

2010-2011 BROKER-IN-CHARGE ANNUAL REVIEW

SECTION TWO

WHAT IS THE NC REAL ESTATE COMMISSION?

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Learning Objective: The purpose of this Section is to acquaint brokers with the structure, functions and administrative duties of their licensing and regulatory agency, the North Carolina Real Estate Commission.

INTRODUCTION

What is now the North Carolina Real Estate Commission began in 1957 when the General Assembly by a 69 to 24 vote passed Senate Bill 277 creating the North Carolina Real Estate Licensing Board. (The name changed to “Commission” in 1983.) In the late 1920’s the General Assembly had passed similar legislation, but it was declared unconstitutional in 1939 because the law only applied to eight counties. The 1957 Act created an independent state agency to regulate brokerage activity in all 100 counties in North Carolina. At the time of its inception in 1957, there were 2500 brokers who were “grandfathered” as licensees. As of mid-July 2010, there were almost 83,000 individuals with current licenses of whom approximately 60,000 were on active status. Another 7645 individuals had allowed their licenses to expire as of July 1, 2010.

THE COMMISSION

A State Government Agency

The North Carolina Real Estate Commission is a *state government agency*. Its **primary purpose** is to license and regulate real estate brokers in order to protect the interests of North Carolina real estate consumers. It should not be confused with the North Carolina Association of REALTORS® (or its local boards and associations), which is a *trade association* whose members are known as “REALTORS®.”

An Independent, Self-Supporting Agency

Although a state agency, the Commission is an *independent agency that receives no monies from the General Assembly and is totally self-supporting* with revenue generated from license application fees, licensees’ annual renewal fees, fees from approved schools and sponsors, sales of various publications and miscellaneous other fees.

Commission Members

The North Carolina Real Estate Commission is comprised of the Commission and Commission staff. Technically, the “**Commission**” refers to the **nine appointed members**, seven of whom are appointed by the Governor, one by the President Pro Tempore of the Senate, and one by the Speaker of the House. Each appointee serves a **three-year term** and may be reappointed. Terms are staggered such that three appointments expire each year. By statute, at least three of the members must be brokers and at least two “... shall be persons who are not involved directly or indirectly in the real estate or real estate appraisal business.” As a practical matter, seven of the Commission members are brokers and two are “consumer” or “public” members. Each year the members elect one of their number to serve as Chair of the Commission and another to serve as Vice-Chair.

Powers

The Commission is expressly vested with the power “... to make reasonable bylaws, rules and regulations ...” not inconsistent with state law, and to:

1. License real estate brokers (including brokerage firms) and register time share projects;
2. Establish and administer prelicensing, postlicensing and continuing education programs;
3. Provide education and information relating to the real estate brokerage business for licensees and the general public;
4. Regulate the business activities of brokers and brokerage firms, including discipline of licensees who violate the Real Estate License Law or Commission rules; and
5. Employ an Executive Director and professional and clerical staff as may be necessary to carry out the provisions of the License Law and to put into effect the rules and regulations that the Commission may promulgate.

The Commission is specifically prohibited from regulating commissions, salaries or fees to be charged by licensees and from arbitrating disputes between parties regarding matters of contract such as the rate and/or division of commissions, pay of licensees, or similar matters.

The Commission may delegate to staff certain duties and authority, but by statute it may *not* delegate its authority to make rules or its duty to act as a hearing panel for disciplinary cases.

Compensation of Commission Members; Meetings

While Commission members receive a per diem for meals and lodging and are reimbursed for their mileage according to business rates established by the Internal Revenue Service, they do **not** receive a salary or other compensation for serving on the Commission.

The Commission generally meets once each month in Raleigh to handle administrative matters, consider license applications, decide budgetary and appropriation issues, review staff recommendations on policies/rules/operations, address personnel matters, make probable cause determinations on complaints, and hear disciplinary and application cases. They may also convene an additional three to four times a year to conduct additional disciplinary hearings. It is no small commitment of time and energy to serve on the Commission. Pursuant to an October 2009 edict from Governor Perdue applicable to all licensing agencies, members must attend 75% of the meetings in any given year or are subject to removal.

COMMISSION STAFF

Commission staff members are employees of the Commission. The Commission's operations are overseen by an Executive Director. The Commission's staff, which currently numbers 54, is divided among four divisions, each headed by a division director. The functions and services of each of the divisions is discussed below.

Administration Division

The Administration Division handles all administrative matters including finance/accounting, personnel, equipment/supplies, technical support and reception, as well as the Commission's website, publications, licensee records changes and maintenance, license status inquiries and license renewal.

Information Services

It is the **Information Services** section of this division with which the vast majority of licensees have the most contact. *All matters relating to a broker's license status are handled by this section.* Examples of the functions/services the section handles include:

1. Processing license activation forms, broker affiliation forms, broker-in-charge declaration forms and change of business address requests, including sending a "Notice of Record Change" to the licensee when there is any change in license status or business address.
2. Maintaining licensee records, most of which are digitally imaged.
3. Handling all inquiries related to a licensee's license status, broker-in-charge eligibility, and postlicensing and continuing education credits.

The Commission has won several awards from the Association of Real Estate License Law Officials (ARELLO) for its newsletter, the *Real Estate Bulletin*, and for the Commission's website.

Education & Licensing Division

The Education and Licensing Division is responsible for reviewing and processing all license applications, issuing licenses, administering the license examination program and administering prelicensing, postlicensing and continuing education programs.

Licensing Program

The Licensing Section of this division reviews and processes all license applications, including those for licensure by examination (which constitutes the overwhelming majority of applications), licensure by reciprocity (based on mutual agreements with a few other states, including the neighboring states of South Carolina, Georgia and Tennessee), reinstatement of an expired, revoked or surrendered license, and licensure of brokerage firms. After applicants satisfy all qualification requirements, this Division issues initial license certificates and pocket cards to the new licensees.

Application review includes consideration of *character issues* that might affect an applicant's fitness for licensure, although these issues are not reviewed until *after* an applicant has passed the state license examination. Consideration of character issues involves review by licensing staff, the Executive Director and frequently the Commission members. Note that "*character issues*" may include criminal convictions, disciplinary action by *any* licensing board, previous bankruptcies, outstanding tax obligations or significant outstanding judgments.

Prelicensing, Postlicensing, and Continuing Education Programs

The Education and Licensing Division also administers the Commission's prelicensing, postlicensing and continuing education programs. This includes the following:

1. Approving schools/sponsors and instructors to teach prelicensing, postlicensing and continuing education courses, periodically renewing such approvals and assuring compliance with education rules and standards.
2. Developing and maintaining prelicensing/postlicensing course syllabi and end-of-course examinations.
3. Developing annually the continuing education course materials for the mandatory *Real Estate Update Course* and the *BICAR Course*.
4. Updating and maintaining the Commission's biannually published comprehensive text and reference book, the *North Carolina Real Estate Manual*.
5. Maintaining current course materials for and teaching (in conjunction with Audits and Investigations) the Commission's 12 hour Broker-in-Charge Course approximately 34 times per year.

The Commission has won numerous awards from the Association of Real Estate License Law Officials (ARELLO) for the quality of its education programs.

Licensing Examination Program

This division also operates the license examination program. North Carolina is one of only a few states that develops and maintains its own question bank for the license examination rather than using a standardized multi-state test provided by a private testing company. The Commission does utilize the services of an outside testing company to actually administer and score the examinations, but Education and Licensing staff is responsible for the ongoing

development of the question bank and assuring that the license examination complies with generally accepted testing standards.

Audits & Investigations Division

The Audits and Investigations Division *conducts field investigations on all types of complaints against licensees and conducts “spot audits” of trust account records.* The Director of this division supervises a staff of eight, of whom seven are auditors or investigators who spend most of their time in the field. Complaints are initially reviewed by attorneys in the Legal Services Division and those requiring a field investigation are assigned to the A&I Division. Field investigations frequently involve inspection of trust account records as part of the investigation. “Spot audits” are reviews of randomly selected company or broker trust account records and transaction files. Following the investigation or audit, the auditor/investigator will prepare a written summary of his/her findings which are reported to the Legal Division for appropriate action.

The Commission is proud to note that in five of the past ten years (2000-2009) different auditors or investigators in A&I have won the national “Investigator of the Year” award conferred by the Association of Real Estate License Law Officials (ARELLO) for exemplary work investigating cases.

Legal Services Division

The Legal Services Division and A&I Division together constitute the disciplinary arm of the Commission. The functions of the Legal Services Division include:

1. Receiving complaints against brokers and time share projects and conducting inquiries and coordinating investigations relating to such complaints.
2. Recommending to the Executive Director and the Commission appropriate actions to be taken regarding complaints following inquiry/investigation.
3. Negotiating settlements of cases by consent with licensees for approval by the Commission.
4. Prosecuting charges against licensees at hearings before the Commission.
5. Providing legal counsel to the Commission.
6. Coordinating the rulemaking process whenever the Commission proposes to adopt or amend its rules.
7. Registering time share projects and regulating time share sales.
8. Providing information to licensees and consumers concerning the License Law and Commission rules and their applicability to real estate transactions.

The Commission is entitled to the services of the Attorney General. Accordingly, the Director of the Commission’s Legal Services Division is a Special Deputy Attorney General assigned to work with the Commission. Including the division director, the division has five attorneys who work with various aspects of the disciplinary process, three consumer protection officers who conduct inquiries into complaints not requiring a field investigation, and three information officers who handle phone calls from licensees and the public regarding complaints, general questions pertaining to real estate brokerage, and legal issues within the purview of the

Commission. It should be noted that while the Commission’s legal staff will offer information and advice as to the interpretation of License Law and Commission rules, they are not permitted to offer advice on civil matters, contract interpretation or compensation disputes. Callers with questions on such issues are advised to confer with private legal counsel or, if applicable, contact their local REALTOR® association.

COMMISSION STATISTICS

Shown below are the number of licensees as of April 30, 2010 and various statistics regarding Commission operations for the one-year period ending April 30, 2010.

	<u>Number of Licensees</u>		
	<u>Active</u>	<u>Inactive</u>	<u>Total</u>
Brokers	59,672	20,578	80,250
Provisional Brokers	3,893	5,985	9,878
Firms	NA	NA	11,212

During the period May 2009-April 2010, the Commission:

- Managed (received/made) 200,257 telephone calls and received 31,754 faxes.
- Received more than 1.5 million “visitors” to its website where 211,045 financial transactions were performed.
- Distributed 583,759 publications (newsletter, Q&A brochures, *Residential Square Footage Guidelines* booklets, *Real Estate Manual* copies, etc.).
- Processed 466,081 license record changes.
- Processed student rosters for 8,554 CE courses and 761 postlicensing courses.
- Processed 3,382 applications for license by examination; administered 4,281 license examinations; issued 2,570 licenses by exam, 271 by reciprocity and 879 firm licenses; and reinstated 335 licenses.
- Approved 18 new pre/postlicensing instructors, seven new private real estate school locations, 25 new CE sponsors, 16 new CE Update course instructors and 56 new CE elective courses.
- Conducted 40 *Broker-In-Charge Course* sessions across the state for 1,544 brokers.
- Conducted six *Basic Trust Account Courses* for 147 students.
- Completed 128 field investigations and examined 172 trust accounts.
- Opened 954 disciplinary case files and closed 1,062.
- Reprimanded 15 licensees, suspended 45 licenses, revoked 45 licenses, accepted 19 license surrenders and utilized conditional remedies against 64 licensees.