

**North Carolina
Postlicensing Course Syllabus**

**POST 301
*BROKER RELATIONSHIPS and
RESPONSIBILITIES***

(Student Version)

January 2019 Edition



North Carolina Real Estate Commission

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INTRODUCTION

Course Description: The *Post 301 - Broker Relationships and Responsibilities* course is one of the three 30-classroom hour courses in the North Carolina mandatory Postlicensing education program. At least one course must be completed annually by North Carolina provisional brokers within three (3) years after initial licensure to remain eligible for active license status. The primary objective of the course is to provide instruction at a level beyond that provided in Prelicensing courses on topics deemed to be of special importance. Topics addressed in this course include:

- a review of agency relationships in real estate residential and commercial sales and commercial property management transactions,
- a real estate broker's legal duties to clients and customers,
- a step-by-step review and discussion of the functions and responsibilities of a real estate broker when working with sellers and buyers,
- a review of issues associated with transactions in progress when a broker leaves a firm, and
- a review of license status and education issues.

Requirements for Teaching the Course: This course may only be taught by schools and instructors approved by the North Carolina Real Estate Commission to teach Prelicensing and Postlicensing courses. Rules governing the conduct of the course, including scheduling, course completion standards, course delivery, course completion reporting and other related matters may be obtained from the Commission. The *Post 301 - Broker Relationships and Responsibilities* course must be taught as prescribed by this syllabus.

Prerequisite:

Per Rule 58H .0209, a school shall not enroll an individual in a Postlicensing course if:

- the first day of the Postlicensing course occurs while the individual is enrolled in a Prelicensing course;
- that individual has not passed the license examination; or
- the first day of the Postlicensing course occurs while the individual is taking another Postlicensing course at the same school or a different school if such enrollment results in the individual being in class more than 30 instructional hours in any given seven day period.

Textbooks: The current editions of:

- *North Carolina Real Estate Manual (hereinafter called Manual)* and
- the Commission's *Residential Square Footage Guidelines* booklet.

Page references throughout the syllabus are for the 2017 edition of the *Manual*.

Course Final Examinations and Completion Standards: Schools and instructors are required to utilize end-of-course examinations provided by the Commission in accordance with Commission rules. Schools and instructors shall safeguard and protect at all times the confidentiality of examinations provided by the Commission. The examination minimum passing standard is 75%. Students must be required to pass the end-of-course examination and to satisfactorily complete any required activities and homework exercises. (Class time should include introduction of the assignment and review upon completion.) Schools and instructors may, in their discretion, also require completion of in-class or out-of-class graded assignments that may count for up to 25% of a student's final grade for the course.

Commission Rule 21 NCAC 58A .0304: Instructor Conduct and Performance

- (a) All instructors shall ensure that class sessions are conducted at the scheduled time and for the full amount of time that is scheduled or required. Instructors shall conduct courses in accordance with the Commission's rules, and any applicable course syllabi, instructor guide, or course plan. Instructors shall conduct classes demonstrating the ability to:
- (1) state student learning objectives at the beginning of the course and present accurate and relevant information;
 - (2) communicate correct grammar and vocabulary;
 - (3) utilize a variety of instructional techniques that require students to analyze and apply course content, including teacher-centered approaches, such as lecture and demonstration, and student-centered approaches, such as lecture discussion, reading, group problem solving, case studies, and scenarios;
 - (4) utilize instructional aids, such as:
 - (A) whiteboards;
 - (B) sample forms and contracts;
 - (C) pictures;
 - (D) charts; and
 - (E) videos;
 - (5) utilize assessment tools, such as:
 - (A) in-class or homework assignments, and
 - (B) quizzes and midterm examinations for Prelicensing and Postlicensing courses;
 - (6) avoid criticism of any other person, agency, or organization;
 - (7) identify key concepts and correct student misconceptions; and
 - (8) maintain control of the class.
- (b) Instructors teaching Prelicensing, Postlicensing, or Update courses shall interact with students either in person in a classroom setting or through an interactive telecommunication system, or comparable system, that permits continuous mutual audio and visual communication between the instructor and students. The school shall provide monitoring and technical support for the instructors or students.
- (c) Instructors teaching Prelicensing or Postlicensing courses shall:
- (1) safeguard and protect the security of course examinations;
 - (2) not allow students to review or retain copies of end-of-course examinations and any materials used during the examination; and
 - (3) only use guest lecturers that have been approved by the school director pursuant to Rule .0204(d) of this Section.
- (d) Instructors shall not obtain, use, or attempt to obtain or use, in any manner or form, North Carolina real estate license examination questions.

Syllabus Copies: The Commission provides this Syllabus for use by school officials and instructors. Schools are authorized to reproduce all or part of this syllabus for student use at their own expense, and may charge students for the cost of reproduction.

Order of Subject Area Presentation: The order in which subject areas are presented in the Syllabus is the recommended order. Instructors and schools may make reasonable adjustments in the order of presentation, but should retain a logical order of presentation.

Recommended Major Subject Area Emphasis: Recommended emphasis by major subject area (i.e., preceded by a Roman numeral) has been provided in this Syllabus in the form of recommended number of instructional hours to be devoted to each major subject area.

Competency and Instructional Levels: Each major topic (i.e., preceded by a letter) in this Syllabus has been assigned a competency and instructional level of 1-3 to indicate the appropriate level of emphasis and instruction. In some instances where a subtopic should be afforded significantly greater or lesser emphasis than the major topic under which it is listed, the subtopic has been assigned a different level that applies to that subtopic only.

Competency and instructional levels have been assigned based on the relative importance of the topic and the degree of knowledge or skill needed by real estate brokers with regard to the topic. Schools and instructors are **REQUIRED** to comply with the assigned competency and instructional levels (and special notes to instructors) when teaching this course.

Shown on the next page are the three (3) competency and instructional levels used in the Course Syllabus and the meaning of each. The term *competency* refers to the cognitive level expected of students with regard to a particular topic, while the term *instruction* refers to the depth of instruction and the instructional methods that should be utilized. Level 1 is the lowest level and Level 3 is the highest level. **The majority of Postlicensing topics should be taught at a Level 3; therefore, assume the topic is a Level 3 topic if no level is noted.**

COMPETENCY AND INSTRUCTIONAL LEVELS

Level 1 – Recall

- Competency:** Student should possess a basic level of knowledge of the topic that is sufficient to recall, recognize, identify, list, describe, etc. definitions of common terms, basic facts/concepts/principles, and basic procedures/methods.
- Instruction:** Instructor should review and discuss the appropriate basic definitions, facts, concepts, procedures, etc. No in-depth instruction required.

Level 2 – Application

- Competency:** Student should possess a moderately comprehensive level of knowledge and understanding of the topic that is sufficient to explain, discuss, interpret, restate, summarize, apply, etc. facts, principles, procedures, etc. and how they relate to real estate brokerage practice.
- Instruction:** Instructor should review and discuss the topic in moderate depth sufficient to reasonably assure substantial comprehension, using examples (as appropriate) to illustrate and enhance understanding of facts, principles, procedures, etc. and their relevance to real estate brokerage practice.

Level 3 – Analysis

- Competency:** Student should possess a substantial working knowledge and understanding of the topic that is sufficient to compare/contrast and analyze relevant facts, principles, procedures, etc. in a variety of common fact situations likely to be encountered in real estate brokerage practice.
- Instruction:** Instructor should review and discuss the topic in substantial depth, using examples (as appropriate) to reinforce understanding of ideas, principles and practices, and requiring students to complete practical work assignments (as appropriate) to demonstrate both their understanding of the topic and their ability to apply their knowledge to common fact situations that will be encountered in real estate brokerage practice.

POST 301
BROKER RELATIONSHIPS AND RESPONSIBILITIES
POSTLICENSING COURSE

RECOMMENDED TOPIC EMPHASIS

Section 1: Agency Relationships & Duties - A Practical Review	4
Section 2: Working With Residential & Commercial Sellers	16.5
Section 3: Working With Residential & Commercial Buyers	5.0
Section 4: Working as a Dual Agent	1.5
Section 5: Working as a Property Manager	1.5
Section 6: Other Topics	0.5
End-of-Course Examination	<u>1.0</u>
TOTAL HOURS	30

Post 301 *Broker Relationships and Responsibilities* Postlicensing Course Syllabus

Section 1: Agency Relationships & Duties – A Practical Review

(4 hours) (*Manual*, Chapter 8, pp. 135-193)

- I. Duties of Real Estate Agents (*Manual*, pp. 135-168)
 - A. Duties to Principal under the Common Law of Agency
 1. Definition of Fiduciary: A relationship of trust and confidence wherein one person is usually entrusted to hold or manage property or money for another. A fiduciary (e.g., agent) is bound to act primarily for the benefit of the beneficiary (e.g., client)
 2. Basic Agency Duties [G.S. 93A-6] (OLD CAR acronym)
 - a. **O**bedience to client's lawful instructions [Rule A .0104 & .0115]
 - b. **L**oyalty to client's best interests over and above interests of others including those of agent [Rule A .0104(d) & (i)]
 - i. Avoidance of *self-dealing*
 - ii. Written client consent to represent adverse interests (e.g., dual agency) [Rule A .0104(d),(i),(o),(p)]
 - c. **D**isclosure of Information to include agent's affirmative duty to discover and disclose all transactional information including, but not limited to, *material facts*
 - d. **C**onfidentiality of client's personal information that would hurt the client's bargaining position, unless disclosure is required by law or rule [Rule A .0104(k) & (n)]
 - e. **A**ccounting for safeguarding goods & funds handled plus retention of transactional records [Rule A .0106, .0109, .0116, .0117]
 - f. **R**easonable Skill, Care and Diligence in delivery of brokerage services to the standard of other competent brokers
 3. Agent's Duty to Principal after Termination of Agency Relationship
 - B. Duties to Third Persons under the Common Law
 1. Honesty
 2. Fairness

C. Duties to Principals and Third persons under the Real Estate License Law and Commission Rules [G.S.93A-6(a)] (*Manual*, pp. 156-165)

1. Duty to avoid any willful or negligent misrepresentation or omission [G.S. 93A-6(a)(1) and (3)]
 - a. Willful Misrepresentation
 - b. Negligent Misrepresentation
 - c. Willful Omission
 - d. Negligent Omission
2. Stigmatized/Psychologically Impacted Properties are NOT material facts in NC [G.S. 39-50; 42-14.2]
 - a. Previous occupant died or had a serious illness while occupying the property
 - b. Convicted sex offender resides near a property
 - c. Reputation as a haunted property
3. Miscellaneous Disclosure Concepts
 - a. Puffing
 - b. Representation Made without Regard for the Truth
 - c. The “Reasonableness” Factor in Negligent Omission
 - d. Disclaimers are seldom a Defense
 - e. Standards for Listing Agents vs. Selling Agents

D. Other Issues Affecting a Real Estate Broker’s Duties [*Level 2*]

1. Unfair and Deceptive Trade Practices Act [G.S. 75-1.1] (*Manual*, pp. 165, 286)
 - a. Applies to real estate brokers
 - b. Possibility of treble damages

2. *Doctrine of Caveat Emptor (Manual, pp. 166-167)*
 - a. Burden of discovery is on the buyer to investigate the property
 - b. Seller could be held liable if he/she
 - i. Engages in fraud
 - ii. Induces buyer to forego an inspection
 - iii. Does not provide RPOADS prior to presentation of 1st offer
3. Sale of Property “As Is”

Note: Broker’s disclosure responsibilities under Real Estate License Law not affected by *doctrine of caveat emptor* or “as is” status.

II. Agency Relationships in Residential & Commercial Sales Transactions (*Manual, pp. 139-143*)

A. Agency Options for Real Estate Companies

1. Exclusive Seller Agency
2. Exclusive Buyer Agency
3. Both Seller Agency and Buyer Agency with Dual Agency for “In-House” Sales [*Brief introduction only at this point.*] [G.S. 93A-6(a)(4) & (5); Rule A .0104(d) and (i) - (n)]

Required Activity: Have students compare & contrast each agency option and the advantages and disadvantages of each.

B. Agency Relationships When Brokers/Firms Cooperate

1. Exclusive Agency
2. Seller Subagency

III. Disclosure of Agency Relationships in Residential & Commercial Sales (*Manual, pp. 179-185*)

A. The Commission Agency Rule 58A .0104

B. *Working with Real Estate Agents* Brochure

C. “First Substantial Contact”

1. Definition: Point at which a consumer begins to
 - a. Act as if an agency relationship exists;

- b. Disclose their particular needs, desires, or wants about property to be sold or purchased; or
 - c. Disclose any confidential information, such as motivation, financial or family circumstances, or acceptable price or terms
2. Compliance in person vs. by electronic or telephonic device

D. Disclosure in Various Situations

1. Listing Agent Working with a Prospective Seller
2. Working with a Prospective Buyer
3. Disclosure by Buyer's Agent to Seller/Seller's Agent
4. Disclosure of and Consent to Dual Agency

Required Activity: Have students role play agency disclosure in a variety of residential and commercial scenarios. Extensive class discussion should be utilized to assure a full understanding of when disclosure is required and what constitutes *first substantial contact* in various situations (e.g., in-person contact, telephone and email contact, open houses, etc.).

Section 2: Working With Residential & Commercial Sellers (17 hours)

(*Manual*, pp. 220-236, 658-659)

I. Solicitation of Listings

A. Soliciting Listings of Other Firms/Brokers

1. Violates the Code of Ethics (Article 16) of the National Association of REALTORS®
2. May constitute *tortious interference with contractual relations* which may be a basis for a civil lawsuit

B. "Do Not Call" Laws and Rules (Federal & NC) [Level 2]

1. *Do Not Call Registry*

- a. Check the *Registry* once every 31 days
- b. Maintain a company "Do Not Call" list for consumers who asked to not be called

2. Brokers may not make telephone calls to anyone whose name appears on the *Do Not Call Registry* (with limited exceptions) for the purpose of soliciting a listing

- a. Exemptions

- i. Express permission or invitation
- ii. Established business relationship (Note: 18-month limit)
- iii. Personal relationship

- b. Penalties

3. Prohibition includes calls *to solicit listings* made to *for sale by owner* (FSBO) if the owner's name is on the registry; however, brokers may call a FSBO owner on behalf of a prospective buyer-client who is interested in the FSBO property

C. "Do Not Fax" Laws and Rules (Federal & NC) *[Level 2]*

1. Restricts unsolicited fax transmissions without recipient's permission
2. Requires prominent *opt out* notice on fax cover sheet
3. Business relationship exemption (no time limit)

D. **CAN-SPAM Act** *[Level 2]*

1. Restricts spamming by email
2. *Opt out* option required

<p>Note: Brokers should keep abreast of any restrictions on email solicitations that might affect their solicitation of business in that manner. Mass electronic newsletters or "just listed" emails would be subject to such restrictions.</p>
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II. Preparing for Prelisting Meeting with Prospective Seller

A. Documents to be Provided by Listing Agent:

1. Well-drafted listing agreement form (such as NCAR Standard Forms 101 or 103 (residential) or 570 or 571 (commercial))
2. The Commission's *Working with Real Estate Agents* brochure

3. *Residential Property and Owners' Association Disclosure Statement (RPOADS)* and *Mineral and Oil and Gas Rights Disclosure (MOG)* forms, if applicable to the property (Form REC 4.22 is available at www.ncrec.gov; REALTORS® may use NCAR Standard Form 140)
4. Property listing data sheet (especially if property will be placed in MLS or commercial listing databank)

B. Advise Seller to Gather the Following Documents/Information

1. Copy of Seller's Deed
2. Copy of Survey
3. Copy of Restrictive (Protective) Covenants
4. Copy of HOA Bylaws, Rules and Regulations, Dues and Assessment Info
5. Balance Due on Seller's Mortgage(s) and Status of Mortgage(s)

III. Prelisting Meeting with Prospective Seller (*Manual*, pp. 224-229;168-176)

A. Explain Agency Relationship and Company Policies/Services

1. Make required agency disclosure
2. Caution seller against providing confidential information to any potential listing agent prior to signing a listing contract and explain why
3. Determine if and how the broker/company will represent the seller (e.g., exclusive seller's agent or possibly as a dual agent)
4. Advise seller of firm's proposed brokerage fee for listing and selling the seller's property and negotiate within parameters established by company policy
5. Discuss marketing options, such as MLS
6. Explain briefly how MLS works and its benefits for both sellers and buyers
[Level 2]

B. Review Documents/Information Obtained from Seller

C. Inspect Property and Verify Questionable Information

1. Inspect the property, noting all features that will be needed for the listing data sheet
2. Identify personal property to be conveyed and fixtures NOT to be conveyed with the property

3. Note all significant defects; remind seller of broker's duty to disclose all material facts about the seller's property to prospective buyers
 4. Suggest needed repairs and improvements to make the property more marketable
 5. Inquire as to whether any construction/alterations/repairs have been done and whether any required permits were obtained
 6. If property is served by a septic system, verify the system's capacity with the county health department; obtain a copy of the septic permit if available (*The 4S's: Septic, Streets, Underground Storage Tanks and Square Footage section of the 2016-2017 General Update course*)
- D. Advise seller of his/her rights and obligations under the *Residential Property Disclosure Act* and assist the seller in fulfilling the statutory obligations [Rule A .0114 & .0019] (*Manual*, pp 168-173)

Required Activity: Provide students with current *RPOADS* & *MOG* disclosure forms. Discuss the purpose of each form and the correct way to advise property owners about completion and delivery of the forms. Discuss pros and cons of seller using "No Representation".

1. Advise the seller as to whether the *RPOADS* statement is required
 - a. Requirement for most sellers of 1-4 residential units to provide completed disclosure forms to prospective buyers prior to presentation of first offer
 - b. Applicability of and exemptions to the law
 - c. Broker's responsibilities to advise seller of disclosure requirement, the need for continued accuracy, and to assure timely delivery of disclosure forms

Note: Agent must NOT complete the form for the seller

2. Advise the seller as to whether the *Mineral and Oil and Gas Rights Disclosure Statement* is required
 - a. Same requirements as for *RPOADS*
 - b. Different applicability of and exemptions to the law
 - c. Broker's responsibilities to advise seller of disclosure requirement, the need for continued accuracy, and to assure timely delivery of disclosure forms

Note: Agent must NOT complete the form for the seller

3. Advise the seller of a buyer's 3-day right to rescind a sales contract if the seller (or seller's agent) fails to deliver a completed disclosure statement to the buyer no later than the time the buyer makes an offer
4. Inform the seller of his/her answer completion options and the right to choose *No Representation* since the seller is NOT required to make any representations regarding the property's condition
5. Explain to the seller that a real estate broker's disclosure responsibilities under Real Estate License Law are not affected by sellers' disclosure under this Act; broker must disclose to any prospective buyer any material fact regarding a listed property about which the broker knows or should reasonably be expected to be aware, even if the seller legally chooses not to disclose such material fact or makes no representation regarding the matter
6. If the seller demands that the listing agent agree not to disclose a material defect (or other material fact) as a condition of granting the listing, the listing should be refused!
7. Assist the seller with understanding how to complete the *Residential Property and Owners' Association Disclosure Statement* and the *Mineral and Oil and Gas Rights Disclosure* forms - but require the seller to complete the forms

Required Activity: Facilitate a discussion regarding how a broker should handle a situation in which the seller balks at completing the disclosure forms or wants to misrepresent a fact about the property with or without the broker's cooperation.

E. Comply with Federal *Residential Lead-Based Paint Hazard Reduction Act of 1992* and updated HUD & EPA Rules (if applicable) (Manual, pp 173-176) *[Level 2]*

1. Disclosure requirement
2. Application – *target* housing
3. Agents' responsibilities (under federal rules and NC Real Estate License Law)
4. Enforcement and penalties
5. N.C. Lead-Based Paint Hazard Management Program
 - a. Inspectors and firms/individuals performing renovation, repair and painting projects for compensation in homes and day-care facilities built before 1978 must be certified

- b. Fines for violations up to \$750 per day
- c. Do-it-yourself homeowners are exempt from certification requirement

F. Verify the acreage of the lot or tract from seller's deed and/or a current survey

- 1. Brokers are NOT expected to measure lots or tracts and calculate the acreage, although licensees should be able to convert acreage to square footage, and vice-versa
- 2. Walk the lot or tract with the seller and locate corners and property lines, if possible, in order to avoid misrepresentation to a prospective buyer about such matters

IV. Verify and Report Building Square Footage in Accordance with NC Real Estate Commission's *Residential Square Footage Guidelines* (Manual, pp. 228-229; *Guidelines* booklet)

Mandatory Student Homework Assignment: Students must independently complete an exercise in determining square footage in order to satisfactorily complete the course. The problem in the *Guidelines* booklet may be utilized as part of in-class instruction but should NOT be used for the homework assignment since the booklet also includes the solution to this problem.

Suggested Approaches: (1) Provide students with diagrams and measurements for one or two houses and have students submit the detailed calculations as a homework assignment. Reserve a portion of the allotted classroom time in a later class (not necessarily the next class) to review students' results and to discuss common mistakes. Students should be provided the correct solution. (2) If feasible, a class field trip (e.g., to a building near the classroom) to obtain the on-the-ground measurements and calculations is recommended. (3) Have students personally measure and submit diagrams with measurement calculations of their personal home; then, have students exchange homework and double-check each other's calculations. (This approach will usually provide class with examples of many types of residential units [e.g., condo, townhouse, single family] and the measurement challenges of each. Have students that live in apartments treat their unit as a condo for measurement purposes.)

V. Perform a Comparative Market Analysis (CMA) for the Residential & Commercial Seller (Manual, pp 229-230; 511-533)

A. Laws and Rules Governing Broker Price Opinions (BPOs) and Comparative Market Analyses (CMAs) Performed by Real Estate Brokers [G.S. 93A-82, Article 6; G.S. E-1-3(c); Rule A .2202; A .0108]

- 1. Summary / Key Points
- 2. Review Complete Text of Article 6 of License Law
- 3. Review and Discuss Commission Rules 58A. 2201 & .2202 and 58A. 0108

B. Broker's Duty with Regard to Providing a CMA/BPO to a Client (*Manual*, pp. 522-523)

1. Duty under the Law of Agency
2. Duty under the License Law
3. CMA/BPO of:
 - a. Residential 1-4 Unit Properties
 - b. Residential 5+ Unit Properties and Other Income-Producing Properties

C. Performing a CMA/BPO

1. Steps in the CMA/BPO Process
 - a. Expectations for Brokers Performing BPOs/CMAs with Regard to Selecting and Making Adjustments to Comparables as Compared to the standards for Appraisers Performing an Appraisal (*Manual*, pg. 520)
 - b. Assuring the Broker is Qualified
 - c. Identifying the Assignment
 - d. Collecting Data on Subject and Local Market
 - e. Analysis
 - i. Using the Sales Comparison Approach
 - ii. Analysis Using the Gross Rent Multiplier Approach
 - iii. Analysis Using the Income Capitalization Approach
 - f. Reporting Probable Selling/Leasing Price as a "Range" (*Manual*, pg. 527)

<p>Required Activity: Have students, independently or in groups, complete an Income Capitalization work problem to arrive at the probable sales price for an income producing property.</p>
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- g. The BPO/CMA Report (*Manual*, pp. 527-528)

Important Note: The Commission expects every CMA/BPO to be performed in a competent manner, **even if no fee is received for the CMA/BPO**. Thus, a licensee performing a CMA/BPO shall abide by the standards set in Rule A .2202, especially those relating to local market knowledge/experience, the necessity for objective independent judgment, personal inspection of the subject property, and the use of the sales comparison, gross rent multiplier, and income capitalization approaches in deriving an estimate of probable selling/leasing price.

Mandatory Student Homework Assignment: Students must independently complete at least one CMA of a single-family property as a mandatory homework assignment in order to satisfactorily complete the course. Because some students may not have access to MLS data, Instructor shall develop at least one CMA exercise with data on a subject property and a substantial number (e.g., 8-10) of potential comps. Have the students prepare a CMA (showing the adjustments made) as a homework assignment which will be critiqued and discussed during a subsequent class session (not necessarily the next class). Instructor should have a *best* solution to provide to the students following the class discussion.

VI. Assist the Seller in Setting an Appropriate Listing Price

A. Advise the Seller on Factors to Consider to set Appropriate Listing Price

1. Estimated Probable Selling Price (or range) of Property (per CMA)
2. Current Market Conditions
3. Pros and Cons of setting listing price at “high” vs. “low” end of range of estimated value
4. Seller’s Needs and Desires
5. Possibility of “Short Sale” (*Manual*, pp. 230, 434-437)

B. Review How to Estimate Seller’s Net Proceeds

Required Activity: After reviewing this calculation, assign practice problems to assure students have mastered the calculation.

C. Review How to Calculate a Seller’s Net Profit

Required Activity: After reviewing this calculation, assign practice problems to assure students have mastered the calculation.

VII. Review and Complete the Listing Contract (*Manual*, pp. 196-198; 210-218)

A. General Requirements for All Agency Contracts [G.S. 93A-13; Rule 58A .0104(a) and (b)]

1. Agency contracts with property owners must be in writing from the outset of the relationship; oral listing agreements are unlawful in NC
2. Listing contracts must
 - a. Have a definite expiration date
 - b. Contain the anti-discriminatory language prescribed by rule
 - c. Be signed by the parties; and
 - d. Include the listing broker's license number

B. Listing Contract Provisions-Standard "Full-Service" Listing Contract

Required Activity: Provide students with current NCAR commercial listing agreements and any available Guidelines for completion. Have students compare and contrast provisions in residential and commercial listing agreements. Discuss the purpose of each provision and the correct way to complete the forms.

C. Selected Points about Listing Contract Completion

1. When to complete the listing contract
2. All provisions should be filled in prior to having the seller(s) sign (Seller should never be asked to sign an incomplete listing contract, e.g., one without the listing price filled in)
3. Names and Signatures
 - a. All co-owners should sign
 - b. Where only one spouse is the titled owner, best practice is to have the non-titled spouse also sign
 - c. Listing agent signs on behalf of his/her firm and includes his/her license number
4. Provide seller(s) a copy of the signed listing agreement [Rule A .0106(a)]

D. Additional Best Practice: Provide seller with a copy of the standard Offer to Purchase and Contract form at time of listing and familiarize seller with major provisions so seller knows what to expect when an offer is received

VIII. Working as a Limited Services Broker (*Manual*, pp. 207-209) [*Level 2*]

A. Limited Services Listing Contract – Common Approaches

B. Limitations Apply Primarily to Services, Not Duties

C. Duties of Limited Services Listing Broker under the Real Estate License Law, Commission Rules and the Common Law of Agency [G.S.93A-6(a)(1-4, 7-8, 12-14); Rules A .0104, .0106, .0116, .0117]

D. Protection Agreement

1. Purpose – agreement with seller for a single transaction, usually when dealing with a FSBO situation
2. See NC NCAR's *Unrepresented Seller Disclosure and Fee Arrangement* Standard Form #150

IX. Submitting Property Data to MLS; MLS Operations; Antitrust Laws (*Manual*, pp. 218-220; 233)

A. A listing agent will be held personally responsible for the accuracy of property data reported in MLS; this responsibility cannot be delegated; a mistake made by an assistant or information supplied by a seller will not excuse the listing agent from responsibility

B. Overview and discussion of typical MLS operational rules [Mandatory training on MLS use is standard among the various MLS operations.] [*Level 2*]

C. Antitrust Laws

1. Price fixing: any broker collaboration in setting fees
2. Boycotting (e.g., joining to boycott certain service providers, such as certain appraisers, attorneys, home inspectors, etc.; excluding certain categories of brokers, such as limited service listing brokers, from MLS membership)

X. Marketing Listed Property (*Manual*, pp. 233-235; 404-405)

A. Legal Compliance in Marketing/Advertising

1. Owner's written permission to advertise or place signage [Rule A .0105(a)(2)]
2. Comply with laws/rules on signage placement
3. Prohibition of "blind" ads [Rule A .0105(b)]

4. Comply with Truth-in-Lending advertising requirements
 - a. *Trigger Terms*
 - b. Required Disclosures
 - c. How to Avoid Violating Regulation Z
 5. Fair Housing Considerations in Advertising (*Manual*, pp.613-614)
 - a. Protected Classes
 - b. Advertising Guidelines
 6. Internet & Social Media Advertising – Same rules apply
- B. Fulfilling Listing Agent's/Firm's Agency and Contractual Duties Relating to Marketing a Property
1. Review customary practices
 2. Other Points to Consider with Caution
 - a. A listing agent might want to obtain permission from his/her seller-client prior to using photographs (or videos) of the inside of a seller's home in advertising (e.g., in flyers, on websites, etc.).
 - b. Providing Copy of Seller's Survey with Promotional Flyer: While this common practice is not objectionable, brokers working with buyers should make certain this does not mislead buyers into thinking they should not obtain a new or updated survey.

3. Educating Sellers on their Role

XI. Working with a Seller/FSBO as a Buyer's Agent

- A. Acting as Buyer's Agent Only. Broker is required to provide and explain *Working with Real Estate Agents* brochure and fully disclose status as buyer's agent. [Rule 58A .0104(c) and (f)]
- B. Acting as Disclosed Dual Agent
- C. Buyer Agent working with a seller who listed with a limited services broker

Section 3: Working with Residential & Commercial Buyers (5½ hours)

(Manual, pp. 236-245)

- I. Agency Disclosure to Buyers – Basic Requirements [Rule 58A .0104(c)]
- II. Working with Buyers as Seller’s Agent or Subagent
 - A. Disclose and Document Agency Relationship in writing using the Seller Subagency check box on the acknowledgement panel of the *Working with Real Estate Agents* brochure [Rule 58A .0104(e)]
 1. Co-brokerage Subagency Situations; subagency may not be offered or allowed by listing firm
 2. In-house Situations; may remain exclusive seller’s agent or act as a dual agent with authorization of both parties
 - B. Switching from seller’s subagent to buyer’s agent requires seller’s consent
- III. Working with Buyers as a Buyer’s Agent
 - A. Basic Requirement for Express Agreement from the start of the relationship [Rule 58A .0104(a)]
 - B. Temporary Oral Buyer Agency Agreement Option
 1. Requirements for temporary oral buyer agency agreement
 - a. Must be non-exclusive; buyer may work with multiple brokers at the same time
 - b. May NOT bind the buyer for any specific period of time
 - c. All terms of the written agency agreement must be addressed in the oral agreement
 - d. If the buyer is asked to limit the oral agreement to a specific firm or for a specific time period, agency must be reduced to a written agreement
 2. Must be reduced to writing no later than the time an offer to purchase is made by any party

<p>Required Activity: Engage students in a discussion of their experiences with buyers who are reluctant to sign a written agreement and how they were able to successfully deal with the situations, such as limiting the agreement to a short time period or to a particular property.</p>

3. Switching from buyer's agent to seller's subagent
 4. Firms are not required to allow the practice of oral agency
- C. Review of Essential Elements of a Written Agency Agreement [Rule 58A .0104(a)]
1. Written and signed by all parties
 2. Has a definite term that expires without prior notice
 3. Includes the broker's license number
 4. Contains prescribed non-discrimination language [Rule 58A .0104(b)]

D. Types of Buyer Agency Agreements [*Level 2*]

1. *Exclusive Buyer Agency Agreement* (e.g., NCAR Standard Form 201 and 201-G – *Guidelines for Completing the Exclusive Right to Represent Buyer Form*)
2. *Non-Exclusive Buyer Agency Agreement* (e.g., NCAR Standard Form 203)

Required Activity: Perform a detailed line-by-line review of these NCAR forms and completion guidelines, discussing appropriate completion of each provision in various circumstances.

3. Alternate Options for Working with Buyers
 - a. Limit duration of agreement
 - b. Limit agreement to specific properties

E. Duties to Buyer: Buyer's Agent versus Seller's Subagent Working with a Buyer

IV. Practices of Brokers Working With Buyers

- A. Comply with Agency Disclosure and Buyer Agency Contract Requirements
- B. Educating Buyer and Soliciting Information on Buyer's Needs and Desires
- C. Qualifying the Buyer (*Manual*, Chapter 13, pp. 412-419, 421-423)

Required Activity: Teach loan prequalification procedures (for a conventional-conforming loan) and have students work sample prequalification problems sufficient to assure the students' competence in prequalifying buyers in common situations.

- D. Perform a Comparative Market Analysis (CMA) for Buyer
- E. Discover and Disclose Material Facts
- F. Check Land Use Restrictions and Compliance with Related Requirements (*Manual*, pp. 102-110, 119-124, 445-448)
 - 1. Protective (Restrictive) Covenants
 - 2. Zoning
 - 3. Flood Hazard Area
 - 4. Check Septic System's Authorized Capacity (if applicable)
 - 5. Inquire about Permits for Renovations, Additions, Major Repairs
- G. Additional Buyer Agent Responsibilities and Practices

Section 4: Working as a Dual Agent (1½ hours) (*Manual*, pp. 245-253)

- I. Review of Dual Agency Basics [G.S. 93A-6(a)(4)]
 - A. Requirements for Brokers in Dual Agency Situations
 - 1. Disclosure to and consent of both parties
 - 2. Requirement for written agreement (with oral agreement permitted in certain situations) [Rule 58A .0104(d)]
 - 3. Authorization of dual agency in listing and buyer agency agreements
 - a. Advance consent by both seller and buyer
 - b. Advance consent by one party only
 - c. No advance consent by either party
 - B. The Conflicting Duties of a Dual Agent
- II. Dual Agency Solutions
 - A. Limiting the Dual Agent's Duties by Contract
 - 1. Limiting disclosure of certain information to principals
 - 2. Limiting the duties of loyalty and skill, care and diligence
 - 3. Effect of this approach

- B. Designated Agency [Rule 58A .0104(i)-(n)]
 - 1. Basic concept
 - 2. Major rule provisions
 - 3. Special features of designated agency
 - 4. Protecting confidential information in general plus small office considerations
- C. Individual Broker Dual Agent [Rule 58A .0104(n)]
- D. Alternatives to Dual Agency in Other States
- E. Dual Agency Agreement without Pre-existing Agency Relationship

Section 5: Working as a Residential or Commercial Property Manager (1½ hour)
(*Manual*, pp. 583-599, 693-714)

- I. Introduction to Property Management
 - A. What Constitutes “Property Management”
 - B. Licensing Requirement for Property Managers
 - 1. General Requirement
 - 2. Exemption for Certain W-2 Employees of Brokers Acting as Property Managers
 - C. Laws Governing Property Management Relationships
- II. Property Management Agreements
- III. Principal Functions of Property Managers [*Level 2*]
 - A. Preparing a Management Plan
 - B. Establishing a Rental Schedule
 - C. Preparing an Operating Budget
 - D. Marketing and Renting the Property
 - E. Collecting Rents and Security Deposits

- F. Maintaining and Protecting the Property
- G. Preparing and Enforcing Rules and Regulations
- H. Performing Landlord's Duties under Leases
- I. Instituting Legal Actions
- J. Maintaining Property Insurance
- K. Maintaining Records and Accounting to Owner

Section 6: Other Topics (½ hour) [Level 2]

- I. When Brokers Leave/Change Firms
 - A. Required Notice to Commission within 10 days [Rule A .0103]
 - B. Handling of Transactions in Progress when Brokers leave/change Firms (*Manual*, pp. 741-742))
- II. License Status and Education Issues [G.S. 93A-4; Rules A .0503, A .0504, A .0505, & A .0506]

Refer to the *Licensing & Education Review* section of the most recent Real Estate Update course.

- A. License Status: Meaning of provisional broker, active, inactive, expired, suspended, revoked, and canceled status
- B. Postlicensing Education Requirement (and consequences of failure to satisfy) Issues [Rule A .1902]
- C. Continuing Education Requirement (and consequences of failure to satisfy) Issues [Rules A.0504(b), A .1702]
- D. Requirements and procedures to activate an Inactive license [Rules A.0504(c) & (d), A .1703]

E. Requirements and procedures to reinstate an Expired license

1. License expired for not more than 6 months [Rules A.0505(c) & (h)]
2. License expired between 6 months and 2 years [Rules A.0505(d) & (h)]
3. License expired more than 2 years [Rules A.0505(e), (f) & (h)]

--End of Course Syllabus--