

**North Carolina
Postlicensing Course Syllabus**

**POST 301
BROKER RELATIONSHIPS and
RESPONSIBILITIES**

February 2018 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 mandatory Postlicensing courses that must be completed by newly licensed North Carolina provisional brokers within three (3) years after licensure. 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 to licensees. Topics addressed in this course include a review of agency relationships in real estate sales transactions and 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 residential 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 *Broker Relationships and Responsibilities* course must be taught as prescribed by this syllabus.

Prerequisite: Possession of a North Carolina broker license (either provisional or non-provisional).

Textbooks: The current edition of the *North Carolina Real Estate Manual* and the Commission's *Residential Square Footage Guidelines* booklet.

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 for such examinations. 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 (1) pass the end-of-course examination and (2) satisfactorily complete the prescribed square footage and comparative market analysis (CMA) mandatory 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 grade for the course.

Order of Topic Presentation & Recommended Topic Emphasis: Topics must be presented in the order shown in the outline. Instructors may make reasonable minor adjustments in subject area emphasis as needed to facilitate instruction but should be careful not to overemphasize or underemphasize any topic.

General Instructional Approach: Instructors are expected to utilize real world illustrative examples, to employ instructional techniques that encourage active student participation in class, and to employ practical in-class and out-of-class work assignments to the maximum extent possible in this course.

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.

**POST 301
BROKER RELATIONSHIPS AND RESPONSIBILITIES
POSTLICENSING COURSE**

RECOMMENDED TOPIC EMPHASIS

	Hours
Section 1: Agency Relationships & Duties - A Practical Review	4
Section 2: Working With Sellers (Residential Sales)	17
Section 3: Working With Buyers (Residential Sales)	5.5
Section 4: Working as a Dual Agent	1.5
Section 5: Other Topics	0.5
End-of-Course Examination	<u>1.5</u>
Total Hours	30

Post 301 Broker Relationships and Responsibilities Postlicensing Course Outline

References to **Manual** in this outline refer to the **North Carolina Real Estate Manual**, which is the prescribed text for this course. Page number references in the syllabus are to the edition of the **Manual** published in 2017.

Section 1: Agency Relationships & Duties – A Practical Review (4 hours) - Chapter 8

- I. Duties of Real Estate Agents (2 hours) - pp 135-168
 - A. Duties to Principal under the Common Law of Agency - pp 135; 144-155
 1. Basic Agency Duties
 - a. Loyalty and Obedience (including duty of “confidentiality” with regard to information that could be harmful to principal’s interest if disclosed)
 - b. Skill, Care and Diligence
 - c. Disclosure of Information (including discussion with examples of concept of *material fact*)
 - d. Accounting
 2. Agent’s Duty to Principal after Termination of Agency Relationship
 - B. Duties to Third Persons under the Common Law – page 155
 1. Honesty
 2. Fairness
 - C. Duties to Principals and Third persons under the Real Estate License Law and Commission Rules - pp 155-165
 1. Miscellaneous Duties
 2. 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
 - D. Other Issues Affecting a Real Estate Broker's Duties - pp 165-168
 - 1. Unfair and Deceptive Trade Practices Act
 - 2. Doctrine of Caveat Emptor
 - 3. Sale of Property "As Is"
- II. Agency Relationships in Sales Transactions (½ hour) - pp 139-144
 - A. Agency Options for Real Estate Firms
 - 1. Seller Agency Only
 - 2. Buyer Agency Only
 - 3. Both Seller Agency and Buyer Agency with Dual Agency for "In-House" Sales [*Brief introduction only at this point.*]
 - B. Agency Relationships When Brokers/Firms Cooperate
 - 1. Cooperating Broker/Firm as Seller's Subagent
 - 2. Cooperating Broker/Firm as Buyer's Agent
- III. Disclosure of Agency Relationships in Real Estate Sales (1½ hours)-pp 179-185
 - A. The Commission Rule – 58A .0104
 - B. *Working with Real Estate Agents* Brochure
 - C. "First Substantial Contact"
 - 1. With Seller
 - 2. With Buyer
 - 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

Section 2: Working With Sellers - Residential Sales (17 hours)
- pp 220-236; selected pages in other chapters

- I. Solicitation of Listings (¼ hour) - pp 220-222
 - A. Soliciting Listings of Other Firms/Brokers
 - B. “Do Not Call” Laws and Rules
 1. Applies to real estate 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 and caller must check the federal *Do Not Call Registry* at least once every 31 days.
 2. Prohibition includes calls *to solicit listings* made to property owners marketing their property as *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
 - D. “Anti-spam” Laws and Rules. Brokers should keep abreast of any restrictions on email solicitations that might affect their solicitation of business in that manner.
- II. Preparing for Prelisting Meeting with Prospective Seller (¼ Hour) - pp 222-224
 - A. Documents to be Acquired by Listing Agent:
 1. Well-drafted listing agreement form (such as NCAR Standard Form 101)
 2. The Commission’s *Working with Real Estate Agents* brochure
 3. Copy of the *Residential Property and Owners’ Association Disclosure Statement* and *Mineral and Oil and Gas Rights Disclosure* forms (available from Commission’s website; REALTORS® may use NCAR Standard Form 140)
 4. Property listing data sheet (if property will be placed in MLS)
 - 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 (1½ hours) - pp 224-229; 168-176

A. Explain Agency Relationship and Company Policies/Services

1. Make required agency disclosure
2. Caution seller about providing confidential information to the listing agent (or any other potential listing agent) prior to signing a listing contract and explain why.)
3. Determine if and how the firm will represent the seller (seller's agent only or possibly also as a dual agent)
4. Discuss marketing options. If listing will be placed in MLS, explain briefly how MLS works and its benefits for both sellers and buyers.
5. Advise seller of firm's proposed brokerage fee for listing and selling the seller's property and negotiate within parameters established by company policy.

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 when preparing the listing data sheet.
2. Identify personal property to be sold and fixtures NOT to be sold.
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.

D. Advise seller of the seller's rights and obligations under the *Residential Property Disclosure Act* and assist the seller in fulfilling these statutory obligations – pp 168-173

1. Advise the seller whether the disclosure statement is required. (Emphasize that the form is mandatory for the vast majority of single-family residences.)
2. 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 the disclosure statement prior to or at the time the buyer makes an offer.
3. Inform Seller of his/her options in answering and the right to choose *No Representation*. Seller is NOT required to make any representations regarding the property's condition.
4. Explain (remind seller of) a real estate broker's statutory duty to 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.
5. 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!
6. 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 allow the seller to complete the forms.

E. Comply with *Residential Lead-Based Paint Hazard Reduction Act* (if applicable) - pp 173-176

F. Verify the acreage of the lot or tract from seller's deed and/or a current survey and locate corners/lines on the ground if possible.

1. Real estate licensees 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. Tour the lot or tract with the seller and actually locate corners and property lines if possible in order to avoid subsequently making a misrepresentation to a prospective buyer about such matters.

IV. Verify and Report Building Square Footage in Accordance with Real Estate Commission's *Residential Square Footage Guidelines* (3 hours) – pp 228-229; *Guidelines* booklet

- V. Perform a Comparative Market Analysis (CMA) for the Seller (7 hours)
 - pp 229-230; 511-533
 - A. Laws and Rules Governing Broker Price Opinions (BPOs) and Comparative Market Analyses (CMAs) Performed by Real Estate Brokers
 - pp 515-522; 529-531
 - 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 – 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 - pp 523-525
 - 1. Steps in the CMA/BPO Process
 - a. Assuring the Broker is Qualified
 - b. Identifying the Assignment
 - c. Collecting Data on Subject and Local Market
 - d. Analysis Using the Sales Comparison Approach
 - e. Analysis Using the Gross Rent Multiplier Approach – pp 511-512
 - f. Analysis Using the Income Capitalization Approach – *Brief Intro Only*
 - g. Analysis Relating to Estimating a Probable Leasing Price (Lease Rate)
 - pg 527
 - h. 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 - pg 520

- i. Reporting Probable Selling/Leasing Price as a “Range” - *pg 527*
 - j. The BPO/CMA Report – *pp 527-528*
 - k. Important Reminder about CMAs/BPOs Provided for No Fee-*pg 529*
- VI. Assist the Seller in Setting an Appropriate Listing Price (1 hour) - *pp 230-232*
 - A. Advise the Seller as to Appropriate Listing Price – Factors to Consider
 - 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” situation - *pp 230; 434-437*
 - B. Review How to Estimate Seller’s Net Proceeds
 - C. Review How to Calculate a Seller’s Net Profit
- VII. Review and Complete the Listing Contract (1 hour)
 - *pp 196-198; 210-218; 255-264*
 - A. General Requirements for All Agency Contracts [*See Commission Rule 58A .0104(a) and (b)*] - *pp 196-198*
 - 1. Listing contracts must be in writing from the outset of the relationship. Oral listing agreements are unlawful in NC.
 - 2. Listing contracts must also:
 - a. have a definite expiration date;
 - b. contain the anti-discriminatory language prescribed by rule; and
 - c. be signed by the parties and include the listing licensee’s license number.
 - B. Listing Contract Provisions-Standard “Full-Service” Listing Contract
 - pp 255-264*

C. Selected Points about Listing Contract Completion - *pp 210-217*

1. When to complete the listing contract.
2. All provisions should be filled in prior to having the seller(s) sign. Seller should not be asked to sign an incomplete listing contract (for example, one without the listing price filled in).
3. Names and Signatures
 - a. All co-owners should sign!
 - b. Where one spouse is the 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.

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

VIII. Working as a Limited Services Broker ($\frac{1}{4}$ hour) - *pp 207-210*

- A. Limited Services Listing Contract – Common Approaches
- B. Duties of Limited Services Listing Broker under the Real Estate License Law, Commission Rules and the Common Law of Agency

IX. Submitting Property Data to MLS; MLS Operations; Antitrust Laws ($\frac{1}{4}$ hour)
–*pp 233; 218-220*

- A. The Commission will hold a listing agent personally responsible for the accuracy of property data reported in MLS. This responsibility cannot be delegated. A mistake made by an assistant or secretary will not excuse the listing agent from responsibility. - *pg 233*
 - B. Overview and discussion of typical MLS operational rules. [Mandatory training on MLS use is standard among the various MLS operations.] - *pp 218-219*
- C. Antitrust Laws - *pp 219-220*

- X. Marketing Listed Property (2 hours) - pp 233-235; 404-405
 - A. Legal Compliance in Marketing/Advertising - pp 233-235
 - 1. Signage and blind ads
 - 2. Comply with advertising requirements of Truth in Lending Laws -pp 404-405
 - 3. Fair Housing Considerations in Advertising
 - 4. Internet Advertising – Same rules apply
 - B. Fulfilling Listing Agent's/Firm's Agency and Contractual Duties Relating to Marketing a Property - pp 234-235
 - 1. Review customary practices.
 - 2. Other Points to Consider – 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 (½ hour) - pp 235-236
 - 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. [See Commission 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 Buyers – Residential Sales (5½ hours) - pp 236-245

- I. Agency Disclosure to Buyers – Basic Requirements (½ hour) - pp 236-237; also see Commission Rule 58A .0104(c)

- II. Working with Buyers as Seller's Agent or Subagent - *pp 237-238*
 - A. Disclose and Document Agency Relationship in writing. Use the *Working with Real Estate Agents* brochure for this purpose.
 - B. Co-brokerage Subagency Situations.
 - C. In-house Situations.
 - D. Switching from seller's subagent to buyer's agent requires seller's consent.
- III. Working with Buyers as a Buyer's Agent (2 hours) - *pp 238-242*
 - A. Basic Requirement for Express Agreement from the outset of the relationship - *pg 238*
 - B. Temporary Oral Buyer Agency Agreement Option - *pp 238-239*
 - 1. Requirements for temporary oral buyer agency agreement:
 - a. must be non-exclusive; buyer may work with multiple brokers
 - b. may NOT bind the buyer for any specific period of time
 - 2. Must be reduced to writing no later than the time an offer to purchase is made.
 - 3. Switching from buyer's agent to seller's subagent
 - C. Summary of Essential Elements of a Written Buyer Agency Agreement - *pg 240*
 - D. Types of Buyer Agency Agreements - *pp 240-241*
 - 1. *Exclusive Buyer Agency Agreement* [See NCAR Standard Form 201, *pp 265-270*, and 201-G – *Guidelines for Completing the Exclusive Right to Represent Buyer Form*]
 - 2. *Non-Exclusive Buyer Agency Agreement* [See NCAR Standard Form 203, *pp 271-274*]
 - 3. Alternate Options for Working with Buyers - *pp 241-242*
 - a. Limit duration of agreement
 - b. Limit agreement to specific properties

- E. Duties to Buyer of Buyer's Agent versus Seller's Subagent Working with a Buyer - *pg 242*
- IV. Practices of Brokers Working With Buyers (2½ hours)
- *pp 242-245 and other pages as noted*
 - 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 – *Chapter 13, pp 412-419; 421-423*
 - 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
 - 1. Protective (Restrictive) Covenants – *pp 120-124; 449*
 - 2. Zoning - *pp 102-110; 449*
 - 3. Flood Hazard Area - *pp 119-120; 445*
 - 4. Check Septic System's Authorized Capacity (if applicable) –*pp 447-448*
 - 5. Inquire about Permits for Renovations, Additions, Major Repairs
-*pp 446-447*
 - G. Additional Buyer Agent Responsibilities and Practices [Covered in *Post 302 Contracts and Closing Postlicensing course*]

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

- I. Review of Dual Agency Basics - *pp 245-246*
 - A. Requirements for Brokers in Dual Agency Situations
 - 1. Disclosure and consent
 - 2. Requirement for written agreement (with oral agreement permitted in certain situations) [*Commission 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 - *pp 246-253*
 - 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 [*Commission Rule 58A .0104(j)-(m)*]
 - 1. Basic concept
 - 2. Major rule provisions
 - 3. Special features of designated agency
 - 4. Protecting confidential information in general, and small office considerations
 - C. Individual Broker Dual Agent [*Commission Rule 58A .0104(n)*]
 - D. Alternatives to Dual Agency in Other States
 - E. Dual Agency Agreement without Pre-existing Agency Relationship

Section 5: Other Topics (½ hour)

- I. When Brokers Leave/Change Firms (¼ hour)
 - A. Required Notice to Commission within 10 days [*Commission Rule A .0103.*]
 - B. Handling of Transactions in Progress - *pp 741-742 (regarding compensation of licensees when leaving/changing firms)*
- II. License Status and Education Issues (¼ hour)
 - 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)
- C. Continuing Education Requirement (and consequences of failure to satisfy)
- D. Requirements and procedures to activate an inactive license
- E. Requirements and procedures to reinstate an expired license
 - 1. License expired for not more than 6 months
 - 2. License expired for more than 6 months

End of Course Syllabus