

2011-2012 BROKER-IN-CHARGE ANNUAL REVIEW

SECTION FIVE

BROKER-IN-CHARGE REQUIREMENTS

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INTRODUCTION

The Commission's Broker-in-Charge rule was substantially rewritten as of July 1, 2009, although its requirements did not change significantly; rather, it was reorganized and expanded in an attempt to clarify all the requirements concerning how to become a broker-in-charge and how to remain broker-in-charge eligible. The rule has not changed since July 2009. This section will review again the requirements to become a broker-in-charge initially, what one must do to maintain broker-in-charge eligibility, and how one may regain broker-in-charge status if eligibility is lost. Revised **Rule A.0110, "Broker-in-Charge,"** is reprinted at the end of this section. When in doubt as to what is required, brokers should *always read the rule and/or statute*.

BROKER-IN-CHARGE *QUALIFICATIONS*

The qualification requirements to declare oneself a broker-in-charge of an office have not changed since April 1, 2006. They are set forth in subparagraph (c) of the rule and reiterate the statutory requirements set forth in **G.S.93A-4.2**, namely:

- two years of full-time real estate brokerage experience, or equivalent part-time experience, within the previous five years (i.e., 4000 hours of real estate brokerage experience within the previous 5 years) or real estate education or experience which the Commission finds to be equivalent;

AND

- completion of the Commission's **12 hour** Broker-in-Charge Course *either* within three years *prior* to designation *or* within 120 days following designation. Brokers will receive **four hours** of continuing education *elective* credit for the 12 hour course.

To become a broker-in-charge initially, a broker must *submit a “Broker-in-Charge Declaration” form to the Commission (REC Form 2.04)*. By signing this form, the incoming or new broker-in-charge certifies, among other things, that s/he has the equivalent of two years full time brokerage experience within the past five years and thus satisfies the experience prerequisite. *A minimum of two years full-time brokerage **experience is the only prerequisite to becoming a broker-in-charge. The twelve hour course is **not** a prerequisite.***

The requisite experience may be acquired through any *lawful* brokerage activity, whether as a salesperson or provisional broker or broker, either in North Carolina or any other State. A broker may be required to provide evidence of this experience upon request by the Commission. Status as a broker-in-charge shall be *terminated **immediately*** if the Commission finds that the broker-in-charge does *not* possess the required experience. Understand that ***merely possessing a license on active status is not sufficient in and of itself. One must have been using that license and must have been actively engaged in brokerage activities within the preceding five years to satisfy the experience qualification.***

Once a broker sends the form to the Commission declaring himself/herself a broker-in-charge, s/he generally will be required to *take the Commission’s twelve hour **Broker-in-Charge Course (the BIC Course)** within 120 days of becoming a broker-in-charge **unless the broker has taken the course within the **preceding three years**.*** If the broker has had the twelve hour Broker-in-Charge Course within the preceding three years, then s/he will *not* be required to repeat the class. However, if it has been more than three years, or if the broker has never had the twelve hour class, then s/he will be required to take the class within 120 days of being designated broker-in-charge. [The lone exception is if the broker has remained “broker-in-charge eligible,” which will be discussed shortly.] The rule expressly states that the original 4.5 hour version of the Broker-in-Charge class (taught between October 1, 2000 and March 31, 2006) will *not* be accepted in lieu of the twelve hour course for those who are required to take it.

The ***Broker-in-Charge Course*** currently is offered three times a month at various locations around the state and ***is taught only by the Commission.*** Any broker may take the Broker-in-Charge course and receive ***four hours of elective continuing education credit*** for the license year in which the course is taken, even if s/he is not designated as a broker-in-charge on Commission records at the time s/he takes the course. However, the only brokers who are *required* to take the course are those who declare themselves a broker-in-charge.

Upon the Commission’s receipt of a Broker-in-Charge Declaration form, the Commission first will check to ensure that the broker has had a license on active status for *at least* two years. If not, then the declaration form will be rejected and returned to the broker. If the broker has had an active license for at least two years, then the declaration will be accepted and the broker’s continuing education record will be checked to see if s/he has taken the Commission’s Broker-in-Charge Course within the preceding three years. If so, then the broker will receive a change of status notice from the Commission confirming that s/he has been made a broker-in-charge at a specified location. If the broker has not had the twelve hour course within the preceding three years, s/he will receive a letter from the Commission confirming his/her designation as a broker-

in-charge, but also advising the broker that s/he must complete the twelve hour Broker-in-Charge Course within 120 days and the deadline date will be given.

If a newly declared broker-in-charge, who has not had the Broker-in-Charge Course within the previous three years, fails to take the twelve hour class within 120 days following designation, then *s/he will be removed as a broker-in-charge by the Commission* for failure to satisfy the second qualification requirement. Thereafter, the broker will not be able to redeclare him/herself as broker-in-charge until s/he ***first completes the twelve hour class*** and resubmits a new Declaration form.

Understand that **no broker will become a broker-in-charge until s/he sends the Broker-in-Charge Declaration form to the Commission**. One cannot begin or initiate a status until one first declares it. A broker will not have *perfected* broker-in-charge status enabling him/her to move to broker-in-charge eligible until s/he has submitted the Declaration form *and* satisfied both of the two qualification requirements, namely, possesses at least two years full-time brokerage experience within the past five years at the time of designation **and** completes the twelve hour Broker-in-Charge Course. Typically, a *broker will perfect broker-in-charge status in one of two ways, either:*

- 1) S/he takes the twelve hour Broker-in-Charge course prior to designation and within three years of the class submits the Declaration form to the Commission declaring himself/herself a broker-in-charge at some location. The broker's status is perfected upon the Commission's receipt of the Declaration form, as the broker already has satisfied the two qualification requirements, i.e., s/he is certifying the requisite experience in signing the form and has taken the Broker-in-Charge Course within the preceding three years.

OR

- 2) The broker submits the Declaration form to the Commission certifying experience and then completes the twelve hour Broker-in-Charge course within 120 days *while still serving as a broker-in-charge*. Upon completing the course, the broker will have satisfied both qualification requirements, thereby perfecting his/her broker-in-charge status, and may move to broker-in-charge eligible.

A broker who is temporarily designated as a broker-in-charge, but who steps down as a broker-in-charge prior to completing the twelve hour course *will not have perfected broker-in-charge status* and will **not** be broker-in-charge eligible.

Example: Sandra has been an associated broker with Super Realty for six years, but has never taken the broker-in-charge course. Her current broker-in-charge, Deborah, is taking a sixty day vacation and has asked Sandra to take over as broker-in-charge. Sandra completes and mails the Broker-in-Charge Declaration form to the Commission designating herself as broker-in-charge replacing Deborah as of August 10, 2010. She receives a letter from the Commission informing her that she must take the Broker-in-Charge Course by December 8,

2010. She does not take the class. Deborah returns from vacation October 15 and redeclares herself broker-in-charge replacing Sandra.

Must Sandra still take the Broker-in-Charge Course? No, because she no longer is a broker-in-charge. *Has Sandra perfected her broker-in-charge status? No*, because she has not satisfied both qualification requirements.

If Deborah must go on family medical leave in March 2011, could she again have Sandra declare herself as broker-in-charge replacing Deborah? Yes. Would Sandra again have 120 days within which to take the twelve hour class? *Yes*, because she previously was *voluntarily* replaced as broker-in-charge **before** her time period expired, *rather than being removed by the Commission* for failure to take the class. Thus, she has a fresh 120 days. If Sandra completes the 12 hour Broker-in-Charge course while still serving as broker-in-charge, she will have perfected her broker-in-charge status and will become “broker-in-charge eligible.”

If Sandra had taken the Broker-in-Charge Course December 3 & 4, 2010 would she have become broker-in-charge eligible? No, because she was not a broker-in-charge on Commission records at the time she took the course, having been replaced by Deborah on October 15, 2010. However, when Sandra sends the Commission her Declaration form in March 2011 replacing Deborah, she would have perfected her broker-in-charge status upon the Commission’s processing her Declaration form as she would have satisfied both qualification requirements. Even if she was replaced by Deborah in June 2011, Sandra nonetheless would have perfected her broker-in-charge status and would be “broker-in-charge eligible.”

BROKER-IN-CHARGE ELIGIBLE

The concept of “broker-in-charge eligible” was introduced with the January 1, 2008 rule revision and effectively freed a broker from *always* actively serving as a broker-in-charge at some office, lest s/he have a “lapse” in his/her status. Prior to January 1, 2008, if a broker ceased serving as a broker-in-charge of an office for any reason for any period of time and later wanted to redeclare as a broker-in-charge, s/he would be required to take the Commission’s twelve hour Broker-in-Charge Course. *Since January 1, 2008, once a broker declares himself/herself a broker-in-charge AND satisfies the initial qualification requirements, s/he may later step down as broker-in-charge and have periods when s/he is not actively managing an office without having lost the ability to step back up and resume broker-in-charge responsibilities at an office if s/he has maintained his/her broker-in-charge eligibility.*

Any broker who was already designated as a broker-in-charge on Commission records as of January 1, 2008 and who had satisfied the qualification requirements existing at the time s/he last designated as a broker-in-charge was automatically classified as broker-in-charge eligible.

All those who declared themselves broker-in-charge on or after January 1, 2008 became “broker-in-charge eligible” upon completing the initial qualification requirements, explained in the preceding three pages.

Once a broker has perfected broker-in-charge status by 1) declaring himself/herself a broker-in-charge and 2) timely completing the 12 hour Broker-in-Charge course, if applicable, s/he immediately becomes “**broker-in-charge eligible.**” To maintain this eligibility, the broker must take the four hour ***Broker-in-Charge Annual Review (BICAR) course each license year beginning the first full license year after the license year in which s/he declared herself/himself a broker-in-charge.*** The relevant date is the date on which the broker notifies the Commission that s/he is becoming a broker-in-charge. Any broker who declares himself/herself a broker-in-charge between July 1, 2010 and June 30, 2011, whether on July 21, 2010, or October 15, 2010, or January 10, 2011 or June 12, 2011, will be required to take the Broker-in-Charge Annual Review course during the 2011-2012 license year in order to remain broker-in-charge eligible as of July 1, 2012.

Only brokers who are designated on the Commission’s records as a broker-in-charge or broker-in-charge eligible are permitted to take the Broker-in-Charge Annual Review Course for credit. Licensees who are not brokers-in-charge or broker-in-charge eligible will not receive any continuing education credit if they take the Broker-in-Charge Annual Review course.

Broker-in-Charge Annual Review Course

The **Broker-in-Charge Annual Review (BICAR)** course is a four hour elective course written by the Commission, but taught by the Commission’s approved Update instructors. It counts for four hours of continuing education *elective* credit **only for brokers who are brokers-in-charge or broker-in-charge eligible.** Once designated a broker-in-charge and after satisfying the initial experience and 12 hour course requirements, a broker now **may remain “broker-in-charge eligible” indefinitely** merely by timely renewing his/her license and by taking the **mandatory Real Estate Update course and the Broker-in-Charge Annual Review course each and every year as his/her 8 hours of continuing education, even though the broker may have periods when s/he is not actively managing an office.** A broker will lose his/her broker-in-charge eligibility **only** if:

- 1) s/he fails to timely renew his/her license (or it is suspended, revoked or surrendered),
- OR**
- 2) s/he fails to take **both** the *Real Estate Update* course and *Broker-in-Charge Annual Review* course each license year beginning the first full license year following designation.

Again, the required four hour special elective will satisfy the broker’s general continuing education *elective* course requirement for that year, **but the broker must still complete the mandatory Real Estate Update course required of all licensees.** In other words, brokers-in-charge still must complete only 8 hours of continuing education each year, but they no longer need to ponder what elective to take if they wish to remain broker-in-charge eligible. A broker who is a broker-in-charge or broker-in-charge eligible who fails to take the Broker-in-Charge

Annual Review in any given year will be removed as broker-in-charge or lose his/her broker-in-charge eligibility the following July 1, even if s/he has 8 hours of continuing education, because s/he did not take the Broker-in-Charge Annual Review course. The individual's broker license may still be on active status, so long as the licensee took the Update course and an elective the preceding license year, but s/he will no longer be broker-in-charge eligible. *As with the mandatory Update course, continuing education credits for the Broker-in-Charge Course and the Broker-in-Charge Annual Review Course will always stay with the license year in which the course was taken and will never carry over to the following license year.*

Brokers can show that they are a broker-in-charge or broker-in-charge eligible by going to the Commission's website and clicking on **BIC Only** in the column in blue on the left and inserting their license number and password (the last 4 digits of one's Social Security number). *If the program does not let the broker in, then most likely s/he is neither a broker-in-charge nor broker-in-charge eligible on Commission records.* If admitted to the program, one of several options is "Print BIC Eligible Document," which allows a broker to print a confirmation of his/her status as broker-in-charge eligible.

Loss of Broker-in-Charge Eligibility

Under **Rule A.0110(f)**, a broker will be terminated as broker-in-charge or will lose broker-in-charge eligible status only if:

- the broker fails to timely renew his/her license; *or*
- his/her license is suspended, revoked or surrendered; *or*
- the broker allows his/her license to go inactive because the broker fails to complete eight hours of continuing education in any given year, including the mandatory Update course; *or*
- the broker fails to take the Broker-in-Charge Annual Review course as his/her elective each year beginning the first full license year after designation.

In sum, a licensee does not achieve broker-in-charge status until the broker notifies the Commission that s/he is becoming a broker-in-charge at a certain location by submitting a Broker-in-Charge Declaration form. (REC #2.04) Merely taking the Broker-in-Charge Course does *not* make one a broker-in-charge – *one must always submit the declaration form to the Commission to initiate one's status as a broker-in-charge.* Once a licensee has declared himself/herself a broker-in-charge somewhere **AND** has completed the 12 hour Broker-in-Charge Course either within the preceding three years or within the following 120 days, s/he may become broker-in-charge eligible. S/he may now retain that "broker-in-charge eligibility" indefinitely merely by renewing his/her license on time each year and by taking the Real Estate Update Course every year and the Broker-in-Charge Annual Review course every license year following the license year in which the broker became a broker-in-charge.

How to Regain Broker-in-Charge Eligibility

The most significant change in the revised broker-in-charge rule effective July 1, 2009, is the broker's ability to *immediately* redesignate as broker-in-charge following the loss of his/her eligibility or broker-in-charge status *once the broker has returned his/her license to active status*. Prior to July 1, 2009, a broker who lost eligibility not only had to do whatever was necessary to return his/her license to active status, but s/he also was required to first complete either the Broker-in-Charge Course or the Broker-in-Charge Annual Review, as applicable, *before* s/he was able to redeclare as a broker-in-charge. ***Beginning July 1, 2009, once a broker who loses broker-in-charge eligibility has restored his/her license to active status, s/he will be able to immediately redesignate himself/herself as a broker-in-charge and will then have 120 days within which to complete either the 12 hour Broker-in-Charge Course or the current year's BICAR course, as may be applicable.***

Rule A.0110(f) states in pertinent part:

... When a broker who is a former broker-in-charge desires to be re-designated as a broker-in-charge following termination of his or her broker-in-charge designation or eligibility, *he or she must first have a license on active status*. The broker then must satisfy the experience requirements for initial designation set forth in Paragraph (c) of this Rule, and the broker *must complete the 12 hour broker-in-charge course within 120 days following re-designation, except that if the broker has taken the 12 hour broker-in-charge course within the preceding three years, he or she has the option to complete the Broker-In-Charge Annual Review Course for the current license year within 120 days following re-designation* as a broker-in-charge in lieu of repeating the 12 hour broker-in-charge course. If a broker who has been re-designated as a broker-in-charge and then removed as broker-in-charge due to failure to satisfy his education requirement within 120 days following re-designation subsequently seeks another re-designation as broker-in-charge, the broker *must first complete the 12 hour broker-in-charge course before* he or she may again be designated as a broker-in-charge, even if the broker has completed the 12 hour broker-in-charge course within the preceding three years.

[Emphasis added.]

Thus, a broker who loses broker-in-charge status or eligibility because s/he 1) forgot to renew his/her license *or* 2) failed to take 8 hours of continuing education the preceding year, including the mandatory Update course, *must first do whatever is necessary to reinstate his/her license on active status*. Once s/he has an active license again, s/he can immediately redeclare as broker-in-charge by sending the Commission the declaration form. S/he will then have 120 days within which to complete either the 12 hour Broker-in-Charge course or the current year's Broker-in-Charge Annual Review course, as may be applicable.

Query: How do I “activate” my license?

It depends.

- If a broker took the mandatory Update and an elective during the preceding license year, but forgot to renew his/her license on time, then s/he can reinstate the expired license by paying a \$55.00 reinstatement fee within six months of license expiration, i.e., prior to December 31. Once the license is reinstated, it may be placed on active status

immediately, because the broker had 8 hours of continuing education for the previous year, including the mandatory Update. [Note: if the broker allows the license to remain expired for more than six months, there will be additional requirements to satisfy before the license may be reinstated, which requirements are outlined in the Update course each and every year.]

- If the broker paid his/her renewal fee on time, but failed to complete eight hours of continuing education the preceding year, then s/he must first complete the Update course and an elective for the current license year, plus take either one or two electives to apply to the missing credit from the previous year. After completing a total of 12 or 16 hours (usually) of continuing education, the licensee may then *send the Commission an activation form (Form 2.08)* returning his/her license to active status.

A broker who fails both to renew his/her license on time and to complete the Update course plus an elective in any given year, must satisfy both points explained above.

Re-establishing Broker-in-Charge Eligibility

Once the broker has done whatever is necessary to restore his/her license to active status, including sending an activation form (REC Form 2.08), s/he may then send the Commission a Broker-in-Charge Declaration (REC Form 2.04) redeclaring himself/herself as a broker-in-charge at some location **IF** s/he can honestly certify that s/he has two years full time brokerage experience within the past five years. The broker will be required to satisfy the initial BIC qualification requirements, namely, two years full-time brokerage experience within the past five years and take the 12 hour Broker-in-Charge course within 120 days, unless the broker has had the course within the preceding three years.

*If the broker has had the twelve hour course within the preceding three years, then s/he will have the **option** of taking the current year's Broker-in-Charge Annual Review course (BICAR) within 120 days of redesignating, or s/he may repeat the 12 hour course, as s/he elects. If the redesignated broker fails to take whatever special broker-in-charge education is required within 120 days following redesignation, then s/he will be removed as broker-in-charge by the Commission and will not be able to be redesignated until s/he first has completed the 12 HOUR Broker-in-Charge course, even if s/he has completed the course within the preceding three years. That broker will have lost the option of taking the current year's BICAR course.*

Example #1: Bill Broker declared himself broker-in-charge of his sole proprietorship in March 2002 and took the original Broker-in-Charge Course in May 2002. He timely renewed his license and did his continuing education each year. With the advent of the Broker-in-Charge Annual Review course in July 2006, he began taking that course each year as his elective, in addition to the mandatory Update course. In **March, 2008**, Bill decides to become an associated broker with XYZ Realty, Inc. and sends an affiliation form to the Commission. Because Bill was a broker-in-charge *as of January 1, 2008* and did not relinquish that status until after January 1, 2008 to become an affiliated broker, he was classified by the Commission as "broker-in-charge eligible." Bill may remain

broker-in-charge eligible by continuing to take the Real Estate Update course and the Broker-in-Charge Annual Review course prior to June 10, 2008 and each year thereafter, *even though he is not actively managing an office after he affiliates with XYZ Realty.*

If Bill then decides in **March 2010** to resume managing his own office as broker-in-charge, he could redeclare by sending a Broker-in-Charge Declaration form to the Commission and he would not have to take any additional education, as he has maintained his broker-in-charge eligibility throughout. *However*, if Bill failed to take the Broker-in-Charge Annual Review course as his *elective* in any given year, then he would lose his broker-in-charge eligibility as of the following July 1.

For example, if Bill had taken the Update course and an elective course on Short Sales in the 2008-2009 license year, then his license would be active July 1, 2009 (assuming he paid his renewal fee prior to June 30, which he *always* does), but he would have lost his broker-in-charge eligibility as of July 1, 2009, because he failed to take the BICAR course as his elective the preceding license year. However, due to the July 1, 2009 rule change, he could redeclare himself as broker-in-charge of his office in March 2010 by sending the BIC Declaration form to the Commission, but he will be required to take the 12 hour Broker-in-Charge Course within 120 days of redeclaring as broker-in-charge, because he has not had the twelve hour course within the preceding three years.

Example #2: Sally Smith has been an active broker for years working for a real estate company. In October, 2006, the Company asks her to become broker-in-charge at one of its offices. She submits the Declaration form to the Commission in October and takes the 12 hour Broker-in-Charge Course in January 2007, as well as the Real Estate Update course. She takes both the Real Estate Update course and the Broker-in-Charge Annual Review course in October 2007 and again in December 2008. She also takes an ethics course in January, 2009, for which she receives elective credit, which rolls over to the next license year. Because of her carryover credit, she only takes the Update course during the 2009-2010 license year. She pays her \$40 renewal fee on May 29, 2010.

What will be the status of her broker license as of July 1, 2010?

Will she still be a broker-in-charge or broker-in-charge eligible as of July 1, 2010?

While Sally's broker ***license will be on active status*** as of July 1, 2010 because she paid her renewal fee and had eight hours of continuing education the preceding year (comprised of the Update and the rollover elective), ***she will no longer be a broker-in-charge or broker-in-charge eligible***, because she failed to take the Broker-in-Charge Annual Review course. To regain broker-in-charge status, she must submit a Broker-in-Charge Declaration form to the Commission and be able to certify two years full time brokerage experience (not a problem). However, because it has been more than three years (Jan, 2007), she will be required to take the Commission's 12 hour Broker-in-Charge Course within 120 days after she redesignates. Nonetheless, there is no impediment to her immediately resuming control of her office.

What if Sally took the Ethics course in January, 2008 and, because it rolled over to the 2008-2009 license year, she failed to take the Broker-in-Charge Annual Review course during the 2008-2009 license year? Again, Sally's license would be active as of July 1, 2009 (assuming she timely paid her renewal fee), but she would have lost her broker-in-charge status as of July 1, 2009. She could immediately redeclare herself broker-in-charge, and because she *had* completed the 12 hour Broker-in-Charge course within the preceding three years, she would have the *option* of taking the *2009-2010 Broker-in-Charge Annual Review course within 120 days of redesignation*, instead of the 12 hour BIC Course. While she could choose to repeat the 12 hour Broker-in-Charge course within the 120 day period, she would not be *required* to take the Broker-in-Charge course because she had taken it within the preceding three years, i.e., January 2007. See Rule A.0110(f).

If Sally failed to take either the 12 hour course or the 2009-2010 BICAR course within the 120 day period, then she would have been removed as broker-in-charge by the Commission and would not be allowed to redesignate herself until she first had completed the 12 hour course. No other choice.

In both of the foregoing examples, the brokers always maintained an active license by both timely renewing the license and completing eight hours of continuing education the previous year, including the mandatory Update course. What happens if the broker allows his/her license to become **inactive**?

Example #3: Michael takes the 12 hour BIC Course in **May 2006** while acting as an associated broker with XYZ Realty. He leaves XYZ Realty in September 2008 and declares himself broker-in-charge of his own sole proprietorship. Because Michael has completed the 12 hour BIC Course within three years prior to declaring himself a broker-in-charge and appears to satisfy the experience requirement, he will have perfected his broker-in-charge status by declaring and will immediately become broker-in-charge eligible. He will not be required to take any additional education at the time he declares. He will not be subject to any 120 day window and will not be required to take the BICAR course until the 2009-2010 license year (i.e., the first full license year following the license year in which he designated).

Michael takes the Update course and an elective in commercial brokerage in May 2009 and pays his \$40 renewal fee on May 27, 2009. He becomes extremely busy in 2009-2010, both professionally and personally, and finds that some matters are falling through the cracks. He renews his license on June 12, 2010 and checks his continuing education credits only to realize that while he took the BICAR in October 2009, he never took his Update course for 2009-2010. While Michael will have a license on **July 1, 2010** because he timely paid his renewal fee, his license will be *inactive*, because he didn't take the Update course and only has 4 hours of CE credit for the preceding year. Having an inactive license will also cause Michael to lose both his broker-in-charge status and his eligibility.

In order to redeclare himself broker-in-charge of his office, Michael first must get his license back to active status by taking the current year's Update course *plus* an elective, *plus* another elective to make up the four hour continuing education deficiency for the missed Update from 2009-2010, for a total of 12 hours of continuing education. (Understand that the prior year's Update course no longer is offered once the new license year begins, so a licensee must substitute an elective for the necessary hours.) *Once he completes all 12 hours (current year's Update + 2 electives), he may send the Commission an activation form (Form 2.08) to place his license back on active status, and he may also include a Broker-in-Charge Declaration form redeclaring himself broker-in-charge of his office.* He will then receive a letter from the Commission confirming that he is a broker-in-charge and advising him that he must complete the 12 hour BIC course within 120 days of being redesignated, because it has been more than three years since he took the course (i.e., May 2006).

Could Michael have killed the proverbial two birds by taking the 12 hour BIC Course as one of the two electives he needed in order to activate? Not really. While he would have received four hours of elective continuing education credit for the course, once he activated and then redeclared, he still would have been required to complete the current year's BICAR course within 120 days of redesignation, because under this fact situation, he had taken the 12 hour BIC course within the preceding three years (i.e., just a few months/weeks earlier). If Michael failed to exercise his option of taking the 2010-2011 BICAR course within the 120 day period after redesignating, he would be removed as BIC by the Commission for failing to take either the 12 hour Broker-in-Charge Course or the current year's BICAR course within 120 days of redesignating. At that point, Michael would be a very unhappy broker, as he would have lost his option to take the BICAR course and instead, would be required to repeat the 12 hour BIC Course before he could redesignate even though he had completed it just 5 months earlier. See Rule A.0110(f).

Thus, the **general advice to brokers with an inactive license attempting to reinstate broker-in-charge eligibility is:**

- 1) Do whatever continuing education is necessary to activate your license *without regard to the special broker-in-charge education requirements*;**
- 2) Then send in the form activating your license, followed by the Broker-in-Charge Declaration form; and**
- 3) *THEN* wait for the letter from the Commission and take whatever special broker-in-charge education is required within 120 days *after* redesignating.**

*You can not kill two birds with one stone and can not avoid taking some special BIC education within the 120 day window following redesignation, i.e., either the 12 hour BIC Course or the current year's BICAR course, as may be applicable. Recall too that *only those brokers who have had the 12 hour BIC course within the preceding three years have the option of taking the current year's BICAR course in lieu of the 12 hour BIC course.**

Query: What if a broker who is broker-in-charge eligible takes the mandatory Update course and Broker-in-Charge Annual Review course, but *fails to renew* his/her individual license by June 30?

Answer: His/her broker license will be **expired**, i.e., s/he **no longer has a license**, and thus has lost his/her broker-in-charge eligibility. Once s/he reinstates his/her license by paying the \$55 reinstatement fee *prior to December 31*, his/her license can be immediately activated, because s/he had eight hours of continuing education the preceding year, including the mandatory Update class. Once activated, s/he may immediately redeclare himself/herself broker-in-charge, **BUT:**

- s/he must take the 12 hour Broker-in-Charge Course within 120 days if s/he has not had the course within the preceding three years,
- OR**
- if s/he *has had the 12 hour course within the preceding three years*, then s/he must **either:** 1) take the current year's Broker-in-Charge Annual Review course **or** 2) repeat the 12 hour Broker-in-Charge Course, whichever s/he elects, within 120 days of redeclaring.

Query: A broker has been serving as broker-in-charge of an office for XYZ Realty since 2003. He took the 4.5 hour Broker-in-Charge course in September, 2003, was given broker-in-charge eligible status by the Commission as of January 1, 2008 because he was still a broker-in-charge and had not had any lapse, and he takes the mandatory Update course and Broker-in-Charge Annual Review course each year and timely renews his individual license. Unfortunately, the *qualifying broker* of XYZ Realty *failed to renew the firm's license* prior to June 30, 2009, so on July 1, 2009, the company's license expires, which means there were no offices anywhere. What must that broker-in-charge do?

Answer: Since the rule change effective January 1, 2008, *that broker retains his broker-in-charge eligibility, because he renewed his individual license on time and took the correct continuing education, namely, the mandatory Update and the Broker-in-Charge Annual Review course. His broker-in-charge eligibility is not affected by his office disappearing from underneath him.* He may either:

- declare himself broker-in-charge of some other office and not have to take any special continuing education, or
- associate with another company as an affiliated broker, yet still remain broker-in-charge eligible, or
- wait until XYZ Realty reinstates its expired license and then send the Commission a broker-in-charge declaration form and resume broker-in-charge responsibilities at his old office without taking either the 12 hour Broker-in-Charge course or the current year's Broker-in-Charge Annual Review course, *because he constantly maintained his broker-in-charge eligibility* by timely renewing his license and taking the Update course and BICAR course every license year.

Query: Does the Broker-in-Charge Annual Review course or BIC Course take the place of the Update course since they are required courses??

Answer: NO!!! NOTHING EVER TAKES THE PLACE OF THE MANDATORY UPDATE COURSE, which is why it is called “mandatory.” **ALL LICENSEES** who wish to be on active status the following license year **MUST take the mandatory Update course each and every year** to be on active status the following license year. **NO EXCEPTIONS! This includes BICs!**

Note: Brokers who engage primarily in commercial brokerage should be aware that there is a *commercial version of the mandatory Real Estate Update course*, which typically is available by late September or early October each year. *A licensee who takes either the “Real Estate Update” course or the “Real Estate Update - Commercial” course will satisfy the mandatory Update course requirement.*

Lone Exemption from Special Broker-in-Charge Education

All brokers who are broker-in-charge or broker-in-charge eligible must take the special required broker-in-charge education to both perfect their status and maintain their eligibility. The **only exception** to this rule is found in **A.0110(i)**. Brokers-in-charge or broker-in-charge eligible brokers who:

- do not live in North Carolina,
- do not have an office in North Carolina, *and*
- do not have a mailing address in North Carolina

are **not required** to take the special broker-in-charge education in order to perfect their broker-in-charge status or maintain their broker-in-charge eligibility. *However*, if they move to North Carolina or begin managing an office located in North Carolina, or notify the Commission of a mailing address in North Carolina, they will be required to take the 12 hour Broker-in-Charge course within 120 days of the change. They also will be required to take the BICAR course each year thereafter to maintain their broker-in-charge eligibility so long as they have a presence in North Carolina.

Current Rule A.0110 (last revised July 1, 2009)

21 NCAC 58A .0110 BROKER-IN-CHARGE

(a) Every real estate firm shall designate a broker to serve as the broker-in-charge at its principal office and a broker to serve as broker-in-charge at any branch office. No broker shall be broker-in-charge of more than one office at a time. If a firm shares office space with one or more other firms, one broker may serve as broker-in-charge of each firm at that location. No office or branch office of a firm shall have

more than one designated broker-in-charge. A broker who is a sole proprietor shall designate himself or herself as a broker-in-charge if the broker engages in any transaction where the broker is required to deposit and maintain monies belonging to others in a trust account, engages in advertising or promoting his or her services as a broker in any manner, or has one or more other brokers affiliated with him or her in the real estate business. Maintenance of a trust or escrow account by a broker solely for holding residential tenant security deposits received by the broker on properties owned by the broker in compliance with G.S. 42-50 shall not, standing alone, subject the broker to the requirement to designate himself or herself as a broker-in-charge. A broker desiring to be a broker-in-charge shall declare in writing his or her designation as broker-in-charge of an office to the Commission on a form prescribed by the Commission within 10 days following the broker's designation as broker in charge of any office. The broker-in-charge shall, in accordance with the requirements of G.S. 93A and the rules adopted by the Commission, assume the responsibility at his or her office for:

- (1) the retention of current license renewal pocket cards by all brokers employed at the office for which he or she is broker-in-charge; the proper display of licenses at such office in accordance with Rule .0101 of this Section; and assuring that each licensee employed at the office has complied with Rules .0503, .0504, and .0506 of this Subchapter;
- (2) the proper notification to the Commission of any change of business address or trade name of the firm and the registration of any assumed business name adopted by the firm for its use;
- (3) the proper conduct of advertising by or in the name of the firm at such office;
- (4) the proper maintenance at such office of the trust or escrow account of the firm and the records pertaining thereto;
- (5) the proper retention and maintenance of records relating to transactions conducted by or on behalf of the firm at such office, including those required to be retained pursuant to Rule .0108 of this Section;
- (6) the proper supervision of provisional brokers associated with or engaged on behalf of the firm at such office in accordance with the requirements of Rule .0506 of this Subchapter;
- (7) the proper supervision of all licensees employed at the office for which he or she is broker-in-charge with respect to adherence to agency agreement and disclosure requirements.

(b) When used in this Rule, the term:

- (1) "Branch Office" means any office in addition to the principal office of a broker which is operated in connection with the broker's real estate business; and
- (2) "Office" means any place of business where acts are performed for which a real estate license is required or where monies received by a licensee acting in a fiduciary capacity are handled or records for such trust monies are maintained.

(c) To qualify to become a broker-in-charge, a broker shall:

- (1) have a license on active status but not on provisional status;
- (2) possess at least two years of full-time real estate brokerage experience or equivalent part-time real estate brokerage experience within the previous five years or real estate education or experience in real estate transactions that the Commission finds equivalent to such experience; and
- (3) complete the Commission's 12 classroom hour broker-in-charge course either within three years prior to designation as a broker-in-charge or within 120 days following designation as a broker-in-charge.

By submission of a broker-in-charge declaration to the Commission, a broker certifies that he or she possesses the experience required to become a broker-in-charge and upon acknowledgment by the Commission of a completed declaration, the broker shall receive his or her broker-in-charge designation and be authorized to act as a broker-in-charge. Upon his or her designation as broker-in-charge and

completion of the broker-in-charge course within the time period prescribed in Subparagraph (b)(3) of this Rule, the designated broker-in-charge acquires the eligibility to be re-designated as a broker-in-charge at any time in the future after a period of not actively serving as a broker-in-charge without having to again satisfy the qualification requirements for initial designation stated in this Paragraph so long as the broker continuously satisfies the requirements to retain such eligibility described in Paragraph (e) of this Rule. A broker-in-charge designation shall be immediately terminated if a broker-in-charge fails to complete the broker-in-charge course during the required time period or if the Commission finds the broker-in-charge does not possess the required experience. Upon the request of the Commission, a broker shall provide to the Commission evidence that he or she possesses the required experience. A broker who is removed as broker-in-charge for failure to timely complete the Commission's 12 hour broker-in-charge course must first complete the 12 hour broker-in-charge course before he or she may again be designated as broker-in-charge. A broker-in-charge, upon written request of the Commission or a broker who has been affiliated with the broker-in-charge within the previous five years, shall provide the Commission or broker an accurate written statement regarding the broker's work at the office of the broker-in-charge, including the dates of affiliation, average number of hours worked per week, and the number and type of properties listed, sold, bought, leased, or rented for others by the licensee during his or her affiliation with the broker-in-charge.

(d) A broker who was the broker-in-charge of a real estate office on April 1, 2006, whose broker-in-charge declaration was received by the Commission prior to that date, and who completed the Commission's broker-in-charge course prior to April 1, 2006 or within 120 days following designation as a broker-in-charge, may continue to serve as a broker-in-charge thereafter until his or her eligibility to serve as a broker-in-charge is terminated as provided in Paragraph (f) of this Rule.

(e) Once a broker has been designated as a broker-in-charge and completed the 12 hour broker-in-charge course as prescribed by Paragraph (c) of this Rule, the broker may maintain broker-in-charge eligibility by timely annual renewal of his or her broker license, completion each license year of the four hour mandatory continuing education update course prescribed for all licensees and known as the "Real Estate Update Course," and completion each license year of the four hour special continuing education course prescribed by the Commission only for brokers-in-charge and known as the "Broker-In-Charge Annual Review Course." The Broker-In-Charge Annual Review Course must be taken initially by a broker-in-charge during the first full license year following the license year in which the broker was designated as a broker-in-charge and must be taken each license year thereafter in order for the broker to maintain broker-in-charge eligibility. The Broker-In-Charge Annual Review Course shall satisfy the broker's general continuing education elective course requirement, but the broker must also take the mandatory continuing education Real Estate Update Course each license year. The Broker-In-Charge Annual Review Course is reserved exclusively for current brokers-in-charge, and brokers who are not currently acting as a broker-in-charge but who desire to retain their broker-in-charge eligibility. Only these brokers shall receive continuing education elective credit for taking the course.

(f) A broker's broker-in-charge eligibility and, if currently designated as a broker-in-charge, his or her broker-in-charge designation shall be terminated upon the occurrence of any of the following events:

- (1) The broker's license expires or the broker's license is suspended, revoked or surrendered;
- (2) the broker's license is made inactive for any reason, including failure to satisfy the continuing education requirements described in Rule .1702 of this Subchapter;
- (3) the broker fails to complete the Broker-In-Charge Annual Review Course described in Paragraph (e) of this Rule; or

- (4) the broker is found by the Commission to have not possessed the experience required in Paragraph (c) of this Rule at the time of either initial designation as a broker-in-charge or re-designation as a broker-in-charge.

When a broker who is a former broker-in-charge desires to be re-designated as a broker-in-charge following termination of his or her broker-in-charge designation or eligibility, he or she must first have a license on active status. The broker then must satisfy the experience requirements for initial designation set forth in Paragraph (c) of this Rule, and the broker must complete the 12 hour broker-in-charge course within 120 days following re-designation, except that if the broker has taken the 12 hour broker-in-charge course within the preceding three years, he or she has the option to complete the Broker-In-Charge Annual Review Course for the current license year within 120 days following re-designation as a broker-in-charge in lieu of repeating the 12 hour broker-in-charge course. If a broker who has been re-designated as a broker-in-charge and then removed as broker-in-charge due to failure to satisfy his education requirement within 120 days following re-designation subsequently seeks another re-designation as broker-in-charge, the broker must first complete the 12 hour broker-in-charge course before he or she may again be designated as a broker-in-charge, even if the broker has completed the 12 hour broker-in-charge course within the preceding three years.

(g) A broker-in-charge shall notify the Commission in writing that he or she no longer is serving as broker-in-charge of a particular office within 10 days following any such change.

(h) A licensed real estate firm is not required to designate a broker-in-charge if it:

- (1) has been organized for the sole purpose of receiving compensation for brokerage services furnished by its qualifying broker through another firm or broker;
- (2) is treated for tax purposes as a Subchapter S corporation by the United States Internal Revenue Service;
- (3) has no principal or branch office; and
- (4) has no person associated with it other than its qualifying broker.

(i) A broker-in-charge residing outside of North Carolina who is the broker-in-charge of a principal or branch office not located in North Carolina is not required to complete the broker-in-charge course or the special continuing education course prescribed for brokers-in-charge under Paragraph (e) of this Rule. However, if such broker-in-charge either becomes a resident of North Carolina or becomes broker-in-charge of an office located within North Carolina, then he or she must take the 12 hour broker-in-charge course within 120 days of such change, unless he or she has taken the 12 hour course within the preceding three years. Such broker-in-charge shall take the special broker-in-charge continuing education course prescribed in Paragraph (e) of this Rule during the first full license year following the change and each license year thereafter so long as the broker-in-charge remains a resident of North Carolina or continues to manage an office located in North Carolina.

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