

## RULE CHANGES EFFECTIVE JULY 1, 2014

The Rules Review Commission has approved all of the rule changes adopted by the Real Estate Commission at its May 9, 2014 meeting. The rule changes went into effect July 1, 2014, except for Rule 21 NCAC 58A .1709 (Extensions of Time to Complete Continuing Education), which has an effective date of August 1, 2014.

A summary citing and describing the rule changes now in effect appears on the following pages, followed by the text for each of the rules as published in the North Carolina Administrative Code.

Members of the public may submit inquiries regarding any of the rule changes by contacting the rule-making coordinator as follows:

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## **SUMMARY OF RULE CHANGES NOW IN EFFECT**

(Unless otherwise indicated, all rules went into effect July 1, 2014)

### **Real Estate Brokers - General Brokerage:**

**21 NCAC 58A .0104** – Amended the rule governing agency agreements and disclosures to incorporate minor technical changes and to add Paragraphs (o) and (p). Paragraph (o) prohibits a broker who is selling property in which the broker has an ownership interest from representing a buyer of the property, except that a firm listing a property owned by a broker affiliated with the firm may represent a buyer of that property so long as the individual broker representing the buyer does not have an ownership interest in the property and the buyer consents to the representation after full disclosure. Paragraph (p) prohibits a listing broker or firm from purchasing the listed property unless the broker or firm first discloses to their seller-client in writing that a potential conflict of interest exists and that the seller-client may want to seek independent counsel. Prior to the listing broker entering into a purchase contract, the listing broker and firm must either terminate the listing agreement or transfer the listing to another broker in the firm. Prior to the firm entering into a purchase contract, the listing broker and firm must disclose to the seller-client in writing that the seller-client has the right to terminate the listing, and must thereafter terminate the listing upon the request of the seller-client. The changes are intended to eliminate the inherent conflict of interest presented by a broker representing the very party against whom the broker, as an interested party, is negotiating.

**21 NCAC 58A .0110** – Amends the rule governing brokers-in-charge to delete the requirement that brokers-in-charge (“BIC”) complete the four-hour Broker-in-Charge Annual Review Course (“BICAR”) and the mandatory four-hour Real Estate Update Course, and to instead require them to complete a four hour mandatory continuing education course known as the “Broker-in-Charge Update Course” (“BICUP”) and a four-hour continuing education (“CE”) elective course in order to retain broker-in-charge eligibility. The new BICUP course combines topics from the old BICAR course and the annual update course into a single 4-hour course, allowing BICs to take an elective CE course to fulfill the second four hour component of the mandatory 8-hour CE requirement. The amended rule also clarifies the experience required for BIC designation.

**21 NCAC 58A .0112** – Amends the rule governing offers and sales contracts to incorporate minor technical changes. Paragraph (a)(7), addressing language required in form contracts regarding the handling of disputed earnest money deposits, has been changed to refer to Rule 21 NCAC 58A .0116 rather than former Rule 21 NCAC 58A .0107.

**21 NCAC 58A .0114** – Amends and clarifies Question #24 on the Residential Property and Owners’ Association Disclosure Statement to inquire whether, based upon the seller’s knowledge, the property is in violation of any local zoning ordinances, restrictive covenants, building code requirements, or other land-use restrictions, and eliminates the reference to notice from a government agency about those restrictions.

**21 NCAC 58A .0117** – Amends Paragraph (f) of the rule governing accounting for trust money to incorporate minor technical changes. The reference to “the records required by Paragraph (d) of this Rule” has been changed to refer to Paragraph (c), which is the paragraph describing the records brokers are required to maintain. The amendment further clarifies the manner in which

specified ledgers are to be maintained by property managers representing owners of vacation rental properties.

**21 NCAC 58A .0118** – Amends the rule governing the handling of trust money belonging to owners’ associations to incorporate minor technical changes for the purpose of updating references to other rules to agree with recent amendments. Paragraph (a), requiring such trust money to be handled in the manner required by “this Rule,” has been changed to refer to Rules 21 NCAC 58A .0116 and A .0117. Paragraph (b), exempting brokers volunteering as officers of owners’ associations from the requirements of Rule A .0116, has been changed to also exempt them from the requirements of Rule A .0117.

#### **Real Estate Brokers - Examinations:**

**21 NCAC 58A .0404** – Amends and clarifies the rule prohibiting cheating and certain other misconduct in connection with the licensing examination to prohibit applicants from engaging in specified activities when taking a license examination and adds forfeiture of examination and application fees as possible consequences for a violation of the Rule in addition to dismissal from an examination, invalidation of examination score, and denial of a real estate license and disciplinary action if an applicant has been issued a license.

#### **Real Estate Brokers - Licensing:**

**21 NCAC 58A .0502** – Amends the rule governing the licensing of business entities to incorporate minor technical changes for the purpose of updating references to other rules to agree with recent amendments. The references in Paragraphs (a)(7) and (d)(1) to the definitions of “office” and “branch office” have been changed to refer to Rule 21 NCAC 58A .0110(a), where the definitions are located in the current rule, instead of A .0110(b). Also, the references in Paragraphs (d)(6) and (8) to records that “have not been reconciled as required by Rule A .0107 of this Subchapter” have been changed to refer to Rule 21 NCAC 58A .0117.

**21 NCAC 58A .0503** – Amends and modernizes the rule governing license renewals to require that brokers applying for renewal do so using an electronic application on the Commission’s website or by calling the Commission’s office. Also, the Rule now requires brokers to provide the Commission with their e-mail address if they have one, and permits brokers to designate their e-mail address as “private,” thereby exempting the address from disclosure as a public record.

#### **Real Estate Brokers - Mandatory Continuing Education:**

**21 NCAC 58A .1702** – Amends the rule governing the continuing education requirement to provide that four of the eight hours of continuing education required of brokers each year shall consist of the “General Update Course,” except that brokers-in-charge shall complete the “Broker-in-Charge Update Course” now prescribed in Rule 21 NCAC 58A .0110.

**21 NCAC 58A .1709** – Effective August 1, 2014, this amended rule governing brokers’ requests for extensions of time within which to complete the continuing education (“CE”) requirement now provides that a request for extension by a broker on active status must be received by the Commission not later than June 10 of the license year for which the extension is sought. The rule change is consistent with Rule 21 NCAC 58A .1708’s requirement that requests for equivalent CE credit be received by the Commission on or before June 10. The amendment

further clarifies the grounds upon which an extension may be requested and granted, and specifies the information to be submitted with the request.

**Real Estate Brokers - Limited Non-Resident Commercial License:**

**21 NCAC 58A .1808** – Amends the rule governing the handling of trust monies by a nonresident commercial broker to incorporate minor technical changes. The provision requiring the depositing of trust monies in a trust account “in accordance with the provisions of Rule .0107 of this Subchapter” has been changed to refer instead to Rule 21 NCAC 58A .0117.

**Real Estate Prelicensing Education - Private Real Estate Schools:**

**21 NCAC 58C .0209** – Amends and reformats Paragraph (c), and prescribes specific language to be included in student enrollment contracts informing students of the penalty for participating in two postlicensing courses concurrently that total more than 21 classroom hours in a seven-day period. Also, the last two sentences of Paragraph (c), pertaining to the enrollment contract, have been moved to Paragraph (b) where they more logically belong.

**21 NCAC 58C .0221** – This new rule governs transfers of private real estate school ownership to clarify that when school ownership is transferred to a different legal entity, the school license is not transferrable, and requires the new entity to obtain an original license for each location where the school will conduct courses. All courses commenced by the former owner must be completed by the effective date of the ownership transfer.

**Real Estate Prelicensing Education – Prelicensing and Postlicensing Courses:**

**21 NCAC 58C .0309** – Amends Paragraph (a) of the rule governing course completion reporting to better describe the requirements for course completion reporting. The amendment further provides that a course completion certificate shall bear the signature of the school director or other responsible official, and deletes the requirement for an original signature or a signature stamp in a color other than black. Paragraph (b) is reorganized into Paragraphs (b) and (c) with minor technical changes.

**21 NCAC 58C .0310** – Amends and clarifies the rule governing course records to be retained by real estate schools to include copies of all enrollment records.

**Real Estate Continuing Education – Update Course:**

**21 NCAC 58E .0102** – Amends the rule governing the update course component of the continuing education requirement for brokers to require each broker renewing his or her license to complete the mandatory four-hour “General Update Course” as prescribed in Rule 21 NCAC 58A .1702, except that brokers-in-charge must complete the “Broker-in-Charge Update Course” prescribed in Rule 21 NCAC 58A .0110. Amends Paragraph (b) to include a description of the subject matter to be taught in each course.

**Real Estate Continuing Education – Update Course Instructors:**

**21 NCAC 58E .0202** – Amends, with minor technical changes, the rule governing the approval of update course instructors to refer to the two new update courses prescribed by Rules 21 NCAC 58A .0110 and A .1702, the General Update Course and the Broker-in-Charge Update

Course. The amended Rule further provides that the approval of an update course instructor remains in effect so long as the approval is on active status.

**21 NCAC 58E .0203** – Amends the rule governing the application and criteria for original approval of update course instructors to require instructor applicants to take the Commission’s seven-hour Update Instructor Seminar for the license year in which the applicant’s approval would be effective prior to approval being issued. If the applicant fails to take the seminar within six months after filing the application for approval, the application will be cancelled.

**21 NCAC 58E .0204** – Amends and clarifies the rule governing active and inactive status of update course instructors to provide that an instructor’s initial approval shall be issued and remain on active status during the approval period so long as the instructor takes the Commission’s annual Update Instructor’s Seminar before September 1 of each year. If an instructor fails to take the Update Seminar before September 1, the instructor’s approval will be placed on inactive status until the seminar is taken or the approval expires. An instructor may teach either the General Update Course or the Broker-in-Charge Update Course while the instructor’s approval is on active status, but shall be prohibited from teaching either course while the instructor’s approval is on inactive status. The amended Rule establishes a procedure for obtaining an extension of time where an instructor on active status is unable to complete the seminar by the September 1 deadline due to personal hardship, but requires that the seminar be completed no later than December 1 of that year. An instructor applying for renewal of approval whose approval is on inactive status must take the annual Update Instructor Seminar for the license year in which the applicant’s renewal of approval would be effective, in addition to satisfying the other criteria required for renewal.

#### **Real Estate Continuing Education – Elective Courses:**

**21 NCAC 58E .0304** – Amends, with minor technical changes, the rule governing the criteria for elective course approval to provide that where a proposed new course has been reviewed by the Commission twice and found unsatisfactory after both reviews, any subsequent submission will be treated as an initial application subject to the course application fee prescribed by Rule 21 NCAC 58E .0303.

#### **Real Estate Continuing Education – General Sponsor Requirements:**

**21 NCAC 58E .0408** – Amends the rule governing changes in continuing education course sponsor ownership to clarify that when sponsor ownership is transferred to a different legal entity, the sponsor approval is not transferrable, and the new entity must obtain an original approval for each location where the school will conduct courses. The amended Rule further prohibits a sponsor owner transferring ownership from conducting any courses after the effective date of the ownership transfer.

#### **Real Estate Continuing Education – Broker-in-Charge Annual Review:**

**21 NCAC 58E .0601 through .0604** – In light of the discontinuance of the Broker-in-Charge Annual Review Course (“BICAR”) requirement and its replacement by the “Broker-in-Charge Update Course” prescribed by Rule 21 NCAC 58A .0110, the rules governing the BICAR course have been repealed.

## **21 NCAC 58A .0104 AGENCY AGREEMENTS AND DISCLOSURE**

(a) Every agreement for brokerage services in a real estate transaction and every agreement for services connected with the management of a property owners association shall be in writing and signed by the parties thereto. Every agreement for brokerage services between a broker and an owner of the property to be the subject of a transaction shall be in writing and signed by the parties at the time of its formation. Every agreement for brokerage services between a broker and a buyer or tenant shall be express and shall be in writing and signed by the parties thereto not later than the time one of the parties makes an offer to purchase, sell, rent, lease, or exchange real estate to another. However, every agreement between a broker and a buyer or tenant which seeks to bind the buyer or tenant for a period of time or to restrict the buyer's or tenant's right to work with other agents or without an agent shall be in writing and signed by the parties thereto from its formation. A broker shall not continue to represent a buyer or tenant without a written, signed agreement when such agreement is required by this Rule. Every written agreement for brokerage services of any kind in a real estate transaction shall be for a definite period of time, shall include the broker's license number, and shall provide for its termination without prior notice at the expiration of that period, except that an agency agreement between a landlord and broker to procure tenants or receive rents for the landlord's property may allow for automatic renewal so long as the landlord may terminate with notice at the end of any contract period and any subsequent renewals. For the purposes of this Rule, an agreement between brokers to cooperate or share compensation shall not be considered an agreement for brokerage services and, except as required by Rule .1807 of this Subchapter, need not be memorialized in writing.

(b) Every listing agreement, written buyer agency agreement or other written agreement for brokerage services in a real estate transaction shall contain the following provision: "The broker shall conduct all brokerage activities in regard to this agreement without respect to the race, color, religion, sex, national origin, handicap or familial status of any party or prospective party." The provision shall be set forth in a clear and conspicuous manner which shall distinguish it from other provisions of the agreement. For the purposes of this Rule, the term, "familial status" shall be defined as it is in G.S. 41A-3(1b).

(c) In every real estate sales transaction, a broker shall, at first substantial contact with a prospective buyer or seller, provide the prospective buyer or seller with a copy of the publication "Working with Real Estate Agents," set forth the broker's name and license number thereon, review the publication with the buyer or seller, and determine whether the agent will act as the agent of the buyer or seller in the transaction. If the first substantial contact with a prospective buyer or seller occurs by telephone or other electronic means of communication where it is not practical to provide the "Working with Real Estate Agents" publication, the broker shall at the earliest opportunity thereafter, but in no event later than three days from the date of first substantial contact, mail or otherwise transmit a copy of the publication to the prospective buyer or seller and review it with him or her at the earliest practicable opportunity thereafter. For the purposes of this Rule, "first substantial contact" shall include contacts between a broker and a consumer where the consumer or broker begins to act as though an agency relationship exists and the consumer begins to disclose to the broker personal or confidential information. The "Working with Real Estate Agents" publication can be obtained on the Commission's website at [www.ncrec.gov](http://www.ncrec.gov) or upon request to the Commission.

(d) A real estate broker representing one party in a transaction shall not undertake to represent another party in the transaction without the written authority of each party. The written authority must be obtained upon the formation of the relationship except when a buyer or tenant is represented by a broker without a written agreement in conformity with the requirements of Paragraph (a) of this Rule. Under such circumstances, the written authority for dual agency must be reduced to writing not later than the time that one of the parties represented by the broker makes an offer to purchase, sell, rent, lease, or exchange real estate to another party.

(e) In every real estate sales transaction, a broker working directly with a prospective buyer as a seller's agent or subagent shall disclose in writing to the prospective buyer at the first substantial contact with the prospective buyer that the broker represents the interests of the seller. The written disclosure shall include the broker's license number. If the first substantial contact occurs by telephone or by means of other electronic communication where it is not practical to provide written disclosure, the broker shall immediately disclose by similar means whom he represents and shall immediately mail or otherwise transmit a copy of the written disclosure to the buyer. In no event shall the broker mail or transmit a copy of the written disclosure to the buyer later than three days from the date of first substantial contact with the buyer.

(f) In every real estate sales transaction, a broker representing a buyer shall, at the initial contact with the seller or seller's agent, disclose to the seller or seller's agent that the broker represents the buyer's interests. In addition, in every real estate sales transaction other than auctions, the broker shall, no later than the time of delivery of an offer to the seller or seller's agent, provide the seller or seller's agent with a written confirmation disclosing that he or she represents the interests of the buyer. The written confirmation may be made in the buyer's offer to purchase and shall include the broker's license number.

(g) The provisions of Paragraphs (c), (d) and (e) of this Rule do not apply to real estate brokers representing sellers in auction sales transactions.

(h) A broker representing a buyer in an auction sale transaction shall, no later than the time of execution of a written agreement memorializing the buyer's contract to purchase, provide the seller or seller's agent with a written confirmation disclosing that he or she represents the interests of the buyer. The written confirmation may be made in the written agreement.

(i) A firm that represents more than one party in the same real estate transaction is a dual agent and, through the brokers associated with the firm, shall disclose its dual agency to the parties.

(j) When a firm represents both the buyer and seller in the same real estate transaction, the firm may, with the prior express approval of its buyer and seller clients, designate one or more individual brokers associated with the firm to represent only the interests of the seller and one or more other individual brokers associated with the firm to represent only the interests of the buyer in the transaction. The authority for designated agency must be reduced to writing not later than the time that the parties are required to reduce their dual agency agreement to writing in accordance with Paragraph (d) of this Rule. An individual broker shall not be so designated and shall not undertake to represent only the interests of one party if the broker has actually received confidential information concerning the other party in connection with the transaction. A broker-in-charge shall not act as a designated broker for a party in a real estate sales transaction when a provisional broker under his or her supervision will act as a designated broker for another party with a competing interest.

(k) When a firm acting as a dual agent designates an individual broker to represent the seller, the broker so designated shall represent only the interest of the seller and shall not, without the seller's permission, disclose to the buyer or a broker designated to represent the buyer:

- (1) that the seller may agree to a price, terms, or any conditions of sale other than those established by the seller;
- (2) the seller's motivation for engaging in the transaction unless disclosure is otherwise required by statute or rule; and
- (3) any information about the seller that the seller has identified as confidential unless disclosure of the information is otherwise required by statute or rule.

(l) When a firm acting as a dual agent designates an individual broker to represent the buyer, the broker so designated shall represent only the interest of the buyer and shall not, without the buyer's permission, disclose to the seller or a broker designated to represent the seller:

- (1) that the buyer may agree to a price, terms, or any conditions of sale other than those established by the seller;
- (2) the buyer's motivation for engaging in the transaction unless disclosure is otherwise required by statute or rule; and
- (3) any information about the buyer that the buyer has identified as confidential unless disclosure of the information is otherwise required by statute or rule.

(m) A broker designated to represent a buyer or seller in accordance with Paragraph (j) of this Rule shall disclose the identity of all of the brokers so designated to both the buyer and the seller. The disclosure shall take place no later than the presentation of the first offer to purchase or sell.

(n) When an individual broker represents both the buyer and seller in the same real estate sales transaction pursuant to a written agreement authorizing dual agency, the parties may provide in the written agreement that the broker shall not disclose the following information about one party to the other without permission from the party about whom the information pertains:

- (1) that a party may agree to a price, terms or any conditions of sale other than those offered;
- (2) the motivation of a party for engaging in the transaction, unless disclosure is otherwise required by statute or rule; and
- (3) any information about a party that the party has identified as confidential, unless disclosure is otherwise required by statute or rule.

(o) A broker who is selling property in which the broker has an ownership interest shall not undertake to represent a buyer of that property. A firm listing a property owned by a broker affiliated with the firm may represent a buyer of that property so long as any individual broker representing the buyer on behalf of the firm does not have an ownership interest in the property and the buyer consents to the representation after full disclosure of the broker's ownership interest.

(p) A broker or firm with an existing listing agreement for a property shall not enter into a contract to purchase that property unless, prior to entering into the contract, the listing broker or firm first discloses in writing to their seller-client that the listing broker or firm may have a conflict of interest in the transaction and that the seller-client may want to seek independent counsel of an attorney or another licensed broker. Prior to the listing broker entering into a contract to purchase the listed property, the listing broker and firm shall either terminate the listing agreement or

transfer the listing to another broker affiliated with the firm. Prior to the listing firm entering into a contract to purchase the listed property, the listing broker and firm shall disclose to the seller-client in writing that the seller-client has the right to terminate the listing and the listing broker and firm shall terminate the listing upon the request of the seller-client.

*History Note: Authority G.S. 41A-3(1b); 41A-4(a); 93A-3(c); 93A-6(a); Eff. February 1, 1976; Readopted Eff. September 30, 1977; Amended Eff. July 1, 2014; July 1, 2009; July 1, 2008; April 1, 2006; July 1, 2005; July 1, 2004; April 1, 2004; September 1, 2002; July 1, 2001; October 1, 2000; August 1, 1998; July 1, 1997; August 1, 1996; July 1, 1995.*

## **21 NCAC 58A .0110 BROKER-IN-CHARGE**

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

- (1) "Office" means any place of business where acts are performed for which a real estate license is required or where monies received by a broker acting in a fiduciary capacity are handled or records for such trust monies are maintained;
- (2) "Principal Office" means the office so designated in the Commission's records by the qualifying broker of a licensed firm or the broker-in-charge of a sole proprietorship; and
- (3) "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.

(b) Except as provided in Paragraphs (d) and (e) of this Rule, every real estate firm, including a sole proprietorship, shall have a broker designated by the Commission as provided in Paragraph (f) of this Rule 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. No office of a firm shall have more than one designated broker-in-charge.

(c) If a firm shares office space with one or more other firms, the same broker may serve as broker-in-charge of multiple firms at that location. All firms at that location having the same designated broker-in-charge shall maintain with the Commission as a delivery address the same delivery address as that of the single designated broker-in-charge.

(d) A licensed real estate firm is not required to have 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 licensed or unlicensed person associated with it other than its qualifying broker.

(e) A broker who is a sole proprietor shall obtain the Commission's designation of 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.

(f) A broker desiring to be a broker-in-charge shall request in writing his or her designation as broker-in-charge by the Commission on a form provided by the Commission. The form shall include the broker's name, license number, firm affiliation, and a certification that he or she possesses the experience described in Subparagraph (g)(2) of this Rule. Upon receipt of notice from the Commission that the broker has been designated as broker-in-charge, the broker shall assume the duties of broker-in-charge.

(g) 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 four years of part-time real estate brokerage experience within the previous five years or real estate education, such as the completion of the North Carolina GRI program or other education with a subject matter relating to brokerage practice and the supervision of brokers, or experience in real estate transactions that the Commission finds equivalent to such experience, such as a licensed attorney with a practice that consisted primarily of handling real estate closing and related matters in North Carolina for three years immediately preceding application or full-time, lawful experience selling

new homes owned by a corporate homebuilder as a bonafide employee of the corporate home builder for three years immediately preceding the application; 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.

Upon the request of the Commission, a broker shall provide evidence to the Commission that he or she possesses the requisite experience. 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. 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.

(h) By submission of a broker-in-charge designation request to the Commission, a broker certifies that he or she possesses the experience required to become a broker-in-charge and upon designation by the Commission, the broker shall 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 (g)(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 (k) of this Rule.

(i) 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 display of licenses at such office in accordance with Rule .0101 of this Section; and assuring that each broker employed at the office has complied with Rules .0503, .0504, and .0506 of this Subchapter;
- (2) the 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 conduct of advertising by or in the name of the firm at such office;
- (4) the maintenance at such office of the trust or escrow account of the firm and the records pertaining thereto;
- (5) the 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 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 supervision of all brokers employed at the office for which he or she is broker-in-charge with respect to adherence to agency agreement and disclosure requirements.

(j) 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 (l) of this Rule.

(k) Once a broker has been designated as a broker-in-charge and completed the 12 hour broker-in-charge course as prescribed by Paragraph (g) of this Rule, the broker may maintain broker-in-charge eligibility by timely annual renewal of his or her broker license and completion each license year of the four hour mandatory continuing education update course for brokers-in-charge known as the "Broker-In-Charge Update Course" described in Rule 58E .0102(b), and any Commission-approved four hour continuing education elective course described in Rule 58E .0305. The Broker-In-Charge Update Course shall 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 each license year thereafter in order for the broker to maintain broker-in-charge eligibility. Enrollment in the Broker-In-Charge Update Course shall be limited exclusively to 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 credit for taking the Broker-In-Charge Update Course. A broker-in-charge or broker who is broker-in-charge eligible who takes the General Update Course described in Rule .1702 of this Subchapter rather than the Broker-In-Charge Update Course shall receive continuing education update course credit for taking such course only for the purpose of retaining his or her license on active status and shall not be considered to have satisfied the requirement to take the Broker-In-Charge Update Course in order to retain his or her broker-in-charge status or eligibility.

(l) 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;
- (3) the broker fails to complete the Broker-In-Charge Update Course described in Paragraph (k) of this Rule; or
- (4) the broker is found by the Commission to have not possessed the experience required in Paragraph (g) of this Rule at the time of either initial designation as a broker-in-charge or re-designation as a broker-in-charge.

(m) 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 (g) of this Rule, and the broker must complete the 12 hour broker-in-charge course prior to re-designation as broker-in-charge.

(n) 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.

(o) A non-resident broker who has been designated by the Commission as the broker-in-charge of an office not located in North Carolina is not required to complete the broker-in-charge course or the Broker-In-Charge Update Course prescribed for brokers-in-charge under Paragraph (k) 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 Broker-In-Charge Update Course prescribed in Paragraph (k) 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.

(p) 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.

*History Note: Authority G.S. 93A-2; 93A-3(c); 93A-4; 93A-4.1; 93A-4.1(c)(8); 93A-4.1(e); 93A-4.2; 93A-9; 93A-9(a); Eff. September 1, 1983; Amended Eff. July 1, 2014; May 1, 2013; July 1, 2010; July 1, 2009; January 1, 2008; April 1, 2006; July 1, 2005; July 1, 2004; April 1, 2004; September 1, 2002; July 1, 2001; October 1, 2000; August 1, 1998; April 1, 1997; July 1, 1995; July 1, 1994.*

## **21 NCAC 58A .0112 OFFERS AND SALES CONTRACTS**

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

- (1) the names of the buyer and seller;
- (2) a legal description of the real property sufficient to identify and distinguish it from all other property;
- (3) an itemization of any personal property to be included in the transaction;
- (4) the purchase price and manner of payment;
- (5) any portion of the purchase price that will be paid by a promissory note, including the amount, interest rate, payment terms, whether or not the note is to be secured, and any other terms contained in the promissory note deemed material by the parties;
- (6) any portion of the purchase price that is to be paid by the assumption of an existing loan, including the amount of such loan, costs to be paid by the buyer or seller, the interest rate and number of discount points and a condition that the buyer must be able to qualify for the assumption of the loan and must make every reasonable effort to qualify for the assumption of the loan;
- (7) the amount of earnest money, if any, the method of payment, the name of the broker or firm that will serve as escrow agent, an acknowledgment of earnest money receipt by the escrow agent, and the criteria for determining disposition of the earnest money, including disputed earnest money, consistent with Commission Rule .0116 of this Subchapter;
- (8) any loan that must be obtained by the buyer as a condition of the contract, including the amount and type of loan, interest rate and number of discount points, loan term, and who shall pay loan closing costs, and a condition that the buyer shall make every reasonable effort to obtain the loan;

- (9) a general statement of the buyer's intended use of the property and a condition that such use must not be prohibited by private restriction or governmental regulation;
  - (10) the amount and purpose of any special assessment to which the property is subject and the responsibility of the parties for any unpaid charges;
  - (11) the date for closing and transfer of possession;
  - (12) the signatures of the buyer and seller;
  - (13) the date of offer and acceptance;
  - (14) a provision that title to the property must be delivered at closing by general warranty deed and must be fee simple marketable title, free of all encumbrances except *ad valorem* taxes for the current year, utility easements, and any other encumbrances specifically approved by the buyer or a provision otherwise describing the estate to be conveyed with encumbrances, and the form of conveyance;
  - (15) the items to be prorated or adjusted at closing;
  - (16) who shall pay closing expenses;
  - (17) the buyer's right to inspect the property prior to closing and who shall pay for repairs and improvements, if any;
  - (18) a provision that the property shall at closing be in substantially the same condition as on the date of the offer (reasonable wear and tear excepted), or a description of the required property condition at closing;
  - (19) a provision setting forth the identity of each real estate agent and firm involved in the transaction and disclosing the party each agent and firm represents; and
  - (20) any other provisions or disclosures required by statute or rule.
- (b) A broker acting as an agent in a real estate transaction shall not use a preprinted offer or sales contract form containing:
- (1) any provision concerning the payment of a commission or compensation, including the forfeiture of earnest money, to any broker or firm; or
  - (2) any provision that attempts to disclaim the liability of a broker for his or her representations in connection with the transaction.

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

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

*History Note: Authority G.S. 93A-3(c);  
Eff. July 1, 1988;  
Amended Eff. July 1, 2014; July 1, 2010; July 1, 2009; April 1, 2006; October 1, 2000; July 1, 1995; July 1, 1989; February 1, 1989.*

**21 NCAC 58A .0114 RESIDENTIAL PROPERTY AND OWNERS' ASSOCIATION DISCLOSURE STATEMENT**

(a) Every owner of real property subject to a transfer of the type governed by Chapter 47E of the General Statutes shall complete the following Residential Property and Owners' Association Disclosure Statement and furnish a copy of the complete statement to a purchaser in accordance with the requirements of G.S. 47E-4. The form shall bear the seal of the North Carolina Real Estate Commission and shall read as follows:

[N.C. REAL ESTATE COMMISSION SEAL]

**STATE OF NORTH CAROLINA  
RESIDENTIAL PROPERTY AND OWNERS' ASSOCIATION DISCLOSURE STATEMENT**

**Instructions to Property Owners**

1. The Residential Property Disclosure Act (G.S. 47E) ("Disclosure Act") requires owners of residential real estate (single-family homes, individual condominiums, townhouses, and the like, and buildings with up to four dwelling units) to furnish purchasers a Residential Property and Owners' Association Disclosure Statement ("Disclosure Statement"). This form is the only one approved for this purpose. A disclosure statement must be furnished in connection with the sale, exchange, option, and sale under a lease with option to purchase where the tenant does not occupy or intend to occupy the dwelling. A disclosure statement is not required for some transactions, including the first sale of a dwelling which has never been inhabited and transactions of residential property made pursuant to a lease with option to purchase where the lessee occupies or intends to occupy the dwelling. For a complete list of exemptions, see G.S. 47E-2.
2. You must respond to each of the questions on the following pages of this form by filling in the requested information or by placing a check (✓) in the appropriate box. In responding to questions, you are only obligated to disclose information about which you have actual knowledge.
  - a. If you check "Yes" for any question, you must explain your answer and either describe any problem or attach a report from an attorney, engineer, contractor, pest control operator or other expert or public agency describing it. If you attach a report, you will not be liable for any inaccurate or incomplete information contained in it so long as you were not grossly negligent in obtaining or transmitting the information.
  - b. If you check "No," you are stating that you have no actual knowledge of any problem. If you check "No" and you know there is a problem, you may be liable for making an intentional misstatement.
  - c. If you check "No Representation," you are choosing not to disclose the conditions or characteristics of the property, even if you have actual knowledge of them or should have known of them.
  - d. If you check "Yes" or "No" and something happens to the property to make your Disclosure Statement incorrect or inaccurate (for example, the roof begins to leak), you must promptly give the purchaser a corrected Disclosure Statement or correct the problem.
3. If you are assisted in the sale of your property by a licensed real estate broker, you are still responsible for completing and delivering the Disclosure Statement to the purchasers; and the broker must disclose any material facts about your property which he or she knows or reasonably should know, regardless of your responses on the Statement.
4. You must give the completed Disclosure Statement to the purchaser no later than the time the purchaser makes an offer to purchase your property. If you do not, the purchaser can, under certain conditions, cancel any resulting contract (See "**Note to Purchasers**" below). You should give the purchaser a copy of the Disclosure Statement containing your signature and keep a copy signed by the purchaser for your records.

**Note to Purchasers**

If the owner does not give you a Residential Property and Owners' Association Disclosure Statement by the time you make your offer to purchase the property, you may under certain conditions cancel any resulting contract without penalty to you as the purchaser. To cancel the contract, you must personally deliver or mail written notice of your decision to cancel to the owner or the owner's agent within three calendar days following your receipt of the Disclosure Statement, or three calendar days following the date of the contract, whichever occurs first. However, in no event does the Disclosure Act permit you to cancel a contract after settlement of the transaction or (in the case of a sale or exchange) after you have occupied the property, whichever occurs first.

5. In the space below, type or print in ink the address of the property (sufficient to identify it) and your name. Then sign and date.

Property Address: \_\_\_\_\_  
 Owner's Name(s): \_\_\_\_\_  
*Owner(s) acknowledge(s) having examined this Disclosure Statement before signing and that all information is true and correct as of the date signed.*

Owner Signature: _____	Date _____, ____
Owner Signature: _____	Date _____, ____
<i>Purchasers acknowledge receipt of a copy of this Disclosure Statement; that they have examined it before signing; that they understand that this is not a warranty by owners or owners' agents; that it is not a substitute for any inspections they may wish to obtain; and that the representations are made by the owners and not the owners' agents or subagents. Purchasers are strongly encouraged to obtain their own inspections from a licensed home inspector or other professional. As used herein, words in the plural include the singular, as appropriate.</i>	
Purchaser Signature: _____	Date _____, ____
Purchaser Signature: _____	Date _____, ____

Property Address/Description: \_\_\_\_\_  
 \_\_\_\_\_

**The following questions address the characteristics and condition of the property identified above about which the owner has *actual knowledge*. Where the question refers to "dwelling," it is intended to refer to the dwelling unit, or units if more than one, to be conveyed with the property. The term "dwelling unit" refers to any structure intended for human habitation.**

- |   | Yes                      | No                       | No<br>Repre-<br>sentation |
|---|--------------------------|--------------------------|---------------------------|
| 1. In what year was the dwelling constructed? _____<br>Explain if necessary: _____  |                          |                          | <input type="checkbox"/>  |
| 2. Is there any problem, malfunction or defect with the dwelling's foundation, slab, fireplaces/chimneys, floors, windows (including storm windows and screens), doors, ceilings, interior and exterior walls, attached garage, patio, deck or other structural components including any modifications to them?   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>  |
| 3. The dwelling's exterior walls are made of what type of material? <input type="checkbox"/> Brick Veneer <input type="checkbox"/> Wood<br><input type="checkbox"/> Stone <input type="checkbox"/> Vinyl <input type="checkbox"/> Synthetic Stucco <input type="checkbox"/> Composition/Hardboard <input type="checkbox"/> Concrete <input type="checkbox"/> Fiber<br>Cement <input type="checkbox"/> Aluminum <input type="checkbox"/> Asbestos <input type="checkbox"/> Other _____<br>(Check all that apply) |                          |                          | <input type="checkbox"/>  |
| 4. In what year was the dwelling's roof covering installed? _____<br>(Approximate if no records are available.) Explain if necessary:<br>_____  |                          |                          | <input type="checkbox"/>  |
| 5. Is there any leakage or other problem with the dwelling's roof?  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>  |
| 6. Is there any water seepage, leakage, dampness or standing water in the dwelling's basement, crawl space, or slab?  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>  |
| 7. Is there any problem, malfunction or defect with the dwelling's electrical system (outlets, wiring, panel, switches, fixtures, generator, etc.)?   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>  |
| 8. Is there any problem, malfunction or defect with the dwelling's plumbing system (pipes, fixtures, water heater, etc.)?   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>  |
| 9. Is there any problem, malfunction or defect with the dwelling's heating and/or air conditioning?   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>  |
| 10. What is the dwelling's heat source? <input type="checkbox"/> Furnace <input type="checkbox"/> Heat Pump <input type="checkbox"/> Baseboard<br><input type="checkbox"/> Other _____ (Check all that apply)<br>Age of system: _____   |                          |                          | <input type="checkbox"/>  |

11. What is the dwelling's cooling source?  Central Forced Air  Wall/Window Unit(s)   
 Other \_\_\_\_\_ (Check all that apply)  
 Age of system: \_\_\_\_\_
12. What is the dwelling's fuel sources?  Electricity  Natural Gas  Propane  Oil   
 Other \_\_\_\_\_ (Check all that apply)  
 If the fuel source is stored in a tank, identify whether the tank is  above ground or   
 below ground, and whether the tank is  leased by seller or  owned by seller.  
 (Check all that apply)
13. What is the dwelling's water supply source?  City/County  Community System   
 Private Well  Shared Well  Other \_\_\_\_\_  
 (Check all that apply)
14. The dwelling's water pipes are made of what type of material?  Copper  Galvanized   
 Plastic  Polybutylene  Other \_\_\_\_\_  
 (Check all that apply)
15. Is there any problem, malfunction or defect with the dwelling's water supply (including  
 water quality, quantity or water pressure)?
16. What is the dwelling's sewage disposal system?  Septic Tank  Septic Tank with Pump   
 Community System  Connected to City/County System  City/County System  
 available  
 Straight pipe (wastewater does not go into a septic or other sewer system [note: use of  
 this type of system violates State law])  Other \_\_\_\_\_  
 (Check all that apply)
17. If the dwelling is serviced by a septic system, do you know how many bedrooms are  
 allowed by the septic system permit? If your answer is "Yes," how many bedrooms are     
 allowed? \_\_\_\_\_  No records available.
18. Is there any problem, malfunction or defect with the dwelling's sewer and/or septic     
 system?
19. Is there any problem, malfunction or defect with the dwelling's central vacuum, pool, hot     
 tub, spa, attic fan, exhaust fan, ceiling fans, sump pump, irrigation system, TV cable  
 wiring or satellite dish, garage door openers, gas logs, or other systems?
20. Is there any problem, malfunction or defect with any appliances that may be included in     
 the conveyance (range/oven, attached microwave, hood/fan, dishwasher, disposal, etc.)?
21. Is there any problem with present infestation of the dwelling, or damage from past     
 infestation of wood destroying insects or organisms which has not been repaired?
22. Is there any problem, malfunction or defect with the drainage, grading or soil stability of     
 the property?
23. Are there any structural additions or other structural or mechanical changes to the     
 dwelling(s) to be conveyed with the property?
24. Is the property to be conveyed in violation of any local zoning ordinances, restrictive     
 covenants, or other land-use restrictions, or building codes (including the failure to obtain  
 proper permits for room additions or other changes/improvements)?
25. Are there any hazardous or toxic substances, materials, or products (such as asbestos,   
 formaldehyde, radon gas, methane gas, lead-based paint) which exceed government safety

- standards, any debris (whether buried or covered) or underground storage tanks, or any environmentally hazardous conditions (such as contaminated soil or water, or other environmental contamination) which affect the property?
26. Is there any noise, odor, smoke, etc. from commercial, industrial or military sources which affects the property?
27. Is the property subject to any utility or other easements, shared driveways, party walls or encroachments from or on adjacent property?
28. Is the property subject to any lawsuits, foreclosures, bankruptcy, leases or rental agreements, judgments, tax liens, proposed assessments, mechanics' liens, materialmens' liens, or notices from any governmental agency that could affect title to the property?
29. Is the property subject to a flood hazard or is the property located in a federally-designated flood hazard area?
30. Does the property abut or adjoin any private road(s) or street(s)?
31. If there is a private road or street adjoining the property, is there in existence any owners' association or maintenance agreements dealing with the maintenance of the road or street?

**If you answered "yes" to any of the questions listed above (1-31) please explain (attach additional sheets if necessary):**

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In lieu of providing a written explanation, you may attach a written report to this Disclosure Statement by a public agency, or by an attorney, engineer, land surveyor, geologist, pest control operator, contractor, home inspector, or other expert, dealing with matters within the scope of that public agency's functions or the expert's license or expertise.

**The following questions pertain to the property identified above, including the lot to be conveyed and any dwelling unit(s), sheds, detached garages, or other buildings located thereon.**

- |   | Yes                      | No                       | No Representation        |
|---|--------------------------|--------------------------|--------------------------|
| 32. To your knowledge, is the property subject to regulation by one or more owners' association(s) or governing documents which impose various mandatory covenants, conditions, and restrictions upon the lot, including, but not limited to obligations to pay regular assessment or dues and special assessments? If your answer is "yes," please provide the information requested below as to each owners' association to which the property is subject [insert N/A into any blank that does not apply]:<br>(specify name) _____ whose regular assessments ("dues") are \$ _____ per _____. The name, address and telephone number of the president of the owners' association or the association manager are _____ | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| (specify name) _____ whose regular assessments ("dues") are \$ _____ per _____. The name, address and telephone number of the president of the owners' association or the association manager are _____   |                          |                          |                          |

**\* If you answered "Yes" to question 32 above, you must complete the remainder of this Disclosure Statement. If you answered "No" or "No Representation" to question 32 above, you do not need to answer the remaining questions on this Disclosure Statement. Skip to the bottom of the last page and initial and date the page.**

	Yes	No	No Representation
33. Are any fees charged by the association or by the association's management company in connection with the conveyance or transfer of the lot or property to a new owner? If your answer is "yes," please state the amount of the fees:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

\_\_\_\_\_  
 \_\_\_\_\_

34. As of the date this Disclosure Statement is signed, are there any dues, fees or special assessment which have been duly approved as required by the applicable declaration or by-laws, and that are payable to an association to which the lot is subject? If your answer is "yes," please state the nature and amount of the dues, fees or special assessments to which the property is subject:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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\_\_\_\_\_  
 \_\_\_\_\_

35. As of the date this Disclosure Statement is signed, are there any unsatisfied judgments against or pending lawsuits involving the property or lot to be conveyed? If your answer is "yes," please state the nature of each pending lawsuit and the amount of each unsatisfied judgment:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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\_\_\_\_\_  
 \_\_\_\_\_

36. As of the date this Disclosure Statement is signed, are there any unsatisfied judgments against or pending lawsuits involving the planned community or the association to which the property and lot are subject, with the exception of any action filed by the association for the collection of delinquent assessments on lots other than the property and lot to be conveyed? If your answer is "yes," please state the nature of each pending lawsuit and the amount of each unsatisfied judgment:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
--	--------------------------	--------------------------	--------------------------

\_\_\_\_\_  
 \_\_\_\_\_

37. Which of the following services and amenities are paid for by the owners' association(s) identified above out of the association's regular assessments ("dues")? (Check all that apply.)

	Yes	No	No Representation
Management Fees	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Exterior Building Maintenance of Property to be Conveyed	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Exterior Yard/Landscaping Maintenance of Lot to be Conveyed	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Common Areas Maintenance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Trash Removal	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Recreational Amenity Maintenance (specify amenities covered) _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____ Pest Treatment/Extermination	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Street Lights	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Water	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sewer	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Storm Water Management/Drainage/Ponds	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Internet Service	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Cable	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Private Road Maintenance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Parking Area Maintenance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Gate and/or Security	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other: (specify)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

\_\_\_\_\_

\_\_\_\_\_

Owner Initials and Date \_\_\_\_\_

Owner Initials and Date \_\_\_\_\_

Purchaser Initials and Date \_\_\_\_\_

Purchaser Initials and Date \_\_\_\_\_

(b) The form described in Paragraph (a) of this Rule may be reproduced, but the text of the form shall not be altered or amended in any way.

(c) The form described in Paragraph (a) of this Rule as amended effective July 1, 2014 applies to all properties placed on the market on or after July 1, 2014. The form described in Paragraph (a) of this Rule as amended effective January 1, 2013, applies to all properties placed on the market prior to July 1, 2014. If a corrected disclosure statement required by G.S. 47E-7 is prepared on or after July 1, 2014, for a property placed on the market prior to July 1, 2014, the form described in Paragraph (a) of this Rule as amended effective July 1, 2014, shall be used.

*History Note: Authority G.S. 47E-4(b); 47E-4(b1); 93A-3(c); 93A-6; Eff. October 1, 1998; Amended Eff. July 1, 2014; January 1, 2013; January 1, 2012; July 1, 2010; July 1, 2009; January 1, 2008; July 1, 2006; September 1, 2002; July 1, 2000.*

**21 NCAC 58A .0117 ACCOUNTING FOR TRUST MONEY**

(a) A broker shall create, maintain and retain records sufficient to identify the ownership of all funds belonging to others. Such records shall be sufficient to show proper deposit and disbursement of such funds into and from a trust or escrow account and to verify the accuracy and proper use of the trust or escrow account.

(b) A trust or escrow account shall satisfy the requirements of G.S. 93A-6(g) and shall be designated as a "Trust Account" or "Escrow Account." All bank statements, deposit tickets and checks drawn on said account shall bear the words "Trust Account" or "Escrow Account." A trust account shall provide for the full withdrawal of funds on demand without prior notice and without penalty or deduction to the funds.

(c) A broker shall create, maintain or retain, as required by Rule .0108 of this Section, the following records:

- (1) bank statements;
- (2) canceled checks and other evidence or memoranda of payments from the trust or escrow account, whether by transfer between accounts, wire payments, or payments by electronic means, that shall be referenced to the corresponding journal entry or check stub entries and to the corresponding sales transaction ledgers or for rental transactions, the corresponding property or owner ledgers. Checks and other evidence or memoranda of payments from the account shall identify the payee by name and shall bear a notation identifying the purpose of the disbursement. When a payment is used to disburse funds for more than one sales transaction, owner, or property, the check or other evidence or memoranda of payment shall bear a notation identifying each sales transaction, owner, or property for which disbursement is made, including the amount disbursed for each, and the corresponding sales transaction, property, or owner ledger entries. When necessary, the check notation may refer to the required information recorded on a supplemental disbursement worksheet that shall be cross-referenced to the corresponding check or payment. In lieu of retaining canceled checks, a broker may retain digitally imaged copies of the canceled checks or substitute checks provided that such images are legible reproductions of the front and back of such instruments with no smaller images than 1.1875 x 3.0 inches and provided that the broker's bank retains for a period of at least five years the original checks, "substitute checks" as described in 12 C.F.R. 229.51 or the capacity to provide substitute checks as described in 12 C.F.R. 229.51 and

makes the original or substitute checks available to the broker and the Commission upon request. The description of "substitute checks" contained in 12 C.F.R. 229.51 is incorporated by referencing, including subsequent amendments and additions. The regulation may be accessed at [www.gpo.gov](http://www.gpo.gov) at no charge.

- (3) deposit tickets or other evidence or memoranda of deposits or payments into the account, whether by transfer between accounts, wire payments, or payments by electronic means:
  - (A) for a sales transaction, the deposit ticket or other evidence or memoranda of deposits or payments into the account shall identify the purpose and remitter of the funds deposited, the property, the parties involved, and a reference to the corresponding sales transaction ledger;
  - (B) for a rental transaction, the deposit ticket or other evidence or memoranda of deposits or payments into the account shall identify the purpose and remitter of the funds deposited, the tenant, and the corresponding property or owner ledger;
  - (C) for deposits of funds belonging to or collected on behalf of a property owner association, the deposit ticket or other evidence or memoranda of deposits or payments into the account shall identify the property or property interest for which the payment is made, the property or interest owner, the remitter, and the purpose of the payment;
  - (D) when a single deposit ticket or payment is used to deposit funds collected for more than one sales transaction, property owner, or property, the required information may either be recorded on the ticket or other evidence or memoranda of deposits or payments into the account for each sales transaction, owner, or property, or it may refer to the same information recorded on a supplemental deposit worksheet that shall be cross-referenced to the corresponding deposit ticket;
- (4) a separate ledger for each sales transaction, for each property or owner of property managed by the broker and for company funds held in the trust account:
  - (A) the ledger for a sales transaction shall identify the property, the parties to the transaction, the amount, date, and purpose of the deposits and from whom received, the amount, date, check number, and purpose of disbursements and to whom paid, and the running balance of funds on deposit for each deposit and disbursement entry;
  - (B) the ledger for a rental transaction shall identify the particular property or owner of property, the tenant, the amount, date, and purpose of the deposits and from whom received, the amount, date, check number, and purpose of disbursements and to whom paid, and the running balance of funds on deposit for each deposit and disbursement entry. Monies held as tenant security deposits in connection with rental transactions may be accounted for on a separate tenant security deposit ledger for each property or owner of property managed by the broker. For each security deposit, the tenant security deposit ledger shall identify the remitter, the date the deposit was paid, the amount, the tenant, landlord, and subject property as well as the check number, amount, date, payee, purpose and a running balance for each disbursement. When tenant security deposit monies are accounted for on a separate ledger as provided in this Rule, deposit tickets, canceled checks and supplemental worksheets shall reference the corresponding tenant security deposit ledger entries;
  - (C) a broker may maintain a maximum of one hundred dollars (\$100.00) in company funds in a trust account for the purpose of paying service charges incurred by the account. In the event that the services charges exceed one hundred dollars (\$100.00) monthly, the broker may deposit an amount each month sufficient to cover the service charges. A broker shall maintain a separate ledger for company funds held in the trust account identifying the date, amount and running balance for each deposit and disbursement;
- (5) a general journal, check register or check stubs identifying in chronological order each bank deposit and disbursement of monies to and from the trust or escrow account, including the amount and date of each deposit and a reference to the corresponding deposit ticket and any supplemental deposit worksheet, and the amount, date, check number, and purpose of disbursements and to whom paid. The journal or check stubs shall also show a running balance for each entry into the account;
- (6) a payment record for each property or interest for which funds are collected and deposited into a property owner association trust account as required by Rule .0118 of this Section. Payment record(s) shall identify the amount, date, remitter, and purpose of payments received, the amount

- and nature of the obligation for which payments are made, and the amount of any balance due or delinquency;
- (7) copies of earnest money checks, due diligence fee checks, receipts for cash payments, contracts, and closing statements in sales transactions;
  - (8) copies of leases, security deposit checks, property management agreements, property management statements, and receipts for cash payments in leasing transactions;
  - (9) copies of covenants, bylaws, minutes, management agreements and periodic statements relating to the management of property owner associations;
  - (10) copies of invoices, bills, and contracts paid from the trust account; and
  - (11) copies of any documents not otherwise described in this Rule that are necessary to verify and explain record entries.
- (d) Records of all receipts and disbursements of trust or escrow monies shall be maintained in such a manner as to create an audit trail from deposit tickets and canceled checks to check stubs or journals and to the ledger sheets.
- (e) Brokers shall reconcile their trust or escrow accounts monthly. The trust account reconciliation shall be performed in the following manner as of a specific cutoff date selected by the broker:
- (1) a trial balance shall be prepared showing a list of the property or owner ledgers, their balances, and the total of all of the property or owner ledger balances as of the cutoff date;
  - (2) a bank statement shall be reconciled by deducting from the statement's ending balance the amount of any outstanding checks and then adding to the balance the amount of any deposits-in-transit as of the cutoff date; and
  - (3) the trial balance, reconciled bank statement balance, and the journal balance shall be compared as of the cutoff date. If the amounts on the trial balance, journal balance and reconciled bank balance do not agree, the broker shall investigate the reason for any variation between the balances and make the necessary corrections to bring the balances into agreement.
- A broker shall maintain and retain a worksheet for each monthly trust account reconciliation showing the balance of the journal or check stubs, the trial balance and the reconciled bank statement balance to be in agreement as of the cutoff date.
- (f) In addition to the records required by Paragraph (c) of this Rule, a broker acting as agent for the landlord of a residential property used for vacation rentals shall create and maintain either a subsidiary ledger sheet for each property or owner of such properties on which all funds collected and disbursed are identified in categories by purpose or an accounts payable ledger for each owner or property and each vendor to whom trust monies are due. If a broker maintains a subsidiary ledger, the broker shall reconcile the subsidiary ledgers to the corresponding property or property owner ledger on a monthly basis. If a broker maintains an accounts payable ledger, the broker shall record on the ledger monies collected on behalf of the owner or property identifying the date of receipt of the trust monies, from whom the monies were received, rental dates, and the corresponding property or owner ledger entry including the amount to be disbursed for each and the purpose of the disbursement. The broker may also maintain an accounts payable ledger in the format described above for vacation rental tenant security deposit monies and vacation rental advance payments.
- (g) Upon the written request of a client, a broker shall, no later than ten days after receipt of the request, furnish the client with copies of any records retained as required by Rule .0108 of this Section that pertain to the transaction to which the client was a party.
- (h) All trust or escrow account records shall be made available for inspection by the Commission or its authorized representatives in accordance with Rule .0108 of this Section.

*History Note: Authority G.S. 93A-3(c); 93A-6;  
Eff. April 1, 2013;  
Amended Eff. July 1, 2014.*

## **21 NCAC 58A .0118 TRUST MONEY BELONGING TO PROPERTY OWNERS' ASSOCIATIONS**

(a) The funds of a property owners' association, when collected, maintained, disbursed or otherwise controlled by a broker, are trust money and shall be treated as such in the manner required by Rules .0116 and .0117 of this Section. Such trust money shall be deposited into and maintained in a trust or escrow account dedicated exclusively for trust money belonging to a single property owners' association and shall not be commingled with funds belonging to other property owners' associations or other persons or parties. A broker who undertakes to act as manager of a property owners' association or as the custodian of trust money belonging to a property owners' association shall provide the association with periodic statements that report the balance of association trust money in the broker's possession or control and account for the trust money the broker has received and disbursed on behalf of the

association. Such statements must be made in accordance with the broker's agreement with the association, but not less frequently than every 90 days.

(b) A broker who receives trust money belonging to a property owners' association in his or her capacity as an officer of the association in a residential development in which the broker is a property owner and for which the broker receives no compensation is exempt from the requirements of Rules .0116 and .0117 of this Section. However, the broker shall not convert trust money belonging to the association to his or her own use, apply such money or property to a purpose other than that for which it was intended or permit or assist any other person in the conversion or misapplication of such money or property.

*History Note: Authority G.S. 93A-3(c); 93A-6;  
Eff. April 1, 2013;  
Amended Eff. July 1, 2014.*

## **21 NCAC 58A .0404 EXAMINATION RELATED CONDUCT**

(a) When taking a license examination, an applicant shall not:

- (1) cheat or attempt to cheat on the examination by any means, including giving or receiving assistance or using notes of any type;
- (2) communicate with any person other than an examination supervisor for any purpose in any manner;
- (3) have in his or her possession or utilize in any manner study materials or notes or any device that may be used to:
  - (A) communicate with others;
  - (B) access information; or
  - (C) record or store photographs, visual images, audio or other information about the examination;
- (4) have in his or her possession or utilize a calculator that:
  - (A) permits the storage, entry or retrieval of alphabetic characters; or
  - (B) is not silent, hand-held and either battery-powered or solar-powered;
- (5) have in his or her possession a wallet, pocketbook, bag or similar item that can be used to store materials prohibited by this Rule;
- (6) refuse to demonstrate to the examination supervisor that pockets on any item of clothing do not contain materials prohibited by this Rule;
- (7) leave or attempt to leave the testing area with any materials provided for the purpose of taking the examination or with any information, notes or other information about the content of the examination; or
- (8) refuse to comply with the instructions of the Commission and the Commission's test provider for taking the examination; or
- (9) disrupt in any manner the administration of the examination.

(b) Violation of this Rule shall result in dismissal from an examination, invalidation of examination scores, forfeiture of examination and application fees and denial of a real estate license, as well as for disciplinary action if the applicant has been issued a license.

*History Note: Authority G.S. 93A-4(d);  
Eff. December 1, 1985;  
Amended Eff. July 1, 2014; April 1, 2006; July 1, 2000.*

## **21 NCAC 58A .0502 BUSINESS ENTITIES**

(a) Every business entity other than a sole proprietorship shall apply for and obtain from the Commission a firm license prior to engaging in business as a real estate broker. An entity that changes its business form other than by conversion shall submit a new license application upon making the change and obtain a new firm license. An entity which converts to a different business entity in conformity with and pursuant to applicable North Carolina General Statutes is not required to apply for a new license. However, such converted entity shall provide the information required by this Paragraph in writing to the Commission within 10 days of the conversion and shall include the duplicate license fee prescribed in Rule .0509 of this Section to have the firm license reissued in the legal name of the converted entity. Incomplete applications shall not be acted upon by the Commission. Application forms for partnerships, corporations, limited liability companies, associations and other business entities required to be licensed as brokers shall be available on the Commission's website at [www.ncrec.gov](http://www.ncrec.gov) or upon request to the Commission and shall require the applicant to set forth:

- (1) the name of the entity;
- (2) the name under which the entity will do business;
- (3) the type of business entity;
- (4) the address of its principal office;
- (5) the entity's NC Secretary of State Identification Number if it is required to be registered with the Office of the NC Secretary of State;
- (6) the name, real estate license number and signature of the proposed qualifying broker for the proposed firm;
- (7) the address of and name of the proposed broker-in-charge for each office as defined in Rule .0110(a) of this Subchapter, along with a completed broker-in-charge declaration form for each proposed broker-in-charge;
- (8) any past criminal conviction of and any pending criminal charge against any principal in the company or any proposed broker-in-charge;
- (9) any past revocation, suspension or denial of a business or professional license of any principal in the company or any proposed broker-in-charge;
- (10) if a general partnership, a full description of the applicant entity, including a copy of its written partnership agreement or if no written agreement exists, a written description of the rights and duties of the several partners;
- (11) if a business entity other than a corporation, limited liability company or partnership, a description of the organization of the applicant entity, including a copy of its organizational documents evidencing its authority to engage in real estate brokerage;
- (12) if a foreign business entity, a certificate of authority to transact business in North Carolina and an executed consent to service of process and pleadings; and
- (13) any other information required by this Rule.

When the authority of a business entity to engage in the real estate business is unclear in the application or in law, the Commission shall require the applicant to declare in the license application that the applicant's organizational documents authorize the firm to engage in the real estate business and to submit organizational documents, addresses of affiliated persons and similar information. For purposes of this Rule, the term "principal," when it refers to a person or entity, means any person or entity owning 10 percent or more of the business entity, or who is an officer, director, manager, member, partner or who holds any other comparable position.

(b) After filing a written application with the Commission and upon a showing to the Commission that one principal of the business entity holds a broker license on active status and in good standing who will serve as qualifying broker of the entity, the entity shall be licensed provided it appears to the Commission that the applicant entity employs and is directed by personnel possessed of the requisite character and fitness required of applicants for a broker license by G.S. 93A-4(b). The qualifying broker of a partnership of any kind must be a general partner of the partnership; the qualifying broker of a limited liability company must be a manager of the company; and the qualifying broker of a corporation must be an officer of the corporation. A licensed business entity may serve as the qualifying broker of another licensed business entity if the qualifying broker-entity has as its qualifying broker a natural person who is licensed as a broker. The natural person who is qualifying broker shall assure to the Commission the performance of the qualifying broker's duties with regard to both entities. A provisional broker may not serve as a qualifying broker.

(c) The licensing of a business entity shall not be construed to extend to the licensing of its partners, managers, members, directors, officers, employees or other persons acting for the entity in their individual capacities regardless of whether they are engaged in furthering the business of the licensed entity.

(d) The qualifying broker of a business entity shall assume responsibility for:

- (1) designating and assuring that there is at all times a broker-in-charge for each office and branch office of the entity as "office" and "branch office" are defined in Rule .0110(a) of this Subchapter;
- (2) renewing the real estate broker license of the entity;
- (3) retaining the firm's renewal pocket card at the firm and producing it as proof of firm licensure upon request and maintaining a photocopy of the firm license certificate and pocket card at each branch office thereof;
- (4) notifying the Commission of any change of business address or trade name of the entity and the registration of any assumed business name adopted by the entity for its use;
- (5) notifying the Commission in writing of any change of his or her status as qualifying broker within ten days following the change;
- (6) securing and preserving the transaction and trust account records of the firm whenever there is a change of broker-in-charge at the firm or any office thereof and notifying the Commission if the

- trust account records are out of balance or have not been reconciled as required by Rule .0117 of this Subchapter;
- (7) retaining and preserving the transaction and trust account records of the firm upon termination of his or her status as qualifying broker until a new qualifying broker has been designated with the Commission or, if no new qualifying broker is designated, for the period of time records are required to be retained by Rule .0108 of this Subchapter; and
  - (8) notifying the Commission if, upon the termination of his or her status as qualifying broker, the firm's transaction and trust account records cannot be retained or preserved or if the trust account records are out of balance or have not been reconciled as required by Rule .0117 of this Subchapter.

(e) Every licensed business entity and every entity applying for licensure shall conform to all the requirements imposed upon it by the North Carolina General Statutes for its continued existence and authority to do business in North Carolina. Failure to conform to such requirements shall be grounds for disciplinary action or denial of the entity's application for licensure. Upon receipt of notice from an entity or agency of this State that a licensed entity has ceased to exist or that its authority to engage in business in this State has been terminated by operation of law, the Commission shall cancel the license of the entity.

*History Note:* Authority G.S. 55-11A-04; 93A-3(c); 93A-4(a); 93A-4(b); 93A-4(d);  
 Eff. February 1, 1976;  
 Readopted Eff. September 30, 1977;  
 Amended Eff. July 1, 2014; July 1, 2009; January 1, 2008; April 1, 2006; July 1, 2005; April 1, 2004; July 1, 2003; October 1, 2000; August 1, 1998; January 1, 1997; July 1, 1994; May 1, 1990.

**21 NCAC 58A .0503 LICENSE RENEWAL; PENALTY FOR OPERATING WHILE LICENSE EXPIRED**

- (a) All real estate licenses issued by the Commission under G.S. 93A, Article 1 shall expire on the 30th day of June following issuance. Any broker desiring renewal of his or her license shall apply for renewal within 45 days prior to license expiration by submitting an electronic renewal application on the Commission's website at www.ncrec.gov and submitting with the electronic application the required renewal fee of forty-five dollars (\$45.00). A broker who does not have the ability to renew online may renew by calling the Commission's office during normal business hours posted on the Commission's website. Every individual broker shall provide on his or her renewal application an email address to be used by the Commission to communicate with the broker. The email address may be designated by the broker as private in order to be exempt from public records disclosures pursuant to G.S. 93A-4(b2). A broker who does not have an email address shall so state on the renewal application. A broker is not required to obtain an email address to comply with this Rule.
- (b) Any person desiring to renew his or her license on active status shall, upon the second renewal of such license following initial licensure, and upon each subsequent renewal, have obtained all continuing education required by G.S. 93A-4.1 and Rule .1702 of this Subchapter.
- (c) A person renewing a license on inactive status shall not be required to have obtained any continuing education in order to renew such license; however, in order to change his or her license from inactive status to active status, the broker must satisfy the continuing education requirement prescribed in Rule .1703 or .1711 of this Subchapter.
- (d) Any person or firm that engages in the business of a real estate broker while his, her, or its license is expired shall be subject to the penalties prescribed in G.S. 93A-6.

*History Note:* Authority G.S. 93A-3(c); 93A-4(b2); 93A-4(c); 93A-4(d); 93A-4.1; 93A-4.1(a); 93A-4.1(c)(8); 93A-6;  
 Eff. February 1, 1976;  
 Readopted Eff. September 30, 1977;  
 Amended Eff. July 1, 1994; February 1, 1991; February 1, 1989;  
 Temporary Amendment Eff. April 24, 1995 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;  
 Amended Eff. July 1, 2014; April 1, 2013; April 1, 2006; January 1, 2006; July 1, 2004; December 4, 2002; April 1, 1997; July 1, 1996; August 1, 1995.

**21 NCAC 58A .1702 CONTINUING EDUCATION REQUIREMENT**

- (a) Except as provided in Rules.1708 and .1711 of this Section, in order to renew a broker license on active status, the person requesting renewal of a license shall, upon the second renewal of such license following initial licensure,

and upon each subsequent annual renewal, have completed, within one year preceding license expiration, eight classroom hours of real estate continuing education in courses approved by the Commission as provided in Subchapter 58E. Four of the required eight classroom hours must be obtained each license period by completing a mandatory update course developed annually by the Commission and known as the "General Update Course," the subject matter of which is described in Rule 58E .0102, except that a broker-in-charge or broker who is broker-in-charge eligible shall complete the "Broker-In-Charge Update Course" in lieu of the "General Update Course" as set forth in Rule .0110 of this Subchapter. The remaining four hours shall be obtained by completing one or more Commission-approved elective courses described in Rule .0305 of Subchapter 58E. The broker shall provide upon request of the Commission, evidence of continuing education course completion.

(b) No continuing education shall be required to renew a broker license on inactive status. In order to change a license from inactive status to active status, the broker must satisfy the continuing education requirement described in Rule .1703 of this Section.

(c) No continuing education shall be required for a broker who is a member of the U.S. Congress or the North Carolina General Assembly in order to renew his or her license on active status.

(d) The terms "active status" and "inactive status" are defined in Rule .0504 of this Subchapter. For continuing education purposes, the term "initial licensure" shall include the first time that a license of a particular type is issued to a person, the reinstatement of a canceled, revoked or surrendered license, and any license expired for more than six months.

*History Note:* Authority G.S. 93A-3(c); 93A-4.1; 93A-4.1(c)(7); 93A-4.1(c)(8);  
Eff. July 1, 1994;  
Amended Eff. July 1, 2014; April 1, 2006; July 1, 2005; April 1, 2004; October 1, 2000; August 1, 1998; July 1, 1996.

## **21 NCAC 58A .1709 EXTENSIONS OF TIME TO COMPLETE CONTINUING EDUCATION**

(a) A broker on active status may request and be granted an extension of time to satisfy the continuing education requirement for a particular license period if the broker provides evidence to the Commission that he or she was unable to obtain the necessary education due to an incapacitating illness, military deployment, or other circumstance that existed for a substantial portion of the license period and that constituted a severe hardship evidenced by supporting documentation, such as a written physician's statement, deployment orders, or other corroborative evidence, such that compliance with the continuing education requirement would have been impossible or burdensome.

(b) The Commission shall not grant an extension of time to satisfy the continuing education requirement for reasons of business or personal conflicts.

(c) The Commission shall not grant such an extension of time when the broker's inability to obtain the required education in a timely manner was unreasonable delay on the part of the broker in obtaining such education.

(d) If an extension of time is granted, the broker shall be permitted to renew his or her license on active status but the license shall be automatically changed to inactive status at the end of the extension period unless the broker satisfies the continuing education requirement prior to that time.

(e) If an extension of time is not granted, the broker may either satisfy the continuing education requirement prior to expiration of the license period or renew his or her license on inactive status.

(f) In no event shall an extension of time be granted that extends the continuing education deadline beyond June 10 of the license year following the license year in which the request is made.

(g) The broker's request for an extension of time shall be submitted on a form prescribed by the Commission and must be received by the Commission on or before June 10 of the license year for which the extension is sought. The form for requesting an extension of time to satisfy the continuing education requirement shall include the broker's name, mailing address, license number, telephone number, email address, and a description of the incapacitating illness or other circumstance upon which the request for extension of time is based. The form can be obtained on the Commission's website at [www.ncrec.gov](http://www.ncrec.gov), or upon request to the Commission.

*History Note:* Authority G.S. 93A-3(c); 93A-4.1;  
Eff. July 1, 1994;  
Amended Eff. August 1, 2014; October 1, 2000.

## **21 NCAC 58A .1808 TRUST MONIES**

A nonresident commercial broker acting as real estate broker in North Carolina shall deliver to the North Carolina resident broker with whom he or she is affiliated all money belonging to others received in connection with the nonresident commercial broker's acts or services as a broker. Upon receipt of the funds, the resident North Carolina broker shall cause the funds to be deposited in a trust account in accordance with the provisions of Rule .0116 of this Subchapter.

*History Note:* Authority G.S. 93A-4; 93A-6(d); 93A-6(g); 93A-9;  
Eff. July 1, 2004;  
Amended Eff. July 1, 2014; April 1, 2006.

## **21 NCAC 58C .0209 ENROLLMENT PROCEDURES AND CONTRACTS**

(a) A school shall provide to a prospective student a copy of the school's bulletin prior to the time that a student becomes committed to payment of any portion of tuition or registration deposit without the right to a full refund.

(b) A school shall execute a written enrollment contract with each student after the school's bulletin has been provided to the student but prior to the beginning of the course for which the student is enrolling. The student shall be provided a copy of the enrollment contract at the time of signing. The enrollment contract shall be a separate document and shall not be combined with the school's bulletin into a single document. A school may utilize the school's copy of the enrollment contract to note a record of student tuition payments.

(c) A school's student enrollment contract shall include:

- (1) the student's name;
- (2) the contract date;
- (3) the title of the course(s) for which the student is enrolling;
- (4) the course schedule (beginning date, end date and meeting days and times);
- (5) the amount of tuition and other required fees;
- (6) a provision incorporating by reference the school's policies as described in the school's bulletin;
- (7) a provision whereby the school certifies that the school's bulletin has been provided to the student and that the student acknowledges receipt of the bulletin;
- (8) any provisions needed to address special accommodations or arrangements applicable to a particular student;
- (9) the signatures of both the student and a school official; and
- (10) the following prescribed text: "NOTICE: Pursuant to North Carolina Real Estate Commission Rule 21 NCAC 58A .1904, the Commission may deny or withdraw credit for a postlicensing course that a provisional broker begins taking while already enrolled in another postlicensing course at the same school or a different school if participating in the two courses concurrently results in the provisional broker attending postlicensing course sessions that total more than 21 classroom hours in any given seven-day period."

(d) Other than the amount of tuition and fees, an enrollment contract shall not address other school policies that are addressed in the school's bulletin.

*History Note:* Authority G.S. 93A-4; 93A-33;  
Eff. October 1, 1980;  
Transferred and Recodified from 21 NCAC 58A .1309 Eff. November 27, 1989;  
Amended Eff. July 1, 2014; January 1, 2008; April 1, 2006.

## **21 NCAC 58C .0221 TRANSFER OF SCHOOL OWNERSHIP**

(a) When ownership of a licensed school is transferred to a different legal entity, the school license is not transferable and shall terminate on the effective date of the transfer.

(b) All courses shall be completed by the effective date of the ownership transfer. The transferring owner shall report course completion to the Commission.

(c) The entity acquiring ownership shall obtain an original school license for each location where the school will conduct courses as required by G.S. 93A-34 and Rule .0202 of this Subchapter prior to advertising courses, registering students, accepting tuition, conducting courses, or otherwise engaging in any school operations.

*History Note:* Authority G.S. 93A-33; 93A-34; 93A-35;  
Eff. July 1, 2014.

## **21 NCAC 58C .0309 COURSE COMPLETION REPORTING**

(a) Schools shall provide a course completion certificate to each student who completes a prelicensing or postlicensing course in compliance with Commission rules and the school course completion standards. Each course completion certificate shall be on official school letterhead and identify the course, student and instructor. The certificate shall be signed by the director, dean or other school official responsible for supervising the conduct of the course.

(b) Schools shall prepare and submit to the Commission accurate reports verifying completion of a prelicensing or postlicensing course for each student who completes a prelicensing or postlicensing course in compliance with Commission rules and school course completion standards. Such reports shall include:

- (1) students' names (full legal name for prelicensing course students);
- (2) students' license numbers (for postlicensing course students);
- (3) students' unique identification number (for prelicensing course students);
- (4) course dates;
- (5) school and course code numbers;
- (6) instructor's name and code number (for prelicensing courses); and
- (7) course information.

(c) The report shall be transmitted by uploading the information to the Commission's website at [www.ncrec.gov](http://www.ncrec.gov) within seven calendar days following the course. Schools shall electronically submit with postlicensing course completion reports the per student fee prescribed by G.S 93A-4(a2).

*History Note:* Authority G.S. 93A-4(a); 93A-4(a2); 93A-4(d); 93A-33;  
Eff. September 1, 1979;  
Amended Eff. February 1, 1989; September 1, 1984; January 1, 1981;  
Transferred and Recodified from 21 NCAC 58A .1111 Eff. November 27, 1989;  
Amended Eff. July 1, 2014; July 1, 2009; January 1, 2008; April 1, 2006; July 1, 1994; May 1, 1990.

## **21 NCAC 58C .0310 COURSE RECORDS**

(a) Schools shall retain on file for three years copies of all enrollment, grade and attendance records and shall make such records available to the Commission upon request.

(b) Schools shall retain on file for two years a master copy of each final course examination that shall indicate the answer key, course title, course dates and name of instructor. Examination file copies shall be made available to the Commission upon request.

*History Note:* Authority G.S. 93A-4(a),(d); 93A-33;  
Eff. September 1, 1984;  
Recodified from Rule 58A .1105 (d) and (e) Eff. January 6, 1989;  
Transferred and Recodified from 21 NCAC 58A .1113 Eff. November 27, 1989;  
Amended Eff. July 1, 2014; October 1, 2000; May 1, 1990.

## **21 NCAC 58E .0102 UPDATE COURSE COMPONENT**

(a) To renew a license on active status, a real estate broker shall complete, within one year preceding license expiration and in addition to satisfying the continuing education elective requirement described in Rule.0302 of this Subchapter, a Commission-developed "General Update Course" described in Paragraph (b) of this Rule consisting of four classroom hours of instruction. A broker-in-charge or broker who is broker-in-charge eligible who desires to retain his or her broker-in-charge status or eligibility shall complete in lieu of the "General Update Course" a Commission-developed "Broker-In-Charge Update Course" consisting of four classroom hours of instruction, described in Paragraph (b) of this Rule and prescribed in Rule 58A .0110.

(b) The Commission shall develop annually a General Update Course and a Broker-In-Charge Update Course that shall be conducted by sponsors approved by the Commission under this Subchapter. The subject matter of these courses shall be determined by the Commission, and shall include instruction on the duties and responsibilities required of brokers by the License Law and Commission rules as well as current trends, standards, or changes affecting the real estate brokerage practice. The Broker-in-Charge Update Course shall also include instruction on the duties and responsibilities required of brokers-in-charge by the License Law and Commission rules. The Commission shall produce instructor and student materials for use by course sponsors, and shall prepare completely new courses for each one-year period beginning July 1 and ending the next June 30. Sponsors shall acquire the Commission-developed course materials and utilize the materials to conduct the update courses. The courses shall be conducted as prescribed by the rules in this Subchapter and the course materials developed by the Commission.

All course materials developed by the Commission for use in an update course and that are subject to the protection of federal copyright laws are the property of the Commission. Violation of the Commission's copyright with regard to these materials shall be grounds for disciplinary action. Sponsors shall provide brokers participating in their classes a copy of the student materials developed by the Commission. With advance approval from the Commission, course sponsors and instructors may make modifications to the update course when the update course is being promoted to and conducted for a group of brokers that specialize in a particular area of real estate brokerage, provided that the modifications relate to the same general subject matter addressed in the prescribed update course and the course as modified achieves the same educational objectives as the unmodified course.

(c) Approved sponsors shall conduct update courses using an instructor who has been approved by the Commission as an update course instructor under Section .0200 of this Subchapter. The sponsor may conduct the update course at any location as frequently as is desired during the approval period; however, no courses may be conducted between June 11 and June 30 of any approval period.

*History Note:* Authority G.S. 93A-3(c); 93A-4.1;  
Eff. July 1, 1994;  
Amended Eff. July 1, 2014; April 1, 2006; July 1, 2000.

### **21 NCAC 58E .0202 NATURE AND SCOPE OF APPROVAL**

Update course instructors shall be approved by the Commission in a separate process from approval for update course sponsors. Approved update course instructors may teach the General Update Course or Broker-In-Charge Update Course for any approved update course sponsor for as long as his or her approval is on active status. An approved update course instructor may not independently conduct an update course unless the instructor has also obtained approval as an update course sponsor. An instructor shall obtain written approval from the Commission prior to teaching an update course and prior to representing to any sponsor or other party that he or she is approved or may be approved as an update course instructor.

*History Note:* Authority G.S. 93A-3(c); 93A-4.1;  
Eff. July 1, 1994;  
Amended Eff. July 1, 2014; July 1, 2000.

### **21 NCAC 58E .0203 APPLICATION AND CRITERIA FOR ORIGINAL APPROVAL**

(a) A person seeking initial approval as an update course instructor must make application on a form provided by the Commission. An applicant who is not a resident of North Carolina shall also file with the application a consent to service of process and pleadings. No application fee is required. All required information regarding the applicant's qualifications shall be submitted.

(b) The applicant shall be truthful, honest and of high integrity.

(c) The applicant shall be qualified under one of the following standards:

- (1) Possession of a current North Carolina real estate broker license that is not on provisional status, a current continuing education record, and three years full-time experience on active status in general real estate brokerage, including substantial experience in real estate sales and at least one year of general brokerage experience in North Carolina, within the previous seven years. For purposes of this Rule, substantial experience is experience which is material, valuable, and worthwhile and not nominal, occasional, or intermittent; or
- (2) Possession of qualifications found by the Commission to be equivalent to the standard stated in Subparagraph (c)(1) of this Rule.

(d) The applicant shall possess good teaching skills as demonstrated on a video recording portraying the instructor teaching a live audience. The applicant shall submit the video recording for Commission review on a digital video disc (DVD). The video recording must be 45-60 minutes in length and shall depict a continuous block of instruction on a single real estate or directly related topic. The video recording shall be unedited, show a portion of the audience, and have visual and sound quality sufficient to enable reviewers to see and hear the instructor. The video recording shall have been recorded within the previous calendar year. The video recording shall demonstrate that the instructor possesses the teaching skills described in Rule .0509 of this Subchapter.

(e) The applicant shall take the Commission's Update Instructor Seminar for the real estate license year in which the applicant's approval would be effective prior to approval being issued. If this seminar is not taken within six months after filing the application for approval, the application shall be deemed cancelled. The Update Instructor Seminar shall be a seven hour course offered by the Commission multiple times each year to demonstrate the General Update Course and Broker-in-Charge Update Course materials described in Rule .0102(b) of this

Subchapter to approved instructors to prepare them to teach those courses. Registration and available dates for the Update Instructor Seminar are available online at the Commission's website, [www.ncrec.gov](http://www.ncrec.gov).

(f) An applicant shall be exempt from qualifying under Paragraphs (c) and (d) of this Rule if he or she is a Commission-approved real estate preclicensing instructor who has satisfied all requirements for an unconditional approval or possesses a current North Carolina real estate broker license, a current continuing education record, and a current designation as a Distinguished Real Estate Instructor (DREI) granted by the Real Estate Educators Association.

*History Note:* Authority G.S. 93A-3(c); 93A-4.1;  
Eff. July 1, 1994;  
Amended Eff. July 1, 2014; January 1, 2008; April 1, 2004; July 1, 2003; September 1, 2002; July 1, 1996; July 1, 1995.

## **21 NCAC 58E .0204 ACTIVE AND INACTIVE STATUS;RENEWAL OF APPROVAL**

(a) An instructor's initial approval shall be issued on active status and shall remain on active status during the approval period so long as the instructor takes the Commission's annual Update Instructor Seminar, described in Rule .0203(e) of this Section, before September 1 of each year. An instructor may teach the General Update Course or Broker-In-Charge Update Course while his or her license is on active status. When an instructor fails to complete the Update Instructor Seminar by September 1, the instructor's approval shall be placed on inactive status and shall remain on inactive status until the seminar is taken or until the expiration of the instructor's approval, whichever occurs first. An instructor shall not teach any version of the update course while his or her approval is on inactive status.

(b) If an instructor whose approval is on active status is unable to take the Update Instructor Seminar on any of the scheduled seminar dates as shown on the Commission's website at [www.ncrec.gov](http://www.ncrec.gov) before September 1 of any year due to a personal hardship such as a personal or family illness or a business conflict, the instructor may request and obtain from the Commission an extension of time to take the seminar on a seminar date following the September 1 deadline. The instructor shall not complete the course later than December 1 of that year. If an extension of time is granted, the instructor's approval shall remain on active status during the extension period.

(c) Commission approval of update course instructors expires on the third December 31 following issuance of approval. Approved instructors shall file applications for renewal of approval on a form provided by the Commission on its website at [www.ncrec.gov](http://www.ncrec.gov) on or before the December 1 immediately preceding expiration of approval. The form shall request information pertaining to the applicant's qualifications under Rule .0203(c) of this Section. In order to renew their approval, applicants must satisfy the criteria for original approval, with the exception of the requirement in Rule .0203(d) of this Section, and their approval shall be on active status as described in Paragraph (a) of this Rule. Applicants for renewal of approval whose approval is on inactive status shall also take the Commission's annual Update Instructor Seminar for the real estate license year in which the applicant's renewal of approval would be effective.

(d) In order to reinstate an expired instructor approval, the former instructor must file an application on a form provided by the Commission and shall satisfy the criteria for original approval set forth in Rule .0203(b) and (c) of this Section. If the applicant's prior instructor approval was on inactive status at the time the approval expired, the applicant must additionally take the Commission's annual Update Instructor Seminar for the real estate license year in which the applicant's reinstated approval would be effective. If the applicant's prior instructor approval has been expired for more than one year, the applicant must also satisfy the criteria for original approval set forth in Rule .0203(d) of this Section.

*History Note:* Authority G.S. 93A-3(c); 93A-4.1;  
Eff. July 1, 1994;  
Amended Eff. July 1, 2014; January 1, 2012; July 1, 2000; July 1, 1996; July 1, 1995.

## **21 NCAC 58E .0304 CRITERIA FOR ELECTIVE COURSE APPROVAL**

(a) The following requirements shall be satisfied in order to obtain approval of a proposed elective course:

- (1) The applicant shall submit the application form and pay the application fee, both of which are required in Rule .0303 of this Section, including any additional application fee set forth in Subparagraph (a)(12) of this Rule if applicable;
- (2) The applicant shall satisfy the requirements of Section .0400 of this Subchapter relating to the qualifications or eligibility of course sponsors;

- (3) The subject matter of the course shall satisfy the elective course subject matter requirements set forth in Rule .0305 of this Section and all information to be presented in the course shall be current and accurate;
  - (4) The course shall involve a minimum of four classroom hours of instruction on acceptable subject matter, as defined in Rule .0305 of this Section. A classroom hour consists of 50 minutes of instruction and 10 minutes of break time;
  - (5) The applicant and the continuing education coordinator required by Rule .0405 of this Subchapter shall be truthful, honest and of high integrity. To do this, the Commission may consider the reputation and character of any owner, officer and director of any corporation, association or organization applying for sponsor approval;
  - (6) The proposed instructor(s) for the course shall possess the qualifications described in Rule .0306 of this Section;
  - (7) The instructional delivery methods to be utilized in the course shall either involve live instruction in a traditional classroom setting or comply with the requirements described in Rule .0310 of this Section;
  - (8) The applicant shall submit an instructor guide that includes:
    - (A) a course outline describing the subject matter and topics to be taught in sufficient detail to permit an evaluation by the Commission of the depth and accuracy of the subject matter and topics to be covered;
    - (B) the amount of time to be devoted to each major topic and to breaks;
    - (C) the learning objective(s) for each major topic; and
    - (D) the instructional methods and instructional aids that will be utilized in the course.
  - (9) The proposed time allotments shown in the instructor guide shall be appropriate for the proposed subject matter to be taught. Unless the applicant can demonstrate that straight lecture is the most effective instructional method for the course, the instructor guide must provide for the use of a variety of instructional methods and instructional aids intended to enhance student participation, attentiveness, and learning. Examples of instructional methods that may be appropriate include, but are not limited to, instructor-led class discussion, role-playing, and in-class individual or group work assignments. Examples of instructional aids that may be appropriate include, but are not limited to, PowerPoint slides, overhead transparencies, video recordings, and information from the Internet displayed on a large screen;
  - (10) The course shall include handout materials for students that provide, in narrative or text form, all the information to be presented in the course. This requirement shall not be satisfied by using only copies of PowerPoint slides or a detailed course outline. All information included in the student materials shall be up-to-date, without error, explanatory of topics covered, consistent with course learning objectives, grammatically correct, and organized. The scope and depth of information presented shall be appropriate in view of course learning objectives and subject matter time allotments, and the information presented must, except for instruction on changes in laws, rules, or practices, include coverage of subject matter at a cognitive level higher than that expected of entry-level real estate brokers. The quality of reproduced student materials shall be generally comparable to that commonly seen in education materials produced by professional publishers. These standards for student materials also apply, to the extent they are relevant, to student materials other than paper materials such as material to be viewed by computer that are provided for use by students in distance education courses;
  - (11) If an applicant proposes to use copyrighted materials in the course, such materials shall be used in a form approved by the copyright holder. If any copyrighted material is to be duplicated by the applicant for use in the course, the sponsor must have the specific permission of the copyright holder; and
  - (12) When an applicant resubmits an elective course approval application after a previous application for the same course has been twice reviewed and found unsatisfactory by the Commission, the resubmitted application shall be treated as an original application for approval and shall be subject to the application fee prescribed in Rule .0303 of this Section.
- (b) An application for elective course approval shall be found unsatisfactory if the applicant fails to fulfill one or more of the requirements set forth in this Rule.
- (c) Applicants requesting approval of distance education courses shall also comply with the requirements described in Rule .0310 of this Section.

*History Note: Authority G.S. 93A-3(c); 93A-4.1;*

*Eff. July 1, 1994;*  
*Amended Eff. July 1, 2014; July 1, 2010; April 1, 2004; July 1, 2000; July 1, 1996; July 1, 1995.*

**21 NCAC 58E .0408 CHANGE IN SPONSOR OWNERSHIP**

When ownership of an approved course sponsor is transferred to a different legal entity, the sponsor approval is not transferable and terminates on the effective date of the transfer. The sponsor owner transferring ownership shall not conduct any course after the effective date of the transfer. The entity acquiring sponsor ownership shall obtain an original course sponsor approval as required by G.S. 93A-4.1 and Rules .0103, .0303 and .0402 of this Subchapter prior to advertising courses, registering students, accepting tuition, conducting courses or otherwise engaging in any sponsor activity.

*History Note: Authority G.S. 93A-3(c); 93A-4.1;*  
*Eff. July 1, 1994;*  
*Amended Eff. July 1, 2014.*

**SECTION .0600 – BROKER-IN-CHARGE ANNUAL REVIEW**

- 21 NCAC 58E .0601 PURPOSE AND APPLICABILITY**
- 21 NCAC 58E .0602 COURSE DESCRIPTION**
- 21 NCAC 58E .0603 AUTHORITY TO CONDUCT COURSE**
- 21 NCAC 58E .0604 COURSE OPERATIONAL REQUIREMENTS**

*History Note: Authority G.S. 93A-2; 93A-3; 93A-3(c); 93A-4.1; 93A-4.2;*  
*Eff. July 1, 2010;*  
*Repealed Eff. July 1, 2014.*