08 – License Activation and Broker Affiliation
Broker inactive due to a CE deficiency	2 years or less	**Per Rule 58A .1703** • Make up any deficiency in the previous year with CE electives • Complete the required current year CE consisting of an Update course and an elective course • File Form 2.08 – License Activation and Broker Affiliation
	More than 2 years	**Per Rule 58A .1703** • Complete the current year CE consisting of an Update course and an elective course • Complete 2 Postlicensing courses no more than 6 months prior to filing the License Activation and Broker Affiliation form • File Form 2.08 – License Activation and Broker Affiliation

When the Broker License is Expired		
Cause of the Expiration	**Length of Expiration**	**Process Required Per Rule 58A .0505**
The only cause of an expired status is failing to renew or failing to pay the $45 renewal fee each year on or before June 30th.	Less than 6 months	• Pay a $90 reinstatement fee • Disclose any convictions or disciplinary actions • File a Form 2.08 - License Activation and Broker Affiliation
	For 6 months but not more than 2 years	• Within 6 months prior to reinstatement, complete one 30-hour Postlicensing course OR pass the National and State license exam sections* • File a License Reinstatement Application with $90 fee * Individuals with an active license in another state may choose to pass the state portion of the license examination in lieu of completing the Postlicensing course
	More than 2 years	• Must be relicensed as if they never possessed a license: ➢ Complete a Prelicensing course ➢ Pass the National & State sections of the license exam ➢ Submit a new license application with fee

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Section 5

Law and Rules Update

LEARNING OBJECTIVES

After completing this Section, you should be able to:

- identify the new questions that pertain to the condition of a property in the revised *RPOADS*,
- state the purpose of the Unfair Real Estate Services Agreements Act,
- explain the Fair Housing Act, and
- differentiate between a service animal and an assistance animal.

TERMINOLOGY

Fair Housing Act: According to the Department of Housing and Urban Development (hereafter referred to as "HUD"), the Fair Housing Act protects people from specified types of discrimination when they are renting or buying a home, getting a mortgage, seeking housing assistance, or engaging in other housing-related activities.

Service Animal: The Americans with Disabilities Act (hereafter referred to as ADA) defines a "service animal" as any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including physical, sensory, psychiatric, intellectual, or mental disability.

Source of Income Discrimination: According to the American Bar Association, source of income discrimination refers to the practice of refusing to rent to a housing applicant because of that person's lawful form of income.

Violence Against Women Act: According to HUD, the Violence Against Women Act "VAWA" is a federal law that, in part, provides housing protections for survivors of domestic violence, dating violence, sexual assault, and/or stalking. Despite the name of the law, VAWA's protections apply regardless of sex, sexual orientation, or gender identity of the victim.

RESIDENTIAL PROPERTY AND OWNERS' ASSOCIATION DISCLOSURE STATEMENT (*RPOADS*)

Jane, a listing agent, represented Tom, the seller-client. Tom completed the Residential Property and Owners' Association Disclosure Statement (RPOADS) and checked "No Representation" for all the questions except for two questions in Section E, Land Zoning. Tom answered "YES" on the RPOADS to the following questions:

E5. Does the property abut or adjoin any private road(s) or street(s)?

E6. If there is a private road or street adjoining the property, are there any owners' association or maintenance agreements dealing with the maintenance of the road or street?

Jane reviewed the *RPOADS* and did not ask additional questions about the private road or maintenance agreements. Further, when Jane listed the property, she failed to include information about the private road and maintenance agreement in the property description and "public remarks" section of the Multiple Listing Service (MLS).

John, an unrepresented prospective buyer placed an offer on Tom's property and Tom accepted. The parties went under contract and John closed on the property five weeks later. After closing, John was made aware of the private road and maintenance agreement by his neighbors at a community gathering.

Regarding the conduct of Jane:

A. Jane acted appropriately because the buyer received the *RPOADS*.
B. Jane violated her duty to discover and disclose.
C. Jane's liability is secondary to the buyer's due diligence obligation.
D. The title company and attorney have breached their duties.

Revised RPOADS

On July 1, 2023, the Commission amended Rule 58A .0114. The purpose of the rule change was two-fold. First, the Commission wanted to remove the actual Residential Property and Owners' Association Disclosure Statement (hereafter known as ***RPOADS***) from the rule language so future revision of the form would not require a rule change.

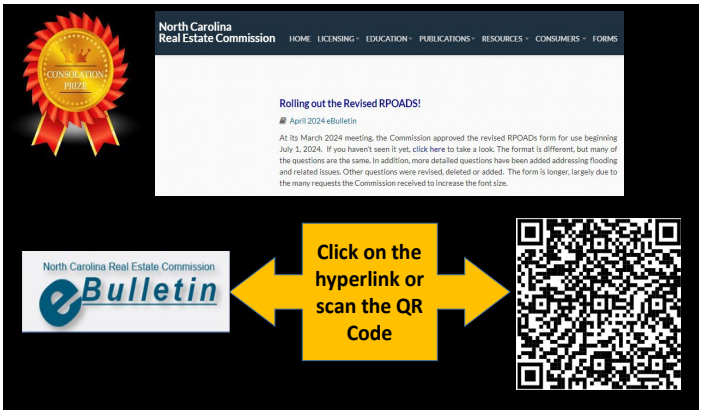
Second, the Commission incorporated the ability for property owners to answer more questions and provide additional disclosures that reflect the condition of the property such as:

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

NOTE: Although the language in this Rule appears to be substantially different; the required content remains the same and in correlation with the disclosure requirements of N.C.G.S. §47E-4. The Commission expects brokers to provide guidance to their clients while they are completing the additional disclosures (e.g., flood status, historic registration/designation, private well testing, and elevator systems relating to the property) that are on the revised *RPOADS*.

Effective **July 1, 2024**, brokers are expected to provide the revised *RPOADS* form to their seller-clients and continue to educate them regarding their rights and obligations to provide specific disclosure statements under N.C.G.S. §47E-4. The revised *RPOADS* is created by the Commission and is available for immediate download from the Commission's website at www.ncrec.gov.

Also, in an effort to ensure that brokers continue to comprehend their statutory obligation to furnish the *RPOADS* to their residential seller-clients and inform their clients of their statutory duty to deliver it to a prospective buyer, brokers can review the 2023-2024 Update Course section entitled, "***Legislative Desk Law and Rules Update***."



Additionally, Regulatory Affairs published the eBulletin article, "*Rolling out the Revised RPOADS!,"* to reiterate the following:

- the duties of a broker have not changed,
- brokers may not complete the *RPOADS* for their seller-clients, and
- they must continue to discover and disclose material facts to all parties in a transaction regardless of the responses provided by the seller-client on the disclosure form.

NOTE: Essentially, the general duty of a real estate broker is to inform the property owner of their rights and obligations to provide prospective buyers the *RPOADS*, and Mineral and Oil and Gas Rights Mandatory Disclosure Statement (*MOG* under General Statutes §47E-2. Additionally, the broker should not advise the seller-client on how to answer the questions. Further, the broker should inform their client of the broker's

mandatory duty to discover and disclose material facts to all parties in a transaction that is not dependent on the owner's disclosures. All brokers should review a completed *RPOADS* looking for unanswered questions and "Yes" answers. If either of those is present, the brokers should inquire further and disclose all discovered information to the buyers.

NOTE: If a listing is active prior to July 1, 2024, the older version of the *RPOADS* is permissible because this was the disclosure form that was approved at the time of the listing. However, all listings taken on or after July 1, 2024, must use the new revised *RPOADS*. The *RPOADS* is reprinted at the end of this section.

NORTH CAROLINA STATUTES

Unfair Real Estate Services Agreements Act

Samantha was unemployed and needed financial assistance. She inquired with several lenders about the possibility of a home equity line of credit. However, Samantha did not qualify because she was not creditworthy. One day while driving on Highway 264, she saw a car that advertised a "Homeowner Benefit Program" at ABC Brokerage.

Samantha was curious about the program, so she called ABC Brokerage. The affiliated broker explained the "Homeowner Benefit Program" to Samantha. After the discussion, Samantha signed a "Homeowner Benefit Agreement" with ABC Brokerage, and she received $1,500. The agreement that Samantha signed provided ABC Brokerage with an exclusive right to list her property for 40 years. Also, the agreement indicated that Samantha must use ABC Brokerage if she sells her property. If Samantha fails to list her property with ABC Brokerage, she will still owe ABC Brokerage compensation.

After Samantha entered the Homeowner Benefit Program with ABC Brokerage, ABC Brokerage filed a memorandum of lien against Samantha's property.

Regarding the listing agreement of ABC brokerage:

A. The listing agreement is freely entered into by the parties and is enforceable.
B. The agreement is only enforceable because Samantha was paid consideration.
C. The listing agreement violates North Carolina statutes.
D. The agreement is valid, but voidable by Samantha after one year.

Is there a "standard" length of time for agency agreements?

Purpose: Unfair Real Estate Services Agreements Act

According to the North Carolina Department of Justice, some real estate companies adopted a predatory business model which specifically targeted seniors and financially vulnerable homeowners. These companies engaged in cold calling, even reaching out to individuals listed on the Do Not Call Registry. Also, they offered modest cash payments, usually under $1,000, to homeowners in exchange for an exclusive commitment to utilize the company's services for listing their property over the next four decades. Subsequently, property owners signed a contract that included a memorandum that was filed with the county, which established a lien on the property's title.

The contract not only claimed to be binding on current homeowners but also extended its reach to property heirs. Therefore, the attached lien complicated the homeowner's ability to refinance, access home equity, or transfer the property. While property owners did have the option to terminate these agreements prematurely, they were met with a penalty equivalent to 3% of the property's market value, which was the commission the company would have earned for listing the home. Most importantly, the company retained the authority to determine the property's value according to the terms outlined in the contract.

In March of 2023, the North Carolina Department of Justice sued real estate company MV Realty and alleged violations of North Carolina laws prohibiting unfair and deceptive trade practices, usurious lending, abusive telephone solicitation, and unfair debt collection practices by tricking homeowners into signing oppressive 40-year real estate agreements.

The Department of Justice began to investigate MV Realty in the Fall of 2022 after receiving over 60 complaints beginning March 2022. The investigation determined that more than 2,100 homeowners in North Carolina were enrolled in their predatory scheme.

As a result of the unfair and deceptive trade practices that misled several North Carolina homeowners, the Unfair Real Estate Services Agreements Act became law in North Carolina on August 24, 2023.

The ***Unfair Real Estate Services Agreements Act*** states:

(a) This Article is intended to prohibit the use of real estate service agreements that are unfair to an owner of residential real estate or to other persons who may become owners of that real estate in the future. This Article also prohibits the recording of such residential real estate service agreements so that the public records will not be

clouded by them and provides remedies for owners who are inconvenienced or damaged by the recording of such agreements.

(b) For the purposes of this Article, the following definitions apply:

> *(1) Person. – A person as defined in G.S. 105-228.90(b)(23).*
>
> *(2) Real estate service agreement. – A written contract between a service provider and the owner or potential buyer of residential real estate to provide services, current or future, in connection with the maintenance, purchase, or sale of residential real estate.*
>
> *(3) Residential real estate. – Real property located in this State which is used primarily for personal, family, or household purposes.*
>
> *(4) Service provider. – A person who provides a service related to residential real estate, including a real estate broker.*
>
> *(5) Unfair real estate service agreement. – A real estate service agreement that violates G.S. 93A-88.2.*

§ 93A-88.2. Unfair real estate service agreements.

a) Unfair Real Estate Service Agreements. – A real estate service agreement is unfair, void, and in violation of this Article if the agreement is to be in effect for more than one year and either expressly or implicitly aims to do any of the following:

> *(1) Run with the land or bind future owners of residential real estate identified in the real estate service agreement.*
>
> *(2) Allow for assignment of the right to provide services without notice or consent of the owner or buyer.*
>
> *(3) Create a lien, encumbrance, or other real property security interest.*

(b) No Right to Refund. – A service provider has no right to a refund of the consideration paid to the owner or buyer in connection with an unfair real estate service agreement.

(c) Exemptions. – This Article does not apply to the following types of agreements:

> *(1) A home warranty or other type of similar product that covers the cost of maintenance of a major housing system, such as plumbing or electrical wiring, for a set period of time from the date a house is sold.*
>
> *(2) An insurance contract.*

(3) Any transactions governed by Chapter 47G (Option to Purchase Contracts Executed with Lease Agreements) or Chapter 47H (Contracts for Deed) of the General Statutes.

(4) A declaration created pursuant to Chapter 47A (Unit Ownership), Chapter 47C (North Carolina Condominium Act), or Chapter 47F (North Carolina Planned Community Act) of the General Statutes.

(5) A maintenance or repair agreement entered into by a homeowners' association in a common interest community.

(6) A security agreement under the Uniform Commercial Code relating to the sale or rental of personal property or fixtures.

(7) Provision of water, sewer, electrical, telephone, cable, natural gas, propane, fuel oil, or other regulated utility service.

(8) A property management contract as defined in G.S. 105-164.3(189).

(9) Any actions arising from Part 2 of Article 2 of Chapter 44A of the General Statutes regarding mechanics', laborers', and materialmen's liens, or Part 4 of Article 2 of Chapter 44A of the General Statutes regarding commercial real estate broker liens.

§ 93A-88.3. Recording prohibited.

(a) Recording an unfair real estate service agreement is prohibited. If an unfair real estate service agreement, or notice or memorandum thereof, has been recorded, it is void.

(b) All of the following shall apply to a recording that is void under subsection (a) of this section:

(1) The recording shall not operate as a lien, encumbrance, or security interest.

(2) No owner or buyer shall be required to record any document voiding the recording.

(3) The recording shall not provide actual or constructive notice to any person interested in the residential real estate that is identified in the unfair real estate service agreement.

(4) The recording violates G.S. 14-118.6(a).

(c) In addition to any other rights provided by law, any person with an interest in residential real estate identified by a recording that is void under subsection (a) of

this section may recover damages, costs, and attorney's fees that may be proved against the service provider named in the unfair real estate service agreement. Any actual damages, costs, and attorney's fees that are proved against the service provider will not be offset by the consideration paid by the service provider to the owner or buyer of the residential real estate.

§ 93A-88.4. Deceptive act.

A violation of any provision of this Article constitutes an unfair or deceptive trade practice under G.S. 75-1.1. Any party aggrieved by a violation of this Article may bring a cause of action against the service provider and is entitled to the relief available in Chapter 75 of the General Statutes. Any recoveries available under Chapter 75 of the General Statutes against the service provider will not be offset by the consideration paid by the service provider to the owner or buyer in connection with the unfair real estate service agreement. The Attorney General is hereby empowered to enforce this Article as allowed by Chapter 75 of the General Statutes.

Anticipated Impact to Brokers

The Unfair Real Estate Agreements Act aims to prevent the use of real estate service agreements that unfairly disadvantage owners of residential real estate, as well as potential future property owners, including heirs. The Act achieves its objectives by:

- restricting unfair "right to list" service agreements that exceed a one-year duration, especially those incorporating terms that:
    - claim to run with the land or bind successors-in-interest,
    - allow assignment of the agreement without homeowner notice or consent, and
    - seek to establish a lien, encumbrance, or other security interest
- declaring such Unfair Real Estate Service Agreements as unenforceable and ineligible for recording. A breach of the Act constitutes a violation of North Carolina's consumer protection laws,
- granting the Attorney General or affected homeowners the authority to initiate legal proceedings against individuals or companies violating the Act, and
- safeguarding the Act's scope to prevent adverse effects on legitimate real estate agreements and liens, such as those related to home warranties, insurance contracts, HOA agreements, utilities agreements, or Mechanic's and Commercial Broker's liens.

If you would like to read the *Unfair Real Estate Services Agreements Act*, N.C.G.S. §93A-88 in its entirety, it can be viewed here.

Best Practices for Compliance

Rule 58A .0104(a) requires:

> *Every agreement for brokerage services in a real estate transaction…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 formation…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…from its formation.*

In order to adhere to the Rule requirements, brokers must take the opportunity at ***first substantial contact*** to educate the consumer by providing and reviewing the *Working With Real Estate Agents Disclosure*. During this conversation, brokers have the ability to explain the agency options that their brokerage may provide them if the brokerage is hired.

Additionally, brokers can provide a copy of the *Q&A: Working with Real Agents Brochure* to consumers to illustrate examples of agency relationships and provide more content regarding the various forms of agency representations.

After brokers have provided and reviewed the *Working With Real Estate Agents Disclosure*, it is important to discuss whether the consumer is going to hire the brokerage to represent their interests in a real estate transaction.

If the consumer elects to hire the brokerage to list their property, it is imperative that the broker ensure that the listing agreement is for a definite period of time in adherence to License Law and Commission rules and does not exceed one year in duration pursuant to N.C.G.S. §93A-85, the Unfair Rental Agreements Act.

Further, brokers may also implement the following best practices:

- effectively communicate with clients;
    - Brokers should clearly communicate terms and conditions to clients. If clients have questions regarding the language in the contract, brokers should encourage the client to seek the advice of counsel.
- avoid using contracts with unfair terminology;
- review documentation;
    - Brokers should be familiar with all of the contracts/documentation that they will use in real estate transactions.
- educate clients; and
    - Brokers should provide guidance to clients regarding their rights and potential risks during brokerage transactions.

- adhere to record retention.
    - Brokers should maintain accurate records in adherence to Rule 58A .0108, Record Retention for all of their transactions.

NOTE: The Commission published an eBulletin article entitled, *Working With Real Estate Agents Disclosure - Updated* to assist brokers with comprehending the primary purposes of the *Working With Real Estate Agents Disclosure*.

Elevator Safety Requirements for Certain Residential Rental Accommodations: Section 1 of N.C.G.S. §143-143.7

Regarding Weston's Law:

A. All elevators in NC are now treated equally.
B. Every residential elevator must now have a certificate of compliance.
C. There are new compliance requirements for residential rental elevators.
D. Cheri Berry has returned to inspect all residential elevators.

Purpose of the Law

On June 30, 2023, the General Assembly made changes to the safety requirements for elevators. N.C.G.S. §143-143.7 made conforming changes and created new requirements for elevator systems in residential rentals, rented for fifteen or more calendar days, including privately-owned residences, cottages, or similar accommodations subject to taxation under N.C.G.S. 105-164.4F. On June 30, 2024, Section One of N.C.G.S. §143-143.7 became law.

Section 1 of N.C.G.S. §143-143.7 indicates:

(a) Notwithstanding the requirements of G.S. 143-139(d), any elevator in a private residence, cottage, or similar accommodation subject to taxation under G.S. 105-164.4F shall meet the following requirements:

> *(1) The gap between the hoistway face of the landing door, the door space guard, or the door baffle and the hoistway face of the car door as well as the door of the car or gate itself must meet the following requirements:*

a. Horizontal sliding car doors and gates shall be designed and installed such that the total of the gap between the hoistway face of the landing door, the door space guard, or the door baffle and the hoistway face of the car door or gate, after the car door or gate has been subject to a force of 75 pounds applied horizontally on an area four inches by four inches at right angles to and at any location on the car door or gate when fully closed, shall be no more than four and three-quarters inches.

b. Folding car doors shall be designed and installed such that the total of the gap between the hoistway face of landing door, the door space guard, or the door baffle and the hoistway face of the car door, after the car door has been subject to a force of 75 pounds applied horizontally using a four-inch diameter sphere at any location within the folds of the door when fully closed, shall be no more than four and three-quarters inches.

c. When the same 75-pound force is applied in the same manner to the horizontal sliding car door or gate or to the folding car door, there shall be no permanent deformation of the door or gate and the door or gate shall not be displaced from its guides or tracks.

(b) If any property subject to this section has an elevator that does not comply with subsection (a) of this section, the landlord shall prevent the operation of the elevator until the elevator has been brought into compliance by meeting the following requirements:

(1) If the elevator does not comply with sub-subdivision a. or b. of subdivision (1) of subsection (a) of this section, then the landlord shall install a hoistway door space guard, a full height door baffle, or a door baffle that is at least 31.75 inches in height, each of which shall be nonremovable and shall be designed and installed to withstand a force of 75 pounds applied horizontally using a four-inch diameter sphere at any location, until the maximum gap is in compliance with sub-subdivision a. or b. of subdivision (1) of subsection (a) of this section.

(2) If the elevator door or gate does not comply with sub-subdivision c. of subdivision (1) of subsection (a) of this section, then the landlord shall replace it with a door or gate that complies with sub-subdivision c. of subdivision (1) of subsection (a) of this section.

(c) Upon installation of a door baffle, door space guard, door, or gate meeting the requirements of subdivision (1) or (2) of subsection (b) of this section, the landlord shall provide the Commissioner of Insurance with one of the following:

> *(1) A statement signed by a professional elevator installer certifying installation of the door baffle, door space guard, door, or gate meeting the requirements of subsection (b) of this section.*
>
> *(2) A receipt for purchase of the door baffle, door space guard, door, or gate meeting the requirements of subsection (b) of this section, a signed statement by the landlord stating the date of installation, and photographs depicting the door baffle, door space guard, door, or gate as installed.*

(d) For purposes of this section, "elevator" means a hoisting and lowering mechanism equipped with a car or platform which moves in guides, and which serves two or more floors of a building or structure.

(e) Any person who violates subsection (b) of this section by permitting the continued operation of an elevator that does not comply with subsection (a) of this section shall be guilty of a Class 2 misdemeanor.

NOTE: If you would like to read the Elevator Safety Requirements for Certain Residential Accommodations, N.C.G.S. §143-143.7, in its entirety, it can be read here.

Basically, the Rule sets the standards for the strength and deformation tolerance of various elevator doors and gates. If an elevator fails to meet the standards, landlords are obligated to either halt its operation until compliance is ensured or install guards or doors meeting the specified criteria. Further, N.C.G.S. §143-143.7 outlines the documentation landlords must furnish to the Commissioner of Insurance upon the installation of doors or guards.

Anticipated Impact to Brokers

The anticipated impact to brokers is minimum. Quite simply, if brokers notice an elevator within a property upon a visual inspection, they must inquire with the seller regarding whether the elevator is in compliance with the General Statutes.

Best Practices for Compliance

Brokers should consider implementing the following best practices to ensure compliance with N.C.G.S. § 143 and License Law and Commission rules:

- know the requirements for elevator gaps, door strength, and deformation tolerance as stated in the Rule,
- ask the seller whether their elevator within their property complies with the Statute,
- disclose to prospective buyers whether the elevator in the subject property complies with required regulation,
- verify whether the elevator doors, gates, and guards comply with the Statute by requesting documentation from the property owner/landlord,
- advise clients to address any non-compliance issues promptly in adherence to the Statue,
- recommend property owners hire professionals to maintain or conduct necessary modifications/installations for compliance,
- ensure properties are advertised accurately and reflect whether a property is in compliance,
- educate property owners/landlords about the importance of elevator compliance and the potential legal consequences due to non-compliance, and
- encourage property owners to seek the advice of an attorney to ensure they comprehend their responsibilities under the law.

If brokers incorporate these best practices while communicating with clients, it can help ensure their clients comply with the requirements set forth under the Statute. The Commission has also published the following eBulletin article, *Weston's Law Revised* to educate brokers on House Bill 619 and the law that was designed to prevent future injuries and deaths resulting from certain gaps in residential rental elevators.

North Carolina Department of Revenue: Privilege License Tax

N.C.G.S. 105-41 required every individual in North Carolina who practiced a profession or engaged in a business to obtain from the North Carolina Department of Revenue (hereafter "NCDOR") a statewide license for the privilege of practicing a profession or engaging in the business.

However, Session Law 2023-134 repealed this requirement under the General Statutes. Therefore, **effective July 1, 2024**, real estate brokers and other professionals are no longer required to apply to the NCDOR for a privilege license, or renew an existing privilege license, each year beginning July 1, 2024. The last license period will be for the fiscal year, July 1, 2023 to June 30, 2024.

If you would additional information regarding this change, you may read the Privilege Tax Bulletin published by the North Carolina Department of Revenue.

FAIR HOUSING

According to the *North Carolina Office of Administrative Hearings*, fair housing means all persons have equal opportunity to be considered for rental units, purchase of property, housing loans, and property insurance.

Specifically, the North Carolina Fair Housing Act makes it illegal to discriminate in housing because of race, color, religion, sex, national origin, physical or mental handicaps, or family status. This law applies to the sale, rental, and financing of residential housing.

Although the Act does have limited exceptions, individuals who control residential property and participate in real estate financing must obey the fair housing law. Basically, this means that rental managers, property owners, real estate agents, landlords, banks, developers, builders, and individual homeowners who are selling or renting their property must comply.

The Legal Aid of North Carolina Fair Housing Project has created a video resource for consumers entitled, *What is Fair Housing?*. This video specifically explains the Fair Housing Act, protected classes, and prohibited activities under the Act.

The Fair Housing Act protects people from discrimination when they are renting or buying a home, getting a mortgage, seeking housing assistance, or engaging in other housing-related activities. The Fair Housing Act prohibits discrimination in housing because of:

- race,
- color,
- national origin,
- religion,
- sex,
    - includes gender identity and sexual orientation
- familial status, and
- disability.

The federal Fair Housing Act covers ***most*** housing. The Act exempts the following:

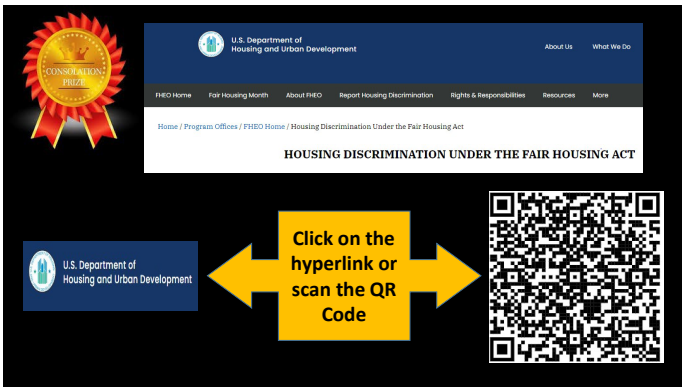
- owner-occupied buildings with no more than four units,
- single-family housing sold or rented by the owner without the use of a broker, and
- housing operated by religious organizations and private clubs that limit occupancy to members.

NOTE: North Carolinians are also protected from housing discrimination under the North Carolina State Fair Housing Act ("State FHA"). The State FHA continues to be certified by HUD as "substantially equivalent" to the federal FHA. Although substantially similar, the State FHA provides a few significant additional areas of protection.

For instance, the State FHA covers certain single-family homes that are exempted under the federal FHA. The federal FHA exempts the sale or rental of a single-family home when certain conditions are met, including (a) the owner does not own more than three single-family homes at any one time, and (b) the sale or rental is done without the use of advertising or real estate broker. The State FHA does not contain this exemption for for-sale-by owners.

You can read more about the State FHA and the exemptions in the article, *The State of Fair Housing in North Carolina 2000-2020.*

The Department of Housing and Urban Development (hereafter referred to as "HUD") provides examples of illegal discrimination against individuals based upon their race, color, religion, sex (including gender identity and sexual orientation), disability, familial status, or national origin in the sale and rental of housing and mortgage lending on its website. Although a complete list can be found on HUD's website, here are some prohibited acts under the federal Fair Housing Act.



Sale and Rental of Housing Prohibited Acts

- Refuse to rent or sell housing
- Falsely deny that housing is available for inspection, sale, or rental
- Limit privileges, services, or facilities of a dwelling
- Discourage the purchase or rental of a dwelling

Mortgage Lending Prohibited Acts

- Refuse to provide information regarding loans
- Refuse to purchase a loan
- Refuse to make a mortgage loan or provide financial assistance for a dwelling
- Discriminate in appraising a dwelling

Unfortunately, fair housing discrimination continues to be an ongoing issue in the United States and North Carolina despite legislation to prevent and combat discrimination. There are several factors that may contribute to discrimination; however, one common factor that is not dictated by geography is systemic bias.

Discrimination results from implicit biases that may influence the decision-making process in housing transactions. As stated in the 2021-2022 Update Course, all implicit biases are not negative. However, all biases have the ability to contribute to the differential treatment of individuals during the rental application process or overall denial of housing opportunities.

Also, some housing providers may deliberately engage in discriminatory practices and disregard the protections afforded to the *protected classes* under fair housing laws. Examples of discriminatory practices could be steering individuals away from certain neighborhoods, and establishing arbitrary criteria that disproportionately impacts specific protected classes.

Economic disparities also contribute to some of the issues/challenges with fair housing. For instance, individuals within the protected classes often face barriers that limit their

housing options due to being underemployed, on a fixed income, or unemployed. Therefore, property owners and managers may discriminate on an applicant's source of income which contributes to systemic inequalities. Discrimination based on implicit biases, stereotypes, and disproportionate economic factors, contributes to inequality in housing.

What type of discrimination do you think increased the most with the filing of fair housing complaints?

a. *Disability*
b. *Source of income*
c. *Race*
d. *Mortgage lending*

The National Fair Housing Alliance created a report entitled, *2023 Fair Housing Trends Report.* This report highlights the ongoing financial and societal impacts of the COVID-19 pandemic, and the high demand and record shortages of housing for rent and sale.

Due to these factors, racial and ethnic disparities have increased in the housing market which have led to complaints being filed by harmed and disadvantaged individuals.

In 2022, 33,007 fair housing complaints were filed with private non-profit fair housing organizations, HUD, and the Department of Justice. Complaints increased 5.74 percent overall since 2021. Additionally, data has indicated that the basis of the increased complaints were source of income discrimination and domestic violence.

FAIR HOUSING: SOURCE OF INCOME DISCRIMINATION

Six months ago, Justin was involved in a terrible automobile collision which resulted in him being confined to a wheelchair. As a result, he lost his job and applied with a local agency to obtain a Housing Choice Voucher (HCV) due to the loss of income. He presented the voucher to his landlord. The landlord has threatened Justin with non-renewal of their lease if he attempts to pay rent using the voucher. The landlord has told him that these types of payments have to be approved at the beginning of the lease.

Regarding the landlord's conduct:

A. *The landlord is correct that the use of vouchers must be approved at the beginning of the lease.*
B. *There is no fair housing right to use vouchers.*
C. *The landlord's conduct can be a violation of both the federal and state fair housing acts.*
D. *The landlord must accept the voucher, but only because of the disability.*

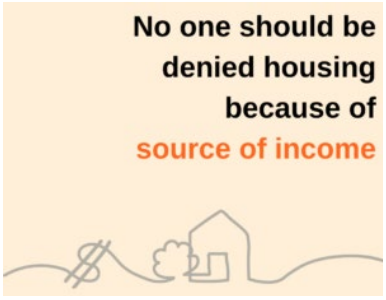
The landlord's conduct violated both the federal and the state fair housing acts which makes it illegal to discriminate against tenant's based upon their race, color, religion, sex, disability, familial status, or national origin.

In the article, *Your Money's No Good Here: Combatting Source of Income Discrimination in Housing,* the American Bar Association states that source of income discrimination refers to the practice of refusing to rent to a housing applicant because of the person's lawful form of income.

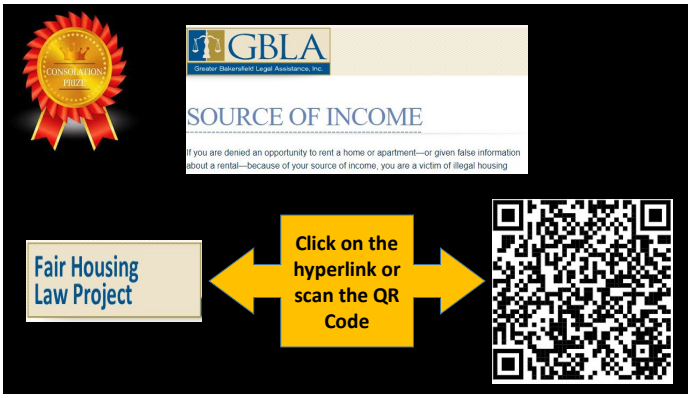
Source of income discrimination disproportionately affects renters of color, women, and people with disabilities. Therefore, this type of discrimination contributes to the continuation of many racially segregated communities.

The prohibition on source of income discrimination is not a federal law. The absence of the protections in some states and municipalities have minimized the effectiveness of the policy.

However, the article, *Source of Income Discrimination and Fair Housing Policy,* indicates that some states and municipalities that prohibit source of income discrimination do so by including it as a protected class alongside race, sex, religion, etc. Therefore, if a tenant is harmed, they will have access to the state/local government's enforcement mechanisms which often includes an administrative process and the ability to file a lawsuit.



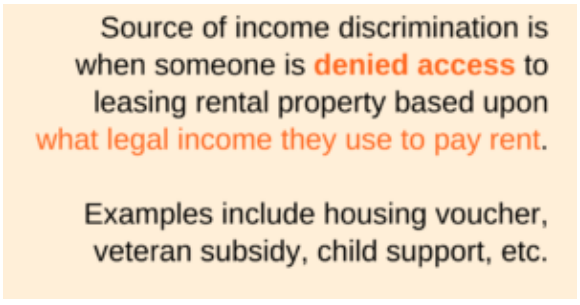
To combat source of income discrimination, housing providers should use objective criteria to screen applicants and their source of income.



If an applicant has legal, regular, and verifiable income, it should not matter if the income is derived from employment, retirement, public benefits, or disability.

In an effort to assist brokers with comprehending source of income discrimination, the GBLA Fair Housing Law Project has provided some examples that follow:

- advertising that an individual "must have a job" to rent, requiring documentation that is only available to working applicants, like paycheck stubs;
- refusing to rent to an individual receiving a voucher, or refusing to use regular/verifiable income in determining whether an applicant meets minimum income requirements;
- setting income requirements artificially high (i.e., monthly income must be four times the rent) in order to exclude applicants who receive public benefits; or
- requiring co-signers or a larger security deposit because of an applicant's source of income.

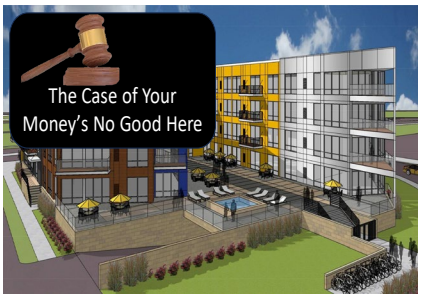


Although there is not a federal law prohibiting source of income discrimination, North Carolina has several municipalities who have passed source of income protection policies. Depending upon the municipality, the protections may only be afforded to housing developments that receive funding from the city or convey city property.

The NC cities and municipalities with such policies are as follows:

- Chapel Hill,
- Charlotte,
- Raleigh,
- Winston-Salem, and
- Mecklenburg County.

Since source of income is not prohibited under the Fair Housing Act, a landlord can deny a person a lease based upon the type of source of income they use to pay rent if the municipality has not enacted protections.



A prospective tenant applied to rent an apartment in the landlord's apartment complex in 2017. At the time of application, the prospective tenant had a housing subsidy for individuals living with AIDS. The housing subsidy guarantees that eligible individuals would pay only 30% of their monthly income towards rent with the remaining balance paid by the subsidy.

The tenant applied for an apartment with a monthly rent of $1,384. The landlord rejected the application due to insufficient income. Further, all rental applicants who were rejected had to wait 60 days before they could reapply to rent another apartment unit.

Upon receiving the prospective tenant's complaint in 2017, a non-profit fair housing agency conducted telephone tests to investigate the allegations. The tests consisted of testers posing as a daughter of a subsidy recipient and a Section 8 Voucher holder. During all of the tests, the staff at the apartment complex confirmed their policy of requiring all applicants to earn 4 times the total rent in income, even if the applicant had a subsidy that would pay part or all of the rent.

The testers explained to Staff how the subsidies worked and that the government would pay a large percentage of the rent. Most importantly, they conveyed that it would be impossible to have an income low enough to receive a subsidy but high enough to satisfy the 4-times-the-rent requirement. The staff indicated they understood the prospective tenants' concerns but had to adhere to the company's policy of applying the income tests to all applicants even if a subsidy was used.

Regarding the landlord's conduct:

A. *So long as a policy is evenly and uniformly enforced, there is no violation.*
B. *Minimum income tests can create liability when they are not reflective of the housing payment.*
C. *Landlords can always establish minimum income levels for housing.*
D. *Income is not a protected class and will not be considered as a basis for fair housing discrimination.*

Conclusion

The court found that there was a correlation between an individual's disability and source of income. The landlord's income test policy adversely affected applicants with subsidies that had a disabled person in their household.

The Court stated that the landlord did not prove that their established company policy was necessary to achieve its interest of reducing the high level of arrears amongst its tenants. The opinion further elaborated that source of income discrimination alone cannot be the basis of an FHA violation; however, it was prohibited under State law.

The Court stated the landlord:

- treated applicants with subsidies less favorably with subsidies against both their rent share and the voucher share of the rent for which they were not personally responsible,
- intentionally discriminated against applicants with subsidies which forced them to satisfy an unreachable and illogical standard, and
- evaluated applicants with subsidies differently than applications with no subsidy.

Compensatory damages in the amount of $240,540 and $750,000 in punitive damages were assessed against the landlord. The Court also enjoined the landlord from:

- denying or withholding rental apartments, or otherwise making rental apartments unavailable on the basis of disability or lawful source of income, including application of minimum income requirements to applicants with rental subsidies or vouchers,
- discriminating against applicants with rental subsidies or vouchers in the terms or conditions of the rental process because of disability of source of income, including by offering variances and waivers to rental criteria to non-subsidy applicants and not to subsidy applicants,
- requiring rejected applicants to wait a minimum period of time before reapplying for apartments to rent; and
- coercing, intimidating, threatening, or interfering with any person, on account of having aided or encouraged another person in the exercise or enjoyment of any rights granted or protected by FHA.

Additionally, the landlord had to:

1. adopt written non-discriminatory rental criteria,
2. contract with a third party to provide a fair housing training program, and
3. maintain sufficient records to verify compliance with the terms of the injunction and make records available to the nonprofit fair housing agency.

FAIR HOUSING: DOMESTIC VIOLENCE

Real estate brokers have a significant responsibility in ensuring the FHA is not violated as they are conducting real estate transactions. Therefore, case studies serve as opportunities for practical application of real-life scenarios involving fair housing violations and/or adherence to state and federal fair housing laws.

The Commission expects brokers to be proactive in receiving education on fair housing principles, so they are enhancing their comprehension of potential legal challenges and adopting best practices for compliance.

According to HUD, The *Violence Against Women Act* (VAWA, 34 U.S.C. 12471 *et seq.*) provides housing protections for survivors of domestic violence, dating violence, sexual assault, and/or stalking. Despite the name of the law, VAWA's protections apply to an individual, regardless of sex, sexual orientation, or gender identity.

The following case studies are real-life examples violations of FHA and Violence Against Women Act (hereafter referred to as "VAWA.")

Violence Against Women Act (VAWA): A Case against a Housing Authority

In April of 2016, a tenant was strangled and beaten in the head and stomach by an ex-boyfriend. Over the course of several months, the abuse continued by the ex-boyfriend, and she was repeatedly threatened and held at gunpoint.

The tenant filed a Domestic Violence Protective Order (hereafter referred to as "DVPO") with the local police department which the Court granted. A week after the DVPO was issued, one of the tenant's children was sitting on the back porch and was accosted by two men pointing guns. The child ran inside the residence to warn her mother, the tenant, as the men tried to force the door open.

As the tenant dialed 911, the men fired shots into the apartment, striking the wall of a bedroom. The next day, the shooting was reported to the family social worker who then informed the police. The social worker asked the Housing Authority for an emergency transfer for the tenant. A Housing Authority employee was uncooperative and informed the social worker that neither the DVPO nor shooting qualified the tenant to transfer to another unit.

The social worker then called the Housing Authority and was informed by the employee that the tenant did in fact qualify for a transfer. However, the tenant never heard back from the Housing Authority. During the investigation of the shooting, the tenant identified the alleged men who shot up her apartment and they were arrested. As a result of their arrest, one of her children was followed to school and called a "snitch" and the tenant also received threats on social media.

Due to being attacked, held at gunpoint, and individuals following her child to school, the tenant began staying with family and friends. She made another request in writing to transfer apartments in 2016. Her transfer request was denied, and her lease was terminated.

The tenant filed an injunction against the Housing Authority, and they responded by seeking to evict her. The Courts found in favor of the tenant and ordered the Housing Authority to transfer her family to another apartment. The tenant moved to another unit in March of 2017. However, six months later the Housing Authority terminated her lease.

The tenant filed a federal discrimination complaint in 2018 against the Housing Authority.

Regarding the actions of the Housing Authority:

a. A landlord has no duty to protect tenants from third parties.
b. The Housing Authority should have granted the emergency transfer.
c. The landlord can only be responsible for conduct of those actually on a lease.
d. The Housing Authority was not subject to any orders of the court.

Conclusion

As a result of this case, the Housing Authority entered into the first ever Federal Consent Decree. This decree addressed the landlord's obligations under the federal Violence Against Women Act. The VAWA requires housing authorities to provide tenants who are victims of domestic violence with specific housing protections. The Federal Consent Decree required the Housing Authority to:

- provide tenants who are facing eviction with written notice of their rights under VAWA,
- provide tenants who are denied admission to the Housing Authority written notice of their rights under VAWA,
- make emergency transfer request forms and the Housing Authority's emergency transfer plan available and accessible to all tenants,
- assign a current Housing Authority employee as a point person to answer questions about VAWA's housing protections,
- provide regular, mandatory training on the Fair Housing Act for all property managers and employees involved in lease intake, transfer decisions, and lease termination decisions,
- send a letter to public housing tenants each year soliciting feedback on all aspects of the Housing Authority, including its employees, and
- provide documentation for three consecutive years demonstrating the Housing Authority's compliance with the Consent Decree.

Why does the Fair Housing Act provide protection to survivors of domestic violence?

Survivors of domestic violence may face discrimination due to their gender or familial status; therefore, Fair Housing Act (hereafter referred to as "FHA") ensures that they are protected from discrimination. Further, domestic violence is often gender-based, with a disproportionate number of victims being women. So, the FHA's prohibition of gender-based discrimination safeguards survivors, particularly women against unfair housing practices.

What is the Violence Against Women Act?

The *Violence Against Women Act* (hereafter referred to as "*VAWA*") was amended in March 2022, and became effective on October 1, 2022. As part of the reauthorization/amendment, Congress required HUD to implement and enforce the housing provisions of VAWA consistent with, and in a manner that provides, the same rights and remedies as those provided for in the FHA.

What are VAWA's housing protections?

The VAWA provides comprehensive housing protections, including:

1. Non-discrimination,
    - Individuals cannot be denied admission, assistance, be evicted, or have participation terminated in covered housing programs based on their status as survivors of VAWA violence/abuse, provided they are otherwise eligible.
2. Notification of Occupancy Rights,
    - Covered housing providers must furnish applicants or tenants with HUD-approved documents, including Notice of Occupancy Rights under VAWA and a VAWA certification form, at specific times.
3. Emergency Transfers,
    - Survivors can request emergency transfers in covered housing programs if they believe there is a threat of imminent harm due to VAWA violence/abuse. The housing providers must have an emergency transfer plan in place.
4. Confidentiality Requirements,
    - Covered housing providers must maintain confidentiality regarding a person's status as a VAWA survivor and not disclose such information without written consent, except in specific circumstances.
5. Documentation,
    - If requested in writing, survivors may provide documentation of VAWA violence/abuse. The housing provider must accept a range of documentation options, and the survivor has discretion in choosing what to provide.
6. Lease Bifurcation,
    - VAWA protects household members when a covered housing provider removes a member from a lease due to criminal activity directly related to VAWA violence/abuse. Remaining household members are given a reasonable time to establish eligibility or find alternative housing.
7. Prohibition on Retaliation, and
    - It is illegal for housing providers to retaliate against survivors for opposing VAWA-prohibited actions or practices, participating in VAWA-related actions, or filing complaints.
8. The Right to Report Crime and Emergencies.
    - Individuals in housing have the right to seek law enforcement or emergency assistance without facing penalties. Threatening or subjecting individuals seeking assistance to penalties, eviction, or other negative actions is unlawful.

A comprehensive list of additional VAWA resources that are available to victims of domestic violence and landlords can be found on HUD's website.

What HUD programs are covered?

Individuals who are applying for, receiving assistance under, or living in public housing, any housing operated by a public housing authority, voucher programs, homeless assistance programs, federally assisted housing for persons with disabilities or for elderly persons, or any other housing receiving assistance from HUD, may have housing protections under VAWA. Further, if an individual is a tenant in a HUD-funded program, certain VAWA protections may also apply to the resident(s) and associated persons. HUD's covered housing programs include, but are not limited to the following:

- Housing Opportunities for Persons With AIDS (HOPWA) program,
- HOME Investment Partnerships (HOME) program,
- Multifamily rental housing under section 236 of the National Housing Act, and
- Housing Trust Fund.

NOTE: VAWA also protects individual's rights to report crime and emergencies from their home, regardless of whether their housing is assisted under a covered housing program.

How do you file VAWA complaints?

If an individual suspects that their rights have been violated, they may file a complaint with HUD's Office of Fair Housing and Equal Opportunity (FHEO). According to the website, the complaint is available in multiple languages and can be filed via email, mail, or over the telephone.

It is important that individuals provide a narrative of the alleged violation in the complaint to ensure their concerns are appropriately addressed during the investigatory process.

NOTE: A comprehensive list of additional VAWA resources that are available to victims of domestic violence and landlords can be found on HUD's website.

FAIR HOUSING: SERVICE AND ASSISTIVE ANIMALS

The purpose of the federal and state fair housing acts is to ensure that members of protected classes have equal access to housing. According to FHA, the seven protected classes:

- race,
- color,
- religion,
- sex,
    - Gender identity and sexual orientation
- handicapping conditions/disability,
- familial status, and
- national origin.

What is a disability?

FHA defines a disability as:

> …those individuals with mental or physical impairments that substantially limit one or more major life activities. The term mental or physical impairment may include conditions such as blindness, hearing impairment, mobility impairment, HIV infection, mental retardation, alcoholism, drug addiction, chronic fatigue, learning disability, head injury, or mental illness.

Often, individuals with a disability request a reasonable accommodation from the landlord so they can use and enjoy housing like someone without a disability.

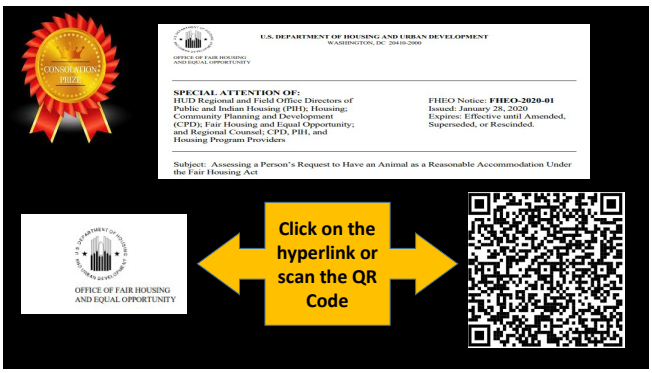
What is a reasonable accommodation?

A reasonable accommodation is a change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a person with a disability to have equal opportunity to use and enjoy a dwelling, including public and common use spaces.

The request for a reasonable accommodation for an assistance animal may be:

- oral or written; and
- requested by others on behalf of the individual, including a person legally residing in the unit with the requesting individual, a legal guardian, or an authorized representative.

Under FHA, a person can make a reasonable accommodation request at any time; the housing provider must consider the request even if the resident made the request after bringing the animal into the dwelling. A housing provider's failure to provide a reasonable accommodation is a violation of FHA and state fair housing laws.



According to the FHEO Notice, FHEO-2020-01, FHA requires housing providers to modify or make exceptions to policies governing animals when it may be necessary to permit persons with disabilities to utilize animals. Moreover, housing providers should follow the guidance of the Department of Justice when assessing whether an animal is a service animal under the American with Disabilities Act (hereafter referred to as ADA).

ADA regulations generally require state and local governments and public accommodations to permit the use of service animals by an individual with a disability.

A prospective tenant filed a complaint in October 2021 with HUD alleging injury due to the landlord's discriminatory acts. The prospective tenant indicated the owner and property manager refused to rent the property to them because they had a dog that served as their service animal.

The tenant had no proof that the dog was properly trained as a service animal. The animal had not been certified of any tasks that it could perform on behalf of the tenant. The only documentation that the tenant had was a letter from a medical provider that the dog was assistive regarding a disability of the tenant.

Regarding the landlord and property manager's actions:

A. *A landlord may exercise their own discretion in whether to allow pets.*
B. *The property manager is protected from liability if they were acting at the express instruction of the owner.*
C. *The property manager and landlord are correct because the dog is not properly certified.*
D. *The landlord and property manager are subject to fair housing violations.*

Conclusion

The tenant provided medical documentation that the service animal was necessary for their use of the dwelling. Therefore, the property manager and landlord were obligated to allow an exemption for the tenant. Due to their failure to provide this reasonable accommodation, the property manager and landlord entered into a "Conciliation Agreement" with HUD to resolve the allegations of discrimination based upon a disability. Under the agreement, the landlord and/or property manager had to:

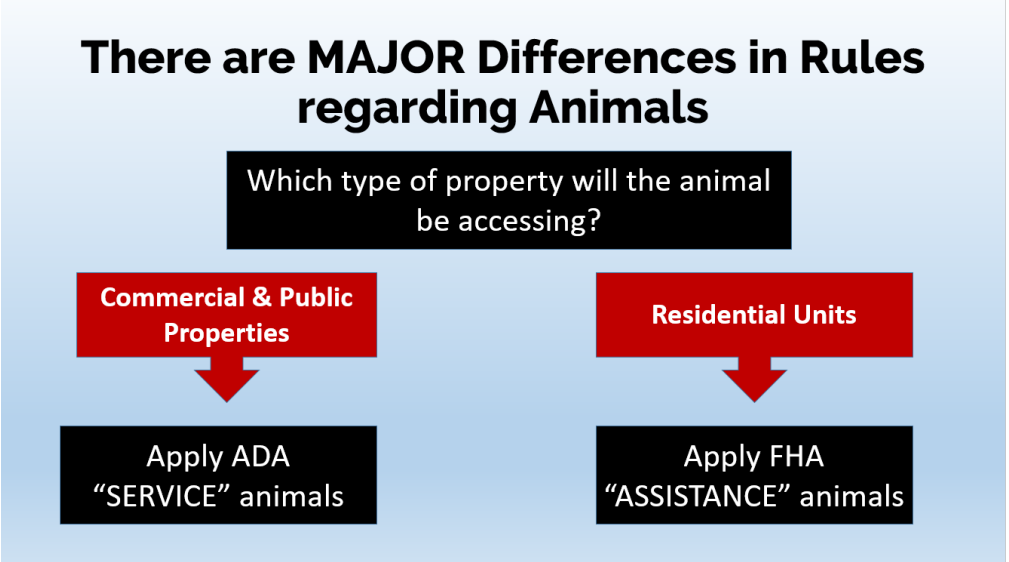
- pay the tenant $6,500,
- read and comply with:
    - HUD's *Joint Statement on Reasonable Accommodation*
    - "Assessing a Person's Request to Have an Animal as a Reasonable Accommodation Under the Fair Housing Act" Memorandum
- complete a fair housing training class,
- comply with the Fair Housing Act, and
- agree to monitoring by HUD which included inspections of their property and the ability to interview tenants to determine compliance with FHA.

NOTE: An attorney should be consulted before denying a reasonable accommodation request to prevent violations of the FHA.

Differences: Service and Assistance Animals

Significant differences in regulations exist regarding accommodation requests involving animals. Identifying the applicable rules hinges on evaluating the type of property for which the accommodation request is being made.

- The American with Disabilities Act (ADA) applies to commercial properties/ places of public accommodation. The ADA defines criteria for SERVICE animals.
- The Fair Housing Act (FHA) applies to residential properties. The FHA defines criteria for ASSISTANCE animals.

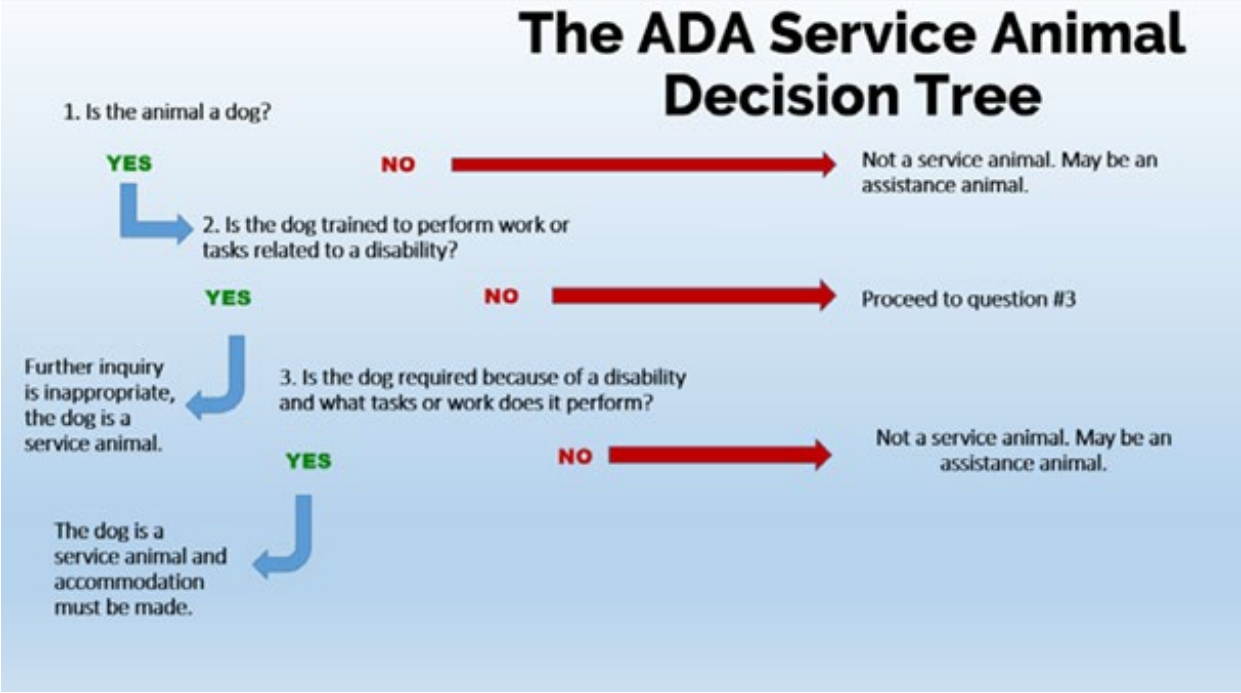


Service Animals

According to the ADA, a service animal means any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Further, the work or tasks performed by a service animal must be directly related to the individual's disability.

According to the *FHEO Notice FHEO-2020-01*, housing providers may use the following questions as a guide to help determine if the animal is a service animal under ADA.

NOTE: For clarity, a service animal is any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability. Therefore, any other animal may be a support animal, not a service animal.



1. ***Is the animal a dog?***

   YES: Proceed to Question 2.

   NO: The animal is not a service animal but may be another type of assistance or support animal for which a reasonable accommodation is needed under FHA. Proceed to Question 1 under the questions for a reasonable accommodation under FHA.

2. ***Is it readily apparent that the dog is trained to do work or perform tasks for the benefit of an individual with a disability?***

   YES: Additional inquiries are unnecessary and inappropriate because the animal is a service animal.

   NO: Proceed to Question 3.

3. ***Is the animal required because of a disability and what work or task has the animal been trained to perform?***

   YES: If the animal is required because of a disability and the work or task is identified, then the reasonable accommodation should be granted because the animal is a service animal.

NO/NONE: If the animal is not required because of a disability, the animal does not qualify as a service animal under ADA but may be a support or other type of assistance animal that needs to be accommodated under FHA.

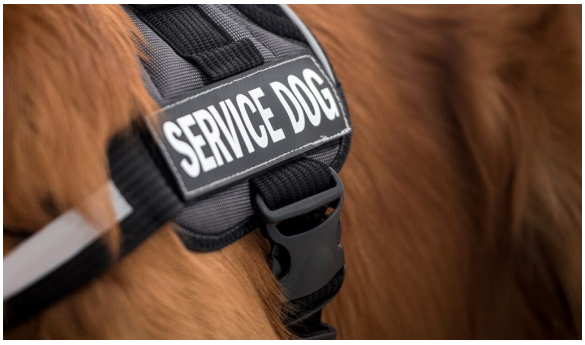
NOTE: Performing a work or tasks means that the dog is trained to take a specific action when needed to assist the person with a disability. Some examples of the disability support functions that service animals perform are:

- alerting a hearing-impaired person to sounds;
- guiding a visually-impaired person;
- pulling a wheelchair; or
- reminding a person to take their medication.

When can a request for a reasonable accommodation be legally denied?

A reasonable accommodation request may be legally denied when/if:

- the accommodation will cause an undue financial and administrative burden on the housing provider;
- accommodating the request will fundamentally alter the housing provider's services;
- the assistance animal poses a direct threat to the health and safety of others that cannot be reduced or eliminated by another reasonable accommodation; or
- an assistance animal causes substantial physical damage to the property or others that cannot be reduced or eliminated by another reasonable accommodation.



Kayla, a prospective tenant, has a cat named Lucky. Lucky is her pet. She also has a service animal named Lucy, a dog, to help her cope with her Post Traumatic Stress Disorder. Kayla asked the landlord for a reasonable accommodation for Lucy. The landlord has informed Kayla that she has a one pet policy. Therefore, Kayla cannot have Lucky and Lucy in the apartment with her.

Is it permissible for a tenant to have a pet and request a reasonable accommodation for a service animal if the landlord has a one-pet policy?

_____

Assistance Animals

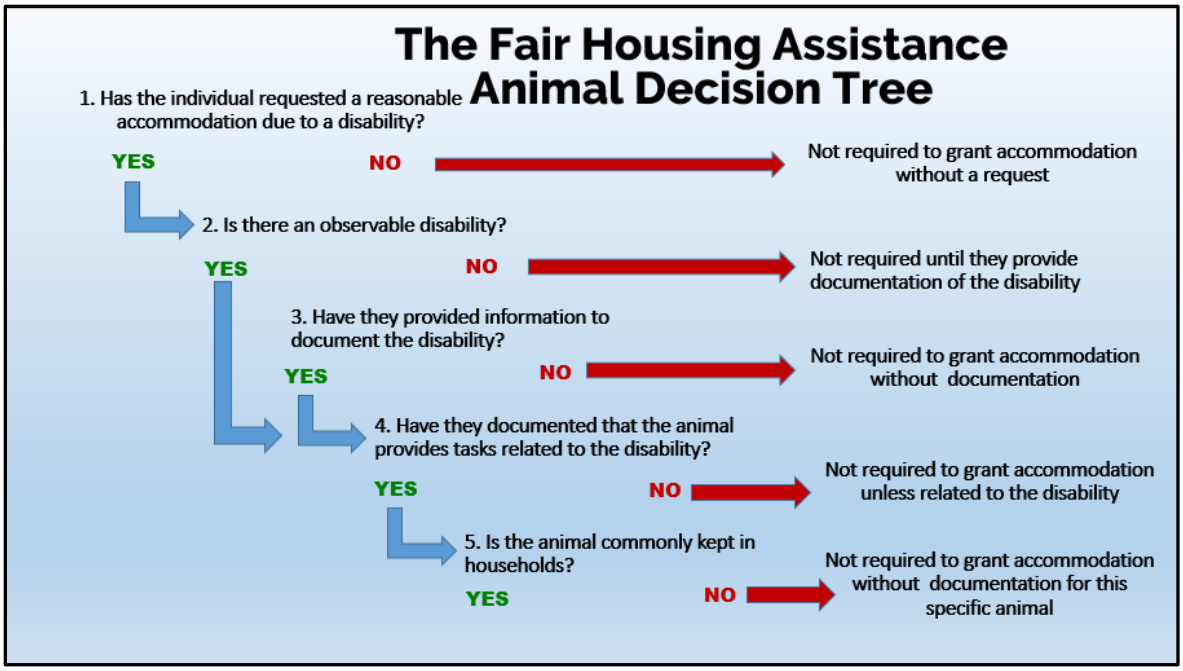
As mentioned previously, FHA makes it unlawful for a housing provider to refuse a reasonable accommodation for a person with a disability who needs it to use and enjoy the dwelling. Therefore, housing providers are required to modify or make exceptions to policies when it may be necessary to permit persons with disabilities to have assistance animals.

Assistance animals (i.e., support animals) work, perform tasks, provide assistance, or provide emotional support for a person with a physical or mental impairment that substantially limits at least one major life activity or bodily function.

The *FHEO Notice FHEO-2020-01* states, in relevant part:

> This notice explains certain obligations of housing providers under the Fair Housing Act (FHA) with respect to animals that individuals with disabilities may request as reasonable accommodations.
>
> There are two types of assistance animals:
> (1) service animals, and
> (2) other trained or untrained animals that do work, perform tasks, provide assistance, and/or provide therapeutic emotional support for individuals with disabilities (referred to in this guidance as a "support animal").

Further, according to the FHEO Notice FHEO-2020-01, issued by HUD, housing providers may use the following questions as a guide to help them decide regarding a reasonable accommodation request:



1. Has the individual requested a reasonable accommodation to get or keep an animal in connection with a physical or mental impairment or disability?

   YES: Proceed to Question 2.

   NO: The housing provider is not required to grant a reasonable accommodation if the purpose is not related to a handicapping condition or disability.

2. Does the individual have an observable disability or does the housing provider (or agent making the determination for the housing provider) already have information giving them reason to believe that the person has a disability?

   YES: Proceed to Question 4.

   NO: Proceed to Question 3.

   Note: Observable disabilities include blindness or low vision, deafness or being hard of hearing, mental illness, or mobility limitations. Some impairments may not be observable. In such case, the housing provider may request information regarding the disability and the disability-related need for the animal but is not entitled to know the individual's diagnosis.

3. Has the individual requesting the accommodation provided information that reasonably supports that the individual seeking the accommodation has a disability?

   YES: Proceed to Question 4.

   NO: The housing provider is not required to grant the accommodation unless this information is provided. Note that the housing provider must provide the individual with a reasonable opportunity to submit the information.

   Information about the disability may include:

   - a determination of a disability from a federal, state, or local government,
   - a receipt of disability benefits, eligibility of a housing voucher due to disability, or
   - information confirming a disability from a health care professional.

   Before denying a reasonable accommodation request due to lack of information, the housing provider is encouraged to engage in a good-faith dialogue with the requesting party called the "interactive process."

The housing provider may not insist on specific types of evidence if the information which is provided or known to the housing provider meets the requirements. Also, a housing provider may not request the disclosure of the diagnosis, severity of the disability, or medical records/examination.

An attorney should be consulted before denying a reasonable accommodation request to prevent violations of the Fair Housing Act. Also, the NC Human Relations Commission is a resource for brokers and housing providers regarding fair housing questions and concerns. This agency can provide information regarding reasonable accommodation request and when they can be denied.

Also, it is recommended that individuals seeking reasonable accommodations for assistance animals ask health care professionals to provide the following statements /certifications:

- the patient has a physical or mental impairment;
- the patient's impairment(s) substantially limit(s) at least one major life activity or major bodily function; and
- the patient needs the animal(s) because it does work, provides assistance, performs at least one task that benefits the patient because of their disability, or because it provides therapeutic emotional support to alleviate a symptom or effect of the disability of the patient.

Some certificates and licensing documents can be obtained via the internet for a nominal fee. According to *FHEO Notice FHEO-2020-01,* documentation from the internet is not, by itself, sufficient to reliably establish an individual has a non-observable disability or disability related-need for the assistance animal.

4. Has the individual requesting the accommodation provided information which reasonably supports that the animal does work, performs tasks, provides assistance, and/or provides therapeutic emotional support with respect to the individual's disability?

   YES: Proceed to Question 5.

   NO: The housing provider is not required to grant the accommodation unless this information is provided but may not deny the accommodation on the grounds that the individual has not provided the information until the housing provider has provided a reasonable opportunity to do so.

5. Is the animal commonly kept in households?

   YES: The reasonable accommodation should be provided.

NO (animal is a reptile, barnyard animal, monkey, kangaroo, or other non-domesticated animal): A reasonable accommodation should not be provided unless the individual demonstrates a disability-related therapeutic need for the specific animal. The individual is encouraged to submit documentation from a health care professional confirming the need for the animal.

Unique animals may be a reasonable accommodation if the animal is trained to do work or perform tasks that a dog cannot perform and the information from the health care professional confirms:

- the individual has allergies that prevents using a dog; or
- without the animal, the symptoms or effects of the person's disability will be significantly increased.

It may be helpful for patients to ask health care professionals to provide the following additional information:

- the date of the last consultation with the patient;
- any unique circumstances justifying the patient's need for the particular animal (if already owned or identified by the individual); and
- whether the health care professional has reliable information about this specific animal or whether they specifically recommend this type of animal.

Example: A capuchin monkey is trained to assist a person with a spinal cord injury who has paralysis. The monkey, because it has hands, can retrieve a bottle of water from the refrigerator, unscrew a cap, insert a straw, or place the bottle of water in a holder for the individual. A service dog is not able to perform these types of manual tasks.

Although domesticated, non-domesticated, and unique animals may be considered for reasonable accommodations, a housing provider may deny a reasonable accommodation request due to:

- a direct threat to the health and safety of others; or
- the potential of the animal to cause substantial physical damage to the property of others.

Reasonable accommodation requests must be analyzed using objective evidence about the particular conduct of the assistance animal, and not the conduct of similar animals.

NOTE: Policies including pet deposits, fees, and/or breed restrictions do not apply to assistance or service animals because these animals are not considered pets. A housing provider may charge a fee or deposit for pets.

Sarah, a tenant, leases a single-family home managed by Bob, a property manager. Bob has restricted the number of assistance/service animals Sarah can have in the property. However, upon leasing the property, Sarah sent Bob a letter from her medical professional indicating that she has a disability that requires the use of a service dog and parrot. Bob denied Sarah's request to have a parrot in the residence.

In regard to the policies of Bob, the property manager:

A. *He has likely violated fair housing laws with this type of restriction.*
B. *Bob is not subject to fair housing because he is not the owner.*
C. *So long as Bob applies the policy to everyone in the same fair manner there is no violation.*
D. *Restrictions on the number of service and assistive animals in one dwelling are enforceable.*

NOTE: Property managers who develop policies regarding restricting the number of assistance animals that are allowed in a property, may be in violation of FHA. FHA makes it unlawful for a housing provider to refuse a reasonable accommodation for a person with a disability who needs it to use and enjoy the dwelling. Therefore, housing providers are required to modify or make exceptions to policies when it may be necessary to permit persons with disabilities to have assistance animals. An attorney should be consulted before denying a reasonable accommodation request to prevent violations of FHA.

Where do I file a fair housing complaint?

A fair housing complaint can be filed with HUD's Fair Housing/Equal Opportunity Housing Office using the following options:

- online in English or Spanish at https://www.hud.gov
- download a HUD complaint form in a variety of languages and email it to a local FHEO office; or
- call an FHEO intake Specialist at 1-800-669-9777.

In North Carolina, complaints for alleged violations of fair housing laws must be filed within one year of the alleged violation with the North Carolina Human Relations Commission (NCHRC), 116 West Jones Street, Suite 2, Raleigh, NC. The phone number for the North Carolina Human Relations Commission is (919) 431-3036 and the web address is https://www.oah.nc.gov/civil-rights-division/human-relations-commission.

Once a complaint has been filed, the NCHRC will investigate to determine whether unlawful discrimination has occurred, and

- attempt to eliminate discriminatory practices by (1) having an informal conference, (2) persuasion, or (3) conciliation; or
- issue a right-to-sue letter if allegations of discrimination are not determined.

If a resolution cannot be achieved by NCHRC, an individual may:

- request a right-to-sue letter so that they may file a civil lawsuit;
- allow NCHRC to file a lawsuit for them; or
- have an administrative hearing to determine a final decision on the matter.

An individual may choose to file a civil lawsuit at their expense without filing a complaint with the NCHRC at any time. A civil lawsuit must be filed within one year of an alleged violation of the state fair housing laws and within two years of federal fair housing laws.

NOTE: The North Carolina Real Estate Commission has published a brochure entitled *Fair Housing* to assist brokers and housing providers with the Fair Housing Act. It is available at:

https://www.ncrec.gov/Brochures/FairHousingBrochure.pdf.

NOTE: A violation of the fair housing law is also violation of the N.C. Gen. Stat. §93A-6(a)(10) and (15) and Commission rule 58A .1601.

Fair Housing Act: Homeowner Association

The Plaintiffs filed an application with the Homeowners' Association to install a wheelchair ramp for their disabled parent. The HOA responded with approval but required Plaintiffs to sign a statement agreeing to remove the ramp when it was "no longer needed." In need of immediate access to the home and under duress, the Plaintiffs signed the agreement. The Plaintiffs' parent died the following year; however, the Plaintiff continued to enjoy access to the home using the ramp.

The HOA notified the Plaintiffs and requested removal of the wheelchair ramp within 30 days. The Plaintiffs contacted the Director of the HOA about their concerns. However, after the Director spoke with the Board, the Board decided that the ramp had to be removed within 30 days.

After receiving this information, the Plaintiffs submitted a letter to the Board by their optometrist stating that the Plaintiff was legally blind. The doctor recommended that she continue to use the ramp due to her visual impairment. The HOA responded to the letter and indicated that the Plaintiff may keep the wheelchair ramp as long as the Plaintiff had a certifiable disability that required a wheelchair ramp. The letter also stated that:

- the ramp must be removed when it was no longer needed by the homeowner (i.e., when you sell your home),
- disclosure must be made to the prospective buyer that the wheelchair ramp must be removed upon purchase unless the new owner has a certifiable disability that requires the wheelchair ramp,
- they must submit prior to closing the sale, an Architectural Review Committee request to retain the wheelchair ramp if they have a certifiable disability. If the Board denies the request, the wheelchair ramp must be removed prior to the closing of sale.

Regarding the policies of the HOA:

A. The HOA made an improper restoration condition and demand.
B. Since the owner agreed to the restoration terms, the HOA can enforce the removal.
C. The removal is justified because the disability for which the ramp was created no longer exists.
D. Since the owner does not have approval of the Architectural Review Committee, the ramp must be removed.

Conclusion

Although the HOA allowed the wheelchair ramp to be built on the property, they violated the FHA by imposing unreasonable requirements upon the Plaintiff as a condition to grant the requested modification.

The FHA expressly provides that housing providers may only require restoration of modifications made to the interiors of dwellings at the end of a tenancy. Reasonable modifications such as ramps to front doors of a dwelling are not required to be restored. Most importantly, the request from the Plaintiffs was not a reasonable modification, it was a reasonable accommodation

request. Reasonable modifications are requests by a tenant to make physical alterations to property that is owned by another person, often times a landlord. The Plaintiffs requested a reasonable accommodation to modify their own property; therefore, there is no provision for restoring a reasonable accommodation in the Fair Housing Act.

Further, the HOA's instructions to the Plaintiff to either remove the ramp prior to sale, have the prospective buyer submit a request if they had a certifiable disability that required the ramp, or removal of the ramp prior to the close of sale, was discriminatory housing practices. Essentially, the HOA's instructions limited the Plaintiffs right to sell an accessible property as well as market their home.

NOTE: These case studies are meant to provide you with information that you can use to help identify patterns of discrimination in real estate transactions (i.e., sales/leasing), and serve as educational tools for compliance which can contribute to the prevention of future fair housing violations.

NORTH CAROLINA REAL ESTATE COMMISSION

Residential Property And Owners' Association Disclosure Statement

Protecting the Public Interest in Real Estate Brokerage Transactions

Property Address/Description:_____
Owner's Name(s): _____

North Carolina law N.C.G.S. 47E requires residential property owners to complete this Disclosure Statement and provide it to the buyer prior to any offer to purchase. There are limited exemptions for completing the form, such as new home construction that has never been occupied. Owners are advised to seek legal advice if they believe they are entitled to one of the limited exemptions contained in N.C.G.S. 47E-2.

An owner is required to provide a response to every question by selecting Yes (Y), No (N), No Representation (NR), or Not Applicable (NA). An owner is not required to disclose any of the material facts that have a NR option, even if they have knowledge of them. However, failure to disclose latent (hidden) defects may result in civil liability. The disclosures made in this Disclosure Statement are those of the owner(s), not the owner's broker.

- If an owner selects Y or N, the owner is only obligated to disclose information about which they have actual knowledge. If an owner selects Y in response to any question about a problem, the owner must provide a written explanation or attach a report from an attorney, engineer, contractor, pest control operator, or other expert or public agency describing it.
- If an owner selects N, the owner has no actual knowledge of the topic of the question, including any problem. If the owner selects N and the owner knows there is a problem or that the owner's answer is not correct, the owner may be liable for making an intentional misstatement.
- If an owner selects NR, it could mean that the owner (1) has knowledge of an issue and chooses not to disclose it; or (2) simply does not know.
- If an owner selects NA, it means the property does not contain a particular item or feature.

For purposes of completing this Disclosure Statement: **"Dwelling"** means any structure intended for human habitation, **"Property"** means any structure intended for human habitation and the tract of land, and **"Not Applicable"** means the item does not apply to the property or exist on the property.

OWNERS: The owner must give a completed and signed Disclosure Statement to the buyer no later than the time the buyer makes an offer to purchase property. If the owner does not, the buyer can, under certain conditions, cancel any resulting contract. An owner is responsible for completing and delivering the Disclosure Statement to the buyer even if the owner is represented in the sale of the property by a licensed real estate broker and the broker must disclose any material facts about the property that the broker knows or reasonably should know, regardless of the owner's response.

The owner should keep a copy signed by the buyer for their records. If something happens to make the Disclosure Statement incorrect or inaccurate (for example, the roof begins to leak), the owner must promptly give the buyer an updated Disclosure Statement or correct the problem. Note that some issues, even if repaired, such as structural issues and fire damage, remain material facts and must be disclosed by a broker even after repairs are made.

BUYERS: The owner's responses contained in this Disclosure Statement are not a warranty and should not be a substitute for conducting a careful and independent evaluation of the property. **Buyers are strongly encouraged to:**
• Carefully review the entire Disclosure Statement.
• Obtain their own inspections from a licensed home inspector and/or other professional.
DO NOT assume that an answer of N or NR is a guarantee of no defect. If an owner selects N, that means the owner has no actual knowledge of any defects. It does not mean that a defect does not exist. If an owner selects NR, it could mean the owner (1) has knowledge of an issue and chooses not to disclose it, or (2) simply does not know.

BROKERS: A licensed real estate broker shall furnish their seller-client with a Disclosure Statement for the seller to complete in connection with the transaction. A broker shall obtain a completed copy of the Disclosure Statement and provide it to their buyer-client to review and sign. All brokers shall (1) review the completed Disclosure Statement to ensure the seller responded to all questions, (2) take reasonable steps to disclose material facts about the property that the broker knows or reasonably should know regardless of the owner's responses or representations, and (3) explain to the buyer that this Disclosure Statement does not replace an inspection and encourage the buyer to protect their interests by having the property fully examined to the buyer's satisfaction.

- **Brokers are NOT permitted to complete this Disclosure Statement on behalf of their seller-clients.**
- Brokers who own the property may select NR in this Disclosure Statement but are obligated to disclose material facts they know or reasonably should know about the property.

Buyer Initials _____ Owner Initials _____
Buyer Initials _____ Owner Initials _____

SECTION A.
STRUCTURE/FLOORS/WALLS/CEILING/WINDOW/ROOF

	Yes	No	NR
A1. Is the property currently owner-occupied? Date owner acquired the property:_____ If not owner-occupied, how long has it been since the owner occupied the property?_____	◯	◯	◯
A2. In what year was the dwelling constructed?_____			◯
A3. Have there been any structural additions or other structural or mechanical changes to the dwelling(s)?	◯	◯	◯
A4. The dwelling's exterior walls are made of what type of material? (Check all that apply) ○ Brick Veneer ○ Vinyl ○ Stone ○ Fiber Cement ○ Synthetic Stucco ○ Composition/Hardboard ○ Concrete ○ Aluminum ○ Wood ○ Asbestos ○ Other:_____			◯
A5. In what year was the dwelling's roof covering installed?_____			◯
A6. Is there a leakage or other problem with the dwelling's roof or related existing damage?	◯	◯	◯
A7. Is there water seepage, leakage, dampness, or standing water in the dwelling's basement, crawl space, or slab?	◯	◯	◯
A8. Is there an infestation present in the dwelling or damage from past infestations of wood destroying insects or organisms that has not been repaired?	◯	◯	◯

A9. Is there a problem, malfunction, or defect with the dwelling's:

	NA	Yes	No	NR		NA	Yes	No	NR		NA	Yes	No	NR
Foundation	◯	◯	◯	◯	Windows	◯	◯	◯	◯	Attached Garage	◯	◯	◯	◯
Slab	◯	◯	◯	◯	Doors	◯	◯	◯	◯	Fireplace/Chimney	◯	◯	◯	◯
Patio	◯	◯	◯	◯	Ceilings	◯	◯	◯	◯	Interior/Exterior Walls	◯	◯	◯	◯
Floors	◯	◯	◯	◯	Deck	◯	◯	◯	◯	Other:_____	◯	◯	◯	◯

Explanations for questions in Section A (identify the specific question for each explanation):

_____
_____
_____
_____

SECTION B.
HVAC/ELECTRICAL

	Yes	No	NR
B1. Is there a problem, malfunction, or defect with the dwelling's electrical system (outlets, wiring, panels, switches, fixtures, generator, etc.)?	◯	◯	◯
B2. Is there a problem, malfunction, or defect with the dwelling's heating and/or air conditioning?	◯	◯	◯
B3. What is the dwelling's heat source? (Check all that apply; indicate the year of each system manufacture)			◯

○ Furnace [_____ # of units] Year:_____ ○ Heat Pump [___# of units] Year:____

○ Baseboard [___ # of bedrooms with units] Year:____ ○ Other:_____ Year:____

	Yes	No	NR
B4. What is the dwelling's cooling source? (Check all that apply; indicate the year of each system manufacture)			◯

○ Central Forced Air:_____ Year:_____ ○ Wall/Windows Unit(s):_____ Year:_____

○ Other:_____ Year:_____

B5. What is the dwelling's fuel source? (Check all that apply)			◯

○ Electricity ○ Natural Gas ○ Solar ○ Propane ○ Oil ○ Other:_____

Explanations for questions in Section B (identify the specific question for each explanation):

_____

_____

_____

_____

SECTION C.
PLUMBING/WATER SUPPLY/SEWER/SEPTIC

	Yes	No	NR
C1. What is the dwelling's water supply source? (Check all that apply)			◯

○ City/County ○ Shared well ○ Community System ○ Private well ○ Other:_____

If the dwelling's water supply source is supplied by a private well, identify whether the private well has been tested for: (Check all that apply).

○ Quality ○ Pressure ○ Quantity

If the dwelling's water source is supplied by a private well, what was the date of the last water quality/quantity test?_____

C2. The dwelling's water pipes are made of what type of material? (Check all that apply)			◯

○ Copper ○ Galvanized ○ Plastic ○ Polybutylene ○ Other:_____

C3. What is the dwelling's water heater fuel source? (Check all that apply; indicate the year of each system manufacture) ○ Gas:_____ ○ Electric:_____ ○ Solar:_____ ○ Other:_____			◯

C4. What is the dwelling's sewage disposal system? (Check all that apply)			◯

○ Septic tank with pump ○ Community system ○ Septic tank ○ Drip system

○ Connected to City/County System ○ City/County system available ○ Other:_____

○ Straight pipe (wastewater does not go into a septic or other sewer system) *Note: Use of this type of system violates State Law.

If the dwelling is serviced by a septic system, how many bedrooms are allowed by the septic system permit? _____ ○ No Records Available

Date the septic system was last pumped:_____

C5. Is there a problem, malfunction, or defect with the dwelling's:

	NA	Yes	No	NR		NA	Yes	No	NR
Septic system	◯	◯	◯	◯	Plumbing system (pipes, fixtures, water heater, etc.)	◯	◯	◯	◯
Sewer system	◯	◯	◯	◯	Water supply (water quality, quantity, or pressure)	◯	◯	◯	◯

Explanations for questions in Section C (identify the specific question for each explanation):

_____

_____

_____

_____

SECTION D.
FIXTURES/APPLIANCES

	Yes	No	NR
D1. Is the dwelling equipped with an elevator system? If yes, when was it last inspected?_____ Date of last maintenance service: _____	◯	◯	◯

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

	NA	Yes	No	NR		NA	Yes	No	NR		NA	Yes	No	NR		NA	Yes	No	NR
Attic fan, exhaust fan, ceiling fan	◯	◯	◯	◯	Irrigation system	◯	◯	◯	◯	Sump pump	◯	◯	◯	◯	Garage door system	◯	◯	◯	◯
Elevator system or component	◯	◯	◯	◯	Pool/hot tub /spa	◯	◯	◯	◯	Gas logs	◯	◯	◯	◯	Security system	◯	◯	◯	◯
Appliances to be conveyed	◯	◯	◯	◯	TV cable wiring or satellite dish	◯	◯	◯	◯	Central vacuum	◯	◯	◯	◯	Other: _____	◯	◯	◯	◯

Explanations for questions in Section D (identify the specific question for each explanation):

_____
_____
_____
_____

SECTION E.
LAND/ZONING

	Yes	No	NR
E1. Is there a problem, malfunction, or defect with the drainage, grading, or soil stability of the property?	◯	◯	◯
E2. Is the property in violation of any local zoning ordinances, restrictive covenants, or local land-use restrictions (including setback requirements?)	◯	◯	◯
E3. Is the property in violation of any building codes (including the failure to obtain required permits for room additions or other changes/improvements)?	◯	◯	◯
E4. Is the property subject to any utility or other easements, shared driveways, party walls, encroachments from or on adjacent property, or other land use restrictions?	◯	◯	◯
E5. Does the property abut or adjoin any private road(s) or street(s)?	◯	◯	◯
E6. If there is a private road or street adjoining the property, are there any owners' association or maintenance agreements dealing with the maintenance of the road or street? ◯NA	◯	◯	◯

Explanations for questions in Section E (identify the specific question for each explanation):

_____
_____
_____
_____

SECTION F.
ENVIRONMENTAL/FLOODING

	Yes	No	NR
F1. Is there hazardous or toxic substance, material, or product (such as asbestos, formaldehyde, radon gas, methane gas, lead-based paint) that exceed government safety standards located on or which otherwise affect the property?	◯	◯	◯

	Yes	No	NR
F2. Is there an environmental monitoring or mitigation device or system located on the property?	◯	◯	◯
F3. Is there debris (whether buried or covered), an underground storage tank, or an environmentally hazardous condition (such as contaminated soil or water or other environmental contamination) located on or which otherwise affect the property?	◯	◯	◯
F4. Is there any noise, odor, smoke, etc., from commercial, industrial, or military sources that affects the property?	◯	◯	◯
F5. Is the property located in a federal or other designated flood hazard zone?	◯	◯	◯
F6. Has the property experienced damage due to flooding, water seepage, or pooled water attributable to a natural event such as heavy rainfall, coastal storm surge, tidal inundation, or river overflow?	◯	◯	◯
F7. Have you ever filed a claim for flood damage to the property with any insurance provider, including the National Flood Insurance Program?	◯	◯	◯
F8. Is there a current flood insurance policy covering the property?	◯	◯	◯
F9. Have you received assistance from FEMA, U.S. Small Business Administration, or any other federal disaster flood assistance for flood damage to the property?	◯	◯	◯
F10. Is there a flood or FEMA elevation certificate for the property?	◯	◯	◯

NOTE: An existing flood insurance policy may be assignable to a buyer at a lesser premium than a new policy. For properties that have received disaster assistance, the requirement to obtain flood insurance passes down to all future owners. Failure to obtain flood insurance can result in an owner being ineligible for future assistance.

Explanations for questions in Section F (identify the specific question for each explanation):

_____
_____
_____
_____

SECTION G.
MISCELLANEOUS

	Yes	No	NR
G1. Is the property subject to any lawsuits, foreclosures, bankruptcy, judgments, tax liens, proposed assessments, mechanics' liens, materialmens' liens, or notices from any governmental agency that could affect title to the property?	◯	◯	◯
G2. Is the property subject to a lease or rental agreement?	◯	◯	◯
G3. Is the property subject to covenants, conditions, or restrictions or to governing documents separate from an owners' association that impose various mandatory covenants, conditions, and or restrictions upon the lot or unit?	◯	◯	◯

Explanations for question in Section G (identify the specific question for each explanation):

_____
_____
_____
_____

SECTION H.
OWNERS' ASSOCIATION DISCLOSURE

If you answer 'Yes' to question H1, you must complete the remaining questions in Section H. If you answered 'No' or 'No Representation' to question H1, you do not need to answer the remaining questions in Section H.

	Yes	No	NR
H1. Is the property subject to regulation by one or more owners' association(s) including, but not limited to, obligations to pay regular assessments or dues and special assessments? If "yes," please provide the information requested below as to each owners' association to which the property is subject [insert N/A into any blank that does not apply]: a. (specify name)_____ whose regular assessments ("dues") are $_____ per _____. The name, address, telephone number, and website of the president of the owners' association or the association manager are: _____ b. (specify name)_____ whose regular assessments ("dues") are $_____ per _____. The name, address, telephone number, and website of the president of the owners' association or the association manager are: _____ c. Are there any changes to dues, fees, or special assessment which have been duly approved and to which the lot is subject? If "yes," state the nature and amount of the dues, fees, or special assessments to which the property is subject:_____	◯	◯	◯
H2. Is there any fee charged by the association or by the association's management company in connection with the conveyance or transfer of the lot or property to a new owner? If "yes," state the amount of the fees:_____	◯	◯	◯
H3. Is there any unsatisfied judgment against, pending lawsuit, or existing or alleged violation of the association's governing documents involving the property? If "yes," state the nature of each pending lawsuit, unsatisfied judgment, or existing or alleged violation:_____	◯	◯	◯
H4. Is there any unsatisfied judgment or pending lawsuits against the association? If "yes," state the nature of each unsatisfied judgment or pending lawsuit:	◯	◯	◯

Explanations for questions in Section H (identify the specific question for each explanation):

_____
_____
_____
_____

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

Owner Signature: _____ Date _____

Owner Signature: _____ Date _____

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

Buyer Signature: _____ Date _____

Buyer Signature: _____ Date _____

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