

# BOARDING NOW

*Arriving at Your  
Education Destination*



## NORTH CAROLINA REAL ESTATE COMMISSION

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BOARDING PASS



**2026-2027**  
**BROKER-IN-CHARGE**  
**UPDATE**





# Welcome to the 2026-2027 Mandatory Update

The North Carolina Real Estate Commission is honored and excited to bring you the General update and Broker-in-Charge Update courses for the 2026-2027 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 involve 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 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 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 "Boarding Now: Arriving at Your Education Destination" and is built around a travel theme. We did this to maximize engagement in the courses and to create lots of interaction between the instructor and the students. We know students learn best when they are engaged and having fun while learning. We have also powered this year's UPDATE courses with AI tools to create better quality videos and be more innovative in the conveyance of information. Additionally, there are tons of resources shared through 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 *2026-2027 Broker-in-Charge Update (BICUP) Course* is a four (4) hour\* course that must be completed by all Brokers-in-Charge and brokers who have *BIC-Eligible* status and who wish to renew their licenses on active status on July 1, 2027, for the 2027-2028 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:

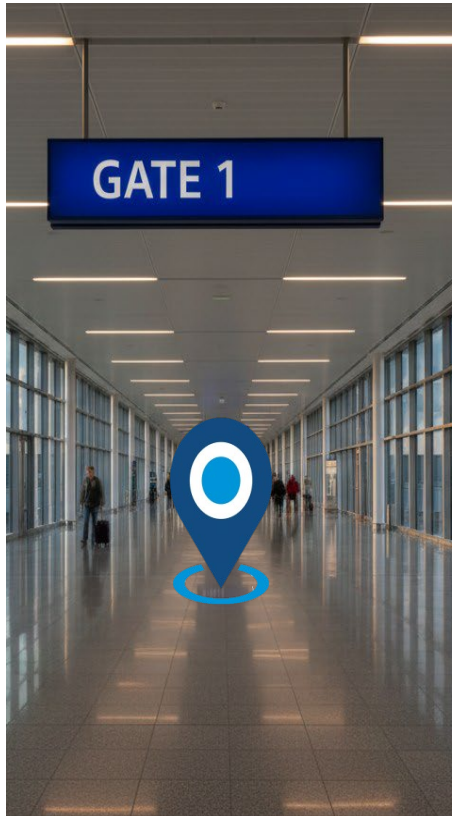
North Carolina Real Estate Commission  
Education and Licensing Division  
P.O. Box 17100  
Raleigh, NC 27619-7100  
Email address: [educ@ncrec.gov](mailto:educ@ncrec.gov)

## TABLE OF CONTENTS

|           |                       |       |     |
|-----------|-----------------------|-------|-----|
| Gate I:   | Appraisals            | ..... | 1   |
| Gate II:  | FAQs                  | ..... | 21  |
| Gate III: | Fake Sellers          | ..... | 47  |
| Gate IV:  | Fair Housing          | ..... | 67  |
| Gate V:   | Law and Rules Update  | ..... | 87  |
| Gate VI:  | Licensing & Education | ..... | 113 |
| Gate VII: | BIC Responsibilities  | ..... | 129 |

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# Gate I



## The New Destination In Appraisals





1. What have you heard about the new appraisal process?

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2. What experiences have you had regarding the current appraisal changes?

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## LEARNING OBJECTIVES



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

- explain the changes that are effective in 2026 regarding appraisals;
- state the effective dates of the changes;
- list the obligations of brokers regarding the new changes; and
- discuss the impact these changes may have on brokerage practices.

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## TERMINOLOGY

**Dynamic Digital Form:** A system that adjusts by expanding and contracting relevant fields as data is entered.

**Fannie Form 1004:** The formal name given by Fannie Mae to the Uniform Residential Appraisal (URAR) form.

**UAD 3.6:** The new dynamic digital appraisal form adopted by Fannie Mae and Freddie Mac.

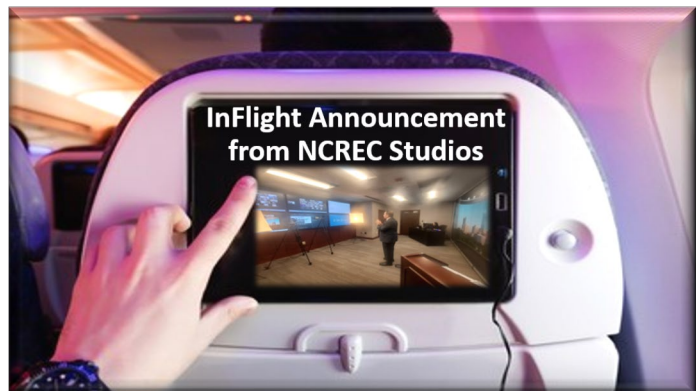
**URAR:** Uniform Residential Appraisal Report is the standard Fannie Mae appraisal report that has been in use since the late 1980's and that is being retired.

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## THE OVERALL FRAMEWORK OF APPRAISALS

**NCREC Studios**

**Overview of the  
Appraisal Changes**



Brokers and parties to the transaction do not order appraisals in traditional financed purchase transactions. A lender orders the appraisal through an appraisal management company so that the selection of appraisers is randomized. The purpose of the appraisal is to assure the lender that the collateral is sufficient to support the loan request. Even though a lender will collect money from a buyer to pay for an appraisal, the lender is the client of the appraiser. Therefore, if a lender orders an appraisal, brokers should not refer to the appraisal as the “buyer’s appraisal.” Instead, brokers should refer to appraisal as “the appraisal performed for the buyer’s lender.” Alternatively, if a buyer is paying cash for a property and decides to order an appraisal, in this scenario the buyer is the appraiser’s client and the appraisal would be the buyer’s appraisal.

Although in financed transactions the lender is the appraiser's client. The buyer has a right to obtain a copy of the appraisal. Buyer agents should make a habit of:

1. Asking their buyer clients to obtain copies of the appraisal reports from the lenders as soon as possible, and
2. Carefully reviewing the reports and disclosing material information, such as square footage and other information that a reasonable buyer would want to know.

Buyers who pay cash for properties rarely order appraisals because there is no requirement to do so. However, an appraisal can provide useful information to a buyer, such as square footage verification, acreage, and other information. The NC REALTORS Form 760 is a *Professional Services Disclosure and Election* and includes appraisals in the list of services. Brokers who represent and/or assist buyers should explain the value of an appraisal and always recommend the obtainment of an appraisal so that buyers can make informed decisions.

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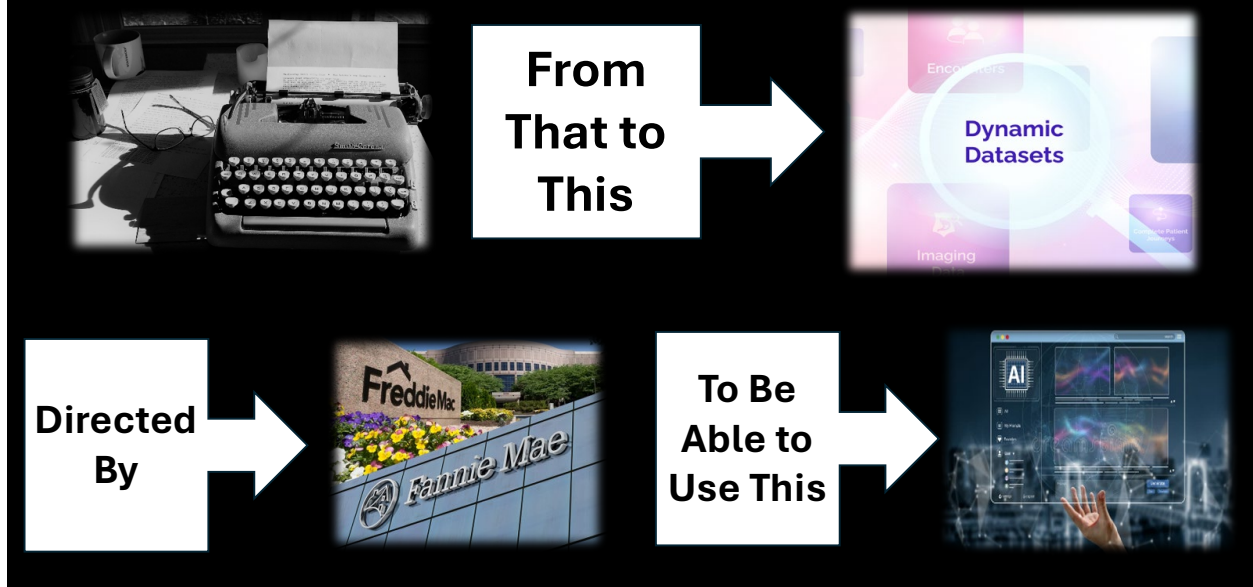
## THE CHANGE THAT IS COMING



The Uniform Residential Appraisal Report (URAR), or Fannie Mae Form 1004, was established by Fannie Mae and Freddie Mac in the mid-1980's to standardize single-family residential appraisals. The form went through major revisions in 1994 and 2005, but still had major drawbacks as a static form, lacked consistency, and was devoid of detailed data regarding the properties.

Because the Federal National Mortgage Association, known as Fannie Mae (FNMA), controls about 80% of the residential loans in the secondary market, FNMA directs the documentation necessary for the transfer of mortgages. A big part of that documentation is the appraisal. The major drawback of an outdated appraisal form containing inconsistent terminology and subjective appraisal narratives requires individual review of each appraisal that cannot be automated.

# The Change That's Coming



Moving all of the appraisal data to a dynamic dataset in a dynamic digital form will allow Fannie Mae to automate reading and analysis of the appraisals in the secondary market and to implement artificial intelligence (AI) technology. This massive change will require appraisers to use new software to enter more detailed property data on a dynamic form that changes relevant fields and sections as data is entered. It will consolidate and replace multiple separate forms currently used by appraisers.

## Resources To Go



Click on the Suitcase or scan to read NCREC's eBulletin article  
*Do You Know That Appraisals Are Changing*



There is a lot to learn about the new Uniform Appraisal Dataset. Details about the changes and the implementation can be found on FNMA's website.

<https://singlefamily.fanniemae.com/delivering/uniform-mortgage-data-program/uniform-appraisal-dataset>



***Key Reasons for Replacing the Uniform Residential Appraisal Report (URAR) with the Uniform Appraisal Dataset (UAD)***

- **Modernization and Data Efficiency:** The UAD converts appraisal data into a machine-readable MISMO format, allowing automated, faster, and more accurate review processes.
- **Form Consolidation:** The new, dynamic UAD replaces multiple, separate-property-use URAR forms (1004, 1073, 2055, etc.) with a single, flexible report that adapts to property type (e.g., condo, manufactured, 2-4 units).
- **Enhanced Data Quality:** Inconsistencies are reduced by standardized fields and definitions (e.g., Q&C ratings) for Quality and Condition.
- **Improved Accuracy in Reporting:** There is better capture of modern property features like ADUs (accessory dwelling units), green features, and solar panels.



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## ANATOMY OF THE UAD 3.6

The new form is entirely different. It is not just a “new form,” it is a digital first-reporting system.

### Anatomy of the New UAD 3.6

| Feature      | Legacy Form (e.g., Form 1004)             | New UAD 3.6 Reporting Standard                                          |
|--------------|-------------------------------------------|-------------------------------------------------------------------------|
| Structure    | Static PDF. Rigid layout.                 | Dynamic. Sections turn "on" or "off" based on property characteristics. |
| Data Type    | Qualitative (narrative-heavy).            | Quantitative (discrete data points).                                    |
| Detail Level | Generalized summary.                      | Highly granular (room-level detail).                                    |
| Efficiency   | Relying on addenda to explain edge cases. | Data is standardized for automated analysis (AVMs).                     |

The biggest impact of the changes is that the data is highly granular. That means that there is much more data that must be entered into the system during the appraisal process. Under the old system, an appraiser was able to simply rate the interior condition of a home generally. In the new report, they are required to document features at the room level. This includes capturing:

- Dimensions of individual rooms
- Specific materials used (countertops, flooring type, etc.)
- Condition and quality ratings broken out by interior, exterior and overall property
- More detailed data on energy efficiency, such as a HERS rating
- Green building verifications
- Detailed solar panel information

This means that current data fields in many of the MLS systems are incomplete and insufficient. The MLS systems are working hard with both Fannie Mae and the Appraisal Foundation to update and expand the data that brokers will need to enter.

## IMPLEMENTATION TIMELINES FOR THE UAD 3.6

The required use of the new UAD 3.6 reporting system is being phased in between January 26, 2026, and November 2, 2026. The implementation milestones for the new UAD 3.6 reporting system are reflected in the following timeline:





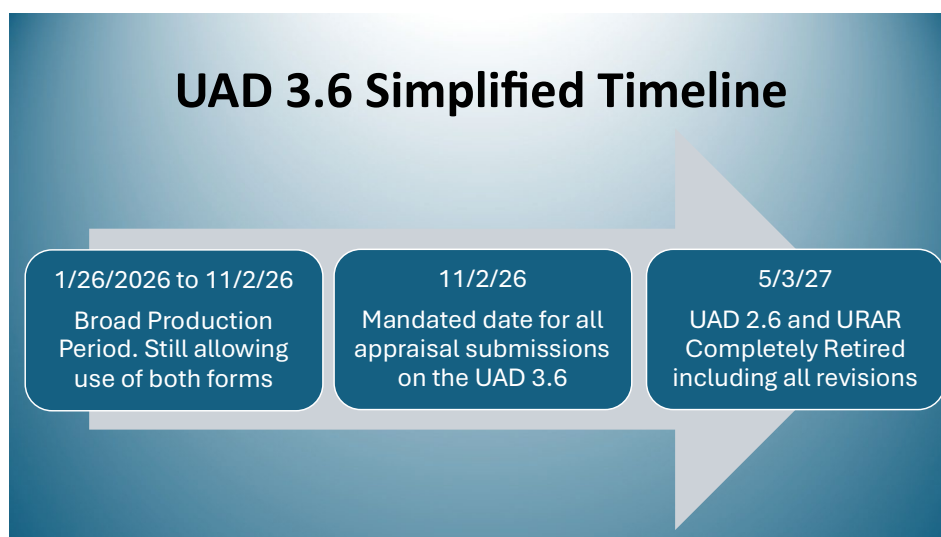
# UNIFORM MORTGAGE DATA PROGRAM

| 2024                                                                                                                            |                                                                                                                                                                    | 2025                                                                                                                                                                                                                                                                                          | 2026                                                                                                                      |                                                                                                                                                                       | 2027                                                        |
|---------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------|
| UAD 3.6 TESTING                                                                                                                 |                                                                                                                                                                    | Uniform Appraisal Dataset (UAD) 3.6 PRODUCTION                                                                                                                                                                                                                                                |                                                                                                                           |                                                                                                                                                                       |                                                             |
| INDUSTRY PREP                                                                                                                   |                                                                                                                                                                    | LIMITED PRODUCTION                                                                                                                                                                                                                                                                            | BROAD PRODUCTION                                                                                                          | MANDATE                                                                                                                                                               | RETIREMENT                                                  |
|                                                                                                                                 |                                                                                                                                                                    | September 8, 2025 – January 25, 2026                                                                                                                                                                                                                                                          | January 26, 2026 – November 1, 2026                                                                                       | November 2, 2026                                                                                                                                                      | May 3, 2027                                                 |
|                                                                                                                                 |                                                                                                                                                                    | UAD 2.6 -> UAD 3.6 Transition Period                                                                                                                                                                                                                                                          |                                                                                                                           |                                                                                                                                                                       | UAD 2.6 Pipeline Revisions                                  |
| Submit 2.6 Only                                                                                                                 | Submit 2.6 Only                                                                                                                                                    | Submit 2.6 and Limited Production Participants* to Submit 3.6                                                                                                                                                                                                                                 | Submit 2.6 or Submit 3.6                                                                                                  | Submit 3.6 Only                                                                                                                                                       | 2.6 Pipeline Cleared                                        |
| <b>November 18, 2024</b> – Redesignated Uniform Residential Appraisal Report (URAR) industry training available on GSE websites | <b>June 4, 2025</b> – GSEs publish policy updates<br><br><b>July 28, 2025</b> – ULDD Mandate: Lenders must deliver ULDD Phase 5 data points prior to using UAD 3.6 | <b>September 8, 2025</b> – Fannie Mae and Freddie Mac can accept both UAD 2.6 and 3.6<br><br>*Limited Production Participants - Lenders who have submitted the UAD Questionnaire and received GSE approval will have controlled access to submit 3.6 to Uniform Collateral Data Portal (UCDP) | <b>January 26, 2026</b> – All Lenders may begin submitting to the GSEs' production environment without prior GSE approval | <b>November 2, 2026</b> – Lenders must use UAD 3.6 for all new submissions on or after this date<br><br>Revisions allowed for previously submitted UAD 2.6 appraisals | <b>May 3, 2027</b> – UAD 2.6 Pipeline revisions period ends |

This document relates to the Uniform Mortgage Data Program®, an effort undertaken jointly by Freddie Mac and Fannie Mae at the direction of the Federal Housing Finance Agency.  
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12/9/2024

During the period between January 26, 2026, and November 2, 2026, many lenders will begin requiring the UAD 3.6. The process does not prevent them from implementing changes prior to the mandatory deadline of November 2, 2026.



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## WHAT THE CHANGES MEAN FOR APPRAISERS

While adoption of the UAD 3.6 system will eventually help streamline the appraisal process, the implementation process requires a lot from appraisers. The use of the new reporting system will have an impact on appraisers in the following ways:

- **Training and Learning Curve:** The transition requires significant training for many appraisers, marking the biggest change in reporting in over two decades.
- **Fundamental Workflow Changes:** The shift from filling out static forms to constructing a detailed dataset changes how appraisers collect and report data.
- **Increased Complexity and Time:** The new format demands more detailed documentation (such as detailed quality, condition, and energy efficiency metrics). This adds significant time to both the field inspection and report writing.
- **Technology Upgrades Needed:** Appraisers must use updated appraisal software that supports the new dynamic reports. The use of mobile apps or tablets for on-site data collection is expected to become standard.
- **Impact on Fees:** Due to the added time, complexity, increased data collection, and increased technology costs, there is strong expectation of increased appraisal fees.

As of early 2026, there are approximately **60,000-67,000 individual real estate appraisers** in the United States who are active. The total number of active appraisal licenses held nationally is higher (over 91,000) due to the fact that many appraisers hold multiple licenses across state lines.

Key data points regarding the appraiser population in 2025-2026:

- **Declining Workforce:** The number of appraisers has decreased by roughly 27,000 or 29% over the past decade.
- **Industry Employment (2026):** IBISWorld reports a projection of 60,113 people employed in real estate appraisal in the U.S. as of January 1, 2026.
- **Residential Focus:** As of June 2025, it was estimated that only about 38,000 active appraisers are completing residential appraisals in-the-field on a weekly basis, a number projected to fall below 30,000 by 2026. You can find additional information at <https://appraisalfoundation.org/>.

- **Certification Mix:** The workforce consists of roughly 48.8% Certified Residential, 44.1% Certified General, and 7.2% Licensed Residential appraisers.
- **Demographics:** The average age of an appraiser is 49, with a notable gap in experience for those with 5-15 years in the industry.

Key drivers for this anticipated exodus include:

- **High Learning Curve:** The shift from traditional "form-filling" to a dynamic, data-driven, and complex reporting structure requires significant training and time investment, often referred to as a steep learning curve.
- **Retirement Acceleration:** Many in the industry are already near retirement age, and the significant change in workflow may serve as a catalyst for leaving the profession.
- **Operational Strain:** Increased technical requirements, software costs, and increased need for data collection are causing frustration, with some viewing it as "doomsday" for the traditional appraisal process.
- **Shift to Technology:** Some industry participants predict a push toward replacing human appraisers with AI or Automated Valuation Models (AVMs), prompting some to leave due to a perceived lack of future in the field.

## Resources To Go





Click on the  
Suitcase or scan  
the QR Code to  
read Fannie  
Mae's  
*Inspection &  
Reporting Tips  
for Appraisers*



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## WHAT THE CHANGES MEAN FOR BROKERS

With the UAD 3.6 implementation mandatory by November 2, 2026, real estate brokers must provide more granular, standardized property data, including detailed interior/exterior condition ratings, energy-efficient features, and precise measurements. Brokers should be prepared for stricter appraisal inspections, potential floor plan requirements, closer scrutiny of property updates, and more interaction with appraisers looking for missing information.

**NOTE:** Brokers must fulfill fiduciary duties to their clients. Those duties include responding to and assisting third party settlement service providers to obtain information that is necessary for the success of the transaction.

### Key Obligations and Changes for Brokers:

- **Granular Data Requirements:** Brokers need to provide more-detailed information on property characteristics, including specific kitchen/bathroom updates, construction types, and accessory unit details.
- **Energy Efficiency & Green Features:** Specific, documented data on energy-efficient improvements and certifications is required.
- **Measurement and Layout:** Appraisers may require detailed floor plans, especially for atypical homes.
- **Condition Ratings:** A more detailed, standardized rating system (UAD 3.6) will be used for both interior and exterior conditions, requiring brokers to be accurate about home improvements.
- **Comparable Data:** Appraisers will require clearer information about comparable sales, including better photos and descriptions.
- **Broadband Availability:** Documentation regarding high-speed internet availability may be required.





Brokers should proactively gather detailed information about listings to assist appraisers, as the new system replaces free-form descriptions with standardized data fields. Brokers will have increased obligations to provide additional, accurate data. In providing property data, brokers must fulfill the fiduciary duties to their clients and steer clear of misrepresentations.

**NOTE:** While a broker should provide any information requested by an appraiser, the broker must remain mindful of Rule 58A .0120(c) which reads, *A broker shall not coerce, extort, collude, instruct, induce, bribe, or intimidate a service provider in a real estate transaction in order to influence or attempt to influence their findings, report, or decision. Service providers include, but are not limited to appraisers, inspectors, financial lenders, and contractors.*



Brokers will need to understand the new condition ratings, energy ratings, green building features, and other new fields that are being added to MLS systems. NAR's article [How and Why to Avoid Errors in MLS Listings](#) is a great starting point for broker understanding.

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## THE COMING SOON CASE STUDIES



### **The Case of the Missing-in-Action Broker**

A listing agent enters only minimal basic information about the property into the MLS system. The buyer's lender is already requiring all appraisals to be submitted using the UAD 3.6 system. The appraiser has difficulty gaining access to the property because the listing broker is slow to return the appraiser's calls and emails. Having completed the physical field visit to the property, the appraiser is now seeking additional detail from the listing agent. The listing agent has failed to respond to the several phone message requests from the appraiser. The appraiser has also sent several emails inquiring as to property details and has not received any response from the listing agent. In frustration, the appraiser has decided to contact the lender and cancel the assignment since it cannot be completed in accordance with requirements of the UAD 3.6 system.

### **For Discussion:**

**What are the possible consequences for the parties involved in the transaction?**

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**Might the broker be subject to disciplinary action by the Commission?**

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## **The Case of the Irrate Buyer Agent**

A broker, representing a buyer, tenders a purchase offer to a seller with a 10-day Due Diligence Period and a 30-day period to the date of Settlement. The buyer's lender requires that the appraiser use the UAD 3.6 process in completing the appraisal and submitting a report. The buyer agent has been notified that the appraisal cannot be completed until after the settlement date stated in the purchase contract. The seller is unwilling to grant any extension. The buyer agent has written an email to the appraiser that states "it is completely unacceptable and unprofessional for you to take so long to complete the appraisal" and claims that "you are subjecting everyone in the transaction to civil damages and penalties." The email also states that if the appraisal is not completed within the next seven days for the amount of the property's value in the offer to purchase and contract that the broker will never allow the appraiser to be involved in any more of the broker's transactions and that the broker will publish derogatory comments on social media about the incompetency of the appraiser.

**What are the possible consequences for the parties involved in the transaction?**

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**Might the buyer agent be subject to disciplinary action by the Commission?**

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## BROKERAGE BEST PRACTICES TO WEATHER THE CHANGES



The transition period leading up to November 2026 is the critical window for real estate brokers. As appraisers learn the new system, lenders update their software, and MLSs restructure their databases, brokers can expect some significant, albeit temporary, operational headwinds. Here are some best practices for brokers:

### 1. Set Client & Customer Expectations Early

Clients and customers are likely to have little if any insight into the significance of the appraisal process changes. Talking with consumers early and alerting them to the potential impact of changes will aid in subsequent conversations about the appraisal process that may arise during the transaction.

### 2. Plan for Delays and Contract Extensions

During the implementation phases in 2026, there are likely to be delays and significantly more time involved in completing the appraisal process. Brokers should consult with lenders and appraisers about the anticipated timeframes needed in negotiating and finalizing dates in offers.

### 3. Expect Phone Calls from Appraisers Regarding Property Details and Comparable Sales Data

This is probably the most direct impact on the day-to-day workflow of brokers. In the implementation phase, appraisers may lack access to standardized granular data from their usual sources (like older MLS listings or public records). To satisfy the new, strict reporting requirements of the GSEs, appraisers will turn to the brokers. Be prepared to receive calls asking for specific details that were never before required, such as:

- Specific countertop materials in the kitchen;
- Type of flooring in the secondary bedrooms;
- Energy efficiency ratings of windows or HVAC systems; or
- Confirmation of specific upgrades made since the last sale.
- 

**NOTE:** Brokers have a duty to provide accurate information.

#### **4. Stay Up-to-Date on MLS Data Field Changes**

To alleviate the burden on appraisers (and reduce the number of calls to brokers), MLS systems nationwide are currently working to update their listing input fields. The goal is to align MLS data points with the new UAD requirements. In the future, there will be many more mandatory fields when listing a property including fields designed to populate the appraiser's report automatically.



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## SUMMARY OF IMPORTANT POINTS

# Post-Flight Check Summary

## Key Concepts to Review



- Major changes are occurring in the area of appraisals.
- The long utilized URAR form is being replaced by the data collection system of the UAD 3.6.
- The changes will require much additional data and granular information to complete the appraisal process.
- While some lenders will begin using the new appraisal process earlier in 2026, the deadline for all appraisals to be done within the new system is November 2, 2026.
- By May 3, 2027, the URAR form will be completely phased out and eliminated.
- As these changes are phased in, brokers should be aware of and attentive to all of the following:
  - The need for increased cooperation in the providing of data to appraisers;
  - Potentially longer appraisal times and higher costs; and
  - MLS mandatory field changes.

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## **CASE STUDY OUTCOMES**

### **The Case of the Missing-in-Action Broker**

**What are the possible consequences for the parties involved in the transaction?**

It is entirely foreseeable that the failure of the licensee to promptly and fully provide requested information to the appraiser could cause the buyer to not be able to complete all due diligence within the Due Diligence Period. It is also likely that the parties may not be able to comply with the terms of the purchase contract regarding the Settlement Date and the buyer could end up terminating the contract to avoid being in breach of the contract.

**Might the broker be subject to disciplinary action by the Commission?**

If the seller or buyer files a complaint with the North Carolina Real Estate Commission, the Commission could possibly find that the listing agent breached fiduciary duties to their client, resulting in disciplinary action. The listing agent is potentially at fault for not providing requested information needed to complete the appraisal required for the buyer to be able to close the transaction desired by the seller-client.

### **The Case of the Irate Buyer Broker**

**What are the possible consequences for the parties involved in the transaction?**

Inability to fulfill the terms of the purchase contract creates the probability the parties may be in breach of the contract or the need for a party to terminate to avoid breaching. Either way, the transaction will generally not close and both the buyer and seller do not achieve their desired transfer of title.

**Might the buyer agent be subject to disciplinary action by the Commission?**

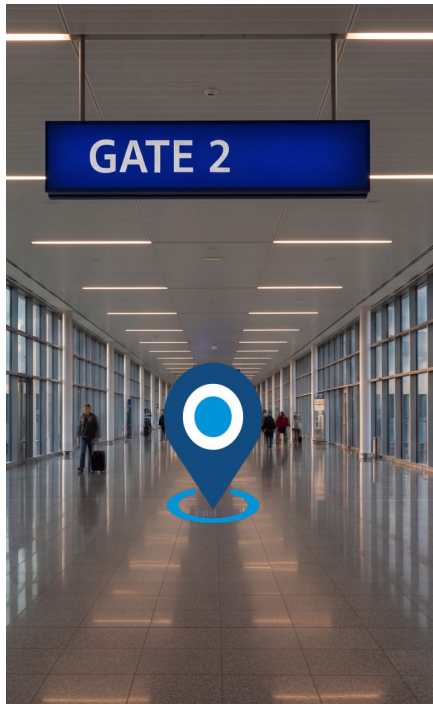
If the buyer files a complaint with the North Carolina Real Estate Commission, the Commission could possibly find that the buyer agent breached fiduciary duties to their client, resulting in disciplinary action. The buyer agent is potentially at fault for not advising the buyer to request a longer Due Diligence Period that would have allowed the longer time needed to obtain the UAD appraisal.

Further, Commission Rule 58A .0120 sets forth certain prohibited acts of a real estate broker. Rule 58A .0120(b) specifically states that:

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

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# GATE II



## Frequently Asked Questions

### *Travel Tips for Brokerage*



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## LEARNING OBJECTIVES



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

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

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## TERMINOLOGY

- **Closing:** The final step in a real estate transaction. It occurs when a closing attorney records the deed and disburses funds to the appropriate parties. Distinguish from settlement.
- **Due Diligence Fee:** A negotiated amount, if any, paid by the buyer for the right to conduct *due diligence*. The amount of the fee may be influenced by such matters as the market interest for the property, number of days on the market, personal circumstances of the buyer and seller, and the length of the contract Due Diligence Period. *This fee takes the property off the market during the Due Diligence Period so the buyer can conduct due diligence and make their final decision about moving forward.*
- **Impervious Surface (Built Upon Area):** According to N.C.G.S. §143-214.7D, as used in this section, the term *built-upon area* means impervious surfaces and partially impervious surfaces to the extent that the partially impervious surface does not allow water to penetrate the surface into the subsoil.
- **Material Fact:** Any fact that could affect a reasonable person's decision to buy, sell, or lease real property.
- **Pre-Foreclosure Notice:** A written notice sent to the last known address of the delinquent borrower by a mortgage servicer of a home loan. This note is sent at least 45 days prior to the filing of a Notice of Hearing. It informs the borrower of resources they can utilize to avoid foreclosure.
- **Settlement:** The point in time in which the buyer signs final documents, pays the purchase price to the seller, and the seller signs a deed transferring title to the property to the buyer. Distinguish from closing.

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## INTERACTING WITH THE COMMISSION



There are several options available for brokers to connect with Commission staff. While many brokers may choose to call the Commission to ask a question, many answers can be easily found on [ncrec.gov](https://www.ncrec.gov). Therefore, brokers are encouraged to work through the contact guide below to determine the best way to seek assistance.

### 1. Start Here for the Fastest Answer

Before calling or emailing the Commission, try these quick steps:

- a) Use the search feature in the menu of the Commission website to locate links to the information you need.
  - For example, entering “BIC form” in the search field will return results that include a link to the [Request for BIC-Eligible Status and/or Broker-In-Charge Designation \(Form REC 2.25\)](#).
- b) If you are not sure what topic to search, you can use Alfred, the Commission’s AI chatbot, to ask full questions.
  - For example, you can ask, “What are the requirements to become a BIC?” Alfred will provide a response and several links to additional information and related forms for your review.

### 2. Choose the Best Contact Option

If you are unable to search and locate the information you need, you can visit the Commission’s Support page by clicking on “Support” in the menu at the top of the website. After selecting one of the initial options, a list of common questions and requests will be displayed. If none of those questions/requests addresses your concerns, the Commission does provide contact information for the Administrative, Regulatory Affairs, and Education & Licensing Divisions.

Upon receipt of a submission form, the Commission will ensure the inquiry is routed to the appropriate division for a response.

### 3. Best Practices for Email

Brokers who prefer to send an email, should include their full name, license number, and a detailed description of their question and/or concern. Also, brokers should include any supplemental documentation that will assist the Commission staff with responding accurately to a particular scenario.

### 4. What to Expect When You Call the Commission

Brokers who choose to call the Commission, should be prepared to give Commission staff their license number. Providing their license number ensures Commission staff can review the correct license record and appropriately answer their questions. The

Commission handles an average of 500 telephone calls and 1,000 emails daily, so occasionally brokers may be asked to leave their contact information and give a brief description of the question and/or concern and wait for a callback. Once Commission staff is in receipt of this information, a call ticket is created and routed to the appropriate staff member, and the call is returned as promptly as possible.

Incoming calls are generally routed based on the purpose of the communication, such as whether the question relates to licensing or rule interpretations.

**NOTE:** While most broker inquiries focus on licensure and form processing, staff also addresses a variety of questions related to brokerage activities. The FAQs that follow are based on the questions and concerns Commission staff receive most frequently throughout the year. Each question originates from either the Regulatory Affairs Division or the Education and Licensing Division.

If a broker calls Regulatory Affairs about a current or previous investigation, the broker should provide the case number and ask for the Commission staff member who sent a letter to the broker.

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## UNILATERAL TERMINATION OF AGENCY AGREEMENT



*Can a principal unilaterally terminate an agency agreement by email, text, or telephone call?*

An agency agreement is a contract between a real estate brokerage company and a buyer or seller. In most cases, the written agreement cannot be ended early unless **both parties agree**.

Usually, one party cannot cancel the agreement on their own. If all parties agree to terminate the agency relationship, they should all sign a **written termination agreement**.

Sometimes a brokerage or agent may request payment in exchange for ending the agreement early. The client can agree, refuse, or try to negotiate the amount. If the agreement includes an early termination fee or penalty, that fee must be written in a **clear and easy-to-notice** way.



If the parties cannot agree to terminate the contract, the client may choose to speak with an attorney or wait until the agreement expires. The Commission does **not** have the authority to terminate agency agreements or force a company or agent to end one.

**NOTE:** If a principal and a brokerage cannot reach a mutual agreement to end the relationship, the principal is advised to consult an attorney.

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## MATERIAL FACT DISCLOSURE AFTER CONTRACT TERMINATION



*A broker discovered material facts about a property when they represented a previous buyer client in a terminated contract on the property. Can the broker disclose those material facts to a subsequent buyer whom they represent? To a subsequent buyer with whom they have no agency relationship?*

### Mandatory Disclosure of Material Facts

Under North Carolina General Statute § 93A-6(a)(1) a broker may be disciplined by the Commission for making any willful or negligent misrepresentation or any willful or negligent omission of material fact. Further, Commission Rule 58A .0114(c) states a broker representing either an owner or a purchaser of any real property subject to Chapter 47E of the North Carolina General Statutes shall disclose to the purchaser any material facts the broker knows or reasonably should know about the property.



Basically, a broker has an affirmative duty to discover and disclose material facts to all parties in a transaction. A material fact is defined as any information that could affect a reasonable person's decision to buy, sell, or lease property. Most importantly, this duty is not contingent upon whom the broker represents and must be followed regardless of the broker's agency role. In this scenario, the broker must disclose to their buyer client and to the listing agent and/or the seller.

### Disclosing to a Subsequent Buyer Who is a Client

If the broker enters into an agency agreement with a subsequent buyer for the same property in which their previous buyer was interested, the broker has a fiduciary obligation to represent the interests of their current buyer. Most importantly, the broker has an affirmative duty to disclose material facts the broker knows about the property, even if the broker learned about the material facts in a previous transaction.

In short, as a fiduciary for the new buyer, the broker must disclose all facts that may influence the principal's decision. For example, if a broker learned during a previous listing that the sellers were desperate to sell due to a divorce, and that broker now represents a new buyer for that property, the broker must disclose the sellers' motivation to their new buyer-client to assist in negotiations. If a broker learns of a defect through a previous client's home inspection report and now represents a new buyer, the broker must disclose those material facts to the new buyer. While a broker should follow a previous client's direction regarding the distribution of the actual inspection report, the material facts contained within it must be disclosed freely.

### **Disclosing to a Subsequent Buyer Who is NOT a Client**

If the previous buyer agent is not representing the subsequent buyer and is no longer involved in a transaction for that property, that broker has no fiduciary duties to any subsequent buyer-consumer or buyer agent for that property. When the material fact was initially discovered, the buyer agent was required to disclose it to all parties in that transaction, which included the listing agent and the seller. Once the buyer agent informed the listing agent and/or the unrepresented seller, that broker satisfied their duty to disclose the material facts. Upon receipt of the material fact information, the listing agent became responsible for updating the property data and disclosing those material facts to all subsequent prospective buyers and/or their agents. The listing agent should also advise the seller to update the RPOADS with the new information.

Therefore, an uninvolved broker is not required to independently seek out subsequent buyers to inform them of previously discovered material facts. In fact, a broker with no agency involvement with the property transaction is cautioned against inserting themselves into the transaction with information that may now be inaccurate. Such unnecessary insertion may result in legal liability for the broker and their brokerage.

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## **COMMISSION ROLE IN COMPLAINTS**



***Who does the Commission represent when a complaint is filed?***

Commission staff *does not represent* the person who filed the complaint or the broker who is the subject of the complaint. The Commission's statutory role is regulatory, and its principal purpose is to protect the public's interest in real estate brokerage transactions.



The Commission investigates complaints against real estate licensees accused of misconduct. If the Commission finds that a licensee has violated the Real Estate License Law (N.C.G.S. Chapter 93A) and/or Commission rules, it can reprimand, suspend or revoke the real estate license.



Here are some key distinctions regarding the parties involved in a complaint:

- **Complaining Witness (Complainant or Plaintiff):** This is the person (or persons) who submits the written complaint to the Commission. They may serve as a witness for the Commission.
- **Respondent (Defendant):** The person against whom the complaint is made and who must reply to the complaint.



When the Commission receives a complaint against a broker, a staff attorney reviews the complaint to determine whether the alleged conduct is within the jurisdiction of the Commission. At this time, the staff attorney does not attempt to determine whether the allegations are in violation of License Law and/or Commission rules but simply whether the factual allegations asserted fall within the Commission's jurisdiction.

If the Commission does not have jurisdiction, then the staff attorney sends a declination letter to the complaining witness which contains the reason(s) as to the declination.



The Commission does not investigate complaints where no violation of License law and/or Commission rules is alleged, or where it has no jurisdiction. If the Commission does have License Law and Commission rules that regulate the broker's alleged conduct/activity, a case file is opened, and the Complaining Witness is notified.

If a broker files a complaint against another broker and the Commission's investigation finds evidence of a violation by the complaining broker, then the Commission will add the complaining broker as a Respondent and may pursue disciplinary action, if warranted.

North Carolina General Statute § 93A-6 grants the Commission the authority to take disciplinary action in the form of a suspension, revocation, or reprimand against a licensee who has violated any of the provisions of § 93A or Commission rules. These forms of discipline are imposed upon a review of the facts of a case and the particular violation(s).

Most disciplinary cases at the Commission are settled by presenting a proposed agreement between the Commission staff attorney and the Respondent, or the Respondent's attorney, to the Commission. In addition to a disciplinary sanction, a Respondent may agree to complete real estate education courses and/or satisfy other conditions as part of a settlement.

With very limited exceptions, the Commission is prohibited from ordering restitution or payment of monetary damages directly to a complaining witness. While a broker may voluntarily agree to pay restitution as part of a negotiated settlement to resolve a disciplinary matter, the Commission does not act as a board of arbitration for private financial disputes. Individuals seeking monetary recovery for their personal losses are often directed to seek the advice of counsel.



For a more comprehensive and in-depth review of this topic, brokers should start with the eBulletin article, [Navigating Complaints: A How-To Guide](#). This article is part one of a five-part series on the Complaint and Disciplinary Process in Regulatory Affairs.

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## AI-GENERATED ADVERTISEMENTS AND BROKER LIABILITY



*Can I be liable for a property description generated by AI that I publish on social media?*

Yes, a broker can be held liable for a property description generated by artificial intelligence (AI). The Commission holds listing agents and their brokers-in-charge strictly responsible for the accuracy and

truthfulness of all property information they distribute, regardless of the technology used to create it.

### **Affirmative Duty to Ensure Accuracy**

Listing agents have an affirmative duty to discover and disclose all material facts about a property. While they may use various technology platforms or AI to assist in drafting descriptions or measuring square footage, they are not relieved of the responsibility to ensure the usage and dissemination of accurate information.

Under N.C.G.S. § 93A-6(a)(1), a broker may be subject to disciplinary action for making any willful or negligent misrepresentations or omissions of material facts.



Therefore, a listing agent who adds disclaimers that the published information/data was derived from technology platforms or AI may still be liable for the misrepresentation or omissions of material facts. This includes property information:

- communicated directly to cooperating brokers or buyers,
- entered into a Multiple Listing Service (MLS), and
- published on websites, print-ads, and/or social media, etc.

### **AI and Fair Housing Risks**

As covered in the Fair Housing Section of the 2025-2026 Update Course, using AI introduces significant risks regarding compliance with Fair Housing laws.

- **Algorithmic Bias:** The National Fair Housing Alliance's (NFHA) research shows that AI platforms are susceptible to bias because their algorithms are written by humans.

- **Discriminatory Content:** If an AI-generated property description indicates a preference, limitation, or discriminates against an individual of a protected class (e.g., race, color, religion, sex, national origin, handicap, or familial status), the broker may be in violation of the Fair Housing Act, License Law, and Commission rules.
- **Strict Liability:** The absence of intent to be biased does not excuse a broker from liability under fair housing laws. Brokers are advised to describe the property, not the person, to avoid these pitfalls.



The eBulletin article, [Tech Corner: What to Avoid When Using AI Tools](#) provides additional information regarding the potential pitfalls of relying too heavily on AI.

### Social Media as Legal Advertising

Brokers should know that posting listings, open houses, and statements regarding the brokerage services they may offer potential clients are considered advertisements. Therefore, social media posts must follow License Law and Commission rules. According to Rule 58A .0105, a broker must obtain the:

- BIC's consent to advertise any brokerage service, and
- written consent of the owner or owner's authorized agent.

Additionally, Rule 58A .0105 indicates that a broker must include the name of the brokerage firm or sole proprietorship with which a broker is affiliated.



**NOTE:** For more information regarding advertising on social media, please review the [2023-2024 Update Course Frequently Asked Questions Section](#).

## Record Retention Requirements



Under Commission Rule 58A .0108, brokers are required to maintain records of all advertisements used to market a property, which includes posts to social media. In the 2020-2021 Update Course, the Commission specified that brokers may choose to keep electronic records instead of paper copies. Regardless of the method, records must be available upon request

and kept for three years after the latter of the following:

- all funds held by the broker in connection with the transaction have been disbursed to the proper party or parties;
- termination of the agency agreement; or
- the conclusion of the transaction.

## BIC Responsibility



Per Commission Rule 58A .0110, the Broker-in-Charge (BIC) is responsible for the content of all advertising of affiliated brokers. BICs are expected to have written office policies regarding advertising and compliance with License Law and Commission rules. Additionally, BICs should have a procedure/policy to ensure the review of advertisements for affiliated brokers.

## Best Practices

To minimize liability when using AI for property descriptions, brokers should:

- **Review and Verify:** Comprehensively review AI content for accuracy against their visual inspection and seller-provided data.
- **Monitor Output:** Consistently monitor their advertisements to ensure the information remains accurate and hasn't been altered by third-party platforms during dissemination.
- **Standardize Policies:** Create and review the brokerage's written office policies regarding the permissible use of AI and social media platforms.

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## PRE-FORECLOSURE vs FORECLOSURE



*Is a pre-foreclosure notice a material fact?*

No. A pre-foreclosure notice is not a material fact and does not need to be disclosed. It does not directly affect the legal title of the property or the seller's ability to consummate the transaction.

**What is a pre-foreclosure notice?**

N.C.G.S §45-102, states:

*At least 45 days prior to the filing of a notice of hearing in a foreclosure proceeding on a primary residence, mortgage servicers of residential loans shall send written notice by mail to the last known address of the borrower to inform the borrower of the availability of resources to avoid foreclosure, including:*

- (1) An itemization of all past due amounts causing the loan to be in default.*
- (2) An itemization of any other charges that must be paid in order to bring the loan current.*
- (3) A statement that the borrower may have options available other than foreclosure and that the borrower may discuss available options with the mortgage lender, the mortgage servicer, or a counselor approved by the U.S. Department of Housing and Urban Development.*
- (4) The address, telephone number, and other contact information for the mortgage lender, the mortgage servicer, or the agent for either of them who is authorized to attempt to work with the borrower to avoid foreclosure.*
- (5) The name, address, telephone number, and other contact information for one or more HUD-approved counseling agencies operating to assist borrowers in North Carolina to avoid foreclosure.*
- (6) The address, telephone number, and other contact information for the State Home Foreclosure Prevention Project of the Housing Finance Agency. (2008-226, s. 1; 2010-168, ss. 1, 9; 2012-79, s. 2.17(a), (g))*

**NOTE:** The purpose of the pre-foreclosure notice is to inform borrowers of their default, and provide resources to assist them in avoiding foreclosure, such as loan modification, forbearance, or a repayment plan.



## What happens when a foreclosure case is filed?

According to the North Carolina Judicial Branch, a power of sale foreclosure is initiated when the trustee or their substitute files a notice of hearing with the clerk of superior court in the county where the real property is located. The notice provides the date, time, and location of the hearing, among other information. The notice of hearing must be served on borrowers, record property owners, and anyone else required under the deed of trust. The notice must be served in any manner provided by the Rules of Civil Procedure for services of summons, including service by the sheriff or certified mail, return receipt requested. If a party cannot be personally served, the sheriff can serve it by posting a copy of the notice in a conspicuous place and manner upon the mortgaged real property.

In a special proceeding, the hearing is before the Clerk of Superior Court or an Assistant Clerk of Superior Court. During the hearing, the Clerk of Court must find the existence of:

- a valid debt in which the party seeking to foreclose is the holder;
- default by the borrower;
- right of the holder to foreclose under the deed of trust;
- notice of hearing to those entitled to notice;
- a home loan and the pre-foreclosure notice under N.C.G.S. 45-102 was provided in all material respects and certain statutory time periods have elapsed; and,
- that the foreclosure is not barred under N.C.G.S. 45-21.12(a)

for the trustee or substitute trustee to receive an order allowing the sale of real property.



The date for the foreclosure sale is usually scheduled at the end of the foreclosure hearing before the clerk enters an order allowing the trustee to proceed with the foreclosure. The notice of sale must be served according to Statute and posted at the courthouse and advertised in the newspaper for at least 20 days before the scheduled sale date.

## When does a foreclosure become a material fact?

Once the notice of sale is issued, the foreclosure is a material fact. Foreclosure is a material fact because it will affect the seller's ability to convey clear title and consummate the transaction and the extended time that may be necessary to complete a sale.



## Disclosure Obligations for Brokers

Once a foreclosure proceeding has started, a broker has an affirmative duty to disclose this information to all interested parties, regardless of which party the broker represents. While a seller's personal motivation for selling is generally confidential, if that motivation is due to a pending foreclosure sale, it must be disclosed because it directly impacts the ability to consummate the transaction. Listing agents are encouraged to ask sellers specifically if they are currently in a foreclosure proceeding as part of their due diligence before listing the property.

In a property management context, the broker should also inquire whether the property is subject to a loan and, if so, inquire about the status of the loan. The fact that a loan is in default should be a red flag to the broker. A pending foreclosure sale would be a material fact that the broker would have to disclose to existing tenants and prospective tenants.

**NOTE:** A pending foreclosure sale needs to be disclosed to existing tenants so they can begin the process of finding a new residence.

## Foreclosure in Disclosure Statements

The Residential Property and Owners' Association Disclosure Statement (RPOADS) includes a specific question (Question G1) asking if the property is subject to any foreclosures that could affect title. While a seller may choose to select *No Representation* on this form, a broker who knows or reasonably should know that a foreclosure has commenced must still disclose it to prospective buyers.



**NOTE:** Brokers are encouraged to review the [Foreclosures Page](#) on the North Carolina Judicial Branch website for more information.

# IMPERVIOUS SURFACES

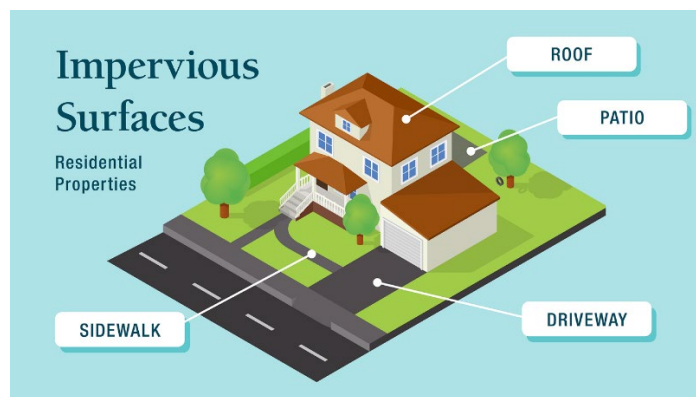
## *What is an impervious surface?*

According to N.C.G.S. §143-214.7D, as used in this Section, the term *built-upon area* means an impervious surface and partially impervious surface(s) as to the extent that the partially impervious surface does not allow water to infiltrate through the surface into the subsoil.



Common examples include roofs, driveways, sidewalks, parking areas, and many hardscape improvements such as patios, gazebos, and similar surfaces.

In the context of real estate and land use regulation, these surfaces are significant because they prevent water from soaking into the ground increasing storm water runoff.



The following points detail how impervious surfaces are regulated and their impact on property development:

- **Watershed Protection:** Local ordinances, including watershed overlay districts, may limit the amount of impervious surface permitted on a lot and may require buffer zones to protect drinking water sources. Watershed regulations frequently affect new development. For example, proposed developments may be limited by impervious surfaces.
- **Zoning and Development Standards:** Modern Unified Development Ordinances (UDOs) and zoning classifications typically include maximum impervious coverage standards for lots.
- **Impact on Industrial Development:** Because industrial facilities often require large building areas and expansive parking, they may need significantly more land in watershed-regulated areas than in non-regulated areas to remain within permissible impervious surface limits.
- **Restrictions on Expansion:** If a property exceeds an impervious surface limit, a buyer may face restrictions on additions, expansions, or even rebuilding after damage, depending on the ordinance. Once a property has reached its maximum permissible impervious surface, regulations may prohibit further expansion of building footprints or parking areas.

- **Nonconforming Use:** If a zoning ordinance is amended to become more restrictive regarding surface coverage after a property is already developed, the existing property may be classified as a preexisting nonconforming use.
- **Mitigation and Management:** Under certain conditions, property owners may be allowed to increase their impervious surface if they implement *best management practices* (BMPs), such as constructing detention ponds or other structural measures designed to reduce nonpoint source pollution and achieve water quality protection goals.



In the eBulletin article, [Beware of Use of Existing Surveys](#), brokers are cautioned that relying on older surveys can be risky because site conditions can change, including the reshaping or expansion of impervious surface area, which can create zoning or regulatory issues a buyer would want to know about.

A practicing broker should be familiar with the watershed regulations in the geographic area in which they practice real estate. Brokers should be knowledgeable regarding this information so that they can provide guidance to their clients about impervious surfaces and where they are located on specific properties. Additionally, brokers should advise clients/customers to contact the local municipality/jurisdiction if they have questions and seek further clarity on watershed regulations.

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## IMPROPER CONDUCT

***Can the Commission discipline a broker for improper conduct? If so, what are some examples of improper conduct?***

Yes, the North Carolina Real Estate Commission has the statutory authority to discipline brokers for various forms of improper conduct. This authority is granted by N.C.G.S. § 93A-6, which allows the Commission to act on its own initiative or upon a written complaint from any person.

Under N.C.G.S. § 93A-6(a)(10), the Commission has the authority to suspend or to revoke at any time a license issued under the provisions of Chapter 93A, or to reprimand or to censure any licensee. If, following a hearing, the Commission adjudges the licensee to be guilty of "conduct which constitutes improper, fraudulent or dishonest dealing." This authority includes conduct that reflects poor judgment, dishonesty, or a disregard for laws and rules.

The Commission might also charge a broker with a violation of N.C.G.S. 93A-6(a)(8), which is being unworthy or incompetent to act as a real estate broker in a manner as to endanger the interest of the public.

## Conflicts of Interest and Self-Dealing



A broker must put their principal's interests above their own and avoid any conduct that breaches their fiduciary duty to their principal. Such as:

- **Undisclosed Dual Agency:** Acting for both parties in a transaction without obtaining the express written authorization and consent of all parties. The written authorization occurs in the agency agreement. Additionally, once a dual agency situation arises, the broker(s) must inform both clients that the firm will represent both sides if a contract is formed.
- **Self-Dealing:** Putting personal or business interests above the client's, such as using a *straw man* to purchase a property from a principal so the broker can later resell it for a secret profit.
- **Purchasing a Property They Listed:** Attempting to enter a contract to purchase a property the broker has listed without first providing written disclosure of the conflict and giving the seller the right to terminate the listing.

## Unworthiness and Incompetence

The Commission evaluates the unworthiness and incompetence of a broker by using the *reasonableness standard*. This standard requires a broker to exercise that degree of skill, care, and diligence that a reasonably prudent real estate broker would exercise under the same or similar circumstances.

In the 2020-2021 Update Course, the Commission discussed the competence of licensees. A broker lacks competency if they fail to obtain/possess the requisite education, good judgement, and experience to conduct brokerage activities in accordance with License Law and Commission rules. Some examples of *incompetence or acts unworthy* include:

- **Inadequate Contracts:** Failing to properly complete contract forms or using forms that are not legally adequate.
- **Property Mismanagement:** Failing to conduct necessary property inspections, improperly using tenant security deposits, or failing to appear in summary ejectment hearings.



The eBulletin article [Broker Misconduct, the Root of the Problem](#) is a resource that looks at improper conduct from another angle by identifying the recurring root causes behind most disciplinary cases and can serve as a self-audit tool for reducing complaint risk in common problem areas.



## BUYER POSSESSION BEFORE SETTLEMENT



*Can a buyer legally take possession of a property prior to settlement?*

Any agreement about a buyer taking possession before or after closing is governed by the terms of the parties' sales contract. Because the Standard Form 2-T Offer to Purchase and Contract, jointly approved by the North Carolina Bar Association and NC

REALTORS®, is used in the vast majority of North Carolina residential single-family transactions, this Section will use that form as the primary reference. Hereafter, it will be referred to as *Standard Form 2-T*.

### Settlement vs. Closing

A real estate closing is the completion of a sales transaction. Many people assume closing happens when the parties meet with the settlement agent to sign documents and deliver funds, but that meeting is more accurately called the settlement meeting (as defined in the Standard Form 2-T). The closing occurs after the settlement meeting.



Closing is the broader legal process that ends with the transfer of title from seller to buyer. It includes the settlement meeting and additional steps that are not always finished on the same day. These steps typically include the closing attorney's final title update after settlement, receipt of the lender's authorization to disburse loan funds, recording the deed and any deed(s) of trust with the county register of deeds, and then disbursement of sale proceeds to the seller and others as required by law, the contract, and the settlement statement. Only after all steps are completed is the transaction considered closed or finished and title officially transferred.

Please see this [FAQ regarding settlement and closing](#) developed by the NC REALTORS® for more information.



### **Mandatory Written Authorization**

A real estate agent is strictly prohibited from transferring possession of a property, which includes providing keys or granting physical access, to a buyer before the deed is recorded without the seller's express, written consent. This prohibition extends to allowing a buyer to move personal items into the property. Unauthorized access granted by a broker can lead to disciplinary action and significant liability if the buyer causes damage, begins making unpermitted modifications, or occupies the property against the seller's wishes.

Standard Form 2-T provides that possession is delivered upon closing, and it specifically requires a separate addendum for early buyer possession, the Standard Form 2A7-T, *Buyer Possession Before Closing Agreement*, if the parties agree to early possession. This agreement should address insurance needs and explicitly state the amount of rent the buyer will pay to the seller for the interval between taking possession and the actual closing date. Similar procedures and forms are recommended if the seller wishes to retain possession after closing.



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## ADVISING ON THE DUE DILIGENCE FEE



*Should a buyer agent tell a buyer the amount of Due Diligence Fee to include in their Offer to Purchase and Contract, Standard Form 2T?*

As part of their fiduciary duty to use reasonable skill, care, and diligence, a buyer agent should provide advice and guidance to a buyer regarding the amount of the Due

Diligence Fee (DDF) to include in an offer. Although the agent should provide advice based on current market conditions and the specifics of the property, the final decision on the amount, if any, remains a negotiated term between the buyer and the seller.



### Due Diligence Fees in North Carolina

A DDF is not required to create a legally valid contract. Under the Standard Form 2-T Offer to Purchase and Contract, the DDF is 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 for any

reason or no reason during the Due Diligence Period (DDP). The DDP allows the buyer time to gather information regarding the property while conducting inspections, surveys, and having an appraisal performed.

### Payment and Broker Handling

The DDF is paid directly to the seller upon contract formation and generally is retained by the seller unless there is a seller breach of the contract.

- **Timing of Delivery:** The DDF is due and should be delivered to the seller on the date specified in the contract.
- **Broker Responsibility:** A broker may accept custody of a DDF check, but only for the purpose of delivering it to the seller.
- **Three-Day Rule:** Brokers must deliver the DDF to the seller within three business days of contract acceptance. See: [NCREC Bulletins - Due Diligence Fees: How and when must they be delivered?](#)
- **Mailbox Rule Exception:** The *mailbox rule* (which applies to contract acceptance) does **not** apply to the delivery of the DDF. It is not considered delivered when dropped into a mailbox.



### Refundability and Credits

The DDF is non-refundable even if the buyer chooses to terminate the contract during the DDP. The buyer is entitled to a refund of the DDF only in specific circumstances such as, if the:

- seller materially breaches the contract; or
- property is materially damaged or destroyed (e.g., by fire) prior to closing.

If the transaction successfully closes, the DDF is credited to the buyer against the purchase price.

### Consequences of Non-Delivery

If a buyer fails to deliver the DDF by the due date, or if the payment is dishonored by the bank, a valid contract still exists, but the buyer is in breach. Per the Standard Form 2-T, the seller must provide the buyer with written notice of the failure. After receiving this notice, the buyer has one banking day to deliver *good funds* (such as a wire transfer or certified check). If the buyer fails to do so, the seller has the right to unilaterally terminate the contract and may be entitled to recover the DDF and any negotiated Earnest Money Deposit.

### Determining the Amount

The amount of the DDF is influenced by several factors that the agent should discuss with the buyer, such as the:

- current market for the property;
- number of days the property has been on the market;
- personal circumstances of both the buyer and the seller; and
- length of the requested Due Diligence Period.

Because the DDF is often the only compensation a seller retains if a buyer terminates during the DDP, listing agents typically encourage sellers to ensure the fee adequately compensates them for taking their property off the market.

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## MALICIOUS ELECTRONIC MEETING LINKS



*Which electronic meeting link should brokers use to communicate with clients/consumers? Should they use their own or one provided by the client/consumer?*

It is highly recommended that brokers use their own Zoom links rather than ones provided by a client or consumer. Scammers increasingly use malicious meeting links to steal credentials or install malware. If the client is verified and there is a legitimate reason to join their meeting, brokers should independently confirm the invitation details before clicking any link.



Recent scam alerts specifically warn brokers about fake buyers who send malicious Zoom links designed to install malware on a broker's device for criminal activity. To defend against these malicious attacks, brokers are advised to create their own meeting link. Brokers must exercise extreme caution when receiving links or attachments from unknown or unverified sources, because clicking on a suspicious link or opening an attachment may lead to the loss of client data.

### **Maintaining Security and Control**

Brokers should be wary of using a link provided by a client or consumer, especially when the

- person is a new lead;
- person refuses normal identity verification;
- person is out of state and insists everything happen electronically; or
- scenario matches common scam patterns (e.g., vacant land, quick sale, urgency, unusual pressure).

Additionally, brokers are cautioned not to use public Wi-Fi when sending or accessing personal, confidential client information.

### **Fiduciary Duty to Protect Confidentiality**

Brokers have a fiduciary duty to be loyal to their principals and preserve personal, confidential information. Because a broker is responsible for the security of transaction files and personal data, controlling the digital environment where these items are discussed is a critical part of exercising reasonable skill, care, and diligence.

As brokers conduct more real estate transactions virtually, the importance of ensuring the security of transaction files and personal data may require additional safety protocols. Even though cloud providers have a responsibility to safeguard the information of their customers, brokers are obligated to secure transaction files as well. If there is a breach which leads to a potential loss suffered by a client, a broker may be held liable.

### **Compliance and Office Policy**

The Broker-in-Charge (BIC) is responsible for establishing written office policies that should address client and consumer interaction as well as the use of technology. BICs should consider implementing *best practices* in their office policies to prevent a cyber-attack. The written office policies and procedures could possibly include a caution to brokers not to use links for cloud-based communication platforms provided by unknown individuals. Additionally, in cases of a breach, recovery protocols should be addressed.

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## SUMMARY OF IMPORTANT POINTS

# Post-Flight Check Summary

## Key Concepts to Review



- The Commission offers multiple ways for brokers to connect with staff. While many brokers may choose to call the Commission to ask a question, many answers can be easily found on [ncrec.gov](https://www.ncrec.gov).
- An agency agreement is a contract between a real estate brokerage company and a buyer or seller. In most cases, the agreement cannot be ended early unless **all parties agree**.
- Usually, one party cannot cancel the agency agreement on their own without the other party's consent. If the client and the brokerage agree to end the agreement, they should both sign a **written termination agreement**.
- A broker has an affirmative duty to discover and disclose material facts to all parties in a transaction. A material fact is defined as any information that could affect a reasonable person's decision to buy, sell, or lease real property. Most importantly, this duty is not contingent upon who the broker represents and exists regardless of the broker's agency role.
- If the previous buyer agent is not representing the subsequent buyer and is no longer involved in a transaction for a property, that broker does not owe any fiduciary duties to a subsequent buyer-consumer.
- If the broker enters into an agency agreement with a subsequent buyer for the same property in which their previous buyer was interested, the broker has a fiduciary obligation to their current buyer client to represent their interest. Most importantly, they have an affirmative duty to disclose material facts they know existed previously.



- When a complaint is filed, the Commission does not *represent* the person who filed the complaint or the broker who is the subject of the complaint. The Commission's statutory role is regulatory, and its principal purpose is to protect the public's interest in real estate brokerage transactions.
- The Commission investigates complaints against real estate licensees accused of misconduct. If the Commission finds that licensees have violated the Real Estate License Law (N.C.G.S. Chapter 93A) or Commission rules, it can reprimand, suspend or revoke their real estate licenses.
- A broker can be held liable for a property description generated by artificial intelligence (AI) if published on social media.
- As covered in the Fair Housing Section of the 2025-2026 Update Course, using AI introduces significant risks regarding compliance with Fair Housing laws.
  - **Algorithmic Bias:** The National Fair Housing Alliance's (NFHA) research shows that AI platforms are susceptible to bias because their algorithms are written by humans.
  - **Discriminatory Content:** If an AI-generated property description indicates a preference, limitation, or discriminates against an individual of a protected class (e.g., race, color, religion, sex, national origin, handicap, or familial status), the broker may be in violation of the Fair Housing Act, License Law, and Commission rules.
  - **Strict Liability:** The absence of intent to be biased does not excuse a broker from liability under fair housing laws. Brokers are advised to describe the property, not the person, to avoid these pitfalls.
- To minimize liability when using AI for property descriptions, brokers should:
  - **Review and Verify:** Comprehensively review AI content for accuracy against their visual inspection and seller-provided data.
  - **Monitor Output:** Consistently monitor their advertisements to ensure the information remains accurate and hasn't been altered by third-party platforms during dissemination.
  - **Standardize Policies:** Review the brokerage's written office policies regarding the permissible use of AI and social media platforms.
- A pre-foreclosure notice is not a material fact. It is not a material fact that must be disclosed because it does not directly affect the legal title of the property or the seller's ability to consummate the transaction.
- According to N.C.G.S. §143-214.7D), as used in this Section, the term *built-upon area* means an impervious surface and partially impervious surface(s) to the extent that the partially impervious surface does not allow water to infiltrate through the surface into the subsoil.
  - Common examples include roofs, driveways, sidewalks, parking areas, and many hardscape improvements such as patios, gazebos, and similar surfaces.
- In the context of real estate and land use regulation, these surfaces are significant because they prevent water from soaking into the ground and thereby increasing storm water runoff.
- The North Carolina Real Estate Commission has the statutory authority to discipline brokers for various forms of improper conduct. This power is granted

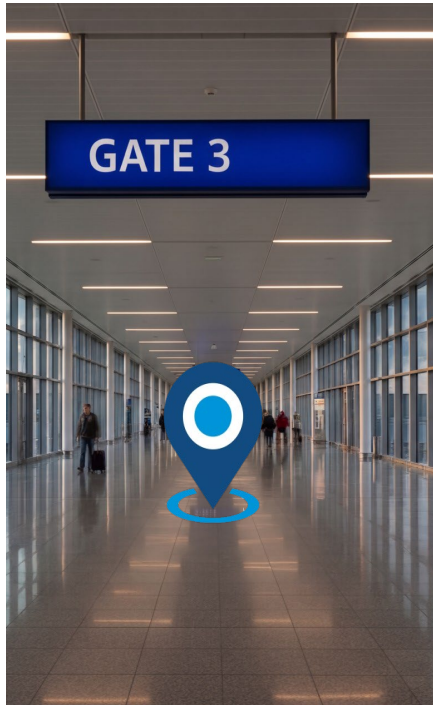
by N.C.G.S. § 93A-6, which allows the Commission to act on its own initiative or upon a written complaint from any person.

- Under N.C.G.S. § 93A-6(a)(10), the Commission has the power to suspend or to revoke at any time a license issued under the provisions of this Chapter, or to reprimand or to censure any licensee. If following a hearing, the Commission adjudges the licensee to be guilty of being unworthy or incompetent to act as a real estate broker in a manner as to endanger the interest of the public.
- This authority includes conduct that reflects poor judgment, dishonesty, or a disregard for laws and rules.
- Any agreement regarding buyer possession before or after closing is governed by the terms of the parties' sales contract.
- A real estate closing is the completion of a sales transaction. Many people assume closing happens when the parties meet with the settlement agent to sign documents and deliver funds, but that meeting is more accurately called the settlement meeting (as defined in the Standard Form 2-T).
- Closing is the broader legal process that ends with the transfer of title from seller to buyer. It includes the settlement meeting and additional steps that are not always finished on the same day. These steps typically include:
  - The closing attorney's final title update after settlement,
  - receipt of the lender's authorization to disburse loan funds,
  - recording the deed and any deed(s) of trust with the county register of deeds, and then
  - disbursement of sale proceeds to the seller and others as required by law, the contract, and the settlement statement.

Only after all steps are completed is the transaction considered closed or finished and title officially transferred.

- As part of their fiduciary duty to use reasonable skill, care, and diligence, a buyer agent should provide advice and guidance to a buyer regarding the amount of the Due Diligence Fee (DDF) to include in an offer.
- Although the agent should provide advice based on current market conditions and the specifics of the property, the final decision on the amount, if any, remains a negotiated term between the buyer and the seller.
- The Commission highly recommends that brokers use their own Zoom links rather than ones provided by a client or consumer.
- Scammers increasingly use malicious meeting links to steal credentials or install malware. If the client is verified and there is a legitimate reason to join their meeting, brokers should independently confirm the invitation details before clicking any link.

# Gate III



**Fake Sellers**

***Avoiding  
Turbulence in  
Your Brokerage***

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## LEARNING OBJECTIVES



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

- define seller impersonation fraud;
- identify the red flags to recognize a fake seller; and
- state the best practices for brokers to prevent fraud in a transaction.

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## TERMINOLOGY

**Seller impersonation fraud:** A scheme in which a person purports to be the true owner of real property and attempts to illegally sell that property using the services of a real estate broker or as a for sale by owner (FSBO).

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## FAKE SELLERS/FAKE BUYERS

Fraudulent activity involving fake buyers and sellers has increased significantly in North Carolina -- impacting brokers, attorneys, lenders, and consumers.



In December of 2022, the Commission published an article entitled, [Fake Seller/Fake Buyer Scam Alerts](#). This article describes a rising problem in North Carolina involving real estate scams with criminals pretending to be legitimate sellers and buyers. These scammers try to take advantage of brokers, buyers, sellers, attorneys, and lenders. According

to the Commission, the people behind these scams often pretend to be local property owners or buyers but are actually working from outside the state or even from another country. Their goal is to steal money such as due diligence fees and sale proceeds before anyone realizes the deal is a hoax. Because these scams can look like real transactions, brokers must stay alert and question anything that seems odd or unrealistic.

**NOTE:** In recent scams, bad actors decline to accept due diligence fees to prevent detection until after they have received the full sales proceeds. Also, bad actors reject due diligence fees in an attempt to (1) appear to be legitimate and (2) get the full sale price.



The article, [Fake Seller/Fake Buyer Scam Alerts](#), explains how fake sellers target vacant or rarely visited properties. In some cases, scammers claim to own land and put up “For Sale By Owner” signs or contact real estate brokers to list the property. In a majority of these cases, brokers did check deed records, but the scammers avoided in-

person contact and used emails and electronic signatures to seem legitimate. Luckily, in some cases, the fraud was discovered when observant neighbors noticed something suspicious and contacted the real owner. Therefore, it is important for brokers to confirm who owns the property on paper, but also to verify the true identity of the person claiming to be the owner of record.



Overall, the Commission stresses that careful attention from brokers is one of the best ways to prevent fake seller/buyer fraud. Some red flags of a fraudulent buyer or seller are as follows:

- the buyer’s and/or seller’s inability to meet in person;
- the seller requires a quick cash sale;
- email address and/or phone numbers originate from outside the United States;
- identification is not legible;
- seller does not negotiate for due diligence fees, and/or no earnest money deposit;
- buyer makes excuses regarding contract performance and/or fails to return transaction documents; and/or
- buyer or seller pressures the broker to make sure the deal consummates quickly and offers commission bonuses or promises to hire the broker in the future.

**NOTE:** Brokers are advised to ask questions and double-check information, so they can help protect their clients, themselves, and the real estate process.





In another article, [Be Aware of Scam Sellers](#), published in July 2023, the Commission again warned brokers about a sharp increase in identity theft scams involving fake sellers across North Carolina. Basically, in these scams, criminals pretended to be property owners and contacted listing brokers, often through online lead websites. Additionally, these scammers

usually provide realistic-looking photo IDs, such as fake driver's licenses, and sign listing agreements using electronic signature tools, which makes the transaction seem authentic.

Thankfully, in some cases, the true property owner finds out about the fake listing before the sale is consummated and is able to stop it. Unfortunately, some scams go further, and due diligence fees are collected and in serious cases, the property is actually sold and the sales proceeds are lost. If the property is sold, this can cause major problems for buyers, brokers, and closing attorneys and the real property owner may have to go to court to resolve title issues and reverse the sale.

Interestingly, the Commission has uncovered some common patterns in these fake seller scams. Scammers often say they are living or traveling out of state and cannot meet in person. They may also claim to have health problems, family emergencies, or other



urgent reasons for selling quickly, sometimes at a price lower than market value. Further, most communication happens through email and electronic signature platforms and messages often seem believable because they include the real owner's name and details taken from public records.

Scammers usually target vacant, undeveloped, abandoned, or trust-owned properties, especially when an owner has

recently passed away because these properties are less likely to be closely watched. Because these scams happen throughout North Carolina, the Commission urges brokers to stay alert, double-check a virtual seller's identity when warning signs appear, and not rely only on documents provided by the supposed owner.



*A listing agent is contacted by someone claiming to be the owner of vacant property who asks for it to be listed for sale. The individual provides identification and signs the listing agreement electronically, making the request appear legitimate. After the property is posted, a nearby neighbor notices*

*the listing and contacts the true owner, who confirms they did not authorize the sale. What should the listing agent have done differently?*



Think Before You Act, a Commission article published in June 2025, indicates that a broker's responsibility to confirm a seller's identity occurs prior to signing a listing agreement, not later in the transaction or at settlement. Also, relying on an attorney or title company to catch an ownership issue may be too late to stop financial losses and may be considered by the Commission to

be an unrealistic expectation by the broker. Unclear or altered ID, even with photos, and sellers who insist on handling everything remotely without a valid reason are strong warning signs that need closer review.



This article includes practical steps brokers can take to lower scam risks such as:

- talking to neighbors,
- searching online/social media, and
- requesting a notarized statement from the seller confirming they own the property.

Finally, the article makes clear that brokers are expected to look for, recognize, and address red flags, not ignore them.

**NOTE:** The Commission notes that brokers who take reasonable, well-documented steps to verify a seller's identity are less likely to face discipline if a complaint is filed.



In the article, [Preventing Seller Impersonation Fraud in Residential and Commercial Transactions](#), reprinted with permission from NC REALTORS®, the discussion of seller impersonation fraud makes clear that it is prevalent in deals involving vacant land, abandoned properties, and property owned by trusts or estates. This article is written as a question-and-answer guide to help

brokers who are contacted by out-of-state individuals who claim to own property in North Carolina they want to list for sale.

The article further recommends using several steps to verify a seller's identity and not relying only on documents the seller provides. Also, brokers-in-charge can adopt the following best practices, as policies to help brokers reduce the odds of falling for real estate scams:



- Verification of property ownership;
  - Check the deed and county tax records to make sure you have the correct property owner(s).
  - Verify the name on the government-issued ID matches the name in public records and other identifying details such as hair and eye color are accurate.
  - Request notarized statements and/or ownership documents, like recent tax bills, title policies, or settlement statements, to confirm ownership.
- Confirmation of seller identity;
  - Ask for a government-issued photo ID, such as a driver's license or passport.
  - Hold a live, face-to-face video meeting through a link sent by the broker, not the purported seller.
  - Ask detailed questions about the property.
  - Check information using the internet, social media, and identity verification tools.
  - Contact neighbors to verify the seller's information.
  - Attempt to contact the actual owner directly using public record and visiting the property.
- Validation of buyer identity and source of funds;
  - Request proof of funds or prequalification information from the buyer.



- Confirm that due diligence and earnest money funds are received and cleared before moving forward.
- Educate clients about wire fraud risks and advise them on safe ways to transfer funds.
- Acknowledgement of red flags;
  - Watch for sellers or buyers who are out of state, traveling, or refuse to meet in person.
  - Be cautious of requests for a quick sale at a below-market price.
  - Document any refusal to provide ID or notarized ownership documents.
  - Evaluate methods of communication.
  - Be alert to pressure to close quickly or offers of incentives to speed up closing.
  - Check for questionable or blurry identification documents.
- Requirement of agents to exercise due diligence; and
  - Contact prior listing agents or firms if the property's history seems unusual.
  - Verify that FSBO (For Sale By Owner) or limited-service listings are legitimate.
  - Educate clients about signs of potential fraud.
  - Document all steps to verify authenticity of owner.
- Coordination of transaction oversight.
  - Notify the closing attorney of any concerns or red flags.
  - Be transparent with clients about potential risks.
  - Escalate any suspicious activity to the broker-in-charge.
  - Report suspected fraud to the appropriate authorities:
    - FBI: <https://www.fbi.gov/how-we-can-help-you/safety-resources/scams-and-safety>
    - NC Attorney General Fraud Hotline: <https://ncdoj.gov/>



Following these best practices helps brokers create a strong and consistent approach to avoiding fake seller and buyer scams. When brokers take these steps, they are exercising caution and adhering to their due diligence responsibilities.

Fraud prevention requires attention throughout the entire transaction, not just at the beginning. If something does not seem right, brokers should slow down, ask questions, and involve the broker-in-charge and/or an attorney, when needed. Implementing these best practices will help brokers protect their clients, the brokerage, and themselves.

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## CASES



The cases presented are actual Commission disciplinary cases, many of which resulted in disciplinary action imposed against brokers.

After reading each case summary, determine what, if any, errors\* were made by the brokers involved.

\*To view NC License Law and Commission Rules, go to [www.ncrec.gov](http://www.ncrec.gov), click on **Resources**, and select **License Law/Rules**.

When evaluating the case studies, it's important to differentiate between "complainants" and "respondents."

- **Complaining Witness = Plaintiff:** The party who makes the complaint.
- **Respondent = Defendant:** The person against whom the complaint is made and who must reply to the complaint.

The outcomes of the cases, including Commission sanctions, are revealed at the end of the Section. Possible sanctions include:

- **License Revocation** for a definite period of time.  
A broker whose license is revoked has no license and cannot practice brokerage.



- **License Suspension** for a stated period of time.  
Active suspension: A broker whose license is suspended still has a license but is prohibited from using it for a specified period of time until conditions of the suspension have been met.  
  
Stayed suspension: A broker whose license is suspended for a specified period of time; however, the broker may still practice real estate activity.
- **Reprimand**  
This is a public statement of disapproval by the Commission. A broker who has been reprimanded continues to have an active license and may engage in real estate brokerage activities.
- **Close and Warn**  
The Commission finds probable cause that a violation has occurred; however no disciplinary action is levied against the broker's license. The broker (respondent) is sent a letter of warning regarding the violation that was identified during the investigation.
- **Close**  
No disciplinary action is levied against the broker's license.

**NOTE:** The Commission frequently will impose a harsh sanction in a case but allow the broker to reduce it to a lesser sanction or dismissal by completing some specified education by a certain date or by making the Complaining Witness whole. This approach seeks to fulfill the Commission's purpose of protecting the public interest while educating brokers in hopes of improving their knowledge, competency, and skills. Often, other brokers question the severity (or lack thereof) of outcomes in cases such as these.



Read the following case summary.

Determine what, if any, errors were made by the broker(s) and which License Laws or Commission rules were violated.

**PARTIES:**

Complaining Witness is an unsuccessful buyer. Respondent is Listing Agent (RLA).

**COMPLAINT:**

The RLA failed to take reasonable steps to verify the identity of the individual who claimed to be the seller. The RLA only had this individual sign the firm's disclosure stating that the firm would not transmit electronic communications containing confidential information.

The purported seller stated they would not accept the buyer's offer unless the due diligence fee was wired to their account. The RLA then provided the seller's wiring instructions to the buyer agent. After the buyer wired the \$5,014 due diligence fee, the RLA discovered that the individual was a fraudulent seller. The buyer was unable to stop the wire transfer before the funds were deposited into the fraudster's account.

**Evaluation and Discussion- Who Are You?**

Errors made by the Listing Agent:

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**Related Law and Rule Considerations - Who Are You?**

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Read the following case summary.

Determine what, if any, errors were made by the broker(s) and which License Laws or Commission rules were violated.

**PARTIES:**

Complaining Witness is a buyer. Respondents are Listing Agent (RLA), BIC and Listing Firm.

**COMPLAINT:**

RLA failed to verify the seller's identity before taking the listing, which ultimately caused the buyers to lose a \$5,000 due diligence fee to impostors. RLA communicated with only one of the two purported sellers and overlooked multiple red flags. The individual claiming to be the seller said his wife was ill, needed to sell the land quickly, and insisted on pricing it below market value. He promised several times to allow RLA to speak with his wife but never did, instructed RLA not to place a sign on the property and told her not to speak with neighboring family members when RLA inquired whether they were aware of the sale.

Additional warning signs included the seller changing email addresses twice and using a third email address for the wife. Although the wife was allegedly too sick to speak, she promptly signed electronic documents. Emails and text messages contained numerous grammatical and spelling errors, including the seller misspelling his own first

name. RLA stated she required photo identification before listing the property but did not obtain the IDs until the buyers were preparing to make an offer. Public records reflected that the wife was deceased, yet RLA did not question this discrepancy. The seller also insisted that the due diligence fee be wired immediately rather than paid by check.

The IDs ultimately provided contained false photographs and inaccurate information. The fraud came to light when the buyers' surveyor visited the property and was confronted by neighboring family members, who then alerted the actual owner.

### **Evaluation and Discussion - A Promise You Can't Keep**

Errors made by the Listing Agent:

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Errors made by the BIC:

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Errors made by the Listing Firm:

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### **Related Law and Rule Considerations - A Promise You Can't Keep**

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Read the following case summary.

Determine what, if any, errors were made by the broker, and which License Laws or Commission rules were violated.

**PARTIES:**

Complaining Witness is buyer. Respondent is listing agent (RLA).

**COMPLAINT:**

Complaining Witness purchased a vacant lot for \$189,000 in cash. The Respondent, a sole proprietor and listing agent, failed to take reasonable steps to verify the identity of the individual who claimed to be one of the sellers. The transaction closed, and the purchase funds of \$189,000 were wired to a bank account controlled by a fraudulent seller.

After closing, the sister of the true owners contacted the RLA and reported that the sale had not been authorized.

## **Evaluation and Discussion - Where Is My Money?**

Errors made by the Listing Agent:

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## **Related Law and Rule Considerations - Where Is My Money?**

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## CASE OUTCOMES

### Case Outcome - Who Are You?

#### Errors identified during the Commission's Investigation

- RLA failed to take adequate steps to verify the identity of the owner/seller of the vacant lot for sale.
- RLA's failure to verify the identity of the seller caused the buyer to lose \$5k in due diligence fees.

#### Possible Law & Rule Violations

- N.C.G.S. §93A-6(a)(8),
- N.C.G.S. §93A-6(a)(10),
- N.C.G.S. §93A-6(a)(15), and
- Rule 58A .0105

#### Sanction Imposed by Commission:

- 6-month suspension reduced to reprimand if Respondent:
  - provides evidence of an offered payment of \$5,014 to the injured party; and
  - completes NCREC's Issues and Answers Course.

### Case Outcome - A Promise You Can't Keep

#### Errors identified during the Commission's Investigation

- RLA failed to verify the seller's identity before taking the listing
- RLA only worked with one of the two purported sellers
- RLA failed to recognize the following red flags:
  - Consistent changing of email addresses
  - Seller wife inability to have a conversation with RLA
  - Public records indicating seller wife was deceased

#### Possible Law & Rule Violations

- N.C.G.S. §93A-6(a)(8), and
- N.C.G.S. §93A-6(a)(10)

#### Sanction Imposed by Commission

- Permanent Voluntary Surrender of RLA, BIC, and Firm Licenses

## Case Outcome - Where Is My Money?

### Errors identified during the Commission's Investigation

- RLA failed to take adequate steps to identify the true owner of the vacant land
  - Conducted search of social media and public tax records
- RLA prepared the listing documents and fraudulent seller signed via Dotloop
- RLA listed vacant lot for sale in MLS and placed sign on the property

### Possible Law & Rule Violations

- N.C.G.S. §93A-6(a)(10)

### Sanction Imposed by Commission:

- ***Reprimand***

**NOTE:** Complainant has not recovered the \$189,000 paid for the property. Litigation is currently pending and involves the title company, the errors and omissions insurance carrier, and the true property owners. The local police department, the SBI, and the FBI have investigated the matter but have been unable to identify or apprehend the fraudulent seller.

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## SUMMARY OF IMPORTANT POINTS

### Post-Flight Check Summary

#### Key Concepts to Review



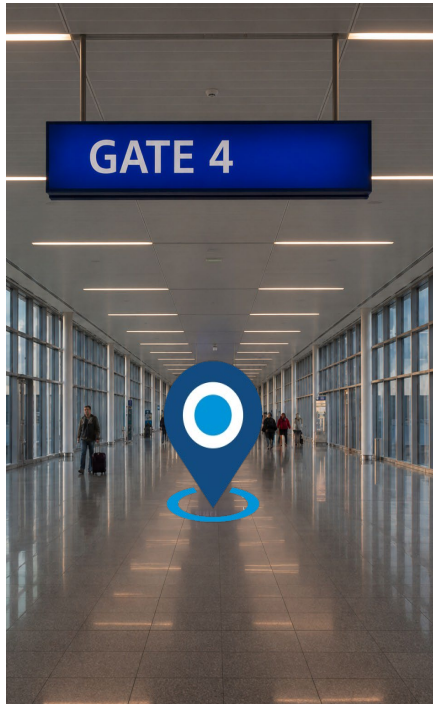
- Fraudulent activity involving fake buyers and sellers has increased significantly in North Carolina...impacting brokers, attorneys, lenders, and consumers.
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- It is important for brokers to confirm who owns the property on paper, but also to verify the true identity of the person claiming to be the owner of record.
- Overall, the Commission stresses that careful attention from brokers is one of the best ways to prevent fake seller/buyer fraud. Some red flags of a fraudulent buyer or seller are as follows:
  - the buyer's and/or seller's inability to meet in person;
  - the seller requires a quick cash sale;
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  - identification is not legible;
  - seller does not negotiate for due diligence fees and/or no earnest money deposit;



- buyer makes excuses regarding contract performance and/or fails to return transaction documents; and/or
- buyer or seller pressures the broker to make sure the deal consummates quickly and offers commission bonuses or promises to hire the broker in the future.
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- Scammers usually target vacant, undeveloped, abandoned, or trust-owned properties, especially when an owner has recently passed away because these properties are less likely to be closely watched.
- [Think Before You Act](#), a Commission article published in June 2025, indicates that a broker's responsibility to confirm a seller's identity occurs prior to signing a listing agreement, not later in the transaction or at settlement.
- This article includes practical steps brokers can take to lower scam risks such as:
  - talking to neighbors,
  - searching online/social media, and
  - requesting a notarized statement from the seller confirming they own the property.
- Finally, the article makes clear that brokers are expected to look for, recognize, and address red flags, not ignore them.
- The Commission notes that brokers who take reasonable, well-documented steps to verify a seller's identity are unlikely to face discipline if a complaint is filed.
- Brokers-in-charge can adopt the following best practices as policies to help brokers reduce the odds of falling for real estate scams:
  - Verification of property ownership;
    - Check the deed and county tax records to make sure you have the correct property owner(s).
    - Verify the name on the government-issued ID matches the name in public records.
    - Request notarized statements and/or ownership documents, like recent tax bills, title policies, or settlement statements, to confirm ownership.
  - Confirmation of seller identity;
    - Ask for a government-issued photo ID, such as a driver's license or passport.
    - Hold a live, face-to-face video meeting.
    - Ask detailed questions about the property.
    - Check information using the internet, social media, and tools like *Forewarn*.
    - Contact neighbors to verify the seller's information.
  - Validation of buyer identity and source of funds;

- Request proof of funds or prequalification information from the buyer.
- Confirm that due diligence and earnest money funds are received and cleared before moving forward.
- Educate clients about wire fraud risks and advise them on safe ways to transfer funds.
- Acknowledgement of red flags;
  - Watch for sellers or buyers who are out of state, traveling, or refuse to meet in person.
  - Be cautious of requests for a quick sale at a below-market price.
  - Document any refusal to provide ID or notarized ownership documents.
  - Evaluate methods of communication.
  - Be alert to pressure to close quickly or offers of incentives to speed up closing.
  - Check for questionable or blurry identification documents.
- Requirement of agents to exercise due diligence; and
  - Contact prior listing agents or firms if the property's history seems unusual.
  - Verify that FSBO (For Sale By Owner) or limited-service listings are legitimate.
  - Educate clients about signs of potential fraud.
  - Document all steps to verify authenticity of owner.
- Coordination of transaction oversight.
  - Notify the closing attorney of any concerns or red flags.
  - Be transparent with clients about potential risks.
  - Escalate any suspicious activity to the broker-in-charge.
  - Report suspected fraud to the appropriate authorities:
    - FBI: <https://www.fbi.gov/how-we-can-help-you/safety-resources/scams-and-safety>
    - NC Attorney General Fraud Hotline: <https://ncdoj.gov/>
- Fraud prevention requires attention throughout the entire transaction, not just at the beginning.

# Gate IV



**Fair Housing**

***Reducing Risk  
Before Take Off***

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## LEARNING OBJECTIVES



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

- identify the fair housing equal opportunity memorandums that have been withdrawn by HUD;
- explain the most common types of alleged discrimination cited in fair housing complaints; and
- discuss recent fair housing cases.

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## TERMINOLOGY

**Fair Housing Act:** A group of laws that forbid discrimination in housing based on race, color, national origin, religion, sex, familial status, and disability. There is a federal Fair Housing Act and a North Carolina (“State”) Fair Housing Act.

**The Department of Housing and Urban Development (HUD):** The Department of Housing and Urban Development (HUD) is the federal agency responsible for national policy and programs that address America’s housing need, that improve and develop the Nation’s communities, and that enforce fair housing laws.

**The North Carolina Human Relations Commission (NCHRC):** The North Carolina Human Relations Commission is the Civil Rights Division of the Office of Administrative Hearings. It is responsible for enforcing the state Fair Housing Act.

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## HUD GUIDANCE MEMORANDUMS



HUD's Office of Fair Housing and Equal Opportunity (hereafter referred to as *FHEO*), enforces the federal Fair Housing Act and ensures compliance with other civil rights laws, including but not limited to Title VI of the Civil Rights Act of 1964, Section 109 of the Housing and Community Development Act of 1974, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990.

The FHEO has the authority to investigate and resolve complaints regarding housing discrimination and initiate investigations or

file complaints on behalf of HUD under Section 810 of the Fair Housing Act.

On September 17, 2025, the Department of Housing and Urban Development (hereafter referred to as *HUD*) announced the withdrawal of several guidance documents via the memorandum, [Notice of Withdrawal of Fair Housing Equal Opportunity Guidance Documents.](#)



In this memorandum, HUD informed the public that the documents were withdrawn due to its policymaking discretion. For context, agencies, including HUD, often share written information, called guidance documents, to explain how they interpret and apply the laws they regulate. Whereas these documents

are not official law, the guidance can include:

- explanations of law,
- discussions regarding agency decisions,
- compliance guides, and/or
- training materials.

These documents are meant to inform the public about specific laws and regulations but are not legally binding - hence the use of the term “guidance.”

Throughout the years, HUD, including the FHEO, has issued various guidance documents.

As a result of HUD's desire to reduce burdens on the public, the FHEO is consistently reviewing all guidance previously issued and withdrawing specific material. Further, the FHEO has indicated that guidance that has been withdrawn should not be relied upon by others or enforced.

The table below references the guidance documents that the FHEO has withdrawn along with the dates the guidance was originally issued. Moreover, all of these documents have been removed from the [HUD.gov](https://www.hud.gov) website.

| <b>Title</b>                                                                                                                                                                 | <b>Date Issued</b> |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|
| Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons | January 22, 2007   |
| FHEO Notice 2013-01: Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-funded Programs                                                  | April 25, 2013     |
| FHEO 2020-01: Assessing a Person's Request to Have an Animal as a Reasonable Accommodation Under the Fair Housing Act                                                        | January 28, 2020   |
| Implementation of Executive Order 13988 on the Enforcement of the Fair Housing Act                                                                                           | February 11, 2021  |
| FHEO Statement on the Fair Housing Act and Special Purpose Credit Programs                                                                                                   | December 7, 2021   |
| Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real-Estate Related Transactions                                        | June 10, 2022      |
| Implementation of OGC Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records                                                                   | June 20, 2022      |
| FHEO Memorandum on Source of Income Testing Activities under the Fair Housing Assistance Program                                                                             | February 12, 2024  |
| Guidance on Application of the Fair Housing Act to the Advertising of Housing, Credit, and Other Real Estate-Related Transactions through Digital Platforms                  | April 29, 2024     |

Although the FHEO has removed the above referenced guidance documents, it will continue to provide links and information to documents that are still valid. Also, if new guidance is issued, it will be published and available on the [HUD.gov](https://www.hud.gov) website.





*A landlord asks a broker to advertise that “no pets” are allowed in their rental property. A prospective tenant is interested in the property and completes a rental application. Upon submission of the rental application, the tenant provides a request for reasonable accommodation for their service animal. The broker informs*

*the landlord of this request and advises them to deny it because the FHEO has withdrawn the Assessing a Person’s Request to Have an Animal as a Reasonable Accommodation under the Fair Housing Act guidance documents. Is the conduct by the broker in violation of state/federal fair housing laws?*

The withdrawal of specific FHEO documents may cause some confusion among brokers regarding compliance with the Fair Housing Act (hereafter referred to as *FHA*).



Therefore, the Commission explained in the eBulletin article, [2025 Year In Review](#), that brokers should be aware that the FHEO guidance documents help housing providers, agencies, and the overall public with clarity on their rights and responsibilities, and interpretation of existing

housing laws and regulations.



The Commission reiterated in the [article](#) that guidance documents may shift over time; however, the underlying laws such as Title VIII of the Civil Rights Act, the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act of 1974, remain unchanged. It is also important that real estate professionals, housing providers, and community partners continue to ensure compliance with fair housing requirements and protections in all housing and real estate transactions.

The article discussed the following fair housing concerns for brokers:

- service animals and reasonable accommodations,
  - Individuals with disabilities continue to have the right to request reasonable accommodation under the Fair Housing Act, and housing providers are required to grant accommodations that are reasonable, including the use of service animals. Further, verification of medical documentation for non-obvious disabilities remains a standard part of the reasonable accommodation evaluation process.
- gender identity and sexual orientation,
  - Complaints based solely on gender identity or sexual orientation are no longer accepted by HUD. However, complaints involving sexual harassment such as *quid pro quo* or hostile environment claims, remain valid. Additionally, specific NC cities such as: Charlotte, Durham, and Greensboro have local ordinances that provide extra protections for gender identity and sexual orientation.
- use of criminal records,
  - In the case [Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc., 576 U.S. 519, \(2015\)](#), the Supreme Court held that the Fair Housing Act allows lawsuits based on policies or practices that disproportionately harm protected groups. The North Carolina Human Relations Commission cannot investigate disparate impact claims, however; housing providers are still required to avoid discriminatory practices.



- source of income testing, and
  - Fair Housing Assistance Program (hereafter referred to as *FHAP*) may use federal funds to conduct source of income testing to detect discrimination.

- The cities/counties in North Carolina with source of income protections are:
  - Chapel Hill,
  - Charlotte,
  - Mecklenburg County,
  - Raleigh, and
  - Winston-Salem.
- digital advertising and fair housing.
  - Housing providers must ensure that digital advertising complies with the FHA. Some recommended best practices for brokers and housing providers are to:
    - prohibit use of discriminatory language;
    - avoid targeting specific populations;
    - obtain knowledge regarding fair housing protections;
    - educate themselves on the areas of concern within the various platforms; and
    - implementation of artificial intelligence (AI) tools in compliance with fair housing laws.



*A broker uses AI advertising to promote a residential property. The platform disseminates ads that target individuals who are African-American, single, and enjoy the “night life” based on their engagement patterns on social media. The broker does not review the targeting criteria because this AI tool is widely used*

***in the industry. May the broker be liable for violating the Fair Housing Act and License Law and Commission rules?***

Yes, a broker may be in violation of Rule 58A .120(d), Rule 58A .1601, and N.C.G.S. § 93A-6(a)(8), (10) and (15). Brokers must also avoid ads that specifically target people within protected classes and actively review and monitor AI generated marketing for fair housing compliance. Brokers who rely on automated tools without oversight, are not relieved of their duty to comply with state, federal, and License Law and Commission rules. Basically, brokers are responsible for ensuring their advertisements are not discriminatory in nature.

Brokers may also find the article, [Cracking the Code: AI and Fair Housing Marketing](#), helpful when creating marketing materials and property descriptions. The article



discusses the usage of AI tools, audience-targeting algorithms, that may lead to the exclusion of certain groups from housing advertisements—even without intent. Although AI may assist brokers with creating advertisements, brokers must still be diligent and evaluate their advertisements and marketing materials to prevent

discriminatory language.

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## FAIR HOUSING TRENDS REPORT



Housing discrimination occurs in many forms and across a variety of housing related activities, such as rental housing, real estate sales, mortgage lending, zoning, and appraisals.

Due to the occurrence of housing discrimination, the National Fair Housing Alliance publishes a trends report each year.

The trends report includes data that is primarily collected and reported on the seven protected classes:

- race,
- color,
- religion,
- national origin,
- sex,
- disability, and
- familial status

and includes some data on state/local laws regarding sexual orientation, source of income, and marital status.





In 2024, fair housing organizations (hereafter referred to as *FHOs*), HUD, Fair Housing Assistance Program agencies (hereafter referred to as *FHAP*), and the Department of Justice, (hereafter referred to as *DOJ*) received 32,321 fair housing complaints according to the [2025 Fair Housing Trends Report](#). This is a decrease of 1,829 complaints (5.36%) from those filed in 2023.

Consistent with prior years, disability remained the most frequently alleged basis of discrimination, accounting for 17,645 complaints (54.59% of all filings). Race was the second most common allegation with 5,034 complaints (15.58%), followed by sex

with 2,304 complaints (7.13%). National origin accounted for 1,836 complaints (5.68%), familial status for 1,786 complaints (5.53%), color for 777 complaints (2.40%), and religion for 363 complaints (1.12%).

## Resources To Go



Click on the Suitcase or scan the QR Code to review the National Fair Housing Alliance's 2025 Fair Housing Trends Report



While *FHO's* primarily receive complaints alleging discrimination against federally protected classes, they also process complaints based on protections established exclusively under state or local fair housing laws.

In 2024, 5,894 complaints—18.24% of all filings—were classified under the “other” protected class category. However, private FHOs only provided detailed data for 4,539 of these complaints, identifying the following categories:

- source of income (2,189 complaints)
- age/student status (434 complaints)
- sexual orientation (257 complaints)
- gender identity/expression (188 complaints)
- marital status (74 complaints)
- criminal background (310 complaints)
- victims of domestic violence (297 complaints)
- military status (38 complaints)
- retaliation (472 complaints)
- immigration status/citizenship (36 complaints)

Also, statistical data indicates that 83.56% of complaints were filed in 2024 based upon alleged discrimination in rental transactions. The data in the following chart has been received by private FHOs, HUD, FHAP agencies, and the DOJ.

**NOTE:** Complaints categorized as “other” included discriminatory advertising by housing providers and discrimination by homeowners or condominium associations.

**Complaints by Transaction Type in 2024**

|                         | Rental        | Sales      | Lending    | Insurance | Harassment | Appraisal | Advertising | HOA/Condo  | Other        | Total         |
|-------------------------|---------------|------------|------------|-----------|------------|-----------|-------------|------------|--------------|---------------|
| <b>NFHA Members</b>     | 21,861        | 254        | 142        | 26        | 815        | 39        | 108         | 200        | 512          | <b>23,957</b> |
| <b>HUD</b>              | 974           | 68         | 31         | 1         | 0          | 0         | 0           | 0          | 492          | <b>1,566</b>  |
| <b>FHAPS</b>            | 4,156         | 336        | 41         | 0         | 0          | 0         | 0           | 0          | 2,221        | <b>6,754</b>  |
| <b>DOJ</b>              | 16            | 1          | 6          | 0         | 0          | 0         | 0           | 3          | 18           | <b>44</b>     |
| <b>Total</b>            | <b>27,007</b> | <b>659</b> | <b>220</b> | <b>27</b> | <b>815</b> | <b>39</b> | <b>108</b>  | <b>203</b> | <b>3,255</b> | <b>32,321</b> |
| <b>Percent of Total</b> | 83.56%        | 2.04%      | 0.68%      | 0.08%     | 2.52%      | 0.12%     | 0.33%       | 0.63%      | 10.07%       |               |

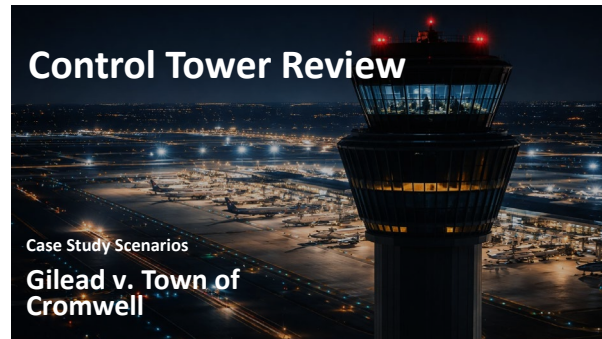
Note: HUD and FHAP data contained minor inconsistencies. For reporting clarity, minor adjustments (less than 1%) were made to ensure subtotals aligned with complaint total.



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## CASE HIGHLIGHTS

In 2024, the DOJ secured 39 settlements and judgments, resulting in \$50 million in penalties. The cases that follow display some of the systemic challenges that consumers face when trying to access housing opportunities in the real estate market.



*What conduct by the Town of Cromwell violated the Fair Housing Act according to the Court?*

### Disability

**Gilead Community Services v. Town of Cromwell, NO. 22-1209, 2024 U.S. App. LEXIS 20193 (2d Cir. Aug. 12, 2024)**



In the article, [Court Upholds \\$5.2 Million Jury Award in Group Home Discrimination Case](#), the Fair Housing Project discusses the facts of the case as follows:

In 2015, Gilead purchased a home in a residential area to provide housing and services to six residents

with mental health disabilities, as permitted under Connecticut law. In response, officials in the Town of Cromwell undertook a multi-pronged effort to prevent Gilead from operating a group home in the town, including leading forums to garner public support against the home, challenging their funding, wrongfully denying a tax exemption, and issuing a cease and desist order against them. Ultimately, because of the Town's discriminatory actions, Gilead had to close its operations at the home, depriving its residents of the opportunity to live outside an institutional setting.

In 2017, the Connecticut Fair Housing Center and Relman Colfax PLLC filed a housing discrimination lawsuit in federal court on behalf of Gilead and the Center against the Town of Cromwell. The complaint alleged violations of the Fair Housing Act, the Americans with Disabilities Act, and the Rehabilitation Act. The Fair Housing Act violations included allegations that the Town of Cromwell engaged in unlawful discrimination by making housing unavailable to persons with disabilities and by attempting to coerce, intimidate, threatened, or interfere with Gilead's operation at the group home.



A jury returned a verdict for the plaintiffs and awarded them \$181,000 in actual damages and \$5 million in punitive damages. The town appealed the finding of liability and the award of punitive damages. The court rejected the town's argument that the trial court applied the wrong standard in assessing causation when it ruled that

the plaintiffs were only required to show that the issue of the residents' disability was a significant factor in the town's action.

In a precedent ruling, the Second Circuit Court of Appeals affirmed a jury verdict in favor of the Connecticut Fair Housing Center and the operators of a group home for people with disabilities in their discrimination lawsuit against the Town of Cromwell, Connecticut.

The court held that punitive damages are available against municipalities under the Fair Housing Act—marking the first time a federal appellate court has recognized the availability of punitive damages against a local government.

However, it concluded that the amount awarded in this case was unconstitutionally excessive. It remanded the case for a new trial on the issue of punitive damages unless Gilead agreed to a reduction of the amount to \$2 million. Gilead later agreed to the lower monetary award and the district court entered final judgment for the plaintiffs.

**NOTE:** Since 1988, the Fair Housing Act has barred local governments from using zoning laws, land use regulations, or similar controls to discriminate against group homes. Courts have consistently affirmed that group homes serving persons with disabilities are entitled to operate in residential neighborhoods and are protected from exclusionary zoning practices.



## **Lending**

***What is reverse redlining? Is it a violation of the Fair Housing Act?***

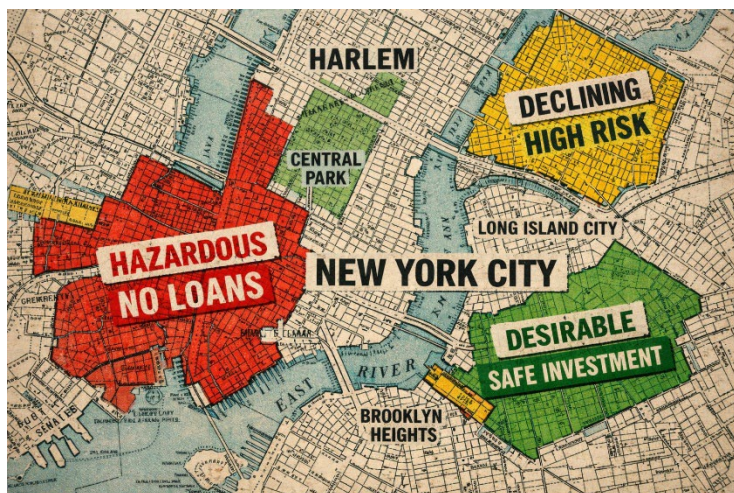
**Saint-Jean v. Emigrant Mortgage Company, No. 22-3094, 2025 U.S. App. LEXIS 3742 (2d Cir. Feb. 19, 2025)**

The facts of this case as decided on February 19, 2025, are as follows:

In 1979, Howell and his wife moved into a new home on 158th Street in Jamaica, Queens with their young children. Over the next thirty years, the Howells paid down their mortgage until they owned their home outright. Howell had \$424,000 in equity in his home. One day, a contractor knocked on Howell's door and told him that he could make some extra money by constructing a rental property in his yard. Howell, who was retired by then, expressed his interest in generating extra income and the contractor introduced Howell to a broker who helped him apply for loans.

The broker introduced Howell to Emigrant Mortgage Company (hereafter referred to as *Emigrant*). Emigrant approved Howell for a \$200,750 STAR NINA loan with an initial interest rate of 10.375%. Howell and Emigrant closed on the loan on February 6, 2008. Although Howell did not realize it at signing, his loan contained a provision providing for an 18% default interest rate if he missed a single payment. The default provision appeared in a separate rider to the main loan papers, and no one otherwise informed him of the default rate. Howell could not afford the \$1,817.61 monthly payments on his STAR NINA loan. Indeed, his inability to make a single payment triggered the 18% default rate, which quickly caused him to fall deeper into the debt he owed Emigrant. In March 2009, Emigrant obtained a judgment of foreclosure on Howell's home and purchased it for \$1,000 in August 2009.

Despite having had over \$400,000 in equity in his home before he took out the STAR NINA loan, Howell lost his home -- what he had called his "castle" -- and received no part of the foreclosure proceeds.



Eight Black and Hispanic homeowners in New York City sued Emigrant Mortgage Company and Emigrant Savings Bank, alleging race discrimination. The plaintiffs were homeowners with significant equity in their homes who applied for refinancing from Emigrant under its STAR NINA program, which allowed borrowers with high equity in their homes to receive a loan without disclosing income or

assets and with lower credit scores. Under the program, if a borrower defaulted, the interest rate would increase to 18 percent.

Emigrant targeted borrowers in Black and Hispanic neighborhoods. The plaintiffs only learned of the targeting of minority groups when Emigrant initiated foreclosure proceedings against them in 2009 and they observed other Black borrowers in foreclosure court. Plaintiffs alleged that Emigrant had discriminated against them based on their race and national origin. Following two jury trials, the district court entered judgment for the plaintiffs. The court awarded the plaintiffs who had lost their homes a total of \$720,000.

The plaintiffs who were still in their homes under threat of foreclosure were awarded nominal damages. Emigrant appealed. It argued that the plaintiffs' claims were untimely because they had not filed the case until more than two years after the mortgage company had foreclosed on their properties and were therefore barred by the statute of limitations; that the jury instructions on disparate impact and disparate treatment were wrong; and that the court had erred in ruling that a release of claims provision in a loan modification agreement signed by two plaintiffs was unenforceable. In a 2-1 decision written by Judge Denny Chin, a Second Circuit panel rejected the defendants' arguments and affirmed the district court's judgment. The panel ruled that the district court had not erred in finding that the statute of limitations had been equitably tolled because plaintiffs were unaware of the facts of discrimination within the statutory period.

The appeals court also ruled that the trial court's jury instructions on disparate impact and disparate treatment were not erroneous and agreed with the district court that the release of claims provisions in two of the plaintiffs' loan modification agreements was unenforceable because it contravenes public policy against broad waivers of claims in mortgage transactions.



The National Fair Housing Alliance also highlighted the following cases to further demonstrate inequities in housing opportunities.



*How can the failure to market foreclosed properties in certain neighborhoods create liability under the Fair Housing Act?*

### ***REO Case***

**National Fair Housing Alliance v. Deutsche Bank National Trust, No. 18 CV 839, 2025 U.S. Dist. LEXIS 60481 (N.D. Ill. March 31, 2025)**

The National Fair Housing Alliance and 19 local FHOs sued Deutsche Bank and Ocwen Loan Servicing and Altisource Solutions, alleging that the defendants violated the Fair Housing Act by failing to maintain and market foreclosed homes (known as *real estate owned properties*, or REOs) in communities of color in 30 metropolitan areas.



The court held that the plaintiffs had stated claims of both disparate treatment and disparate impact under Section 3604(b), and that a reasonable jury could find that Ocwen's and Altisource's REO maintenance conduct was motivated in part by race. It also ruled that the plaintiffs had presented sufficient evidence under 3604(b) to establish a prima

facie case of disparate impact based on the defendants' maintenance conduct. The court entered judgment as a matter of law for the defendants on the plaintiffs' claims brought under Sections 3604(a) and 3605. It noted that these sections make it unlawful to make property unavailable because of race and that the plaintiffs' claims were based on allegations that defendants' policies created unnecessary restrictions and barriers to REO home ownership in non-white communities.

### ***Source of Income***

**Fair Housing Justice Center, Inc. v. Pelican Management, No. 23-7258, 2025 U.S. App. LEXIS 1242 (2d Cir. Jan. 21, 2025)**



The Fair Housing Justice Center (FHJC) sued Pelican Management and other owners and managers of rental buildings in New York City. FHJC alleged that minimum income policies enacted in 2015 and 2019 excluded renters who receive rental subsidies.

FHJC contended that this policy discriminated based on source of

income in violation of a local fair housing law and had a disparate impact on applicants with disabilities in violation of the Fair Housing Act and local law. After a bench trial, the district court ruled for FHJC. The court issued an injunction prohibiting the defendants from denying applicants based on disability or source of income and ordered defendants to adopt non-discriminatory rental criteria. It also awarded FHJC compensatory damages of \$240,540 and punitive damages of \$750,000.



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## SUMMARY OF IMPORTANT POINTS

# Post-Flight Check Summary

## Key Concepts to Review



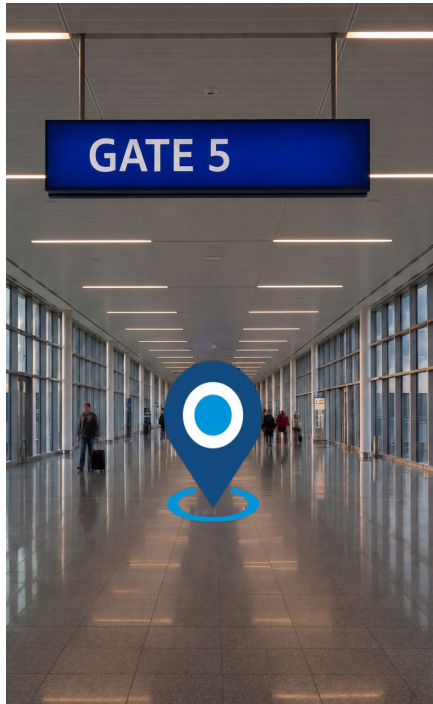
- The FHEO has the authority to investigate and resolve complaints regarding housing discrimination and initiate investigations or file complaints on behalf of HUD under Section 810 of the Fair Housing Act.
- On September 17, 2025, the Department of Housing and Urban Development (hereafter referred to as *HUD*) announced the withdrawal of several guidance documents via the memorandum, [\*Notice of Withdrawal of Fair Housing Equal Opportunity Guidance Documents\*](#).
- The Commission explained in the eBulletin article, [\*2025 Year In Review\*](#), that brokers should be aware that the FHEO guidance documents help housing providers, agencies, and the overall public with clarity on their rights, responsibilities, and interpreting existing housing laws and regulations.
- The Commission reiterated in the [\*article\*](#) that guidance documents may shift over time; however, the underlying laws such as Title VIII of the Civil Rights Act, the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act of 1974, remain unchanged.
- It is also important that real estate professionals, housing providers, and community partners continue to ensure compliance with fair housing requirements and protections in all housing and real estate transactions.

- The article discussed the following fair housing concerns for brokers:
  - service animals and reasonable accommodations,
    - Individuals with disabilities continue to have the right to request reasonable accommodation under the Fair Housing Act, and housing providers are required to grant accommodations that are reasonable, including the use of service animals. Further, verification of medical documentation for non-obvious disabilities remains a standard part of the reasonable accommodation evaluation process.
  - gender identity and sexual orientation,
    - Complaints based solely on gender identity or sexual orientation are no longer accepted by HUD. However, complaints involving sexual harassment such as *quid pro quo* or hostile environment claims, remain valid. Additionally, specific NC cities such as: Charlotte, Durham, and Greensboro have local ordinances that provide extra protections for gender identity and sexual orientation.
  - use of criminal records,
    - In the case [Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc., 576 U.S. 519, \(2015\)](#), the Supreme Court held that the Fair Housing Act allows lawsuits based on policies or practices that disproportionately harm protected groups. The North Carolina Human Relations Commission cannot investigate disparate impact claims, however; housing providers are still required to avoid discriminatory practices.
  - source of income testing, and
    - Fair Housing Assistance Program (hereafter referred to as *FHAP*) may use federal funds to conduct source of income testing to detect discrimination.
  - digital advertising and fair housing.
    - Housing providers must ensure that digital advertising complies with the FHA. Some recommended best practices for brokers and housing providers are to:
      - prohibit use of discriminatory language;
      - avoid targeting specific populations;
      - obtain knowledge regarding fair housing protections; and
      - implementation of artificial intelligence (AI) tools in compliance with fair housing laws.

- Brokers who rely on automated tools without oversight, are not relieved of their duty to comply with state, federal, and License Law and Commission rules. Brokers are responsible for ensuring their advertisements are not discriminatory in nature.
- Housing discrimination occurs in many forms and across a variety of housing related activities, such as rental housing, real estate sales, mortgage lending, zoning, and appraisals.
- In 2024, FHOs, HUD, FHAP agencies, and the DOJ received 32,321 fair housing complaints according to the [2025 Fair Housing Trends Report](#). This number reflects a decrease of 1,829 complaints (5.36%) from complaints filed in 2023.

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# Gate V



**Law and Rules**

***A Clear Route to  
Compliance***



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## LEARNING OBJECTIVES



By the end of this Section, you should be able to describe updates to License Law and Commission rules that became effective on April 1, 2026, or July 1, 2026.

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## TERMINOLOGY

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

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

**Rule:** Adopted by administrative agencies to implement broader laws as enacted by the legislature and the processes for compliance. Rules have the force and effect of law. The North Carolina Real Estate Commission rules are published in the North Carolina Administrative Code which is the official publication of the rules that govern North Carolina's agencies, boards, and commissions.

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

**Statute:** A law which is passed by the North Carolina General Assembly that consists of the Senate and House of Representatives.

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## THE RULEMAKING PROCESS

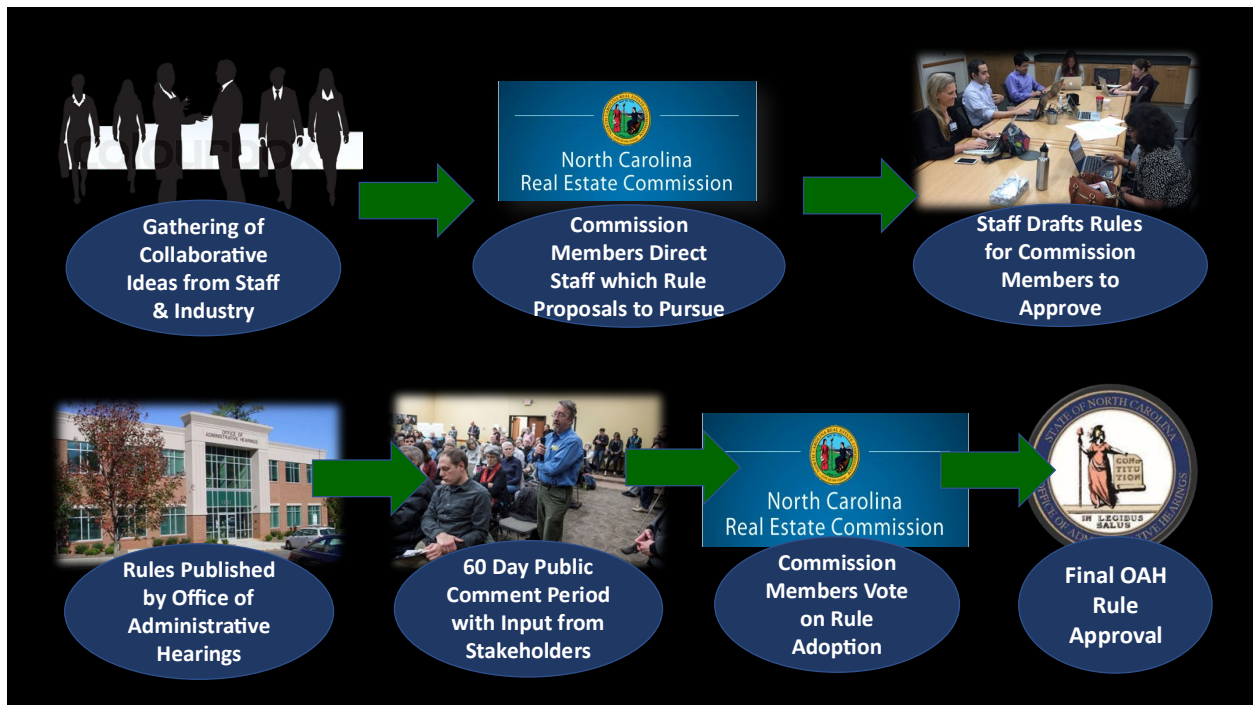
Rulemaking is the process by which the Commission implements laws passed by the General Assembly through the adoption, amendment, or repealing of rules. During permanent rulemaking, the Commission proposes rule language and sends it to the Office of Administrative Hearings (hereafter referred to as *OAH*). *OAH* publishes the proposed rule text in the North Carolina Register which provides notice to interested parties that the Commission has started the process to amend, adopt, or repeal a rule.

Once the rule text is published, interested parties have two opportunities to comment on the proposed language. The first opportunity is the 60-day public comment period. Public comments on the proposed rule can be submitted in writing during the comment period to the Commission via the Rulemaking Coordinator. The second opportunity to comment is during an advertised public hearing that is held shortly after the proposed rule text is published. During the public comment period or public hearing, interested parties have the opportunity to express support or opposition for the proposed rule.

Once the comment period and public hearing have passed, the Commission must consider all the comments and decide whether to reject, amend, or adopt the proposed rule text. If the Commission rejects the rule text, the rulemaking process will end. However, if the Commission makes a substantial change to the rule text based upon the comments, then the revised proposed rule text is republished, and another 60-day comment period begins. If the Commission adopts the rule text as proposed, the proposed rule is sent to the Rules Review Commission (hereafter referred to as *RRC*).

Once *RRC* is in receipt of the proposed rule package, the proposed rules are reviewed to ensure the Commission has followed the rulemaking requirements; the rule text establishes a purpose with clear language; and the Commission has the legal authority to make the rule. During the review, *RRC* can either approve or object to the rule(s). If *RRC* objects to the rule(s), the Commission must amend the proposed rule. However, if *RRC* approves a proposed Commission rule, it is entered in the North Carolina Administrative Code. The newly approved rule(s) may become effective immediately upon approval or at some specified date in the future.

The permanent rulemaking process takes several months. The Commission must ensure that rulemaking adheres to the rules required by *RRC*, analyze all the comments received during the public comment period/public hearing, and evaluate how the amendment, adoption, or repealing of rule text will affect stakeholders (i.e., brokers, brokerages, education providers, and instructors) prior to the *RRC* approving the rule.



**BEST PRACTICE:** For clarity, once the Commission proposes an amendment or revision to an existing rule, *OAH* has the authority to review the entire rule and request Commission staff to address any concerns and/or provide clarity on existing rule language.

Brokers can subscribe to the Commission's mailing list to receive notice of rulemaking at <https://www.ncrec.gov/Home/Subscribe>.

The following article, [Understanding the Rulemaking Process: A Simple Guide for Real Estate Brokers](#), helps clarify who makes the rules and the extensive rulemaking process. Also, brokers can find the most current version of License Law and Commission Rules as well as proposed rule changes on the Commission's [website](#).



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## FINES AND RESTITUTION



The North Carolina Real Estate Commission has a pivotal role in regulating the conduct of real estate brokers across the state. Although the Commission regulates the conduct of brokers, it is also essential to understand the limitations the Commission has regarding the ability to authorize fines and the payment of restitution.

Pursuant to N.C.G.S. §93A-6, the Commission may investigate the actions of any person or entity licensed under this Chapter upon its own initiative, or the complaint of any person. Under this Statute, the Commission also has the power to suspend or revoke at any time a license issued under the provisions of this Chapter, or to reprimand or censure any licensee.

### Commission Discipline

- Upon its own initiative or on the complaint of any person
- The Commission may:
  - Reprimand or censure
  - Suspend
  - Revoke



### §93A-6



The Commission is prohibited from imposing fines or ordering restitution for payment of monetary damages to consumers. However, it does consider the economic losses of consumers.

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

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## COMMISSION RULE CHANGES EFFECTIVE APRIL 1, 2026

### Rules That Have Already Arrived at the Gate Effective April 1, 2026



The Commission revised several rules in Chapters 58A with an effective date of April 1, 2026. The changes that directly impact brokers will be summarized in this Section.

All revised rules can be viewed on the Commission's website.



*Samantha, an approved NC real estate instructor, is reviewing the Real Estate Licensing in North Carolina booklet (RELINC) with her Prelicensing students. She indicates the license application fee is \$100. Is Samantha correct?*

#### **Rule 58A .0302: License Application and Fee**

The Commission has amended Rule 58A .0302 which increases the fee for an original broker license application. The fee increased by \$5, from \$100 to \$105. This change to the Rule is primarily administrative and financial in nature.



Application fees help support the Commission's administrative functions such as reviewing license applications, conducting background checks, overseeing examinations, and enforcing real estate regulations. By increasing the fee slightly, the Commission is ensuring it has the resources needed to carry out these responsibilities effectively while continuing to protect the public.

Effective April 1, 2026, Rule 58A .0302(a) states:

*(a) The fee for an original application of a broker or firm license shall be one hundred five dollars (\$105.00).*

### ***Anticipated Impact to Brokers***

For brokers, the impact of this change will be minimal. The increased fee applies to individuals applying for their real estate broker license. Upon submission of a license application, individuals must remit \$105 to the Commission. However, if an individual seeks to reinstate their license that has been expired, revoked, or surrendered for more than two years, they must submit a license application fee of \$105 pursuant to G.S. 93A-4, and Rules 58A .0301, 58A .0302, and 58A .0511.

Moreover, education providers, instructors, and other industry stakeholders should update any materials that reference the real estate license application fee. This includes both printed documents and online resources. Providing accurate information regarding License Law and Commission rules helps prevent confusion and ensures that prospective brokers have the correct guidance when preparing to apply for licensure.



***What is the annual license renewal fee a broker must pay to renew their license?***

### **Rule 58A .0503: License Renewal**

Effective April 1, 2026, the Commission amended Rule 58A .0503(a) to increase the annual license renewal fee by \$5. This license renewal fee is for both individual broker licenses and firm licenses.

According to the Rule change, a broker must submit a renewal fee of \$50.00 within 45 days prior to license expiration. The minimal fee increase is intended to cover rising operational costs, such as managing licensee records, enhancing databases, and enforcing disciplinary actions.

Effective April 1, 2026, Rule 58A .0503 states:

*(a) All real estate licenses issued by the Commission under G.S. 93A, Article 1 shall expire on June 30 following issuance. Any broker desiring renewal of his or her license shall renew on the Commission's website within 45 days prior to license expiration and shall submit a renewal fee of fifty dollars (\$50.00).*

### ***Anticipated Impact to Brokers***

For individual brokers and qualifying brokers of firms, the financial impact of this change will be minute. Since all active brokers and qualifying brokers of firms are required to renew their individual broker license and firm license annually between May 15<sup>th</sup>-June 30<sup>th</sup>, brokers and qualifying brokers should plan accordingly and include the revised fee in their professional budgeting for licensing expenses.



Brokers-in-charge (BICs) and educators should also take steps to communicate this fee change to brokers. This may include notifying affiliated brokers, updating internal policy manuals or reimbursement procedures, and encouraging early renewal to avoid license expiration.



***Mary has been a licensed broker for 53 years and plans to retire on June 1, 2027. She no longer wants to renew her license or complete continuing education in the future.***

***May Mary surrender or cancel her license? If she later changes her mind and wants to practice real estate again, will she be able***

***to reinstate her real estate license?***

## **Rule 58A .0513: License Cancellation**

Rule 58A .0513 was adopted by the Commission on April 1, 2026. This new Rule allows brokers to voluntarily and permanently cancel their license, as long as no disciplinary matters are pending. Instead of letting a license expire or remain inactive indefinitely, brokers now have the option to formally cancel their license. This Rule adoption provides a clear administrative license cancellation process for brokers who no longer plan to practice real estate in North Carolina.

This change helps the Commission maintain accurate license records, reduce unnecessary monitoring and regulation of individuals who have left the real estate profession, and preserve enforcement authority by preventing cancellation of real estate license during ongoing investigations or disciplinary proceedings.

Effective April 1, 2026, Rule 58A .0513 states:

- (a) A broker seeking to voluntarily cancel their real estate license shall file a license cancellation notice by logging into the broker's online portal located on the Commission's website.*
- (b) The license cancellation shall be granted if the broker's license does not have a pending complaint or disciplinary action with the Commission. If the license cancellation is granted, the broker's license shall be permanently cancelled effective as of the date the notice was filed pursuant to Paragraph (a) of this Rule.*
- (c) A license cancelled pursuant to this Rule shall be ineligible for reinstatement.*

### ***Anticipated Impact to Brokers***

For brokers, this new option offers a definitive alternative to placing a license on inactive status or letting it expire. However, this cancellation permanently terminates the real estate license. Therefore, if a broker decides to conduct NC real estate brokerage activities in the future, they would need to reapply and meet all current licensing requirements in effect at that time, including successful completion of a prelicensing course and passing the state license examination. Because of these implications, brokers should carefully consider whether permanent license cancellation aligns with their long-term professional goals before submitting the license cancellation form to the Commission.

Before initiating permanent cancellation, brokers should ensure that all real estate transactions are either completed or properly reassigned according to brokerage policies. It is also important to confirm that there are no pending complaints or disciplinary matters prior to license cancellation. Also, brokers must retain required transaction records according to Commission Rule 58A .0108 and ensure that all such documentation remains accessible even after the license is canceled.

To complete the process, brokers must submit the License Cancellation form, Form 2.26. Upon processing of the form by Commission staff, brokers can exit the profession responsibly and with a clear understanding that this license cancellation is, in fact, permanent in nature.



*John, a commercial broker in Florida, would like to apply for a limited commercial license in NC. What is the fee for the limited commercial license?*

#### **Rule 58A .1803: Requirement for Licensure; Application and Fee**

Prior to April 1, 2026, the original application fee for limited commercial licenses was \$100. However, Rule 58A. 1803 has been amended to increase the fee for an original limited commercial license by \$5, just like for a broker application. The fee is now \$105.

Additionally, the Rule has also been amended to clarify the specific items the limited commercial broker must include in the limited commercial license application. Such items include the submission of a criminal background report issued within the previous 6 months and a certified license history from their qualifying state obtained within 6 months prior to application submission.

#### **Prior to April 1, 2026, Rule 58A .1803 stated:**

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

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

- (b) A person desiring to be licensed under this Section shall submit an application on a form prescribed by the Commission and shall show the Commission that he or she has satisfied the requirements set forth in Paragraph (a) of this Rule. In connection with his or her application a person applying for licensure under this Rule shall provide the Commission with a certification of license history from the qualifying state where he or she is licensed. He or she shall also provide the Commission with a report of his or her criminal history from the service designated by the Commission. An applicant for licensure under this Section shall be required to update his or her application as required by Rule .0302(c) of this Subchapter.*
- (c) The fee for persons applying for licensure under this Section shall be one hundred dollars (\$100.00) and shall be paid in the form of a certified check, bank check, cashier's check, money order, or by credit card. Once paid, the application fee shall be non-refundable.*
- (d) If the Commission has received a complete application and the required application fee and if the Commission is satisfied that the applicant possesses the moral character necessary for licensure, the Commission shall issue to the applicant a limited nonresident commercial real estate broker license.*

**Effective April 1, 2026, Rule 58A .1803 states:**

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

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

- (b) An applicant for licensure under this Section shall be required to update his or her application as required by Rule .0302(b) of this Subchapter.*
- (c) The fee for a limited commercial license shall be one hundred five dollars (\$105.00).*

- (d) *An individual seeking licensure as a limited commercial broker shall submit an application that is available on the Commission's website and shall include the applicant's:*
- (1) legal name;*
  - (2) place of business name, mailing address, and phone number;*
  - (3) residence mailing address and telephone number;*
  - (4) email address;*
  - (4) social security number and date of birth;*
  - (5) qualification for license application;*
  - (6) real estate license history;*
  - (7) criminal offenses, military courts-martial convictions, professional license disciplinary actions, including the jurisdiction, file number, and explanation of each offense;*
  - (8) liens or unpaid judgments;*
  - (9) certification the applicant has read the Real Estate Licensing in North Carolina brochure that is available on the Commission's website; and*
  - (10) declaration and signature.*
- (e) *In addition to the application required by Paragraph (d) of this Rule, the applicant shall submit:*
- (1) the limited commercial license application fee pursuant to Paragraph (c) of this Rule; and*
  - (2) a certification of license history from the qualifying state issued within the previous six months; and*
  - (3) a criminal records report from a Commission-designated criminal reporting service obtained within six months prior to application submission.*

### ***Anticipated Impact to Brokers***

For brokers applying for an original limited commercial license, the fee increase represents a nominal cost. Also, the submission of the limited commercial application, criminal background report, and certified license history ensures that the Commission can evaluate each applicant for character and fitness to practice commercial real estate brokerage in North Carolina.



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## COMMISSION RULE CHANGES EFFECTIVE JULY 1, 2026

### Rules That Have Already Arrived at the Gate Effective July 1, 2026



The Commission revised several rules in Chapters 58G and 58H with an effective date of July 1, 2026. The changes that directly impact brokers will be summarized in this Section.

All revised rules can be viewed on the Commission's website.



*How does Commission Rule 58G .0103 define a principal office?*

#### **Rule 58G .0103: Definitions (General)**

Rule 58G. 0103 clarifies that a broker's principal office must be a physical location. Historically, a broker's principal office could have been a virtual address. By requiring a physical location, the Commission ensures that both regulators and consumers have a verifiable location where the brokerage conducts its real estate business.

**Prior to July 1, 2026, Rule 58G .0103 stated:**

*(11) “Principal Office” means the office so designated in the Commission’s records by the qualifying broker of a licensed firm or the broker-in-charge of a sole proprietorship.*

**Effective July 1, 2026, Rule 58G .0103 states:**

*(11) “Principal Office” means the physical address designated in the Commission’s records by the qualifying broker of a licensed firm or the broker-in-charge of a sole proprietorship.*

### ***Anticipated Impact to Brokers***

Brokers should anticipate that this clarification may require changes to their office arrangements if their principal office has previously been a virtual address, mailbox service, or other non-physical location. While the Rule does not limit the use of additional branch offices, it reinforces that the principal office, the primary location listed with the Commission, must be a physical location where the brokerage’s activities are conducted.



To comply with this Rule, brokers should verify that their principal office meets the physical location requirement and update any license records to reflect the change of address, if applicable. Taking these steps minimizes the risk of regulatory issues and ensures that the Commission can contact the brokerage efficiently for licensing or compliance matters.

As a best practice, BICs should also inform all affiliated brokers about this clarification and confirm that all advertisements, correspondence, agency agreements and disclosures use the principal office address.

*Linda, a full broker, takes a CE course via Webex. She turns her camera off to take a call from a potential client. Linda is off camera for 52 minutes during the course. Will Linda receive CE credit for the course?*



#### **Rule 58H .0101: Definitions (Real Estate Education)**

Per Commission Rule 58H .0101, Linda will not receive continuing education (CE) credit for the course. The active participation in the completion of CE courses is essential for brokers to obtain knowledge, practice competently, and adhere to License Law and Commission rules.

#### **Prior to July 1, 2026, Rule 58H .0101(15) stated:**

*(15) “Synchronous distance learning” means the instructor and students are separated only by distance and not time, allowing for real-time monitoring of student participation.*

#### **Effective July 1, 2026, Rule 58H .0101 (15) states:**

*(15) “Synchronous distance learning” means the instructor and students are separated only by distance and not time, allowing for real-time monitoring of student attendance and participation. For purposes of this Subchapter, a student shall be visible on camera in order to meet the attendance requirements set forth in Rule .0207 of this Section or 21 NCAC 58A .1705.*

Therefore, this Rule mandates that students must remain visible on camera during synchronous distance learning courses in order to receive continuing education (CE) credit. This rule change is designed to improve the integrity and accountability of online instruction by confirming that students actively participate in CE courses and that attendance can be accurately verified.

#### ***Anticipated Impact to Brokers***

Brokers can expect that education providers (EPs) will monitor whether students are on camera throughout live online class sessions. If a student fails to remain visible on camera during class sessions, they will not be awarded CE credit, which could affect a broker’s ability to meet their 8-hour CE requirements per Rule 58A .1702. Since Rule 58H .0101(15) applies to popular synchronous, live sessions, it may impact brokers attending class from home or other remote locations without reliable internet

connectivity. Therefore, it is imperative for brokers to understand the technology requirements for a course and Commission Rule 58H .0101 prior to course registration, to avoid any disruption to their CE courses.

To comply with this Rule requirement, brokers should ensure their camera is operational, properly positioned to display their face, and visible for the full duration of each session. Moreover, it is wise to test cameras and audio equipment prior to the beginning of class.

Further, brokers should review an EP's Policies and Procedures Disclosure to familiarize themselves with their technology and attendance policies for successful course instruction.



#### **Rule 58H .0210: Limitation, Denial, Withdrawal, or Termination of Education Provider Certification**

Per Rule 58H .0210(a)(19), Education Providers (EPs) are now required to ensure that students remain visible on camera during synchronous distance learning courses. Continuing education (CE) is essential for brokers to maintain their active licensure and stay up to date on legal and practical developments in real estate. Therefore, the Commission aims to strengthen the integrity of online instruction and confirm that CE credit is awarded to students who are present and actively engaged in the learning process.

#### **Prior to July 1, 2026, Rule 58H .0210(a)(19) stated:**

*(a) The Commission may limit, deny, or withdraw certification of an education provider or suspend, revoke, or deny renewal of the certification of an education provider upon finding that an education provider:*

*(19) failed to comply with the provisions of this Subchapter.*

**Effective July 1, 2026, Rule 58H .0210 (a)(19) states:**

*(b) The Commission may limit, deny, or withdraw certification of an education provider or suspend, revoke, or deny renewal of the certification of an education provider upon finding that an education provider:*

*(19) failed to ensure that synchronous distance learning students were visible on camera pursuant to Rule .0101 of this Section;*

### ***Anticipated Impact to Brokers***

Brokers can expect that Commission-approved education providers (EPs) will implement attendance and monitoring policies to track camera visibility during online courses. While this Rule primarily governs EPs, brokers will be required to remain on camera during CE courses due the companion Rule H .0101(15) discussed previously.



EPs should ensure that brokers have a working camera, remain fully visible for the duration of the session, and follow any instructions from the instructor regarding engagement and participation. It is strongly encouraged for EPs to specify in their Policies and Procedures Disclosure the technology, attendance, and participation requirements for synchronous distance courses. These practices can help prevent disruptions during a course and provide clarity regarding whether CE credit was awarded to a broker.



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## COMMISSION RULE EFFECTIVE UPON LEGISLATIVE REVIEW

### Rules That Are Enroute & Effective Upon Legislative Review



#### Rule 58A .0112: Offers and Sales Contracts

### Resources To Go



Click on the Suitcase or scan the QR Code to review the eBulletin article *A Message From Regulatory Affairs About Commission Rule A .0112*



In the article, [A Message From Regulatory Affairs About Commission Rule A .0112](#), the Commission indicated its intent to comply with Session Law 2025-52 (Senate Bill 690) and enact permanent rulemaking. Therefore, the Commission has amended Rule 58A .0112, Offers and Sales Contract. The amendment to this Rule ensures that sales contracts and

preprinted offers reflect the changes mandated by the legislation.



Effective, according to G. S. 150B-21.3(b1), Rule 58A .0112 states:

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

- (1) the names of the buyer and seller;*
- (2) a legal description of the real property sufficient to identify and distinguish it from all other property;*
- (3) an itemization of any personal property to be included in the transaction;*
- (4) the purchase price and manner of payment;*
- (5) any portion of the purchase price that will be paid by a promissory note, including the amount, interest rate, payment terms, whether or not the note is to be secured, and any other terms contained in the promissory note deemed material by the parties;*
- (6) any portion of the purchase price that is to be paid by the assumption of an existing loan, including the amount of such loan, costs to be paid by the buyer or seller, the interest rate and number of discount points and a condition that the buyer must be able to qualify for the assumption of the loan and must make every reasonable effort to qualify for the assumption of the loan;*
- (7) the amount of earnest money, if any, the method of payment, the name of the broker or firm that will serve as escrow agent, an acknowledgment of earnest money receipt by the escrow agent, and the criteria for determining disposition of the earnest money, including disputed earnest money, consistent with Commission Rule .0116 of this Subchapter;*
- (8) the amount and purpose of any special assessment to which the property is subject and the responsibility of the parties for any unpaid charges;*
- (9) the date for closing and transfer of possession;*
- (10) the signatures of the buyer and seller;*
- (11) the date of offer and acceptance;*
- (12) a provision that title to the property must be delivered at closing by general warranty deed and must be fee simple marketable title, free of all encumbrances except ad valorem taxes for the current year, utility easements, and any other encumbrances specifically approved by the buyer or a provision otherwise describing the estate to be conveyed with encumbrances, and the form of conveyance;*
- (13) the items to be prorated or adjusted at closing;*
- (14) who shall pay closing expenses;*
- (15) the buyer's right to inspect the property prior to closing and who shall pay for repairs and improvements, if any;*

*(16) a provision that the property shall at closing be in substantially the same condition as on the date of the offer (reasonable wear and tear excepted), or a description of the required property condition at closing;*

*(17) a provision setting forth the identity of each real estate agent and firm involved in the transaction and disclosing the party each agent and firm represents; and*

*(18) any other provisions or disclosures required by statute or rule.*

*(b) A broker acting as an agent in a real estate transaction:*

*(1) may use a preprinted offer or sales contract form containing provisions concerning the payment of a commission or compensation, including the forfeiture of earnest money, to any broker or firm; and*

*(2) shall not use a preprinted offer or sales contract form containing any provision that attempts to disclaim the liability of a broker for his or her representations in connection with the transaction.*

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

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

### ***Anticipated Impact to Brokers***

The anticipated impact to brokers is minimal. Brokers acting as agents in a real estate transactions may now use a preprinted offer or sales contract form that includes provisions addressing the payment of a commission or other compensation, including provisions concerning the forfeiture of earnest money to a broker or firm. Additionally, the rule removed old subsections (a)(8) which required the disclosure of the buyer's loan information and old subsection (a)(9), the provision describing the buyer's intended use of the property.

To navigate this change effectively, brokers should implement best practices such as:



- clearly explaining contract terms to clients,
- ensure that all parties understand any compensation or earnest money provisions,
- use current and reliable forms, and
- consult with legal counsel when questions arise about form language and with the Commission when questions arise about Rule compliance.

**NOTE:** The Form 2-T is not a Commission form. Therefore, questions regarding the content, use, interpretation, or drafting of this form should be directed to NC REALTORS® or seek the advice of private legal counsel when appropriate.

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## COMMISSION FORM CHANGE EFFECTIVE JULY 1, 2026

Effective July 1, 2026, the North Carolina Real Estate Commission will implement a revised Residential Property and Owners' Association Disclosure Statement (RPOADS) form. The updates are primarily minor and technical, intended to improve clarity, data capture, and consistency without changing the underlying disclosure obligations for sellers. These changes are designed to help brokers collect and communicate information more accurately while reducing ambiguity in responses from property owners.

Section A, which covers the structure, floors, walls, ceilings, windows, and roof, includes two new questions, A9 and A10. These questions aim to capture more precise information about structural impacts caused by fire events.

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Yes                   | No                    | NR                    |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|-----------------------|-----------------------|
| A1. Is the property currently owner-occupied?<br>Date owner acquired the property: _____<br>If not owner-occupied, how long has it been since the owner occupied the property? _____                                                                                                                                                                                                                                                                                          | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| A2. In what year was the dwelling constructed? _____                                                                                                                                                                                                                                                                                                                                                                                                                          |                       |                       | <input type="radio"/> |
| A3. Have there been any structural additions or other structural or mechanical changes to the dwelling(s)?                                                                                                                                                                                                                                                                                                                                                                    | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| A4. The dwelling's exterior walls are made of what type of material? (Check all that apply)<br><input type="radio"/> Brick Veneer <input type="radio"/> Vinyl <input type="radio"/> Stone <input type="radio"/> Fiber Cement <input type="radio"/> Synthetic Stucco <input type="radio"/> Composition/Hardboard<br><input type="radio"/> Concrete <input type="radio"/> Aluminum <input type="radio"/> Wood <input type="radio"/> Asbestos <input type="radio"/> Other: _____ |                       |                       | <input type="radio"/> |
| A5. In what year was the dwelling's roof covering installed? _____                                                                                                                                                                                                                                                                                                                                                                                                            |                       |                       | <input type="radio"/> |
| A6. Is there a leakage or other problem with the dwelling's roof or related existing damage?                                                                                                                                                                                                                                                                                                                                                                                  | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| A7. Is there water seepage, leakage, dampness, or standing water in the dwelling's basement, crawl space, or slab?                                                                                                                                                                                                                                                                                                                                                            | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 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?                                                                                                                                                                                                                                                                                                                      | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| A9. Has the dwelling ever experienced damage due to a fire?                                                                                                                                                                                                                                                                                                                                                                                                                   | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| A10. Have you ever filed a claim for fire damage to the dwelling with any insurance provider?                                                                                                                                                                                                                                                                                                                                                                                 | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

Brokers should anticipate that these two additional questions may require more detailed discussions with sellers to ensure an accurate and complete disclosure.

Section B, which addresses HVAC and electrical systems, has been revised to allow Question B4 for more detailed reporting. Question B4 now provides additional spaces to record the year of system manufacture, and expanded fields have been added to capture the dwelling's fuel source, including the provider, whether the system is leased or owned, whether storage is above or below ground, and the year of installation.

|                                                                                                                                                                                                                                                                                                                                                                            | Yes | No | NR                    |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|----|-----------------------|
| B4. What is the dwelling's cooling source? (Check all that apply; indicate the year of each system manufacture)<br><input type="radio"/> Central Forced Air: _____ <input type="radio"/> Wall/Windows Unit(s): _____ <input type="radio"/> Other: _____<br>Year: _____ Year: _____ Year: _____   Year: _____ Year: _____ Year: _____   Year: _____ Year: _____ Year: _____ |     |    | <input type="radio"/> |
| B5. What is the dwelling's fuel source? (Check all that apply)<br><input type="radio"/> Electricity <input type="radio"/> Natural Gas <input type="radio"/> Solar <input type="radio"/> Propane <input type="radio"/> Oil <input type="radio"/> Other: _____<br>Provider: _____ Leased/Owned: _____ Above/Below Ground: _____ Year: _____                                  |     |    | <input type="radio"/> |
| Explanations for questions in Section B (identify the specific question for each explanation):<br>_____<br>_____<br>_____                                                                                                                                                                                                                                                  |     |    |                       |

In Section H, related to Owners' Association disclosures, Question H1(c) now includes clearly fillable "Yes," "No," and "NR" response circles to promote consistency in completion. These technical revisions help ensure disclosures are uniform and comprehensive across all transactions.

|                                                                                                                                                                                        | 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? | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 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 assessments which have been duly approved and to which the lot is subject?                                                          | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| If "yes," state the nature and amount of the dues, fees, or special assessments to which the property is subject: _____                                                                |                       |                       |                       |

Brokers should anticipate that the updated form may require slightly more time and attention during the property disclosure process.



To implement best practices, brokers should carefully review each section of the revised RPOADS, verify responses with sellers, and document any discussions or clarifications in writing. Providing sellers with guidance on accurately completing the new questions, particularly those addressing fire damage or detailed HVAC and electrical systems information, can reduce the risk of incomplete or inaccurate disclosures.

Additionally, companies should update training materials, checklists, and internal policies and procedures to ensure that all affiliated brokers comply with the new form requirements and maintain consistent, thorough disclosure practices.

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## LICENSE LAW AND COMMISSION RULES

Brokers may retrieve the most current License Law and Commission rules by accessing the Commission's website using the following instructions:

- 1) go to [www.ncrec.gov](http://www.ncrec.gov);
- 2) click on *Resources*;
- 3) click *License Law/Rules*;

**To access the NC License Law:**

- 4) click *Chapter 93A* under License Law;

**To access the Commission rules:**

- 5) click *Chapter 58* under Rules.



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## SUMMARY OF IMPORTANT POINTS

# Post-Flight Check Summary

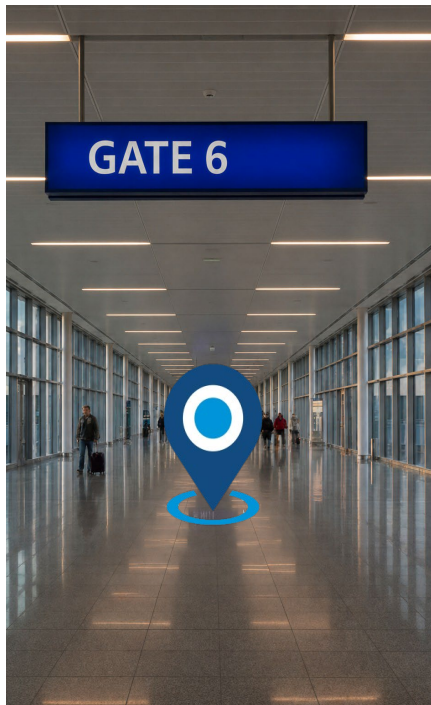
## Key Concepts to Review



- Rulemaking is the process by which the Commission clarifies laws through the adoption, amendment, or repealing of rules.
- During permanent rulemaking, the Commission proposes rule language and sends it to the Office of Administrative Hearings (hereafter referred to as *OAH*). *OAH* publishes the proposed rule text in the North Carolina Register which provides notice to interested parties that the Commission has started the process to amend, adopt, or repeal a rule.
- Pursuant to N.C.G.S. §93A-6, the Commission may investigate the actions of any person or entity licensed under this Chapter upon its own initiative, or the complaint of any person. Under this Statute, the Commission also has the power to suspend or revoke at any time a license issued under the provisions of this Chapter, or to reprimand or censure any licensee.
- The Commission is prohibited from imposing fines or ordering restitution for payment of monetary damages to consumers.
- The Commission has amended Rule 58A .0302 which increases the fee for an original broker license application. The fee increased by \$5, from \$100 to \$105.
- Effective April 1, 2026, the Commission amended Rule 58A .0503(a) to increase the annual license renewal fee by \$5. This license renewal fee of \$50 is for individual broker licenses and firm licenses.
- Rule 58A .0513 allows brokers to voluntarily and permanently cancel their license, as long as no disciplinary matters are pending. Instead of letting a license expire or remain inactive indefinitely, brokers now have the option to formally cancel their license.

- Rule 58A .1803 has been amended to increase the fee for an original limited commercial license by \$5, just like for a broker application. The fee is now \$105.
- Rule 58A .1803 has also been amended to clarify the specific items the limited commercial broker must include in the limited commercial license application. Such items include the submission of a criminal background report issued within the previous 6 months and a certified license history from their qualifying state obtained within 6 months prior to application submission.
- Rule 58G. 0103 clarifies that a broker's principal office must be a physical location. Historically, a broker's principal office could have been a virtual address.
- Rule 58H .0101 (15) states synchronous distance learning means the instructor and students are separated only by distance and not time, allowing for real-time monitoring of student attendance and participation. For purposes of this Subchapter, a student shall be visible on camera in order to meet the attendance requirements set forth in Rule .0207 of this Section or 21 NCAC 58A .1705.
- Per Rule 58H .0210(a)(19), Education Providers (Eps) are now required to ensure that students remain visible on camera during synchronous distance learning courses.
- According to Rule 58A .0112, brokers acting as agents in a real estate transaction may now use a preprinted offer or sales contract form that includes provisions addressing the payment of a commission or other compensation, including provisions concerning the forfeiture of earnest money to a broker or firm.
- The Commission will implement a revised Residential Property and Owners' Association Disclosure Statement (RPOADS) form. These changes are designed to help brokers collect and communicate information more accurately while reducing ambiguity in responses from property owners.
- Section A, which covers the structure, floors, walls, ceilings, windows, and roof, includes two new questions, A9 and A10. These questions aim to capture more precise information about structural impacts caused by fire events.
- Question B4 now provides additional spaces to record the year of system manufacture, and expanded fields have been added to capture the dwelling's fuel source, including the provider, whether the system is leased or owned, whether storage is above or below ground, and the year of installation.
- In Section H, related to Owners' Association disclosures, Question H1(c) now includes clearly fillable "Yes," "No," and "NR" response circles to promote consistency in completion.

# Gate VI



**Licensing &  
Education**

***Maintaining  
Cruising Altitude***

---

## LEARNING OBJECTIVES



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

- explain how a broker's licensing and education requirements change over the course of a real estate career;
- identify common mistakes involving renewal and completing required education; and
- distinguish between inactive and expired status and describe the consequences of each.

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## STARTING THE JOURNEY



A newly licensed provisional broker (PB) is ready to get started on their career in real estate, and while they may feel like the trip has already begun, in many ways this provisional broker is only now reaching the gate. To begin practicing brokerage, the provisional broker must understand activation, affiliation with a supervising Broker-in-Charge (BIC), and compliance with educational requirements.



**TRUE or FALSE?**

**1. As soon as a provisional broker (PB) has been issued a license, they can begin advertising their services and working with potential clients.**

**FALSE.** Provisional broker licenses are issued on inactive status. No broker is allowed to perform any brokerage activity, including advertising their services or entering into any type of agency relationship with a potential client, prior to activating their license. A PB must activate their license by affiliating with a brokerage under the supervision of a Broker-in-Charge (BIC). The BIC must submit the *License Activation and Broker Affiliation Form (REC 2.08)* to activate and affiliate the PB under their supervision. Once the form has been successfully submitted, the PB possesses a temporary 30-day license activation and may begin practicing brokerage while they wait for the form to be processed by Commission staff. If they do not receive written notice from the Commission within 30 days of form submission, the BIC must ensure that the PB ceases all brokerage activity and contacts the Commission regarding their license status.

**2. To begin their real estate career, a PB wants to join a licensed team within a larger brokerage and represent only buyers. The team and the brokerage have different BICs. The PB is allowed to do this.**

**TRUE.** Rule 58A .0506(a) reads, "...a provisional broker may be supervised by no more than two brokers-in-charge of two licensed affiliated firms located in the same physical location and acting as co-listing or co-selling agents in real estate transactions."



**3. Now that the PB has activated their license, the timer for the 18-month deadline to complete their Postlicensing education has started.**

**FALSE.** Per Commission [Rule 58A .1902\(b\)](#), a provisional broker must complete all 90 hours of Postlicensing education within 18 months of initial licensure (not the date of license activation) to remove the provisional status from their license record. They do not lose their license if they fail to complete all three 30-hour courses within that 18-month period; however, their license is made inactive, so they must cease all brokerage activity until they can reactivate their license after satisfying the educational deficit. Once they have completed the third Postlicensing course, they can submit the *License Activation and Broker Affiliation Form (REC 2.08)* to reactivate their license, if they are compliant with all activation requirements. **NOTE:** PBs should be aware that completion of a Postlicensing course is only valid for two years after course completion; so, do not delay in completion of all three Postlicensing courses.

**4. The PB wants clarity regarding when they must take their continuing education (CE) courses. They ask their BIC and are told, “Since you were licensed in May of 2026, your continuing education is actually due by June 10, 2027.”**

**TRUE.** Per Commission [Rule 58A .1702\(c\)](#), to maintain eligibility for an active license, annual CE courses must be completed for the second renewal following the initial licensure and upon each subsequent license renewal. In the scenario above, since the broker was licensed in May 2026, they would renew their broker license for the first time by June 30, 2026, with no CE being required for that first renewal. The second renewal of their license would occur between May 15 and June 30, 2027, so the broker must complete CE prior to June 10, 2027, to maintain eligibility for an active license. If the broker renews their license but does not complete the required 8 hours of CE by June 10, the license will renew on inactive status.

Required Annual Continuing Education

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



**5. The PB runs into a classmate from Prelicensing and asks them if they have renewed their license yet. The classmate responds, “No, my license is inactive. As long as I stay inactive, I do not have to pay to renew for the first two years.”**

**FALSE.** Brokers, firms, and Limited Commercial Brokers (LCB) 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 \$50.00 and must be:

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

A broker can renew their license on either active or inactive status, but it must be renewed each license year to remain current. Failure to renew a license will result in it expiring.

**CAPTAIN’S NOTE:** While you can renew up to June 30, it is highly recommended not to wait until the deadline. Law and rules do not include situational exemptions for missing the annual renewal period. **If the Commission’s website goes down, you lose power or internet connection, or something else prevents you from completing the renewal process in a timely manner, then your license will expire and you will have to deal with the consequences.**

**6. The PB makes it through renewals and is now subject to the CE requirement. A fellow broker tells them it is better to complete their CE early than to wait until next spring.**

**TRUE.** One advantage of completing continuing education earlier in the year is that a broker can gain and implement relevant knowledge sooner and become better informed about the Commission’s policies. As a result, the broker is made aware of law and rule changes for earlier compliance and is reminded of the duties and obligations required to protect the public. Additionally, as brokers wait to take their CE in the spring, available classes fill up, and scheduling conflicts could result in the broker missing the deadline. Regardless of when a broker takes CE, all 8 hours of continuing education must be completed by midnight on June 10.

---

## STAYING ON SCHEDULE



**7. Our “former” PB has successfully completed all three Postlicensing courses, removing the provisional status from their license. They have decided to affiliate with a different brokerage. The BIC of the new brokerage told them to just submit the License Activation and Broker Affiliation form (REC 2.08), and Commission staff will automatically remove them from their original affiliation when processing the form.**

**FALSE.** Since they are a non-provisional “full” broker now, they can legally affiliate with multiple brokerages if they have permission of the various BICs. When an active, full broker submits the License Activation and Affiliation (REC 2.08) form, affiliations are only added. If a broker wishes to terminate their affiliation with a brokerage, they will need to submit the *Request to Terminate Your Affiliation with a Firm or Sole Proprietorship* (Form REC 2.22) and identify the brokerage they are leaving. Alternatively, a Broker-in-Charge can submit the *Request to Remove Licensee from Broker Supervision* (Form REC 2.13) to terminate a broker’s affiliation with their office location.

Only PBs who submit the License Activation and Affiliation (REC 2.08) form requesting to affiliate with a different BIC at another office location will have their previous affiliation terminated when their form is processed by the Commission.

**8. The broker has delayed taking CE due to their busy schedule. June 10<sup>th</sup> passes and the broker has only completed their CE elective requirement. On July 2<sup>nd</sup>, the broker gets ready to leave the office to attend their client’s closing, but their BIC stops them. The BIC tells them they are inactive and cannot attend their client’s closing.**

**TRUE.** If a broker does not fully complete their CE requirement by June 10<sup>th</sup>, their license will go inactive on July 1<sup>st</sup>. No brokerage activity is allowed with an inactive license. This includes attending a closing for a client’s transaction that was pending before the license went inactive. The BIC will have to send another affiliated broker to represent the brokerage’s client. The inactive broker may not resume any brokerage activity until they satisfy the license activation requirements and re-affiliate with a BIC.

**9. The broker is now panicking and asks a veteran broker in the office what they need to do to reactivate their license. The veteran broker responds, “Take the General Update now to replace the one you missed back in June, then submit the activation form.”**

**FALSE.** The annual Update courses expire each license year and, on July 1<sup>st</sup>, the new year’s version of the Update courses are offered until the following June 10<sup>th</sup>. There is no way to take a previous license year’s Update course, so, other solutions are needed. If it has been less than 2 years since a broker went inactive due to a CE deficiency, they will need to first cure the previous license year’s CE deficiency with 4 or 8 hours of electives, and then complete the current license year’s 8-hour CE requirement before submitting the *License Activation and Broker Affiliation Form (REC 2.08)* to reactivate their license.

In this broker’s situation, since they cannot take the previous year’s General Update class, they will take a CE elective in its place to achieve the 8 hours of completed CE for the previous license year. Then, they will take the current license year’s General Update class and a different CE elective of their choice to satisfy the current year’s 8-hour CE requirement. Once they have completed all three courses, they can submit the License Activation and Affiliation Form (*REC 2.08*) to reactivate and reaffiliate.

**CAPTAIN’S NOTE:** Upon receipt of email confirmation of successful online submission of the *License Activation and Broker Affiliation Form (REC 2.08)*, a broker possesses a temporary 30-day approval. This temporary approval means that although their license record still shows an inactive license status, they are considered on active status and can resume brokerage activity. However, if the broker has not received written notice of license activation from the Commission via email within 25 days of submitting the form, they should stop brokerage activity and contact License Services to determine the status of their license.

Rule 58A .0103 requires brokers to maintain their license records with current contact information, including email addresses. Brokers should closely monitor their email inbox and spam folders for emails from the Commission. Further, the Commission does not send *junk mail*. Therefore, any email from @ncrec.gov is important.

**10. Our broker seems to have learned from their mistakes and has been practicing brokerage on a full-time basis for the last several years without issue. They have now been asked to be the BIC of a new office location being opened by their brokerage. They were told they could go ahead and submit the Request for BIC-Eligible Status and/or BIC Designation Form (REC 2.25) and complete the 12-hour BIC Course after the form is approved.**

**TRUE.** If a broker has never previously been BIC-Eligible, they are able to submit the BIC Designation Form (*REC 2.25*) first. Once the form has been processed and approved, they will have 120 days to successfully complete the 12-hour BIC Course. Alternatively,

a broker can complete the 12-hour BIC Course first and then have up to one year from the course completion date to request BIC-Eligibility and/or BIC designation.



**CAPTAIN'S NOTE:** While a broker may have up to 120 days to satisfy the BIC-Eligibility education requirement, once they register for the 12-hour BIC course, they have only 30 days to complete the course before it expires. This timeframe is the same 30-day requirement a broker has to complete a distance (self-paced online) CE elective per Commission Rule 58H .0404(c).

**11. The broker is designated as BIC on April 5<sup>th</sup>. Since they completed this year's General Update (GENUP) course back in August, they do not need to take the BIC Update (BICUP) course by June 10<sup>th</sup>.**

**TRUE.** While a broker who is BIC-Eligible or a designated BIC is required to take the BICUP class each license year (in addition to a CE elective), they do not have to take it when they first gain BIC-Eligibility or BIC designation if they have already completed the current year's GENUP course.

The version of the Update course that must be completed depends on license status at the time of class attendance. If not a BIC or BIC-Eligible, take the GENUP course. If currently a BIC or BIC-Eligible, then take the BICUP course. If a broker becomes a BIC in the middle of the license year but has already completed the GENUP course earlier in that license year, then they have satisfied their annual Update requirement and do not need to also take the BICUP course by June 10<sup>th</sup>. Starting on the subsequent July 1<sup>st</sup>, the BICUP will be required going forward to maintain BIC-Eligible status. If no Update course has been completed prior to becoming a BIC-Eligible or a BIC, then they will need to take the BICUP by June 10<sup>th</sup> to retain the designation.



**12. The broker does such a great job as a BIC that they quickly outgrow their office location. After securing a new office location, a colleague tells them to send an email notifying the Commission of the new office address.**

**FALSE.** While Commission Rule 58A .0110(g)(2) requires the BIC to notify the Commission of any change of business address of their office location, an email does not satisfy this requirement. A BIC must submit the *Firm/Office Address Change Request Form (REC 2.21)*.

Qualifying Brokers (QBs) must also use this form to notify the Commission of any change of address for their brokerage firm. If a QB has multiple firms at exactly the same location (e.g., one entity for sales and another entity for property management), they can change the address of multiple firms on one copy of the form.

**CAPTAIN'S NOTE:** The *Firm/Office Address Change Request Form (REC 2.21)* is not used to inform the Commission of a change in affiliation from one brokerage to another. A broker must submit two forms: the *License Activation and Broker Affiliation Form (REC 2.08)* form to notify the Commission of the new affiliation and the *Request to Terminate Your Affiliation with a Firm or Sole Proprietorship Form (REC 2.22)* to notify the Commission of their desire to terminate an affiliation.

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## TRAVELING WITH MORE RESPONSIBILITY



**13. Our broker decides to start their own brokerage firm as an LLC. To speed up the process, they can submit their application for a firm license to the Commission at the same time as they file their paperwork with the NC Secretary of State.**

**FALSE.** In North Carolina, any business entity that is not a sole proprietorship or a general partnership must first register with the NC

Secretary of State (NCSOS) before conducting business. Only after the entity is registered with the NCSOS and a Secretary of State ID (SOSID) number is received can the *Firm License Application (REC 1.72)* be submitted.

Every licensed firm must have a Qualifying Broker (QB). The QB is an active non-provisional broker who is either a manager of the LLC, an officer of the corporation, or a general partner of the partnership. QBs are responsible for ensuring there is always a BIC for each office location, renewing the firm license annually, and securing and preserving the transaction and trust account records of the firm.

***14. The broker, now the QB and BIC of their own firm, has decided to become a franchisee of a national real estate brand. The franchisor requires the broker to integrate the company's name into the firm's name. The local MLS told the broker that because they are changing the firm's name, they will have to submit a new firm license application.***

**FALSE.** If the broker wants to operate through the same LLC that is already licensed, they will only have to file an Assumed Business Name at their local register of deeds to use a name that is different from the legal name of the entity. Once they have filed the Assumed Business Name Certificate, they would then need to submit the *Request FIRM Name Change and/or Request to Replace FIRM License Certificate or Pocket Card (Form REC 1.47)* to notify the Commission of this new assumed name so they can use it in advertising.

A new firm license application is only required when there has been a change to the underlying entity to the point where the resulting entity has a different SOSID number.

***15. The qualifying broker hired someone to be the BIC of a new office location for the firm. Unfortunately, at the end of the license year, the qualifying broker only renewed the firm license and forgot to renew their individual broker license. However, the qualifying broker was not too worried because the firm license was renewed and the newly hired BIC renewed their license on active status, so business can continue as usual for everyone in that office location.***

**FALSE.** A 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. The continued operation of a firm is dependent on the QB and BIC renewing all necessary licenses on active status.





## The QB, BIC, and Firm Must Stay in Formation

- A BIC failing to renew shuts down the office location
- A QB failing to renew the firm license shuts down the entire firm
- A QB failing to renew their broker license or it goes inactive shuts down the entire firm

If the BIC of the firm fails to renew their individual license or goes inactive:

- they are removed as the BIC, and all affiliated brokers will be removed from that office location:
  - all previously affiliated full brokers will maintain active license status at their home address;
  - the licenses of all previously affiliated provisional brokers will go inactive since they will no longer be under BIC supervision;
- the firm license will remain active, but no brokerage activities can be performed at that office location until:
  - a new BIC is designated; and
  - all broker affiliations and agency agreements have been reestablished under the new BIC.

If the QB of the firm fails to renew their individual broker license or goes inactive:

- the firm license will go inactive;
- the BIC is removed, and all affiliated brokers will be unaffiliated;
  - all previously affiliated full brokers will maintain active license status at their home address;
  - the licenses of all previously affiliated provisional brokers will go inactive since they will no longer be under BIC supervision;
- all brokerage activity on behalf of the firm must cease until:
  - a new QB is named, or the previous QB reinstates and/or reactivates their license;
  - all BIC(s) are re-designated as the Brokers-in-Charge of their office locations; and
  - all broker affiliations and agency agreements are reestablished.

If the QB renews their individual license on active status, 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 will maintain active license status at their home address;
  - the licenses of all previously affiliated provisional brokers will go inactive since they will no longer be under BIC supervision;
- all brokerage activity on behalf of the firm must cease until:
  - the firm license is reinstated by paying the reinstatement fee by December 31<sup>st</sup> (if not reinstated prior to January 1<sup>st</sup>, a new firm license application will be required);
  - all BIC(s) are re-designated as the BIC of their office locations;
  - all broker affiliations and agency agreements must be reestablished prior to performing any brokerage activity on behalf of the reinstated firm.

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## **HANDLING DETOURS: REINSTATEMENT VS. REACTIVATION**

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

- Is the license currently inactive or expired?
- How long has the license been inactive or expired?
- If inactive, what caused the inactivity?

### **Distinguishing Between Inactive or Expired Licenses**

NCREC strongly recommends that when a licensee has questions about their license status, they contact the Commission, specifically, a License Specialist. The License Specialists can examine the licensee’s record and properly advise them of the process necessary for them to achieve reinstatement and/or reactivation.

# Initial Steps to Reactivating or Reinstating

To get a license “up to date,” first determine:

1. Current status
  - Is the license inactive or expired?
2. Length of time
  - How long has it been inactive or expired?
  - If inactive, what caused the inactivity?
3. Review the Appropriate Chart
4. Call and confirm with License Services



When a licensee seeks to reactivate their license — whether it was reinstated after expiration or placed on inactive status, they **must first cure any education deficiencies shown in their license record, including Postlicensing and/or CE, prior to reactivating their broker license.**

Additionally, simply curing the education deficiency and satisfying all other education requirements does not reactivate the license, it only makes it eligible for reactivation. A broker must still submit the *License Activation and Broker Affiliation Form (REC 2.08)* within the required time frame to reactivate their license.

| 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 \$50 renewal fee each year on or before June 30 <sup>th</sup> . | Less than 6 months                     | <ul style="list-style-type: none"> <li>• Pay a \$100 reinstatement fee</li> <li>• Disclose any convictions of disciplinary actions</li> <li>• File Form 2.08 - <i>License Activation and Broker Affiliation</i></li> </ul>                                                                                                                                                                                                                 |
|                                                                                                                                               | For 6 months but not more than 2 years | <ul style="list-style-type: none"> <li>• Within 6 months prior to reinstatement, complete one 30-hour Postlicensing course OR pass the National and State license exam sections*</li> <li>• File a License Reinstatement application with \$100 fee</li> </ul> <p>* Individuals with an active license in another state may choose to pass the state portion of the license examination in lieu of completing the Postlicensing course</p> |
|                                                                                                                                               | More than 2 years                      | <ul style="list-style-type: none"> <li>• Must be relicensed as if they never possessed a license: <ul style="list-style-type: none"> <li>➤ Complete a Prelicensing course</li> <li>➤ Pass the National &amp; State sections of the license exam</li> <li>➤ Submit a new license application with fee</li> </ul> </li> </ul>                                                                                                                |

| 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   | <b>Per Rule 58A .0506</b> <ul style="list-style-type: none"> <li>File Form 2.08 - <i>License Activation and Broker Affiliation</i></li> </ul>                                                                                                                                                                                                                                |
| Provisional Broker inactive due to failing to complete Post within 18 months | Any length of time   | <b>Per Rule 58A .1902</b> <ul style="list-style-type: none"> <li>Complete all three 30-hour Postlicensing courses within the previous 2 years</li> <li>File Form 2.08 - <i>License Activation and Broker Affiliation</i></li> </ul>                                                                                                                                          |
| Broker inactive due to a CE deficiency                                       | 2 years or less      | <b>Per Rule 58A .1703</b> <ul style="list-style-type: none"> <li>Make up any deficiency in the previous year with CE electives</li> <li>Complete the required current year CE consisting of an Update course and an elective course</li> <li>File Form 2.08 - <i>License Activation and Broker Affiliation</i></li> </ul>                                                    |
|                                                                              | More than 2 years    | <b>Per Rule 58A .1703</b> <ul style="list-style-type: none"> <li>Complete 2 Postlicensing courses no more than 6 months prior to filing the License Activation and Broker Affiliation form</li> <li>Complete the current year CE consisting of an Update course and an elective course</li> <li>File Form 2.08 - <i>License Activation and Broker Affiliation</i></li> </ul> |

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# Gate VII



## BIC Responsibilities

*Manning the  
Control Tower*

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## LEARNING OBJECTIVES



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

- identify the BIC's responsibilities for supervising affiliated brokers;
- determine whether BICs should have written office policies; and
- identify recommended topics to be addressed in the brokerage office policies.

---

## TERMINOLOGY

- **ALERT:** An acronym -- the BIC must ensure affiliated brokers: comply with Agency agreements and disclosures; maintain current, active Licenses; comply with Every advertising law and regulation; create and maintain transaction Records; and properly handle Trust money.
- **Broker:** The primary license type for a North Carolina real estate license and includes any licensee who is affiliated with a firm or sole proprietorship.
- **Broker-in-Charge (BIC):** The broker who has been designated as the primary person having responsibility for the daily supervision and management of a brokerage office.
- **Provisional Broker (PB):** The entry-level license status for an individual broker licensee who has not completed the 90-hour Postlicensing education program. A PB must be under the supervision of a BIC to be on active status and legally provide brokerage services.

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## BROKER-IN-CHARGE REQUIREMENTS

Commission Rule 58A .0110(a) requires every real estate firm to designate a broker approved by the Commission to serve as the Broker-in-Charge (hereafter referred to as BIC) for the firm's principal office, and a separate broker to serve as BIC for each branch office.



*ABC Realty has a principal office and two branch offices. Tom is the designated BIC of the principal office. Can Tom designate himself as the BIC of the two branch offices if they are in the same building but have different suite numbers?*

**No.** A broker may serve as BIC for only one office location at any given time, and no office may have more than one designated BIC. Further, the Rule explains that a BIC shall not serve as BIC for more than one office *unless* each of those offices share the exact same physical office space and delivery address. Therefore, even separate office spaces in the same building will not meet this requirement.

Additionally, most sole proprietorships, including sole practitioners, are also required to designate a BIC.

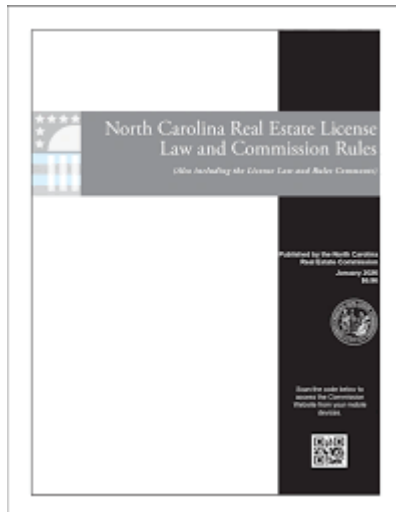


*Jane is a sole practitioner and advertises her real estate services on social media. She does not have any brokers affiliated with her business. Is Jane required to designate herself as a BIC?*

**Yes.** Pursuant to Rule 58A .0110(b), a sole proprietorship must designate a BIC if the sole proprietorship:

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

The designated BIC is the individual the Commission primarily holds responsible for the daily supervision and management of the brokerage. Therefore, to ensure compliance with License Law and Commission rules, the BIC is responsible for supervising the brokerage activities/conduct of all affiliated brokers, employees, and any other individuals, such as unlicensed assistants, who may perform duties on behalf of the brokerage.



Commission Rule 58A .0110(g) lists the specific responsibilities of a BIC as follows:

- (1) assure that each broker affiliated at the office has complied with Rules .0503, .0504, and .0506 of this Subchapter;*
- (2) notify the Commission of any change of firm's business address or trade name and the registration of any assumed business name adopted by the firm for its use;*
- (3) be responsible for the conduct of advertising by or in the name of the firm at such office;*
- (4) maintain the trust or escrow account of the firm and the records pertaining thereto;*
- (5) retain and maintain records relating to transactions conducted by or on behalf of the firm, including those required to be retained pursuant to Rule .0108 of this Section;*
- (6) supervise provisional brokers associated with or engaged on behalf of the firm at such office in accordance with the requirements of Rule .0506 of this Subchapter;*
- (7) supervise all brokers affiliated at the office with respect to adherence to agency agreement and disclosure requirements;*
- (8) notify the Commission in writing that he or she is no longer serving as BIC of a particular office within 10 days following any such change;*
- (9) complete the Commission's Basic Trust Account Procedures Course within 120 days of assuming responsibility for a trust account in accordance with G.S. 93A-6(g); however, the BIC shall not be required to complete the course more than once in three years; and*
- (10) supervise all unlicensed individuals employed at the office and ensure that unlicensed individuals comply with G.S. 93A-2(c)(6).*

Specifically, a BIC has five supervisory responsibilities related to all affiliated brokers, including full brokers. The responsibilities can be remembered by using the acronym **ALERT**.



A BIC's responsibility for full brokers under Commission Rule 58A .0110(g) is limited to the following:

- comply with agency agreements and disclosures;
- have current, active licenses;
- comply with every advertising law and regulation;
- create, maintain, and retain transaction records; and
- properly handle trust money.

**NOTE:** The Commission may hold the BIC responsible for the brokerage conduct of a full broker due to their supervisory responsibilities under Rule 58A .0110.

### ***Best Practices for Supervision***

A BIC's supervisory responsibilities under Rule 58A .0110(g) apply to all brokers affiliated with the brokerage. To effectively adhere to these responsibilities, a BIC should implement best practices that support consistent oversight and compliance.

These best practices could include:



- establishing reminders or systems to regularly verify that all affiliated brokers hold active and current licenses;
- creating a structured process for reviewing and approving all advertising before publication;
- adopting clear policies governing the use of social media in connection with brokerage activities;
- developing a comprehensive transaction file checklist to ensure all required documentation is obtained and maintained;
- conducting periodic reviews of transaction files to confirm accuracy and completeness; and
- implementing and enforcing procedures for the proper handling of trust monies.

**NOTE:** These best practices assist the BIC in fulfilling supervisory responsibilities but also help affiliated brokers maintain compliance with License Law and Commission rules.

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## WRITTEN OFFICE POLICIES



Written office policies are a critical risk-management and supervisory tool for Brokers-in-Charge (BICs) because the Commission looks to the BIC as the primary individual responsible for the daily supervision and management of the brokerage. Clear written policies that address acceptable brokerage conduct, and License Law and Commission rules help

establish expectations for affiliated brokers, and demonstrate that the BIC has taken reasonable steps to prevent violations.

When complaints are filed, the Commission evaluates whether alleged misconduct falls within the standard categories of BIC supervision and whether the BIC knew or reasonably should have known of the broker's actions. Written policies — particularly those that are consistently enforced and supported by documented training — provide tangible evidence that the BIC exercised appropriate oversight, communicated



compliance standards, and implemented systems designed to remediate and correct issues/improper conduct.

Equally important, written office policies can help limit a BIC's personal exposure and reduce company liability by clearly assigning responsibility for improper conduct to the individual broker when appropriate.



***Sara, the BIC of XYZ Realty, created an office policy requiring affiliated brokers to use encrypted email when communicating with clients. Sara implemented this policy to prevent confidential information from being hacked. Ryan, a broker with XYZ, failed to encrypt his emails with Wanda, a client. In one of her communications,***

***Wanda disclosed her social security number and date of birth for transaction documents. Unfortunately, Ryan's email was hacked, and Wanda's information was stolen. Is Sara liable for Ryan's conduct?***

**It depends.** While a BIC is not automatically responsible for every action of an affiliated full broker, the absence of written policies, procedures, or enforcement can suggest a lack of supervision and increase the possibility of disciplinary action. In contrast, policies governing advertising, agency disclosures, transaction file maintenance, trust account handling, file encryption/security, complaint reporting, and responses to Commission inquiries, reinforce a culture of compliance and accountability.

Because BICs may be investigated and potentially held liable for the acts or omissions of affiliated brokers—and because firms may also face civil liability – written office policies are essential to protecting clients, the brokerage, and the BIC while ensuring that all brokerage activity is conducted in accordance with License Law and Commission rules.

BICs should give careful consideration to developing and maintaining written office policies as a core component of their supervisory responsibilities. Written policies are widely regarded as essential because they help standardize office operations, clearly establish expectations, and provide consistent guidance to affiliated brokers, employees, and others performing duties on behalf of the brokerage.

Developing written office policies is only the first step. To be effective, these policies must be uniformly applied and consistently enforced. Written office policies also serve as an important management tool by outlining procedures for daily brokerage activities and providing direction on how issues should be handled when they arise.

Although the Commission does not currently mandate specific topics that must be included in written office policies, it does recommend that BICs address key areas such as recommended communication with the BIC or a designated delegate, training requirements, meeting schedules, transaction and document review procedures, client and consumer interactions, current regulatory requirements, and processes for resolving brokerage-related issues. It is important for BICs to understand that during a Commission investigation, a brokerage's written office policies may be reviewed, and the existence of well-developed and consistently enforced policies may help reduce the brokerage's overall risk and responsibility.

**NOTE:** BICs may wish to require affiliated brokers to sign a dated acknowledgment confirming receipt of an agreement to comply with the company's policies.



To assist BICs in developing effective policies, the Commission has published a [Broker-in-Charge Best Practices Guide](#), available on the Commission's website. This Guide is intended to serve as a starting point rather than a one-size-fits-all solution. Brokerages vary in size, structure, and specialization; therefore, BICs may need to adopt additional

policies tailored to the complexity and specific nature of their practice. As real estate practices and regulatory expectations evolve, office policy manuals should be regularly reviewed and updated to remain current and relevant.

Commission Rule 58A. 0506 places heightened supervisory obligations on BICs with respect to provisional brokers (PBs), requiring the BIC to supervise all brokerage activities in which an affiliated PB engages. While PBs may generally perform the same brokerage activities as non-provisional brokers, they may do so only under active supervision and may not operate independently in any capacity. Some BICs choose to limit more complex brokerage activities by PBs until stated training is satisfactorily complete or only with one-on-one supervision by an appointed veteran broker. Clear written office policies are especially critical in this context, as they would help ensure that PB supervision is in compliance with License Law and Commission rules.

In evaluating complaints and potential violations, the Commission will consider whether a brokerage maintains an office policy manual, preferably in written form, and whether the BIC provides regular, need-based training on how affiliated brokers are expected to conduct brokerage activity. When written policies are paired with ongoing training and meaningful supervision, they may help shift responsibility and liability for improper conduct to only the individual broker involved, rather than to the BIC or brokerage.

However, written policies alone are not sufficient. Policies that are ignored, inconsistently applied, or never enforced, may suggest a lack of effective supervision.

The Commission expects BICs to remain informed about the day-to-day operations of their offices and the brokerage activities of all affiliated brokers. This includes actively supervising brokers, implementing and consistently enforcing office policies, promptly intervening when issues arise during a transaction, and cooperating fully with Commission investigations once a complaint is filed. BICs place themselves at greater risk of disciplinary action when problems persist for extended periods without their knowledge, or when they attempt to conceal issues rather than remediate them and provide corrective action. Essentially, effective supervision requires timely action, transparency, and a willingness to confront compliance concerns before they escalate.

**NOTE:** A BIC who takes proactive steps to resolve issues — and who may even voluntarily inform the Commission of a problem — is generally viewed more favorably than a BIC who refuses to accept responsibility or disregards supervisory obligations.

### ***Criminal Convictions***

License Law and Commission rules are designed not only to regulate broker conduct during real estate transactions, but also to protect the public by ensuring that brokers demonstrate honesty and good character. Criminal convictions and disciplinary actions — whether related to real estate activities or not — can raise serious concerns about a broker's ability to practice brokerage in compliance with License Law.



*John, a real estate broker, was driving carelessly and recklessly in his new sports car. A police officer clocked his speed at 137 mph; therefore, John was arrested and taken to the county jail. He posted bond and was released. Must John report this arrest to the Commission?*



**No.** Although arrests do not need to be reported, the Commission places an affirmative duty on brokers to report felony and misdemeanor criminal convictions, military-court martial convictions, notarial sanctions, and disciplinary actions by occupational agencies within 60 days of final adjudication. Failure to comply with these reporting requirements may violate Commission Rule 58A .0113. In the article, [Reporting Criminal Convictions and Occupational Licensing Discipline](#), the Commission further reiterates a brokers' responsibility for reporting.

BICs have an additional responsibility to supervise affiliated brokers and to make informed decisions about who may practice brokerage under their supervision. This Section explains a broker's duty to report criminal convictions and disciplinary actions, the Commission's authority to review and discipline brokers based on such conduct, and the practical steps BICs should take when evaluating whether a broker should be affiliated with their brokerage.

Rule 58A .0113 requires brokers to file with the Commission a [Criminal Conviction Disciplinary Action Reporting Form](#) within 60 days of:

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

A broker may retrieve the Criminal Conviction Disciplinary Action Form on the Commission's website or upon request from the Commission. Rule 58A .0113 requires brokers to complete the [Criminal Conviction Disciplinary Action Reporting Form](#) and set forth the broker's:

- *full legal name;*
- *physical and mailing address;*
- *real estate license number;*
- *telephone number;*
- *email address;*
- *social security number;*
- *date of birth; and*



- *description of the criminal conviction, military court-martial conviction, notarial commission sanction, or professional license disciplinary action, including the jurisdiction and file number.*



Upon submission of the form, brokers are also required to upload certified copies of judgments, orders, or disciplinary actions. Most importantly, upon the issuance, renewing, or reinstatement of a license, the Commission has the authority to consider the criminal history and character of an individual or broker. The Commission

conducts an evaluation of a criminal conviction or character issue on a case-by-cases basis. During this investigation, the Commission will consider the nature of the offense, the circumstances, and the broker's conduct.



Although a broker may be disciplined by the Commission for a criminal conviction, disciplinary action by or consent order entered into with a governmental agency, military-court martial conviction, or notarial commission sanction; the broker may still affiliate or be affiliated with a BIC if the Commission did not impose a restriction on the brokers' license.

A BIC should acknowledge their importance in playing a gatekeeping role for real estate brokerage due to their supervisory requirements for affiliated brokers. When evaluating whether a broker should be affiliated with a brokerage and authorized to engage in brokerage activities, a BIC must exercise careful judgment and due diligence consistent with their regulatory supervisory responsibilities.

This evaluation by the BIC extends beyond verifying licensure status and includes a meaningful review of the broker's criminal history, disciplinary record, and overall fitness to practice real estate brokerage. To determine their suitability for affiliation, the BIC should ask direct and comprehensive questions to assess potential risks to consumers and the brokerage to determine whether additional supervision or limitations may be necessary.



The following sample questions are intended to be used as a guide for BICs when conducting an evaluation of a broker to potentially affiliate:

1. Have you ever been convicted of a felony or misdemeanor offense?
2. Are there any pending criminal charges currently against you?
3. Have you ever been disciplined by the North Carolina Real Estate Commission?
4. Have you ever entered into a consent order, conciliation agreement, or settlement with any governmental or licensing agency?
5. Do you currently hold, or have you ever held, professional licenses in other states, and were any of those licenses suspended, revoked, or sanctioned?
6. Have you timely reported all required criminal convictions or disciplinary actions to the Commission using the [Criminal Conviction Disciplinary Action Reporting Form REC 2.09](#)?
7. Can you provide documentation related to any reported criminal convictions or disciplinary actions?
8. Do any past convictions or disciplinary matters involve dishonesty, fraud, or trust account issues?
9. Have there been any issues in your past that could raise concerns about your worthiness or competence to act as a real estate broker?
10. Have you ever had a notarial commission sanctioned under G.S. 10B-60?

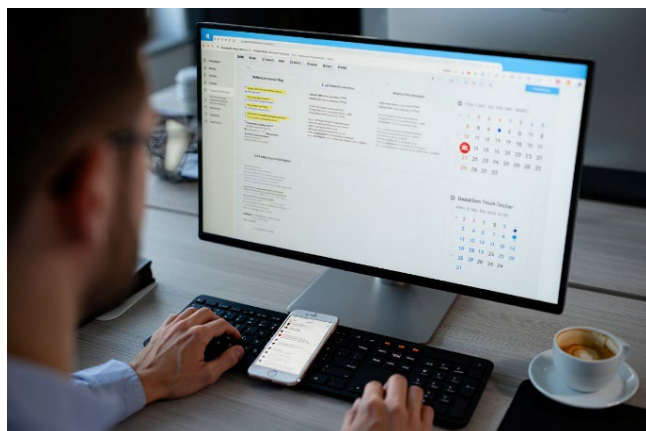
**NOTE:** Before affiliating a new broker, a BIC may perform a criminal background search for convictions in North Carolina using the public website, <https://portal-nc.tylertech.cloud/Portal/>.

In conclusion, brokers are legally required to report criminal convictions and disciplinary actions under Rule 58A .0113. This duty applies to all brokers, including those on inactive status, and must be completed within 60 days of a final judgment, order, or disposition using the [Criminal Conviction Disciplinary Action Reporting Form REC 2.09](#).

BICs serve a vital role in safeguarding the public and their brokerages by carefully evaluating the background and conduct of affiliated brokers. Further, understanding the Commission's reporting and disciplinary requirements are also essential components of effective supervision and compliance with the law.



## Transaction Coordinators: Roles, Responsibilities, and Compliance



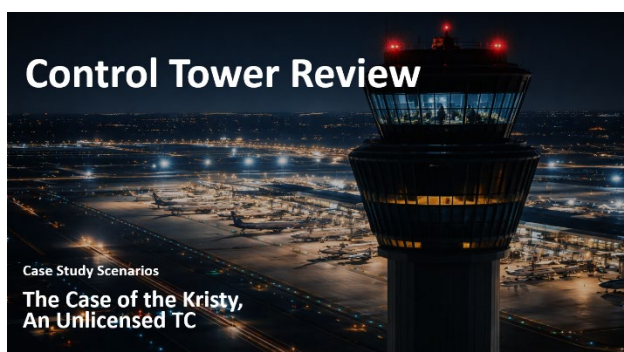
A transaction coordinator (hereafter referred to as *TC*) functions primarily as an administrative professional whose responsibilities focus on document management, coordination, and communication during real estate transactions. *TCs* may organize contracts, offers, leases, and other closing documents, ensuring that nothing is missing and that deadlines are met. They also serve as a liaison among clients, brokers, inspectors, lenders,

and other parties to coordinate signatures, inspections, and appointments, while providing updates to the appropriate licensed brokers.

Basically, the purpose of a *TC* is to reduce the risk of compliance errors and transaction delays, which often allows brokers to focus on tasks that legally require a license. Whether licensed or unlicensed, a *TC* may perform a variety of administrative tasks. These include:

- receiving and forwarding phone calls and emails to the broker;
- scheduling appointments for property showings, inspections, or client meetings;
- submitting MLS listings or changes using data provided by a licensed broker; and
- obtaining copies of public records from sources such as the Register of Deeds or county tax offices.

*TCs* may also type offers, contracts, and preprinted lease forms based on information supplied by the broker. In cases where trust funds are involved, *TCs* may record and deposit monies under the close supervision of a *BIC*. However, the *BIC* retains full responsibility for the accuracy and proper management of the company's trust accounts.



*Kristy, an unlicensed TC, explains to a buyer the counteroffer submitted by the seller because the buyer agent was unavailable. The buyer asked Kristy several questions for clarity and wanted her guidance prior to deciding what terms to accept or reject. Did Kristy conduct illegal brokerage activity?*

**Yes.** It is critical for unlicensed TCs to avoid performing any activities that constitute brokerage. TCs may **not** show properties for sale to prospective buyers, explain agency agreements, contracts, (e.g., explain terms, negotiate contracts) or leases with clients/customers.

They may not solicit listings or management agreements, prepare marketing materials or advertisements for properties, or otherwise act in a capacity reserved for licensed brokers. Engaging in these prohibited activities can expose both the TC and the employing broker to disciplinary action under N.C.G.S. 93A-6(b)(4), which allows the Commission to take action against brokers whose unlicensed staff perform acts that constitute brokerage in violation of License Law.



The article, [Unlicensed Assistants-Drawing the Line Between What They Can and Cannot Do](#), reminds brokers about the limited services/tasks an unlicensed assistant can conduct in a real estate transaction. Further, the BIC bears the ultimate responsibility for supervising all unlicensed staff, including TCs. BICs are responsible for ensuring that office policies clearly define the scope of permissible tasks for licensed and unlicensed TCs, for monitoring compliance with License Law and Commission rules, and for supervising trust accounts and advertising. Even if a TC is employed directly by an affiliated broker rather than the BIC, the BIC remains accountable for the operations of the brokerage. BICs and brokers must provide clear guidance, maintain regular communication, and monitor TCs to prevent unlicensed activity. By maintaining structured supervision and clearly communicating expectations to both TCs and clients, brokers protect the brokerage, reduce risk, and ensure that TCs remain a compliant and valuable resource within the transaction process.

In North Carolina, a TC who also holds an active real estate license must be especially mindful of “which hat” they are wearing at all times during a transaction. Under the North Carolina Real Estate License Law (N.C.G.S. Chapter 93A) and Commission

guidance, a licensed TC does not lose their status as a broker simply because they are performing administrative duties.

This distinction is critical because consumers, cooperating brokers, and third parties may reasonably assume that a licensed TC is providing brokerage services, even when that is not the intent. To avoid confusion, a licensed TC must not blur administrative coordination with brokerage activities such as advising clients, explaining contracts, negotiating terms, or discussing agency relationships, unless they are formally engaged in a brokerage capacity, such as acting as an agent for a principal, and all parties understand that role. The Commission has consistently emphasized that role clarity and supervision are essential to prevent unauthorized brokerage activity and consumer harm.

Accordingly, BICs should clearly define in writing whether a licensed TC is acting solely in an administrative capacity or as a broker in a given transaction, ensure that disclosures and communications reflect that role, and closely supervise the licensed TC's activities to maintain compliance with License Law and Commission rules.

### ***Best Practices***



In conclusion, TCs play a vital role in ensuring that real estate transactions proceed efficiently. Their work focuses on administrative organization, document management, scheduling, and communication support.

Employing brokers and BICs are responsible for supervising TCs and ensuring compliance with the License Law and Commission rules. Proper training, clear office policies, and ongoing supervision are essential to maintaining compliance and protecting both the brokerage and clients from potential liability. Implementation of office policies pertaining to use of unlicensed TCs such as:

- TCs may only provide administrative support and not perform licensed brokerage activities;
  - BICs should provide a list of permitted activities for a TC.
- brokers must supervise TCs during the transaction to ensure brokerage activity is not conducted; and
- clients and consumers must be informed about the role/purpose of the TC to prevent confusion and reduce the risk of the TC conducting illegal brokerage activity.
  - In the article, [Brokers & Consumers Should Be Aware of Unlicensed Activity in North Carolina](#), the Commission clarifies how individuals should be aware of unlicensed activity.



By understanding the scope of permissible activities and maintaining structured supervision, brokers can leverage the efficiency of TCs while being compliant with regulatory requirements.

### ***Additional Considerations for TCs***

There are additional issues/considerations that must be evaluated when determining if a TC can provide administrative support to a single broker and/or multiple brokerages. The issues/considerations that should be addressed are whether the TC is licensed, what specific services they will provide, and whether any of those services meet the definition of brokerage under N.C.G.S. §93A-2. If an unlicensed TC begins performing activities that require a license – such as negotiating terms, discussing material facts, or advising a party – they would be engaging in brokerage without a license, which violates the law. However, there is generally no issue with an unlicensed person acting solely as a TC for more than one brokerage, as long as they strictly limit their work to permitted administrative duties and it does not violate written office policies and procedures of the respective brokerages.

In comparison, a licensed and affiliated broker may offer TC services to multiple brokerages, but only if they do not perform brokerage services for companies with which they are not affiliated. Under License Law and Commission rules, a broker may engage in brokerage activity under the supervision of their BIC. If a licensed broker provides both real estate and TC services at the same brokerage, the lines can easily become blurred. For example, clients may not understand when the broker is acting as an agent and when they are acting only as a coordinator. This confusion can lead to complaints, especially if a client believes the TC gave advice, negotiated terms, or failed to act in a fiduciary capacity when expected.



It would also cause concern if a licensed TC provided coordination services across multiple brokerages. Essentially, this could create confusion amongst consumers. Clients might assume that the TC represents them or owes them fiduciary duties, even when the TC is only performing administrative support. Further, if the TC has access to confidential information from competing brokerages, there is also a risk – real or perceived – that confidential data could be misused or accidentally shared. Even if no wrongdoing occurs, the appearance of divided loyalties can expose the broker and brokerages to disciplinary complaints.

For these reasons, each BIC should have clear written policies addressing whether TCs can be utilized and whether they may conduct transactions for other brokerages. Policies should define exactly what tasks a TC may perform, clarify supervision expectations, and possibly require written confidentiality agreements. BICs may also consider implementing safeguards such as separate email accounts, restricted file access, and written disclosures explaining the TC's limited role. By establishing clear boundaries and maintaining strong supervision, brokerages can reduce confusion, protect confidential information, and remain compliant with the License Law and Commission rules.

### ***Open Houses and Showings***

Brokers owe fiduciary duties to their clients. These duties include loyalty, obedience, disclosure, confidentiality, accounting, and using reasonable skill, care, and diligence. Brokers must always act in good faith, put their client's interests first, and avoid actions that conflict with those interests.

When hosting open houses or showing properties, brokers must be aware of their fiduciary duties.





In the articles, [Getting Agency Representation Right: Clarifying the Practice of Seller Subagency](#) and [Concerns When Showing Agents Are Not Affiliated with Your Brokerage](#), the Commission exposes brokers to the potential risks of utilizing the services of unaffiliated brokers while conducting brokerage activity.

Essentially, allowing another broker, especially one who is not affiliated with the listing firm or supervised by the same BIC – to conduct an open house or showing can create serious risks such as confusion about agency authority and the distribution of inaccurate information shared with clients/consumers. These issues can lead to potential violations of License Law and Commission rules.



Open houses and property showings are important marketing tools for brokers; however, it is imperative that brokers adhere to their fiduciary duties while utilizing these tools. In North Carolina, agency relationships form the legal basis for representing buyers and sellers and are governed by common law, state statutes, and Commission rules. Under agency law, a broker may act only within the authority given by the client. So, if a broker allows an unaffiliated

broker to host an open house or show a property without proper authority, the broker may be incurring unnecessary risks.

Rule 58A .0104(a) is key to understanding these risks.

*Every agreement for brokerage services in a real estate transaction and every agreement for services connected with the management of a property owners association shall be in writing and signed by the parties thereto. Every agreement for brokerage services between a broker and an owner of the property to be the subject of a transaction shall be in writing and signed by the parties at the time of its formation.*



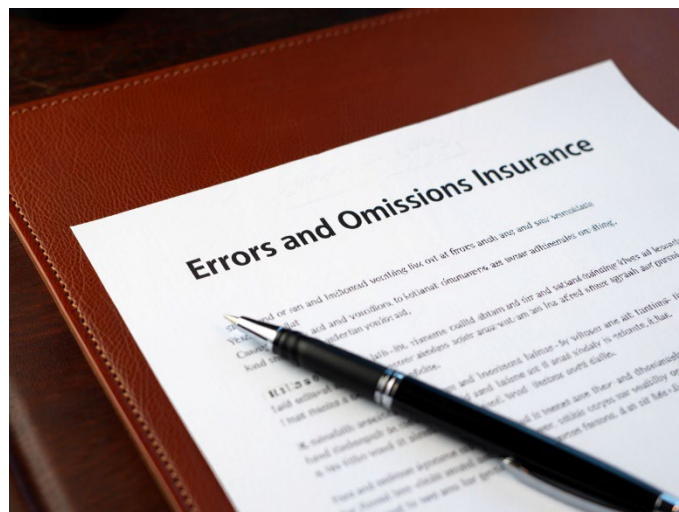
A broker who allows an unaffiliated broker to show a property usually has not had the unaffiliated broker form a proper agency relationship involving disclosure and authority to act for the seller or buyer.

Agency disclosure is another major concern. Under Rule 58A .0104(c), a broker must provide and review the “Working with Real Estate Agents” disclosure at the first substantial contact with a potential buyer or seller. After the disclosure, the broker and consumer should discuss what agency representation the broker will provide them, if any. Further, it is possible that a potential issue may arise if an unaffiliated broker conducts a showing without properly reviewing the WWREA disclosure. The consumer may not understand who is representing them or whether they are represented at all. This basically can confuse consumers and may violate Commission rules that are designed to protect the public and ensure transparency in agency relationships.

Allowing an unaffiliated broker to handle showings also makes it harder to fulfill the duty to discover and disclose material facts. Guidance from the Commission explains that brokers, regardless of their agency relationships, have an affirmative duty to discover and disclose material facts to all parties in the transaction. When showings are delegated to someone outside the firm, responsibility for this duty may be unclear. However, the law is very clear. It states that all brokers must discover and disclose material facts, even unaffiliated brokers. Even so, the broker who has the written agreement and fiduciary obligation to the client still remains responsible. This creates a risk and likelihood that material facts may not be discovered or disclosed, which may violate the broker’s duty under License Law and Commission rules.

Further, Commission Rule 58A .0109 requires affiliated brokers to receive their compensation from their current BIC or the BIC at the time of the transaction. Therefore, if a broker pays an unaffiliated broker directly for conducting showings, this may violate the Rule unless the payment is made through the showing broker’s BIC. These arrangements also require full disclosure to and consent from the client.

Errors and omissions (E&O) insurance is another important consideration. Many E&O policies do not cover brokers who act outside their affiliated firm or brokerages that allow unaffiliated brokers to conduct showings without proper supervision. If an injury, damage, or loss occurs during an open house or showing conducted by an unaffiliated broker, the brokerage and its brokers may not have insurance coverage, which could expose them to personal liability.



Lastly, provisional brokers create additional compliance concerns.



*Sonya is a provisional broker (PB) affiliated with Steve, the BIC of ABC Realty. Her friend Lucy, who is affiliated with XYZ Realty, asks Sonya to host an open house for one of XYZ Realty's listings on Saturday.*

*May Sonya host the open house for XYZ Realty while remaining affiliated with*

***ABC Realty under Steve's supervision?***

**No.** Under Commission Rule 58A .0506(a), a provisional broker (PB) must be affiliated with and directly supervised by a BIC. PBs are not allowed to provide brokerage services without this supervision. If a PB conducts showings for other brokers or firms, they may be violating License Law and Commission rules.

Ethical responsibilities under the REALTOR® Code of Ethics should also be considered if the broker is a REALTOR®. Article 1 of the Code requires brokers to protect and promote their client's interests. Standard of Practice 1-16 specifically prohibits REALTORS® from allowing access to a listed property unless it is authorized by the seller. Therefore, allowing an unaffiliated broker to host an open house or show a property without clear, written permission from the client and without clearly defined agency roles may violate these ethical duties. Confusion about agency status or lack of supervision can place the transaction at risk, reduce consumer confidence, and harm the integrity of the real estate profession.

For these reasons, brokers must be careful when deciding who is allowed to host open houses or show properties on behalf of their clients. Using unaffiliated brokers can create agency confusion, compliance problems, and possible violations of fiduciary duties unless agency authority, compensation arrangements, supervision, and insurance coverage are clearly documented and understood by everyone involved.

BICs and affiliated brokers must take active steps to manage these risks. This includes creating clear office policies, limiting property access to authorized individuals, and making sure all brokerage activities follow the terms of written agency agreements. Protecting the client always comes first, and well-defined procedures for open houses and property showings are essential to meeting this responsibility.

BICs may adopt written office policies like the following to ensure that affiliated brokers comply with their fiduciary duties:

- agency authority;
  - Brokers may only act within the scope of the agency authority that is authorized by the client in their agency agreement.
  - All agency agreements must adhere to Commission Rule 58A .0104.
- agency disclosure;
  - Brokers must provide and review the *Working with Real Estate Agents Disclosure* in adherence to Commission Rule 58A .0104. Additionally, brokers working as a seller's agent or subagent shall disclose in writing to the prospective buyer at first substantial contact that they represent the interests of the seller. Brokers representing a prospective buyer shall at initial contact with the seller or selling agent, disclose that they represent the buyer's interest.
- provisional broker;
  - Provisional brokers are required to be supervised by the BIC at all times. Additionally, provisional brokers are not permitted to conduct showings or host open houses for brokerages/BICs with which they are not affiliated.
- property access;
  - Provisional brokers may conduct open houses and/or showings under the supervision of their BIC or their delegate.
  - Unaffiliated brokers may not host open houses or conduct showings on behalf of the brokerage.
- material facts; and
  - Brokers must conduct a preliminary visual inspection of all properties and must discover and disclose material facts to all parties in the transaction.
    - If a broker delegates the showing of a property to another affiliated broker within the brokerage, the broker providing the delegation is not relieved of their affirmative duty to discover and disclose material facts.
    - Brokers must provide documentation of their communication of material fact disclosures to all parties in the transaction.
- verification of errors and omissions insurance.
  - Brokers may only conduct brokerage activities that are covered by the brokerage's errors and omissions insurance.



## Artificial Intelligence



In the article, [Responsible Use of Artificial Intelligence in Real Estate](#), the Commission acknowledges artificial intelligence has become an increasingly common tool in real estate advertising and marketing, offering brokers new ways to promote properties, engage consumers, and streamline communication. Artificial Intelligence (AI) can assist with drafting listing descriptions, creating

social media content, developing digital advertisements, and enhancing visual presentations. When used properly, these tools can improve efficiency and consistency across a brokerage. However, the use of AI does not change a broker's responsibilities under License Law and Commission rules, or state and federal fair housing laws. Further, BICs must ensure their innovation is balanced with compliance.

# Resources To Go





Click on the Suitcase or scan the QR Code to review the eBulletin article *Responsible Use of Artificial Intelligence in Real Estate*



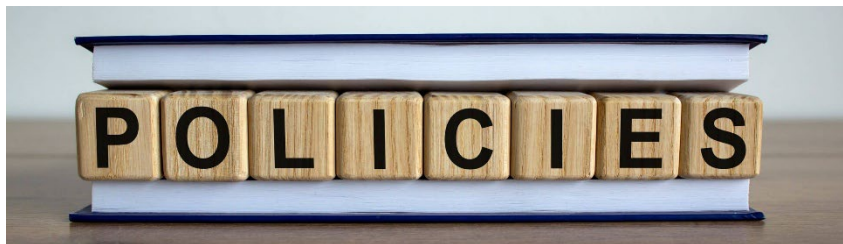
Fair housing compliance is also a central concern when AI is used for advertising and marketing. AI tools may possibly rely on historical data or online patterns that unintentionally exclude or favor certain groups of people. Therefore, targeted advertising, selective visibility of listings may occur. BICs must ensure that brokers understand their continuing responsibility to advertise properties in a fair, inclusive, and nondiscriminatory manner. Office policies should clearly require review of all AI-generated marketing materials for fair housing compliance prior to publication.



One of the most significant concerns related to AI use is privacy and client confidentiality. AI systems generate responses based on data patterns, and information entered into these systems may be stored and reused to improve future outputs. Using AI to review contracts, reconcile trust accounts, or analyze documents that include personal identifying information such as dates of birth, social security numbers, or bank account details poses serious risks. Using AI for these tasks may result in unauthorized disclosure of confidential client information. Brokers must recognize that improper handling of such data may constitute a breach of fiduciary duty.

A BIC should address privacy risks through clearly written office policies and procedures. These policies should prohibit entering client personal identifying data into AI platforms unless the BIC has approved the tool and confirmed appropriate data protections. Policies should also require brokers to disclose AI use to clients and obtain consent before using AI tools that involve client information. Further, it would be wise for a BIC to consider outlining acceptable uses of AI in the written office policies. By formalizing these expectations, the BIC helps reduce risk and ensures consistent practices across the firm.

Compliance with Commission rules is another critical consideration when using artificial intelligence. AI-generated information can be inaccurate, incomplete, or entirely fabricated, and these errors may go unnoticed if brokers rely on automation without review. Basically, technology does not shift liability away from the licensee.



Policies should clearly state that AI-generated content must be reviewed and verified by the broker prior to publication. Policies and procedures should also require

brokers to confirm that marketing materials, advertisements, and communications comply with fair housing laws and do not exclude or target protected classes.

Training and ongoing education are also essential elements of BIC oversight. Written policies should require brokers and unlicensed staff to receive regular training on the risks, limitations, and appropriate uses of AI. Training should address confidentiality, fair housing, accuracy, and the need for human review. The BIC should also stay informed about changes in AI technology and emerging regulatory guidance. Updating office policies as technology evolves is part of effective supervision.

By developing and enforcing thoughtful policies and procedures, a BIC helps protect clients, brokers, and the brokerage. Responsible AI use is not optional; it is an extension of a broker's duty to act competently, lawfully, and in the best interest of the consumer.

In an effort to ensure compliance amongst brokers when using AI tools, BICs may want to consider implementation of the following policies:

- mandatory review of AI-generated content;
  - Information must be reviewed by the broker to correct erroneous information and misleading statements. The content created by AI should be treated as a draft and not the final product.
- creation of a fair housing compliance policy;
  - AI-generated content must comply with state and federal fair housing laws. Brokers should ensure they are not using content, imagery, or language that is discriminatory in nature. Additionally, brokers should report any AI content that appears biased or discriminatory.
- verifying the accuracy of information;
  - Brokers should not rely on AI-generated content as a source of verified facts. All property descriptions, pricing references, etc., need to be independently verified to ensure all advertising is truthful and not misleading.
- prohibiting legal advice;
  - Brokers should not use AI tools to obtain legal advice or interpret contractual obligations on behalf of their client. Brokers should rely on their legal counsel and Commission publications/resources for guidance.
- confidentiality and client data protection policy;
  - Brokers are prohibited from entering personal identifying information from their clients into AI platforms unless approved by the BIC. AI platforms should be used cautiously, just like email and electronic cloud storage systems. Protecting client confidentiality is one of the fiduciary duties of a broker.
- disclosure policy;
  - Brokers must be transparent in communicating their usage of AI when creating client faced communications.
- target advertising policy;
  - Brokers using AI-generated advertisements must ensure that the advertisements don't exclude or target members of protected classes. Filters based on demographics, location, and/or ethnicity, etc. should be carefully reviewed for fair housing compliance
- training and continuing education requirement; and





- All brokers using AI tools must participate in training on responsible AI use. Training will address fair housing, accuracy, confidentiality, and regulations. Brokers are expected to stay informed about evolving AI risks and regulatory guidance on the usage of AI.
- monitoring and enforcement policy.
  - Internal audits may be conducted to identify risks or patterns of noncompliance. Brokers must cooperate with any review or corrective action.

Artificial intelligence can be an effective tool for improving efficiency and creativity when used thoughtfully. By incorporating clear AI-related standards into written office policies and procedures, a broker-in-charge promotes compliance and consumer protection. Further, responsible AI use is an extension of a broker's obligation to act competently and in the best interest of the public.

**NOTE:** One of the most common mistakes brokers make is relying on AI for factual information or legal guidance. AI systems can produce responses that sound authoritative but are inaccurate or misleading. Market statistics, license law interpretations, and procedural guidance must always be verified through reliable sources. AI should never replace guidance from the Real Estate Commission, legal counsel, or official publications. Ultimately, the broker is responsible for the accuracy of information.

## ***Conclusion***

A broker-in-charge (BIC) should develop and maintain a compliance checklist to help ensure that all affiliated brokers conduct brokerage activities in accordance with License Law and Commission rules. Such a checklist supports consistent supervision and reinforces the requirement that written office policies apply equally to all affiliated brokers and are uniformly enforced. By using a checklist, a BIC can more effectively monitor compliance, identify potential issues early, and document reasonable supervisory efforts.

A BIC may consider including items such as:

- disclosing criminal convictions, military-court martial convictions, notarial sanctions, and disciplinary actions;
- the permissible administrative activities of a TC;
- unaffiliated brokers participation at open house and showings; and
- the approved usage of AI platforms

in their written office policies and procedures manual.

**NOTE:** Checklists can be a practical tool when developing and implementing written office policies. While not exhaustive, these items provide a useful starting point for identifying key compliance areas that should be addressed in a brokerage's policies and procedures manual.

The Commission is aware that brokerages may have different policies and procedures regarding their specialty areas. However, a BIC should ensure that they are addressing any policy infractions and documenting opportunities for remediation and corrective action by affiliated brokers to ensure clients and/or customers are made whole and their best interests are protected.

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## SUMMARY OF IMPORTANT POINTS

# Post-Flight Check Summary

## Key Concepts to Review



- Commission Rule 58A .0110(a) requires every real estate firm to designate a broker approved by the Commission to serve as the Broker-in-Charge (hereafter referred to as BIC) for the firm's principal office, and a separate broker to serve as BIC for each branch office.
- A broker may serve as BIC for only one office location at any given time, and no office may have more than one designated BIC. Further, the Rule explains that a BIC shall not serve as BIC for more than one office **unless** each of those offices share the exact same physical office space and delivery address. Therefore, even separate office spaces in the same building will not meet this requirement.
- Pursuant to Rule 58A .0110(b), a sole proprietorship must designate a BIC if the sole proprietorship:
  - engages in any transaction where a broker is required to deposit and maintain monies belonging to others in a trust account;
  - engages in advertising or promoting services as a broker in any manner;  
**or**
  - has one or more other brokers affiliated with the sole proprietorship in the real estate business.

- The designated BIC is the individual the Commission primarily holds responsible for the daily supervision and management of the brokerage.
- The responsibilities can be remembered by using the acronym **ALERT**. A BIC's responsibility for full brokers under Commission Rule 58A .0110(g) is limited to the following:
  - comply with agency agreements and disclosures;
  - have current, active licenses;
  - comply with every advertising law and regulation;
  - create, maintain, and retain transaction records; and
  - properly handle trust money.
- A BIC should implement best practices that support consistent oversight and compliance.
- These best practices could include:
  - establishing reminders or systems to regularly verify that all affiliated brokers hold active and current licenses;
  - creating a structured process for reviewing and approving all advertising before publication;
  - adopting clear policies governing the use of social media in connection with brokerage activities;
  - developing a comprehensive transaction file checklist to ensure all required documentation is obtained and maintained;
  - conducting periodic reviews of transaction files to confirm accuracy and completeness; and
  - implementing and enforcing procedures for the proper handling of trust monies.
- Clear written policies that address acceptable brokerage conduct and License Law and Commission rules help establish expectations for affiliated brokers, and demonstrate that the BIC has taken reasonable steps to prevent violations.
- To assist BICs in developing effective policies, the Commission has published a [Broker-in-Charge Best Practices Guide](#), available on the Commission's website.
- This Guide is intended to serve as a starting point rather than a one-size-fits-all solution. Brokerages vary in size, structure, and specialization; therefore, BICs may need to adopt additional policies tailored to the complexity and specific nature of their practice.
- Although arrests do not need to be reported, the Commission places an affirmative duty on brokers to report felony and misdemeanor criminal convictions, military-court martial convictions, notarial sanctions, and disciplinary actions by occupational agencies within 60 days of final adjudication.

Failure to comply with these reporting requirements may violate Commission Rule 58A .0113.

- A BIC should acknowledge their importance in playing a gatekeeping role for real estate brokerage due to their supervisory requirements for affiliated brokers.
- A transaction coordinator (hereafter referred to as TC) functions primarily as an administrative professional whose responsibilities focus on document management, coordination, and communication during real estate transactions.
- TCs may organize contracts, offers, leases, and other closing documents, ensuring that nothing is missing and that deadlines are met. They also serve as a liaison among clients, brokers, inspectors, lenders, and other parties to coordinate signatures, inspections, and appointments, while providing updates to the appropriate licensed brokers.
- BICs are responsible for ensuring that office policies clearly define the scope of permissible tasks for licensed and unlicensed TCs, for monitoring compliance with License Law and Commission rules, and for supervising trust accounts and advertising.
- In North Carolina, a TC who also holds an active real estate license must be especially mindful of “which hat” they are wearing at all times during a transaction.
- To avoid confusion, a licensed TC must not blur administrative coordination with brokerage activities such as advising clients, explaining contracts, negotiating terms, or discussing agency relationships, unless they are formally engaged in a brokerage capacity, such as acting as an agent for a principal, and all parties understand that role.
- BICs should clearly define in writing whether a licensed TC is acting solely in an administrative capacity or as a broker in a given transaction, ensure that disclosures and communications reflect that role, and closely supervise the licensed TC’s activities to maintain compliance with License Law and Commission rules.
- Proper training, clear office policies, and ongoing supervision are essential to maintaining compliance and protecting both the brokerage and clients from potential liability. Implementation of office policies such as:
  - TCs may only provide administrative support and not perform licensed brokerage activities;
    - BICs should provide a list of permitted activities for a TC.
  - brokers must supervise unlicensed TCs during the transaction to ensure brokerage activity is not conducted; and
  - Clients and consumers must be informed about the role/purpose of the TC to prevent confusion and reduce the risk of the TC conducting illegal brokerage activity.
    - In the article, [Brokers & Consumers Should Be Aware of Unlicensed Activity in North Carolina](#), the Commission clarifies how individuals should be aware of unlicensed activity.



- Open houses and property showings are important marketing tools for brokers; however, it is imperative that brokers adhere to their fiduciary duties while utilizing these tools. BICs may adopt written office policies like the following to ensure that affiliated brokers comply with their fiduciary duties:
  - agency authority;
    - Brokers may only act within the scope of the agency authority that is authorized by the client in their agency agreement.
    - All agency agreements must adhere to Commission Rule 58A .0104.
  - agency disclosure;
    - Brokers must provide and review the *Working with Real Estate Agents Disclosure* in adherence to Commission Rule 58A .0104. Additionally, brokers working as a seller's agent or subagent shall disclose in writing to the prospective buyer at first substantial contact that they represent the interests of the seller. Brokers representing a prospective buyer shall at initial contact with the seller or selling agent, disclose that they represent the buyer's interest.
  - provisional broker;
    - Provisional brokers are required to be supervised by the BIC at all times. Additionally, provisional brokers are not permitted to conduct showings or host open houses for brokerages/BICs in which they are not affiliated.
  - property access;
    - Provisional brokers may conduct open houses and/or showings under the supervision of their BIC or their delegate.
    - Unaffiliated brokers may not host open houses or conduct showings on behalf of the brokerage.
  - material facts; and
    - Brokers must conduct a preliminary visual inspection of all properties and must discover and disclose material facts to all parties in the transaction.
      - If a broker delegates the showing of a property to another affiliated broker within the brokerage, the broker providing the delegation is not relieved of their affirmative duty to discover and disclose material facts.
      - Brokers must provide documentation of their communication of material fact disclosures to all parties in the transaction.
  - verification of errors and omissions insurance.
    - Brokers may only conduct brokerage activities that are covered by the brokerage's errors and omissions insurance.

- Fair housing compliance is also a central concern when AI is used for advertising and marketing. AI tools may possibly rely on historical data or online patterns that unintentionally exclude or favor certain groups of people.
- One of the most significant concerns related to AI use is privacy and client confidentiality. AI systems generate responses based on data patterns, and information entered into these systems may be stored and reused to improve future outputs
- In an effort to ensure compliance amongst brokers when using AI tools, BICs may want to consider implementation of the following policies:
  - mandatory review of AI-generated content;
    - Information must be reviewed by the broker to correct erroneous information and misleading statements. The content created by AI should be treated as a draft and not the final product.
  - creation of a fair housing compliance policy;
    - AI-generated content must comply with state and federal fair housing laws. Brokers should ensure they are not using content, imagery, or language that is discriminatory in nature. Additionally, brokers should report any AI content that appears biased or discriminatory.
  - verifying the accuracy of information;
    - Brokers should not rely on AI-generated content as a source of verified facts. All property descriptions, pricing references, etc., need to be independently verified to ensure all advertising is truthful and not misleading.
  - prohibiting legal advice;
    - Brokers should not use AI tools to obtain legal advice or interpret contractual obligations on behalf of their client. Brokers should rely on their legal counsel and Commission publications/resources for guidance.
  - confidentiality and client data protection policy;
    - Brokers are prohibited from entering personal identifying information from their clients into AI platforms unless approved by the BIC. AI platforms should be used cautiously, just like email and electronic cloud storage systems. Protecting client confidentiality is one of the fiduciary duties of a broker.
  - disclosure policy;
    - Brokers must be transparent in communicating their usage of AI when creating client faced communications.
  - target advertising policy;
    - Brokers using AI-generated advertisements must ensure that the advertisements don't exclude or target members of protected classes. Filters based on demographics, location, and/or ethnicity, etc. should be carefully reviewed for fair housing compliance
  - training and continuing education requirement; and
    - All brokers using AI tools must participate in training on responsible AI use. Training will address fair housing, accuracy, confidentiality,

and regulations. Brokers are expected to stay informed about evolving AI risks and regulatory guidance on the usage of AI.

- monitoring and enforcement policy.
  - Internal audits may be conducted to identify risks or patterns of noncompliance. Brokers must cooperate with any review or corrective action.