

2023-2024 General Update Course

Segment 3

Challenges of a Changing Market



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

2. Can a broker communicate with an appraiser?

LEARNING OBJECTIVES

After completing this section, you should be able to:

- define appraiser pursuant to N.C.G.S. §93E;
- briefly describe the scope of the broker's and appraiser's role during the appraisal process;
- identify the types of assumable mortgages;
- list the common limitations a buyer may encounter when assuming a mortgage; and
- define wholesaling.

TERMINOLOGY

Appraisal: An analysis, opinion, or conclusion as to the value of identified real estate or specified interests therein performed for compensation or other valuable consideration.

Appraiser: A person who is licensed to develop and communicate real estate appraisals or otherwise gives an opinion of the value of real estate or any interest therein for a fee or valuable consideration.

Assumable Mortgage: A mortgage loan that can be transferred to another person.

Wholesaling: A strategy in which a party obtains a contract to purchase a property from a seller, and then prior to closing, assigns their contract rights to a buyer.

ADAPTING TO CHANGING WEATHER

Over the past couple of years, there were significant changes in the housing market that markedly affected the practice of brokerage. During a red-hot seller's market with limited inventory and escalating prices, many buyers completed transactions in which they:

- went under contract on properties sight unseen;
- waived inspections;
- conducted limited due diligence;
- waived appraisals;
- paid money for appraisal gaps; and
- agreed to pay more than the appraised value of properties.

As some of those same buyers now become sellers of the property, they are facing challenges due to information they ignored at the time of purchase.

Sellers who feel like they missed the peak of a market do not necessarily adjust their expectations and may be unhappy with appraisals that don't meet their expectations.

One bright spot for these frustrated new sellers is that many sellers have attractive existing mortgage rates on the property from an all-time low point in the 2%-3% range. Since the extremely low rates are no longer available, for the first time in decades, we are seeing interest in loan assumptions.

In addition to buyers determinedly looking for a place to live, the quickly escalating prices of homes in many areas of our state have resulted in an abundance of investors and individuals engaged in the wholesaling business.

The changing real estate market is forcing brokers to confront legal and compliance issues that many brokers may have seldom or never encountered. This segment focuses on three of those changes and provides some guidance to assist brokers in dealing with each of the following:

- The Storms of Appraisals,
- The Heat Wave of Assumable Mortgages, and
- The Tsunami of Wholesaling.

THE STORMS OF APPRAISALS



N.C.G.S. §93E requires anyone performing an appraisal in North Carolina to be licensed as an appraiser by the North Carolina Appraisal Board. A real estate appraiser is a person who for a fee or valuable consideration develops and communicates real estate appraisals or otherwise gives an opinion of the value of real estate or any interest therein.

Appraisers must follow the Uniform Standards of Professional Appraisal Practice (*hereafter referred to as "USPAP"*) because it is the generally recognized ethical and performance standard for the appraisal profession in the United States. The USPAP was adopted by Congress in 1989 and contains the standards that appraisers must follow while they are providing services.

Some of the standards set the:

- requirements for the development and reporting of real property appraisals; and
- development and reporting of an appraisal review.

Appraisers must also adhere to the ethics rule under USPAP. According to the presentation, [“Boundaries for Tax Appraisers,”](#) presented by the North Carolina Appraisal Board, the ethics rule indicates that an appraiser must promote and preserve the public trust inherent in appraisal practice by observing the highest standards of professional ethics.



The Role of the Appraiser and Their Standards

The liability of brokers pursuant to N.C.G.S. §93A-6(a)(1) for making misrepresentations is a big risk for brokers when it comes to the topic of appraisals. Misrepresentation of the appraisal process or report by a broker can possibly create both civil liability and a violation of Commission rules. Each of the following statements could be construed to be a factual misrepresentation:

- The appraiser undervalued the home. Its value is actually much higher.
- The value of the home is what you are paying for it, not the appraiser’s opinion of value.
- An appraisal is just as good as getting a home inspection.
- Don’t worry about the low appraisal. Once you own this home, you will have lots of equity in it because of what you paid.
- Home values always go up. Your home will increase in value and you can always refinance it in a year or two.
- Zillow and some appraisers often say the property is worth more than it really is. As a real estate broker, I know your home is actually worth less than what those sources say.

Understanding the extent of these misrepresentations requires mastering some vocabulary and recognizing the distinctions in roles and requirements between appraisers and brokers.

WORTH / VALUE - Interchangeable terms that should only be used by licensed appraisers. Appraisers determine value or worth.

PROBABLE LIST PRICE or PROBABLE SALES PRICE - The estimate provided by a real estate broker as to the proper amount at which to either list a property or to accept in a purchase contract.

ACTUAL PRICE -The amount actually paid in dollars for the real estate.

Brokers should always avoid using the words “worth” or “value” in their discussions with consumers. References to worth and value by brokers can lead to misrepresentations and potential liability for rendering an opinion that can only be legally provided by a licensed appraiser.



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

- a) A CMA can be used to originate a mortgage loan, but an appraisal cannot be used for that purpose.
- b) An appraisal estimates value, and a CMA estimates the probable sales price.
- c) Standards for a CMA are set by USPAP, and standards for appraisals are set by the NCREC.
- d) An appraisal can be performed for a fee, but a CMA cannot be performed for a fee.

The law defines a real estate appraisal as:

...an analysis, opinion, or conclusion as to the value of identified real estate or specified interests therein performed for compensation or other valuable consideration.

An appraisal results from an independent, impartial, and objective opinion of value that represents the appraiser's best judgment based on all relevant factual data reasonably available that is derived utilizing appropriate analytical methods.

Brokers perform an analysis of recently sold properties in order to derive an indication of the probable sales price of a particular property. This probable sales price of the property is estimated by a comparative market analysis (CMA).

A probable sales price is not an opinion or conclusion of value or worth. Matter of fact, the North Carolina Appraisers Act specifically exempts comparative market analyses from the real estate appraisal license requirements when it is performed by a licensed real estate broker for a prospective or actual client provided that the broker does not hold themselves out as being state licensed as a real estate appraiser.

NOTE: A CMA is an opinion of the probable sales price for the respective property based on the data of recently sold properties; it does not indicate the value of the property. An opinion of value of the property is provided in an appraisal, which is compiled only by an appraiser.



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

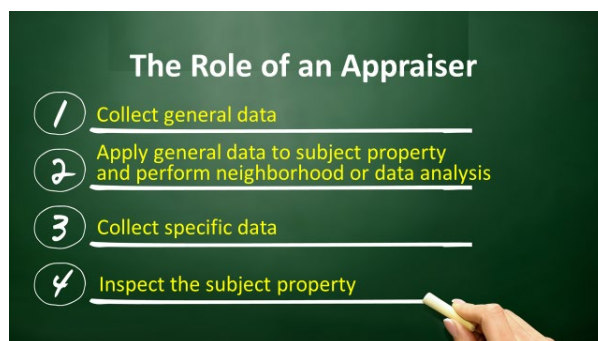
- a) No, all appraisals are the same regardless of the type of financing.
- b) No, the appraiser is not told about the type of financing the buyer is getting.
- c) Yes. The appraiser must comply with the requirements of the mortgage lender and guarantor.
- d) Yes, it impacts the type of value the appraiser must provide.

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

The appraiser evaluates all of the data of the subject property and the lender requirements to ensure the lender has enough information about the collateral property to guarantee the loan. If the property doesn't meet the requirements, the lender will not finance the buyer's loan.

Further, Government Sponsored Enterprises, such as secondary market entities like Fannie Mae, also specify that appraisers must receive a copy of the sales contract. Once the appraiser is in receipt of the sales contract, they:

- compare the terms of the sales contract to what is typical in the market; and
- verify the property seller is in fact the owner of public record for the subject property.



What is the role of an appraiser?

The role of an appraiser is to analyze the data and the property, then report the results to their client, typically the lender. The purpose of the appraisal is to ensure that the property is worth enough as collateral to guarantee the loan; therefore, appraisers may complete some of the following steps:

- collect general data,
 - social, economic, governmental, and environmental forces affecting the nation, the region, and neighborhoods
- apply general data to appraisal of subject property and perform a neighborhood or data analysis, and
 - analysis of the local real estate market
- collect specific data.
 - obtain a detailed description of the subject property
 - identify comparable properties to be used in the appraisal
 - inspect the subject property, verify square footage, and gather information on the characteristics and improvements to the property to use in estimating depreciation

Therefore, an appraiser is concerned about collecting relevant data and using that data to formulate an objective opinion of value. Consequently, brokers should not expect or attempt to pressure an appraiser to meet their client's objective of having the property appraise for the list price of the property or more, without the data to support the desired amount.

According to the article, [“The Appraiser’s Role Isn’t to Kill Your Deal,”](#) an appraiser must not perform an assignment with bias nor accept an assignment that includes the reporting of predetermined opinions and conclusions. Unlike real estate agents, appraisers must not advocate the cause or interest of any party or issue. Basically, an appraiser does not care about the interests of the buyer of the subject property because the buyer is not their client.



Also, appraisers rarely see the material fact disclosures and home inspection reports. Appraisals are completed with the assumption that the property does not need repair.

Who is the appraiser's client?



The appraiser's client is the mortgage lender even though the buyer is generally charged for the appraisal. The mortgage lender orders the appraisal to determine that the value of the collateral property is adequate to support the guarantee of the loan for the subject property. It is imperative that a broker educates their client regarding who hires the appraiser. [“A Guide to Understanding a Residential Appraisal,”](#) published by NAR® is a good resource for buyers if they are unfamiliar with the process. Further, an appraiser owes confidentiality to the lender.



What is the role of a broker during an appraisal process?



The role of a broker is to advocate on behalf of their client and adhere to their fiduciary duties while providing agency representation. Additionally, brokers should ensure that they are assisting their clients with getting the best price.

During an appraisal process, a broker *may* communicate with an appraiser. For example, the broker may provide property specific information and a comparative market analysis for the appraiser to consider using in the preparation of their opinion of value.

Information that brokers may commonly provide as mentioned in the NAR® article, [“The Appraiser's Role Isn't to Kill Your Deal”](#), is as follows:

- a true legal description regarding the property;
- plat of survey;
- blueprints, if the property is a new construction;
- accurate and complete listing sheet;
- property features and upgrades as well as parameters for competing properties and local benefits;
- most recent real property tax bill;
- any closed sales or listings that support the listing price; and
- any insight on the current list price for the subject property.

If the subject property is located within an owners' association, such as a condominium or planned unit development, the broker might also provide:

- copies of the governing documents for the association;
- name, phone number, and email address of the association’s property manager or board president if the property is not managed by a property management company; and
- answers to the questions found in the Fannie Mae questionnaire (FNMA Form 1076).

Although brokers are providing the property information for appraisers to ascertain their opinion of value, the communication of information is generally a one-way street *from the broker to the appraiser*. Brokers should not expect appraisers to discuss comparable properties with them or give them confidential information; in fact, they will not.

Appraisers will not communicate how they approached the impartial, independent, and objective opinion of value for the subject property. However, brokers should be aware that the data they provide to the appraisers will be helpful and assist them with having the requisite information to competently perform their duties. Therefore, in the article, [“Residential Appraisal Process - FAQs for Agents,”](#) NAR® also recommends brokers to prepare an Appraiser’s Package in advance and have it available for the appraiser at the property. If the appraiser does not accept the packet of information prepared by the broker, the broker may send an email to the buyer’s lender and include any documentation and data that was attempted to be shared with the appraiser. This communication with the lender will evidence their due diligence in adhering to their fiduciary duties of their buyer client.



In the Commission article, [“Can I Talk to the Appraiser?”](#), the Commission discusses the duties of the broker, appraiser, and the questions that the broker may ask during the appraisal process. Under no circumstances should a broker attempt to coerce, extort, collude, or influence an appraiser’s opinion of value of a property. Quite frankly, Commission Rule 58A .0120(c) prohibits such conduct.

Rule 58A .0120 (c), states:

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



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Can brokers communicate with appraisers and maintain appraiser independence requirements?

- a) Yes, brokers may communicate with appraisers and not violate Dodd-Frank, TILA, and USPAP.
- b) No, it would violate Dodd-Frank.
- c) No, it would violate the Truth-in-Lending Act.
- d) No, it would violate USPAP.

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

In the article, [Issue Brief: Appraiser Independence](#), published by NAR®, it quotes Dodd-Frank as follows:

The requirements of subsection (b) shall not be construed as prohibiting a mortgage lender, mortgage broker, mortgage banker, real estate broker, appraisal management company, employee of an appraisal management company, consumer, or any other person with an interest in a real estate transaction from asking an appraiser to undertake one or more of the following:



1. *Consider additional, appropriate property information, including the consideration of additional comparable properties to make or support an appraisal.*
2. *Provide further detail, substantiation, or explanation for the appraiser's value conclusion.*
3. *Correct errors in the appraisal report.*

Basically, brokers may ask appraisers to consider additional property information, clarify their opinion of value, or correct any issues during the appraisal process as long as they are not coercing, influencing, or persuading the appraiser. If a broker participates in this type of conduct, they may be in violation of Rule 58A .0120(c).



What happens if the appraisal and purchase price do not match?

Brokers often say to their clients that the appraisal has come in “low.” Essentially, what brokers mean is that the opinion of value that the appraiser has indicated for the property does not support the sales price of the subject property. Brokers often question the compilation of data

used by the appraiser to determine the value and often attempt to communicate their dissatisfaction with the appraisal report to the appraiser after the process has concluded.

Moreover, brokers should be careful not to mislead consumers by indicating that the opinion of value is wrong and not the true market value of the property because the appraisal is different than the listing price.

The appraiser’s job is to develop an opinion of the fair market value for the property. The agreed upon contract price for the subject property between the buyer and the seller does not in any way determine the true market value of the property. The appraised value may not always match or support the sales price of the property.



According to the NAR® article, [“5 Appraisal Topics Every Agent Should Know,”](#) the broker should communicate with the lender, not the appraiser, once an appraisal has been completed. If the broker would like to submit additional documentation and/or data for consideration, the broker must do so through the lender. The broker may submit pertinent information, such as new comparables for recently sold properties that the appraiser may not have had access to during the appraisal process.

Furthermore, if the broker would like additional clarification on how the opinion of value was derived on the subject property, the broker may request of the lender to receive additional clarification from the appraiser.

NOTE: Some lenders may choose not to speak with the broker; therefore, brokers should recommend to their clients to contact the lender regarding the appraisal. If the lender agrees to communicate with the broker, the broker should communicate with the lender.



Takin' it to the Streets:

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

Package were considered when the appraisal was conducted.

Is it permissible for Tommy to call the appraiser?



What if I think racial bias exists in the appraisal?

If a broker or buyer thinks racial bias exists in an appraisal report, the broker or buyer may file a complaint with the North Carolina Appraisal Board and the North Carolina Human Relations Commission.

Further, the broker may suggest that the buyer contact the lender to request a different appraiser and subsequent appraisal for the property. Brokers should not attempt to communicate with the appraiser their belief that racial bias exists in the appraisal report.

Best Practices for Brokers

Appraisers must collect data to support their opinion of value and will compile as much information as necessary to complete an independent, impartial, and objective appraisal report. Therefore, under no circumstances should brokers try to influence the appraiser by indicating the amount of value that should be contained in the report or insisting what specific comparables/data that the appraiser should use to determine the value.

Brokers should remember:

- it is illegal to attempt to influence appraisers;
- it is not within their scope of responsibilities to indicate value or demand an appraiser use specific comparables;
- it is permissible for them to communicate with appraisers to provide relevant information during the appraisal process; and
- they may cooperate but must not use coercion to manipulate information in the appraisal report.



Basically, brokers can give data but not direction, provide information but not influence, and cooperate with the appraiser without coercion. Brokers can provide supporting documentation for the appraiser to consider during the appraisal process, but brokers cannot insist that the provided information be used. Further, if a broker attempts to change, manipulate, or influence data in the appraisal report, this may be a violation of the Dodd-Frank Act. Additionally, brokers should remember that certain acts such as coercion, collusion, etc. are prohibited under Rule 58A .0120.

While an appraiser may note the overall condition of a property, an appraiser's role is to determine the market value of the property as collateral for a loan. An appraiser will not inspect a property to the extent that a licensed home inspector will inspect a property. A buyer agent should always recommend that a buyer order a home inspection and should never state or imply that an appraisal is equivalent to a home inspection.

THE HEAT WAVE OF ASSUMABLE MORTGAGES

Buyers today are being quoted higher mortgage rates. It has been a few decades since the market experienced this type of change. Many brokers practicing today have never handled transactions involving the possible assumption of a loan. There can be lots of complexity and pitfalls in this type of transaction.



Buyers are often perplexed about how to afford a property when rising interest rates are paired with rising property prices.

Therefore, brokers should be knowledgeable about various loan products to ensure that they are able to effectively assist their clients during the

transaction. Assumable mortgages can be one of the options that buyers may consider to finance their property.

If a prospective buyer inquires about obtaining an assumable mortgage, a broker should recommend a competent mortgage lender to thoroughly explain the pros and cons of this financing option. If a prospective buyer inquires about buying a property by assuming the seller's mortgage, a buyer agent should be able to explain the basics of assuming a mortgage, but must not act as if they are a mortgage lender. Listing agents can provide the prospective buyer the lender's information under the direction of the seller; however, the prospective buyer must speak with the lender regarding the specific requirements to assume the loan.

According to mortgage lenders, an assumable mortgage allows a buyer to assume the rate, repayment period, current principal balance, and other terms of the seller's exiting mortgage instead of obtaining a new mortgage. A buyer may choose this option if a seller has a lower interest rate than the current market's interest rate and if the seller's mortgage is *assumable*. Furthermore, the seller must be willing for their loan to be assumed since they may retain some obligations for the assumed loan.

Although assumable mortgages may be an attractive option for some buyers, not all mortgages are assumable. For example, most conventional mortgages are not assumable because they generally have a due-on-sale clause in the mortgage contract.

However, a prospective buyer may be able to assume the following types of loans if they meet certain requirements:

- Federal Housing Administration (FHA);
- Department of Veteran Affairs (VA); and/or
- United States Department of Agriculture.

In an effort to educate and assist prospective buyers with information on assumable mortgages, it is important for brokers to know the specific requirements for each basic loan product and educate their client prior to the buyer determining that assumption of the seller's mortgage would be in their best interest. Now, let's discuss the requirements of each of the aforementioned loans.

Federal Housing Administration (FHA Loans)

Under the HUD Reform Act of 1989, mortgages closed on or after December 15, 1989 require credit qualification of those borrowers wishing to assume the mortgage. This creditworthiness review requirement applies to both borrowers who:

- take title to a property subject to the seller's mortgage without assuming personal liability for the debt, and



- assume and agree to pay the seller’s existing mortgage on the property.

FHA loans are usually considered very attractive loan products due to:

- the possibility of assuming a seller’s mortgage,
- lower down payment options, and
- the ability to secure financing with less than perfect credit.

NOTE: Brokers should recommend that prospective buyers speak with a lender to determine their specific requirements for mortgage assumption.

Department of Veteran Affairs (VA Loans)



VA loans are loans backed by the Department of Veteran Affairs. This type of loan assumption is available to anyone. However, only military members and veterans can originate this type of loan. A buyer who is not a qualified current or former military service member cannot originate a VA loan, but they can still apply for a VA loan assumption. Be aware that a VA loan assumption is subject to approval by the

Department of Veteran Affairs and the original lender.

All VA loans originated on or after March 1, 1988, may be sold to a buyer if the buyer agrees to assume the loan and the lender/VA approves the creditworthiness of the buyer. If the buyer is creditworthy and assumes the liability to the lender/VA, the seller will be released from further liability on the loan.

According to the article, [Rights of VA Loan Borrowers](#), the Department of Veteran Affairs states, if the seller does not get the permission of the lender/VA prior to the buyer assuming the mortgage, the mortgage may become immediately due and payable. The seller will not be able to get another VA loan with their entitlement until the property is sold and the loan is paid in full or the buyer is a veteran and can qualify for a *substitution of entitlement*.



An entitlement is defined as the amount a veteran may have available for a guaranty on a VA loan.

NOTE: Sellers with VA loans need to obtain a release of liability if a buyer assumes their mortgage after closing. This release of liability should be provided to the Department of Veteran Affairs to reinstate the seller’s entitlement of their military benefits.

United States Department of Agriculture (USDA Loans)

A USDA loan is assumable, but a buyer must have a minimum credit score of 620. Also, income limits and location requirements must be met. Once a buyer assumes a USDA loan, their mortgage will usually have new rates and terms unless the mortgage is transferred to a family member of the original borrower. If the transfer is to a family member, the rate and terms may be the same without the buyer-family member having to meet eligibility requirements.



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

- a) The mortgage note must have an assumption clause.
- b) The lender must agree to the assumption.
- c) The borrower has to meet the lenders creditworthy guidelines.
- d) So long as the borrower makes the payments on time, there are no issues.

First, if the mortgage is assumable, the mortgage contract will have an assumption clause. This assumption clause would permit the transfer of the mortgage to another party as long as they can meet the lender's requirements.

FHA, VA, and USDA loans have an assumption clause in their mortgage contracts. Basically, this assumption clause means that any new owner-occupant can qualify using the same standard the loan was issued under with the existing mortgage servicer.

The buyer must also meet the standard requirements set forth by the lender in order to assume the seller's mortgage. Lenders will evaluate the following criteria to determine if the buyer qualifies for financing:

- their credit score and debt-to-income ratio;
- their employment history;
- their income; and
- verification of their assets.

Due to the requirement that a buyer **must use** the seller's lender, it is important for the buyer to inquire with the lender regarding the requirements they must meet for the specific loan product.

NOTE: Brokers should be aware that investors cannot assume FHA, VA, or USDA loans. A property financed with these mortgages must be owner-occupied.

Advantages and Disadvantages of Mortgage Assumption



What are the advantages and disadvantages of assuming a mortgage? There are several advantages and disadvantages of assuming a mortgage from a seller; therefore, buyers should speak with a knowledgeable lender so that the buyer can fully evaluate all of their financing options prior to deciding to assume a mortgage.

The following are pros for assuming mortgages:

- homes can be easier to sell due to a simplified home buying process;
- a buyer saves money due to not having to pay for an appraisal; and
- a buyer receives a lower interest rate than the current market which will save them money over the life of the loan.

The cons of assuming mortgages are:

- sellers may still be held liable for the assumed loan by the lender which can increase financial risk due to the possibility of buyer's default;
- veteran sellers possibly lose their VA entitlement which impacts their future eligibility for VA loans;
- buyers may be required to have a large down payment or secure a 2nd mortgage, if seller has a lot of equity in the property; and
- if the buyer needs to secure a 2nd mortgage, they must fully inform all lenders of the financing for the property.

NOTE: If a buyer assumes the seller's mortgage, the seller generally remains liable for the payment along with the buyer for at least some period of time unless the lender has provided a "written release of liability" to the original borrower-seller.



Assumption Gap

Buyers may be eager to assume a seller's mortgage, but may be unaware of how to handle the assumption gap. An assumption gap is the difference between the purchase price and the assumable mortgage loan balance.

Buyers may be under the impression that the "assumption gap" can be easily financed. However, this is often times very difficult. If a buyer does not have a large down payment to cover the cost of the seller's equity, additional financing from a subsequent lender is needed but may alter their debt-to-income ratio and prevent qualifying for financing from the existing servicer of the assumable mortgage.

Brokers should not advise buyers to secure secondary financing from a different lender for the assumption gap without the buyer making the secondary lender aware they are planning to assume the existing loan on the subject property. If a buyer secures financing without fully disclosing the loans obtained to acquire the subject property to all of the lenders, the buyer (and the broker, if they are aware) may be liable for loan fraud.

Acquiring Title "Subject To" a Seller's Mortgage

When you hear the term, "subject to," it means acquiring title with a seller's existing mortgage still in effect on the property. Typical scenario: A buyer contracts to buy a seller's property promising to make payments on the seller's mortgage. **[Note: This is NOT a formal loan assumption which would obtain the lender's approval.]**

The seller often signs a quitclaim deed without informing the seller’s lender so that it doesn’t trigger the due-on-sale clause which would require the seller to pay off the mortgage. After signing a quitclaim deed, the seller no longer owns the property, but the seller’s mortgage still exists. The quitclaim deed transfers ownership of the property to the buyer but not the debt.

The *buyer* can then:

- 1) borrow money using the house as collateral,
- 2) sell the property to someone willing to pay more for the property, or
- 3) lease the property.

Under option (2), the *buyer* might pay off the seller’s mortgage.

Anytime a property is transferred with the existing loan in place, without the consent of the lender, all parties involved and the brokers in the transactions may be committing **LOAN FRAUD**.

Best Practices for Brokers

Real estate brokers can educate themselves on the complexities of assumable mortgages by:

- networking with mortgage lenders;
- participating in educational opportunities on mortgage loan products; and
- participating in training offered by local and national trade associations.



An additional resource for brokers is the article, [When the Seller Says, ‘Please Take My Mortgage!’](#) published by NAR®.

OWNER-FINANCING



Owner financing occurs when the owner of the property is willing and able to provide some or all of the financing for the prospective buyer by carrying the mortgage on the property. Therefore, the owner-seller also becomes the lender and will collect the mortgage payment from the buyer each month.

Owner-financing can benefit a buyer who has a low credit score or is deemed a “high credit risk” by providing them loan terms that are more flexible than those offered by the financial market’s prime lending institutions.

For sellers who experience challenges with selling their property, offering this creative financing may entice buyers. However, sellers should be knowledgeable about the inherent risks associated with the marginally qualified buyers attracted by this form of financing.

Owner financing can be advantageous to both the buyer and the seller, if it is possible for a particular property. However, the pros and cons should be carefully evaluated to determine if it will be in the best interest of both parties.

Some of the pros for owner financing are:

- ready financing for buyers with reduced closing expenses, such as lender and appraisal fees;
- seller's ability to earn additional fees on their money while transferring the property; and
- seller may reduce tax liability by receiving sale proceeds over several tax years.

The cons of owner financing may include:

- interest rates may be higher or typically higher than market rate for buyers;
- the possibility of buyer defaults requiring the sellers to pursue foreclosure; and
- the seller receives payments over the life of the loan versus all funds upfront at closing.

Brokers should encourage a seller and a buyer to seek legal counsel to determine whether owner financing is an appropriate financing option for their property sales transaction.

THE TSUNAMI OF WHOLESALING

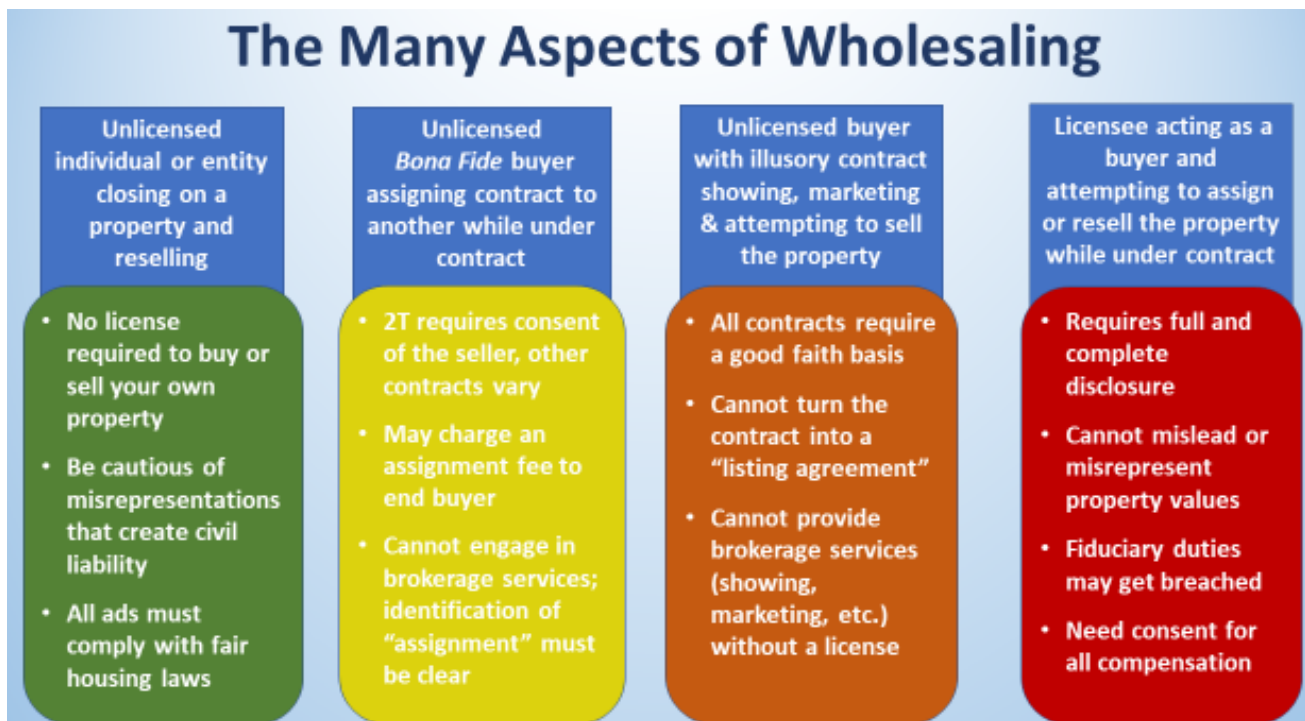
One of the current hot topics that exists in today's changing real estate market is the concept of "wholesaling." The term is being utilized a lot and becomes a "catch-phrase" for a wide variety of circumstances. There are literally hundreds of videos currently posted on YouTube featuring instructions and coaching for how to wholesale properties. Some of the titles currently available are as follows:



- **"Make \$10,000 in 30 Days Wholesaling Real Estate"**
- **"Five Methods to Wholesale a House with No Money in 2023"**
- **"Make \$1 Million a Year Wholesaling Real Estate"**
- **"Watch me Wholesale this House and Make \$5,000 in Less than 1 Hour"**

Promoting real estate as one of the basic principles of building wealth, individuals are being enticed to "wholesale" real estate believing it is an option to make a quick profit in a short amount of time while not spending any cash. Nearly all of the solicitations emphasize the fact that wholesalers act as investors and therefore do not need a real estate license.

Because the term “wholesaling” is being applied to a lot of different activity, it is helpful to look at four major categories that cover the scope of much of the activity. The chart below provides this categorization.



Unlicensed Individual or Entity Closing on a Property and Re-Selling

There may be some instances where a wholesaler enters into a purchase contract and intends to take title to the property. Once they close on the property and take ownership, they immediately attempt to resell the property for a profit without making any repairs/renovations. If a wholesaler takes title to a property before reselling it, then there is no requirement for the wholesaler to have a real estate license.

N.C.G.S. §93A-2(c)(7) specifically exempts from licensure any individual owner who personally leases or sells their personally owned property.

If an entity is purchasing and reselling the property, it is important to know who exactly is exempt from licensure pursuant to NCGS §93A-2(1):

- Corporations - officers and W2 employees;
- Partnerships - general partners and W2 employees; and
- LLCs - Managers, member-managers, and W2 employees.

This means that wholesalers claiming to represent entities who do not fall into the exempted categories could be involved in brokerage services that require active licensure. If the individual or entity properly meets the qualifications for exemption from NCREC licensure, such individuals still need to be cautious regarding all of the following:

- Making misrepresentations or committing fraud that can result in civil or criminal actions;

- Complying with federal and state fair housing laws;
- Avoiding the unauthorized practice of law; and
- Engaging in activities which pay fees or compensation to unlicensed persons for the referral of business
 - an active real estate license is required to receive a referral fee.

Unlicensed Bona Fide Buyer Assigning Contracts to Another While Under Contract

There may be some instances where a wholesaler enters into a purchase contract and possesses the ability to purchase the property. The sale or assignment of the purchase contract is not a licensed activity. Whether the purchase contract can be assigned depends on the language contained in the purchase contract itself. In the NC REALTORS'® Offer to Purchase and Contract, Standard Form 2T, the seller's informed consent is required to assign the contract. Other contracts may freely permit the assignment.

In a typical assignment, the assignee is obligated to perform on the contract based on its original terms and conditions. The assignor remains secondarily liable to perform if the assignee is unable to perform their obligations. There is no prohibition against the assignor charging the assignee an assignment fee. The assignment of a contract does not involve brokerage licensure. It is important to note that neither the assignor nor assignee are typically permitted to change the terms and conditions of the original contract.

Individuals who are trying to sell some equitable right or interest in the property by virtue of an existing contract which they want to assign should be careful to avoid engaging in brokerage services that require licensure. They cannot:

- advertise the property as if they are the owner,
- hold open houses, or
- solicit potential buyers in an effort to secure a buyer for the seller's property.

Unlicensed individuals or entities involved in transactions of this nature should be cautious regarding all of the following:

- Making certain the original purchaser is a bona fide buyer actually capable of performing the obligations in the contract which they sign;
- Making misrepresentations or committing fraud that can result in civil or criminal actions;
- Engaging in brokerage services such as showing the property, advertising the property, or attempting to represent the seller;
- Avoiding the unauthorized practice of law;
- Engaging in activity which pays fees or compensation to unlicensed people for the referral of business; and
- Making certain that the assignee has the ability to perform the contractual obligations and the assignor is capable of performing the obligations in the event of default by the assignee.

Unlicensed Buyer with Illusory Contract Engaged in Brokerage Services to Find a Buyer



Engaging in these types of practices is one of the more troubling aspects of what is being labeled as wholesaling. This type of wholesaling process usually begins when an unlicensed wholesaler locates a property with a motivated seller. Unlicensed individuals are sometimes driving neighborhoods, searching property records, and using social media to identify distressed properties or sellers.

Approaching the seller from the standpoint of an “investor,” the wholesaler attempts to get the seller to accept a “cash” offer and enter into a purchase contract at a below market price with no intention of personally closing on the property. The wholesaler then attempts to find a buyer to purchase the property at a higher price and on different terms than the original contract with the seller.

Oftentimes the wholesaler does not have the ability or qualifications to actually purchase the property. Therefore, as part of this process, it is common for the wholesaler to advertise and market the property as the owner, engage in the showings of the property, and solicit buyers to be an “end buyer” for the property. If the wholesaler can find such a buyer for the property, the plan is usually to create a new purchase contract with the “end buyer.” The wholesaler’s profit in the transaction is the difference between what they agreed to pay the seller and what the buyer agrees to pay for the property in the transaction.

There are many issues with this approach to wholesaling. Jurisdictions, including North Carolina, are analyzing the effects that wholesaling has on the real estate industry. For instance, Oklahoma is one of the first states to pass the “[The Predatory Real Estate Wholesaler Act](#),” to address the issues that wholesaling has caused to consumers.



The Predatory Real Estate Wholesaler Act became effective on November 1, 2021, and requires wholesalers to obtain a real estate license and abide by Oklahoma laws which protect consumers and promote ethical behavior. Likewise, Nebraska just passed legislation requiring a real estate license for this type of activity.

North Carolina already has language which applies in this situation. In N.C.G.S. §93A-2 indicates that a real estate broker is any:

- person, partnership, corporation, limited liability company, association, or other business entity who for compensation or valuable consideration or promise thereof,
- lists, leases, buys, exchanges, auctions, negotiates, or sales real estate,
- for others.

In North Carolina, only licensed real estate brokers can represent others in real estate transactions. Therefore, wholesalers who market a property as if they have legal title or a written agreement to provide agency representation are in violation of the law.

To legally advertise a property for others, an individual must have an active NC real estate license and a written agency agreement to provide brokerage services to the owner of legal title to the property.

If a wholesaler is unlicensed and wishes to be exempt from the Real Estate License Law, then the wholesaler may have to prove that they have entered into a bona fide purchase contract that they have the ability to perform and they are not entering into what appears to be a net listing to provide brokerage services to the seller. For clarity, a net listing is defined as a brokerage fee arrangement in a listing contract whereby the seller will receive a fixed price for their property and the broker will receive any amount realized (i.e., the “net”) in excess of that price. They also must refrain from engaging in brokerage activities involving showing, advertising, and marketing the property in an attempt to help the seller find a buyer.

Individuals or entities involved in transactions of this nature should be cautious regarding all of the following:

- Engaging in brokerage services that require licensure;
- Making misrepresentations or committing fraud that can result in civil or criminal actions;
- Entering into illusory contracts that the wholesaler is not capable of performing;
- Avoiding the unauthorized practice of law; and
- Engaging in “joint venture” activities which pay fees or compensation to unlicensed people for the referral of business.



Takin' it to the Streets:

Chad, an unlicensed real estate investor, enters into a contract with Lucy, the seller, to purchase her 7,000 square foot farmhouse with 5 acres of land in Vance County for \$300K. After entering into the contract, Chad markets Lucy's property for \$375K on the internet. Stew, a prospective buyer, is

interested in purchasing the property for \$375K. Therefore, Chad assigns his rights to purchase Lucy's property to Stew for an assignment fee of \$75,000. Stew is now under contract to purchase Lucy's property. If the transaction is consummated, Chad will profit \$75K for assigning his rights to purchase Lucy's property.

What concerns might the Commission have about this transaction?

Real Estate Licensees Acting as a Buyer and Attempting to Assign or Resell the Property While Under Contract

Wholesaling often leads to complaints by consumers for deceptive practices and predatory language. This should pose additional concerns for any NC real estate licensee. Brokers who act in any "wholesale" capacity are subject to a higher standard than unlicensed individuals. Brokers are subject to all of the basis set forth in N.C.G.S. §93A-6 as grounds for disciplinary action.

Brokers who engage in wholesaling should be cautious about all of the following:

- Proper and full disclosure of probable sales price and probable listing price to the parties in the transaction so as to not create any misrepresentations or omissions as to market value;
- Full and complete disclosure to the parties in the transaction of all material facts concerning the property;
- Strict adherence to agency disclosure, rules, and agency agreements;
- Compliance with fiduciary duties to represented clients; and
- Avoidance of any conduct that can be construed as making false promises or engaging in conduct that rises to the level of improper, fraudulent, or dishonest dealing.

Although North Carolina does not have any laws/regulations that prohibit wholesaling at this time, it is important for brokers to be knowledgeable regarding the legal consequences they may incur as a result of participating in a wholesale transaction.

Real Estate Brokers: What You Must Know



Is assignment of contracts in wholesale transactions permitted in North Carolina?

It depends. The ability to assign equitable rights depends upon the terms of the contract. If a contract expressly states that it cannot be assigned or it prevents assignment by one party without the consent of the other party, or contains qualifying language, the wholesaler cannot legally assign their equitable interest without the sellers' consent. The Standard Form 2T requires all parties to provide written permission to assign a contract in Paragraph 15 (except for 1031 exchanges).

What should I do if I am contacted by a wholesaler who wants me to represent them in a transaction?

If a real estate broker is contacted by a wholesaler for agency representation, the real estate broker should speak with their BIC to ensure that this is permissible according to the office policies of the brokerage. If the BIC/brokerage allows affiliated brokers to represent wholesalers, the broker should educate the wholesaler on their fiduciary duties during representation, their obligation to operate in good faith and honesty, and the duty to disclose material facts to all parties in a transaction.

Can a wholesaler assign a purchase contract in NC?

It depends. If a wholesaler is represented by a broker and the broker uses Standard Form 2-T, Offer to Purchase and Contract, to submit an offer, the purchase contract is not automatically assignable as specified in Paragraph 15 without the seller's consent for the assignment. Therefore, the wholesaler may not, without the seller's written permission, assign their equitable rights to an end buyer without breaching the contract. However, if a wholesaler uses a contract that does not restrict assignment of rights, the wholesaler's equitable interest in the property may be assigned. A wholesaler may also assign their equitable rights in a purchase contract using an Assignment of Contract to an end buyer as long as it does not violate the contract terms within the purchase contract.

What should I tell my seller-client who receives an offer from a wholesaler?

A broker who receives an offer from a wholesaler must present the offer to comply with Rule 58A .0106, which requires brokers to deliver to the customer or their client copies of any offer within three days of the broker's receipt of the executed document. The broker should present and review the offer with their seller-client. If the seller-client has questions regarding the contractual language used in the offer, the broker should advise their seller-client to speak with an attorney.

Must a real estate broker notify the seller that their buyer client, a wholesaler, intends to assign their contractual rights to purchase the property to an end buyer?

Yes. A real estate broker who represents a wholesaler should inform the seller of their buyer client's intent to assign their equitable rights to the contract. Pursuant to §93A-6(a)(1), a broker must disclose any information that may affect the principal's rights, interests, or influence the principal's decision in the transaction regardless of which party they represent.

The broker should disclose this information because it is about the intentions of the wholesaler and possibly their financial ability to consummate the transaction. Further, the broker may have to assist the client with obtaining additional information regarding the wholesaler's ability to complete the transaction.

May a real estate broker market a property on behalf of their principal, the wholesaler, when the principal only has equitable interest?

According to Rule 58A .0104, an agent must have a written agreement with an owner prior to listing/advertising their property. The real estate broker who represents the wholesaler does not have a written agreement with the owner of the property to provide brokerage services; therefore, the real estate broker of the wholesaler may not advertise the property that is the subject of the purchase contract. The wholesaler only has equitable interest and not legal title to the property. Consequently, the real estate broker may not market/advertise the property as if their principal, the wholesaler, is selling the property. If the broker participates in this conduct, they may be in violation of License Law and Commission rules.

Must I notify the seller when my principal, a wholesaler, assigns their contractual rights to the purchase contract to an end buyer?

It depends. If the contract terms are the same and the contract permits assignment, then the broker does not have to notify the seller. If the contract terms are different, then the broker must disclose this information. The wholesaler is still responsible for adhering to the terms in the original underlying contract.

I am a listing agent who learns that the buyer is a wholesaler after my seller accepts the offer. Should I inform my seller?

Yes. A listing agent must disclose to the seller that the buyer is a wholesaler as soon as they find out, because this information is considered a material fact under N.C.G.S. §93A-6(a)(1) and may directly affect a principal's ability to complete the transaction. Further, an agent has a fiduciary duty to protect the best interests of their client and this includes disclosing all relevant information that will assist them in making an informed decision regarding how to proceed in the transaction.

Can a broker act as a wholesaler in a real estate transaction?

Yes. A broker may utilize wholesaling as a personal investment strategy. However, the broker must not represent the prospective seller or end buyer in the transaction.

If a broker decides to wholesale and enters into a purchase contract with a prospective seller, the Commission encourages brokers to inform the prospective seller that the broker is licensed but does not represent their interests. Due to brokers having real estate licenses, they are held to a higher standard and must ensure that they are dealing in good faith and not engaging in deceptive fraudulent practices. To ensure they are not engaging in deceptive practices, real estate brokers should inform prospective sellers of their intent to assign their equitable interests in the purchase contract to an end buyer for a fee. Further, the broker should recommend to the seller to seek the advice of another broker or legal counsel prior to entering into a purchase contract.

Also, N.C.G.S. §93A-6(b)(3) states,

The Commission may suspend or revoke any license issued under the provisions of this Chapter or reprimand or censure any licensee when the licensee has violated any of the provisions of G.S. 93A-6(a) when selling, leasing, or buying the licensee's own property.

Although the Commission recommends that brokers indicate they have a real estate license when engaging in a transaction for personal benefit (i.e. self-interest), they **must** state that they have a real estate license if they are a REALTOR®.

NOTE: Wholesaling is a very popular investment strategy; however, if done incorrectly, may violate License Law and Commission rules. Therefore, the Commission highly encourages brokers to thoroughly understand the usage of wholesaling as an investment strategy and the legal consequences that may arise from deceptive practices. The Commission also cautions brokerages to develop written office policies regarding wholesaling and whether an affiliated broker may provide agency representation to a wholesale investor. Moreover, brokers should recommend that sellers seek legal counsel when they have questions regarding wholesaling.

RED FLAGS AND MISREPRESENTATIONS

Black Knight, Inc. is a data analytics company that provides software solutions for governments, mortgage lenders, and real estate companies.

According to Black Knight, Inc., more than 270,000 borrowers were underwater on their mortgages (e.g. have a mortgage loan balance higher than the value of the collateral property) as of December 2022, which represented approximately 8% of all homebuyers.

On January 5, 2023, *Business Insider* published an article entitled, "[An Increasing Number of Lawsuits are Being Filed against Real Estate Agents as Home Prices Begin to Fall across the United States.](#)" The article alludes to the fact that recent buyers and sellers are regretting their decision to purchase or sell a property due to real estate prices



starting to decline in the United States. Further, buyers and sellers are filing complaints alleging that their real estate agent omitted or misrepresented material information during their transaction.

Some of the challenges that brokers may experience when dealing with a changing market are:

- a broker's failure to discover and disclose material facts;
- the lack of a survey when the buyer purchased the property; and
- a listing agent's omission of material facts from a prior home inspection.

Brokers may increase their chances of liability when they only rely on the seller's assertions when listing a property and fail to personally discover and disclose material facts. The Commission will hold the listing agent responsible for the accuracy of the information in the listing description and what is communicated to the buyer and/or their real estate agent.

Additionally, the buyer agent may incur liability if they fail to discover and disclose material facts on behalf of their client. Although the Commission will hold the listing agent accountable for the accuracy of the advertised information, the buyer agent may also incur liability if the information received from the listing agent is suspicious and a reasonably prudent broker would not have relied upon it.

Information derived from material facts, the lack of surveys, and home inspection reports are some of the primary areas in which brokers incur the most liability. Therefore, it would be prudent for brokers to ensure they are knowledgeable about material facts, the need for surveys, and home inspection reports.

Brokers should review the following information and the specified resources to gain further knowledge on material facts, surveys, and home inspection reports:



[2018-2019 Disclosure of Material Facts](#)



[2019-2020 Material Facts](#)



[2019-2020 Home Inspections](#)

Material Facts

Brokers must ensure that they affirmatively discover material facts and timely disclose them to all parties in the transaction to comply with N.C.G.S. §93A-6. The broker is tasked with the discovery and disclosure of material facts or potential material facts to their client/customer so the client/customer can possess the adequate knowledge to:

- make an intelligent decision regarding the property;
- negotiate repair services; or
- decide to terminate the contract.

Surveys

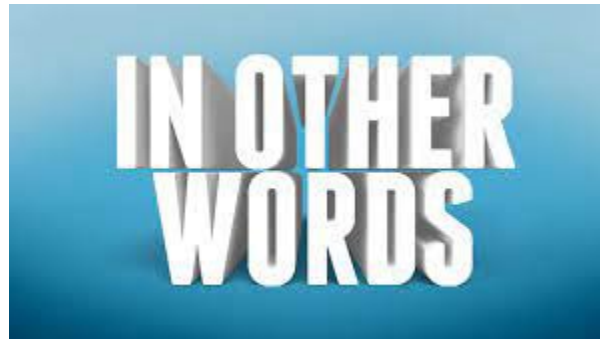


According to the [2013-2014 Update Course](#), buyers who obtain a written verification from a licensed professional surveyor will be knowledgeable about boundaries of the property and the location of all improvements affecting the subject property without having to rely on the sellers' assertions. Additionally, a location survey will identify any encroachments and determine whether fences or driveways are within the boundaries of the property and not violating an adjacent owner's property rights.

Home Inspection Reports

The Commission encourages brokers to advise every buyer-client to hire a home inspector to evaluate the condition of the property. If the client does order a home inspection, the broker should attend the inspection with the buyer and then review the contents of the home inspection report with the client. While reviewing the report, the broker should not attempt to interpret it. Any questions about what the home inspector meant in the report should be addressed to the inspector.

However, brokers should still review the entire home inspection report with their clients so they can advise them on possible repairs and/or price negotiations. If a home inspector recommends further inspection, the broker should encourage their client to follow the inspector's recommendation and to order a re-inspection after repairs have been completed.



Essentially, brokers should ask about and request documentation regarding:

- material facts and whether the issues have been repaired, are going to be repaired, and/or will likely need a repair in the future; and
- if the information rising to the level of material facts in the home inspection report or in the listing description was disclosed to all parties in the transaction.

NOTE: In NC, buyers are not required to order surveys. Therefore, a buyer does not have a right to know why a seller did not order a survey when the seller purchased the property.

YOU BE THE INVESTIGATIVE NEWS REPORTER

1. Joe, an unlicensed wholesale investor from Florida, locates a property at 125 Church Street, Rock Sims, NC. Joe submits an offer to the owner of the property for \$85K. After the owner accepts the offer, Joe lists the property for sale in the local newspaper for \$125K.

Is Joe illegally practicing real estate brokerage without a license?

2. Samantha, a licensed broker, is interested in investing in real estate. Samantha goes to her hometown, Cone Hill, and locates several distressed properties for sale. Samantha submits offers to the respective owners of the distressed properties. When she submits the offers for the properties, she does not inform the owners that she has a real estate license. One owner accepts her offer. Samantha is now under contract for the property. She advertises the property in her local MLS to find a buyer.

Is Samantha in violation of License Law and Commission rules? If so, why?

SUMMARY OF IMPORTANT POINTS

- N.C.G.S. §93E requires anyone performing a real estate appraisal in North Carolina to be licensed as an appraiser by the North Carolina Appraisal Board.
- An appraiser is a person who is licensed to develop and communicate real estate appraisals or otherwise gives an opinion of the value of real estate or any interest therein for a fee or valuable consideration.
- The national standards that are set by the USPAP include:
 - requirements for the development and reporting of real property appraisals; and
 - the development and reporting of an appraisal review.
- The law defines a real estate appraisal as an analysis, opinion, or conclusion as to the value of identified real estate or specified interests therein performed for compensation or other valuable consideration.
- Licensed real estate brokers in North Carolina can perform an analysis of sales of similar recently sold properties in order to derive an indication of the probable sales price of a particular property, but not an indication of value or worth.
- The role of an appraiser is to analyze the data and the property, then report the results to their client, typically the lender.
- The appraiser's client is usually the mortgage lender, even though the buyer-borrower typically pays for the appraisal.
- The role of a broker is to advocate on behalf of their client and adhere to their fiduciary duties while providing agency representation.
- Information that brokers may commonly provide as mentioned in the NAR® article, "[The Appraiser's Role Isn't to Kill Your Deal](#)", is as follows:
 - a true legal description regarding the property;
 - a plat of survey;
 - blueprints, if the property is a new construction;
 - accurate and complete listing sheet;
 - property features and upgrades as well as parameters for competing properties and local benefits;
 - most recent real property tax bill;
 - any closed sales or listings that support the listing price; and
 - any insight on the current list price for the subject property.
- According to the NAR® article, "[5 Appraisal Topics Every Agent Should Know](#)," the broker should communicate with the lender, not the appraiser, once an appraisal has been completed. If the broker would like to submit additional documentation and/or data for consideration, after the appraisal is complete, the broker must do so through the lender.
- If a broker thinks racial bias exists in the appraisal report, the broker should file a complaint with the North Carolina Appraisal Board, which is the state regulatory agency.

- An assumable mortgage allows a buyer to assume the rate, repayment period, current principal balance, and other terms of the seller's existing mortgage instead of obtaining a new mortgage.
- Most conventional mortgages are not assumable because they have a due-on-sale clause in the mortgage contract.
- It is possible for a prospective buyer to assume the following types of loans if they meet certain requirements:
 - Federal Housing Administration (FHA);
 - Department of Veteran Affairs (VA); and/or
 - United States Department of Agriculture.
- If the mortgage is assumable, the mortgage contract will have an assumption clause. This assumption clause would permit the transfer of the mortgage to another party as long as they can meet the lender's requirements.
- Lenders will evaluate the following criteria to determine whether a buyer qualifies for financing:
 - credit score and debt-to-income ratio;
 - employment history;
 - income; and
 - verification of their assets.
- The following are pros for assuming mortgages:
 - homes can be easier to sell due to a simplified home buying process;
 - a buyer saves money due to not having to pay for an appraisal; and
 - a buyer receives a lower interest rate than the current market which will save them money over the life of the loan.
- The cons of assuming mortgages are:
 - sellers may still be held liable for the assumed loan by the lender which can increase financial risk due to the possibility of buyer's default;
 - veteran sellers possibly lose their VA entitlement which impacts their future eligibility for VA loans;
 - buyer may be required to have a large down payment or secure a 2nd mortgage, if seller has a lot of equity in the property; and
 - if the buyer needs to secure a 2nd mortgage, they must fully inform all lenders of the financing for the property.
- Owner-financing occurs when the owner of the property is willing and able to provide some or all of the financing for the prospective buyer by carrying the mortgage on the property.
- Some of the pros for owner financing are:
 - ready financing for buyers with reduced closing expenses, such as lender and appraisal fees;
 - seller's ability to earn additional fees on their money while transferring the property; and

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

ANSWERS TO DISCUSSION QUESTIONS

Newsroom Roundtable Discussion on page 67

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

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

2. Can a broker communicate with an appraiser?

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

Interactive Reporting on page 71

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

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

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

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

Answer: *Correct. An appraisal results from an independent, impartial, and objective opinion of value that represents the appraiser's best judgment based on all relevant factual data reasonably available that is derived utilizing appropriate analytical methods. Brokers perform an analysis of recently sold properties (e.g. CMA) in order to derive an indication of the probable sales price of a particular property.*

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

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

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

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

Interactive News Reporting on page 72

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

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

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

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

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

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

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

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

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

Interactive News Reporting on page 75

Can brokers communicate with appraisers and maintain appraiser independence requirements?

- a. **Yes, brokers may communicate with appraisers and not violate Dodd-Frank, TILA, and USPAP.**

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

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

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

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

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

- d. No, it would violate USPAP.

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

Takin' it to the Streets on page 77

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

Is it permissible for Tommy to call the appraiser?

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

Interactive News Reporting on page 81

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

- a) The mortgage note must have an assumption clause.

Answer: Correct. In order for a mortgage loan to be assumable, the mortgage note must have an assumption clause and the prospective buyer must be creditworthy according to the requirements set forth by the lender.

- b) The lender must agree to the assumption.

Answer: Correct. The lender must always agree to a loan assumption.

- c) The borrower has to meet the lenders creditworthy guidelines.

Answer: Correct. The borrower must be creditworthy according to the requirements set forth by the lender.

- d) So long as the borrower makes the payments on time, there are no issues.

Answer: Incorrect. Borrower must be formally approved for the loan assumption; just taking over and making the seller's payments is not adequate.

Takin' it to the Streets on page 90

Chad, an unlicensed real estate investor, enters into a contract with Lucy, the seller, to purchase her 7,000 square foot farmhouse with 5 acres of land in Vance County for \$300K. After entering into the contract, Chad markets Lucy's property for \$375K on the internet. Stew, a prospective buyer is interested in purchasing the property for \$375K. Therefore, Chad assigns his rights to purchase Lucy's property to Stew for an assignment fee of \$75,000. Stew is now under contract to purchase Lucy's property. If the transaction is consummated, Chad will profit \$75K for assigning his rights to purchase Lucy's property.

What concerns might the Commission have about this transaction?

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

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

You Be the Investigative News Reporter on page 96

1. Joe, an unlicensed wholesale investor from Florida, locates a property at 125 Church Street, Rock Sims, NC. Joe submits an offer to the owner of the property for \$85K. After the owner accepts the offer, Joe lists the property for sale in the local newspaper for \$125K.

Is Joe illegally practicing real estate brokerage without a license?

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

2. Samantha, a licensed broker, is interested in investing in real estate. Samantha goes to her hometown, Cone Hill, and locates several distressed properties for sale. Samantha submits offers to the respective owners of the distressed properties. When she submits the offers for the properties, she does not inform the owners that she has a real estate license. One owner accepts her offer. Samantha is now under contract for the property. She advertises the property in her local MLS to find a buyer.

Is Samantha in violation of License Law and Commission rules? If so, why?

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