

# 2020-2021 General Update Course

## Section Five Law & Rules Updates



1. Lisa, a BIC, opens a trust account for her real estate office at a local bank.

Must Lisa take the Commission's trust account course? Yes / No

If so, when must she take the course? \_\_\_\_\_

2. Chandra, a Prelicensing student, tells her instructor that she had a criminal conviction in her past and asks if it will prevent her from being granted a real estate license. Her instructor tells her she can petition the Commission for a decision about the conviction prior to completing the Pre course and/or prior to taking the license examination.

Is Chandra's instructor correct? Yes / No

3. TRUE or FALSE? Pre and Postlicensing courses may now be taken in an online, self-paced environment.

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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 were effective on July 1, 2020.

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### OVERVIEW

The Commission revised several rules with an effective date of July 1, 2020, in Chapters 58A and 58H. The changes that directly impact brokers will be summarized in this section. Also, all revised rules can be viewed on the Commission's website.

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## COMMISSION RULE CHANGES EFFECTIVE JULY 1, 2020

### Rule 58A .0110: Broker-In-Charge (BIC)

Commission Rule 58A .0110 dictates the duties and responsibilities of the BIC. One of the BIC's primary responsibilities, per 58A .0110(g)(3), is "maintaining the trust or escrow account of the firm and the records pertaining thereto."



*By law, when must a BIC have a trust account?*

N.C.G.S. 93A-6(a)(12) dictates that

- all funds of another person or entity which relate to or concern that person's or entity's interest or investment in real property
- that are received by [a licensee] as a real estate licensee acting in that capacity
- MUST be maintained and deposited in a trust or escrow account in a bank as provided by 93A-6(g).

In other words, the BIC MUST open and properly maintain a trust account if the BIC or any affiliated brokers within the BIC's office collect or otherwise handle the "funds of another person or entity" when acting in the capacity of a broker.

If an active practicing broker does not collect or otherwise handle the funds of others, no trust account is required. Also, a broker who is inactive or otherwise not using his/her real estate license is not required to open or maintain a trust account.



*What are examples of "funds of another person or entity" that would prompt the need for a trust or escrow account?*

Per N.C.G.S. 93A-6(a)(12), "trust money" is defined as money belonging to others received by a real estate broker who is acting as an agent in a real estate transaction.

The most common examples of trust money are:

- Earnest money deposits
- Down payments
- Tenant security deposits
- Rents
- Homeowner Association dues and assessments
- Money received from buyers for final settlements

In the case of resort and other rentals, trust money also includes:

- Advance reservation deposits
- State (and local, if applicable) sales taxes on the gross receipts from such rentals



*If a BIC opens a trust account, must that BIC take any special education?*

Yes!

As of July 1, 2020, subsection (g)(9) of rule 58A .0110 dictates that a designated BIC shall “complete the Commission’s Basic Trust Account Procedures Course within 120 days of opening a trust account in accordance with G.S. 93A-6(g).”

The Commission’s Basic Trust Account Procedures Course provides instruction on the laws, rules and trust account guidelines as they pertain to trust accounting. The course is offered only by the Commission and is available in classroom and distance instruction formats.

To register for the course, go to the Commission’s homepage (nrec.gov), click on the Education menu, and select Course Registration.

**If a BIC Opens a Trust Account**

- **Mandatory** Basic Trust Account Procedures Course
- Taught by the Commission
- Within 120 days of opening the trust account

**Rule 58A .0110(g)**

**Basic Trust Account Procedures Course**  
**Taking the Right Path for Trust Accounts**  
A Production of the North Carolina Real Estate Commission

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

Commission Rule 58A .0302 dictates the fees and requirements for broker and firm license applications.

As of July 1, 2020, if an application is incomplete, and the Commission requests the additional information, the applicant must provide such information / documentation within 45 days of the request. If an applicant fails to submit the documentation within 45 days, the application will be cancelled. Prior to July 1, 2020, the timeframe was 90 days.

## Rule 58A .0305: Petition for Predetermination

House Bill 770 was passed by the NC General Assembly in June 2019 and was signed into law by Governor Cooper on July 8, 2019. The law required occupational licensing boards in North Carolina to institute a process by October 1, 2019, by which:

*an individual with a criminal history may petition a board at any time, including before an individual starts or completes any mandatory education or training requirements, for a predetermination of whether the individual's criminal history will likely disqualify the individual from obtaining a license.*

To meet the October 1 deadline, the Commission initiated a temporary rulemaking process in August 2019. Temporary Rule 58A .0305 became effective on October 1, 2019. It became effective as a permanent rule on July 1, 2020.

Rule 58A .0305 enables an individual to file a Petition for Predetermination to determine whether their criminal history will preclude them from receiving a real estate license.

The Petition for Predetermination is available on the Commission's website. The fee to submit a petition is \$45. Per 58A .0305(b), the petitioner must provide:

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

13. affidavits or written documents, including character references, that the petitioner intends to submit for review;
14. certification; and
15. signature.

The Commission is required to provide a determination within 45 days of receipt of a petition and the determination is binding for the Commission. In other words, if the Commission determines today that an individual's criminal history will not prevent that individual from obtaining a license, the Commission must honor the decision whether that individual files an application today or 30 years from today.

It is important to note that Petition for Predetermination is only related to criminal history. At the time of license application, an individual must disclose any/all criminal convictions, civil judgments or liens, and disciplinary actions by a professional licensing agency. Therefore, it is possible that an applicant who had previously filed a Petition for Predetermination and had been approved by the Commission under the petition, may still be required to undergo a character review - and even be denied a license - based on civil judgments or liens and disciplinary actions.

Also, if the information surrounding a criminal conviction changes between the time of the petition and license application, or if the individual fails to disclose any convictions at the time of petition, the Commission's response to the Petition for Predetermination will no longer apply. In such case, a full character and fitness review will occur.

### **Rule 58A .0506: Provisional Broker to be Supervised by Broker-in-Charge**

Commission rule 58A .0506 dictates that a provisional broker (PB) must be actively licensed and affiliated with a broker-in-charge (BIC) to engage in activities requiring a real estate license.

Prior to July 1, 2020, PBs were only allowed to be supervised by one BIC at a time. However, as of July 1, 2020, Rule 58A .0506 permits a PB to be supervised by no more than two BICs of two licensed affiliated firms, AS LONG AS the two firms are located in the same physical location and are acting as co-listing or co-selling agents in real estate transactions.

The effect of the rule is that PBs may now legally be affiliated with a licensed team that is operating under the umbrella of a larger firm, as long as the team is located in the same physical location as the umbrella firm. An in-depth discussion of this rule change is provided in the "PBs on a Team" section of the 2020-2021 BICUP course.

## **Rule 58A .1708: Equivalent Credit**

Commission rule 58A .1708 dictates the conditions under which a broker may apply and receive “equivalent” CE credit.

While the types of courses and events that may qualify for equivalent credit have not changed, subsection (h) was added, as follows, to clarify when / how credit will be awarded:

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

To clarify, the new subsection dictates:

- if a broker has a CE deficiency in the previous and current license periods, then the equivalent credit will first be applied to the previous year’s deficiency; and
- equivalent credit for a course or activity that was completed during a previous license period will not be applied to a later license period.

NOTE: This rule does not impact carry-over CE elective credit, which is dictated by Rule 58A .1707.

## **Rule 58A .1711 Continuing Education Required of Nonresident Brokers**

Commission rule 58A .1711 dictates the conditions under which a nonresident\* broker may satisfy NC’s CE requirement.

\* To be considered a nonresident for CE purposes, a broker may not have any NC address, meaning the broker does not have an NC business/office, residence, or mailing address.

As of July 1, 2020, nonresident NC brokers who wish to renew their licenses on active status may satisfy the continuing education requirement EITHER by

1. certifying that they hold an active license in another state at the time of license renewal; OR
2. complete the Commission-prescribed Update course plus one Commission-approved continuing education elective course, or complete two Commission-approved continuing education elective courses.

To clarify, the options are only available to nonresident brokers with active NC licenses who wish to renew those licenses on active status.

Nonresident brokers with inactive NC licenses who wish to activate their licenses are subject to the requirements of Commission Rule 58A .1703.

To assist those nonresident brokers who need to complete Postlicensing courses as a condition of license activation, subsection (b) has been added to Commission rule 58A .1711 as follows:

When a nonresident broker's license has been on inactive status for more than 2 years and the broker is satisfying the requirements of Rule .1703(c) of this Subchapter, if a distance education Postlicensing course is unavailable, a nonresident broker may apply for equivalent education credit for a Postlicensing course by submitting a written request that includes a course completion certificate or transcript evidencing the completion of an education program in another state that:

- (1) consisted of at least 30 hours of instruction;
- (2) was completed within six months prior to application, and
- (3) is parallel to the topics and timings described in the Commission's Postlicensing course syllabi.

## **Rule 58A .1904: Denial or Withdrawal of Postlicensing Education Credit**

Commission Rule 58A .1904 dictates the conditions under the Commission may deny or revoke Postlicensing education credit. Previously, this rule limited the number of hours of Postlicensing education a PB could attend within a given 7-day period. As of July 1, 2020, no such limit exists. This restriction was eliminated because education rules in Subchapter H permit Postlicensing education courses to be delivered via various online formats as of July 1, 2020.

## CHANGES IN SUBCHAPTER H RULES

Senate Bill 590 was ratified on August 1, 2019, and signed by Governor Roy Cooper on August 9, 2019. This legislative bill predicated two fundamental and important changes to License Law [Chapter 93A of NC's General Statutes], effective July 1, 2020, as follows:

- 1) In order to offer Prelicensing (Pre), Postlicensing (Post), and Continuing Education (CE) courses, a company (either sole proprietorship or entity) must be certified as an Education Provider.

Prior to July 1, 2020, a company had to be approved or licensed as a "School" to offer Pre/Post courses and/or had to be approved as a "Sponsor" to offer continuing education courses. The criteria and process for approval/licensure as a School was separate from the criteria and process for approval as a Sponsor. Plus, renewal of each approval or licensure was required each year.

As of July 1, 2020, these approval and renewal processes have been streamlined.

- 2) Pre, Post, and CE courses may be delivered online.

The Commission's rules dictating the delivery and instruction of education courses are found in Subchapter H. All rules in that Subchapter were revised as of July 1, 2020, to comply with SB 590. These rules are not discussed during the Update course. All rules in Subchapters A-H may be viewed on the Commission's website.



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## ANSWERS TO DISCUSSION QUESTIONS

For Discussion on page 73:

1. Lisa, a BIC, opens a trust account for her real estate office at a local bank.

Must Lisa take the Commission's trust account course? *YES*

If so, when must she take the course? *WITHIN 120 DAYS OF OPENING THE ACCOUNT*

2. Chandra, a Prelicensing student, tells her Prelicensing instructor that she has a criminal conviction in her past and asks if it will prevent her from being granted a real estate license. Her instructor tells her she can petition the Commission for a decision about the conviction prior to completing the Pre course and/or prior to taking the license examination.

Is Chandra's instructor correct? *YES*

3. TRUE or FALSE? Pre and Postlicensing courses may now be taken in an online, self-paced environment. *TRUE*