

**North Carolina
Postlicensing Course Syllabus**

**POST 303
*NC LAW, RULES, AND LEGAL CONCEPTS***

(Student Version)

September 2018 Edition



North Carolina Real Estate Commission

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INTRODUCTION

Course Description: The *Post 303 - NC Law, Rules, and Legal Concepts* course is one of the three 30-instructional 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 general North Carolina licensing requirements, brokerage compensation issues, the disciplinary process, specialized types of real estate, property management in NC, and miscellaneous NC laws and legal concepts.

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 use of guest lecturers is allowed, if compliant with Rule 58H .0204(d). The *Post 303 - NC Law, Rules, and Legal Concepts* 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*
- *North Carolina Real Estate License Law and Commission Rules (Also including the License Law and Rules Comments) (hereinafter called LLCR).*

Page references throughout the syllabus are for the 2017 edition of the *Manual* and the July 2018 version of the *LLCR*.

Course 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 score is 75%. Students must be required to pass the end-of-course examination and to satisfactorily complete any required activities. Schools and instructors may, at 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, analyze, etc. relevant facts, principles, procedures, etc. in a variety of common fact situations likely 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 303

NC LAW, RULES, AND LEGAL CONCEPTS POSTLICENSING COURSE

RECOMMENDED EMPHASIS

| Section Title | Hours |
|---|--------------|
| Section 1: General North Carolina Licensing Requirements..... | 4.5 |
| Section 2: Brokerage Compensation Issues..... | 4 |
| Section 3: Disciplinary Process..... | 3 |
| Section 4: Specialized Types of Real Estate..... | 4.5 |
| Section 5: Property Management..... | 6 |
| Section 6: Miscellaneous NC Laws and Legal Concepts..... | 7 |
| End-of-Course Examination..... | 1 |
| TOTAL HOURS | 30 |

Post 303
NC Law, Rules, and Legal Concepts
Postlicensing Course Syllabus

Section 1: General North Carolina Licensing Requirements

[Various Commission Rules] (*Manual*, Appendix A; *LLCR*, pp. 86-88)

I. Basic Licensing [93A-1 & 2]

Required Activity: Provide transactional scenarios where students identify whether a license is required; if a license is not required, have students determine which exemption applies.

- a. Activities Requiring a License (*LLCR*, p. 87)
 - i. Definition of Brokerage: Persons and business entities who perform brokerage activities for consideration or the promise thereof as an agent for others
 - ii. Brokerage Activities
 - 1. Listing (or offering to list) real estate for sale or rent
 - 2. Selling or Buying (or offering to sell or buy) real estate
 - 3. Leasing or Renting (or offering to lease or rent) real estate
 - 4. Conducting (or offering to conduct) a real estate auction
 - 5. Selling, Buying, Leasing, Assigning or Exchanging any interest in real estate, including a leasehold interest, in connection with the sale or purchase of a business
 - 6. Referring a party to a real estate licensee for compensation
- b. Licensing Exemptions (*LLCR*, p. 88)
 - i. Business Entity selling or leasing entity-owned real property via officers and W-2 employees
 - ii. Attorney-in-fact for consummation of contract performance
 - iii. Active Attorney-at-law performing practice of law
 - iv. Court-appointed Receiver, Trustee in Bankruptcy, Guardian, Administrator, Executor, etc.
 - v. Trustee

- vi. W-2 Employees of Broker-Property Managers [G.S. 93A-2(c)(6)]
- vii. Individual Property Owner
- viii. Housing Authority organized under Chapter 157 selling or leasing Authority-owned real property via regular salaried employees
- c. License Categories [G.S. 93A-2] (*Manual*, pp. 765-6; *LLCR*, p. 86)
 - i. Broker
 - 1. Provisional Status (PB)
 - a. Postlicensing Education Requirement [G.S. 93A-4(a1); Rule A .1902]
 - b. Requirements for Active Status
 - i. Annual License Renewal
 - ii. Affiliation with a Broker-in-Charge (BIC)
 - iii. Timely Completion of Postlicensing Education
 - iv. Timely Completion of required CE each license year after first license renewal
 - 2. “Full” Broker (Non-provisional Status)
 - a. Requirements for Active Status
 - i. Annual License Renewal
 - ii. Timely Completion of required CE each license year after first license renewal
 - b. Options for Practice
 - i. Firm / BIC Affiliation
 - ii. Sole Proprietorship
 - c. Active Status without BIC Affiliation or Designation
 - 3. BIC Eligible Status / BIC (Broker-in-Charge) Designation [G.S. 93A-2(a1) & G.S. 93A4.2; Rule 58A .0110] (*LLCR*, pp. 100-102)

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| <p>Required Activity: At the end of this section, have students compare & contrast roles of BIC and QB.</p> |
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- a. BIC Eligible Status
 - i. Definition of BIC Eligible Status: Broker is ready to serve as BIC whenever needed; BIC designation is not required to achieve BIC Eligible status
 - ii. Requirements for BIC Eligible Status
 - 1. Active, Full Broker License
 - 2. 2 years of full-time brokerage experience within previous 5 years
 - 3. Submission of *Request for BIC Eligible Status and/or BIC Designation Form* (REC 2.25)
 - 4. Completion of *12-Hour Broker-in-Charge Course* (no earlier than 1 year prior to submission of Form 2.25 & no later than 120 days after submission of Form 2.25)
 - iii. Maintenance of BIC Eligible Status
 - 1. Timely annual renewal of Broker license
 - 2. Timely completion of annual BICUP beginning in the year of designation unless GENUP was completed prior to designation
 - 3. Timely annual completion of an NCREC-approved Elective
- b. Options for BIC Designation
 - i. Designation as BIC of an Office at a New or Existing Firm

- ii. Designation as BIC of a New or Existing Sole Proprietorship
 - 1. Definition: Non-entity business owned by one person who is liable for all debts & obligations of the company
 - 2. May have Affiliated Brokers
 - 3. Registration of Assumed Name with Secretary of State (SOS) (*Manual*, pp. 766-767)
- iii. BIC is Required when a Sole Proprietorship:
 - 1. Has a Trust Account, **or**
 - 2. Advertises/Promotes Brokerage Services in any way, **or**
 - 3. Has any Affiliated Brokers
- c. Statutory Responsibilities
 - i. Ensuring that Affiliated Brokers maintain Active Licensure
 - ii. Providing “Active & Direct” Supervision of PBs [Rule 58A .0506]
 - iii. Ensuring Compliance with Agency Agreement & Disclosure Rules [Rule 58A .0104] (*LLCR*, pp.95-98)
 - iv. Maintaining the Trust Account per Commission Rules [Rule 58A .0117] (*LLCR*, pp.104-106; the *Handling Trust Monies* section of the 2015-2016 BICUP)
 - 1. Basic Account Requirements
 - 2. Deposits & Disbursements
 - 3. Disputed Funds

- v. Advertising (*LLCR*, pp. 98-99; *Broker-in-Charge Reminders* section of the 2017-18 BICUP course)
 - vi. Retaining Records [Rule 58A .0108] (*LLCR*, p. 99)
 - vii. Notifying Commission of Changes in Firm Name or Address [Rule 58A .0103] (*LLCR*, p. 98)
- ii. Firm Licenses [93A-1 & 2; Rule 58A .0502] (Manual, pp. 766-771)
- 1. Business Entities
 - a. Definition: Corporations, LLCs, Partnerships, Association, Joint Business Ventures
 - b. Legally creating an Entity & registering with NC SOS
 - c. Permissible Names of Entities & Business Purpose
 - i. Name Restrictions [Rule 58A .0103]
 - ii. Registering Assumed Names
 - iii. NCREC cannot license “Professional Services” entity [G.S. 55B-2]
 - 2. NCREC Firm License Requirements
 - a. Firm Application (*Form REC 1.72*)

Required activity: Conduct a line-by-line review of the Firm Application (Form REC 1.72) on the Commission’s website at www.ncrec.gov as part of the discussion on this topic.
 - b. Firm Name on Application must be identical to entity’s legal or trade name as registered with SOS
 - c. All Entity Principals must satisfy Character Requirement
 - d. Qualifying Broker (QB)
 - i. Qualifications
 - 1. Active “Full” Broker License in Good Standing

2. Principal of the Entity
 - a. General Partner of a Partnership
 - b. Manager of an LLC
 - c. Officer of a Corporation
- ii. Responsibilities
 1. Designate BIC for each Office
 2. Renew Firm License
 3. Retain Firm's Pocket Card
 4. Notify NCREC of Change in Firm's Address, Trade or Assumed Name
 5. Notify NCREC of change in QB status within 10 days
 6. Secure Transactional and Trust Account Records when QB or BIC changes
 7. Inspect Trust Account Records upon change in BIC
 8. Notify NCREC of inability to maintain records or of unreconciled trust account
 9. Notify NCREC of firm's change in status with SOS
- iii. Lack of QB (e.g., expired or inactive individual broker status)
 1. Firm License placed on Inactive status
 2. All firm offices close
 3. BIC(s) lose designation (but do not lose BIC Eligible status)
 4. Formerly affiliated Brokers remain Active at their home addresses
 5. Formerly affiliated PBs become Inactive
- e. Broker-in-Charge (BIC) appointed for each physical office

- f. Firm licensure does not extend to any individual
 - g. Firm license must be renewed annually between May 15-June 30
- iii. Limited Nonresident Commercial License (LNCL) [G.S. 93A-9(b); Rule Section 58A .1800] (Manual, p. 647-648; LLCR, p.87) **Level 2**
 - 1. Requirements for Licensure
 - a. Eligibility
 - b. Definitions
 - c. License Maintenance
 - d. Limitations
 - e. Advertising
 - f. Payment of Fees
 - 2. Affiliation with Resident Broker(s)
 - a. Brokerage Cooperation Agreement
 - b. Declaration of Affiliation
 - c. Duties of Resident Broker
 - i. Verification of Active LNCL Status
 - ii. Active & Direct Supervision
 - iii. Notification of LNCL Non-compliance to NCREC
 - iv. Maintenance of Transactional Records
 - v. Handling of Transactional Trust Monies (Note that the BIC will be responsible for the Trust Account)
- d. Broker License Maintenance [G.S. 93A-4(c); Rules 58A .0503, .0504, .0505]
 - i. Annual Renewal and Education Requirements
 - 1. Current vs. Expired = Annual Renewal Fee paid between May 15 and June 30
 - 2. Active vs. Inactive = “Current” plus up-to-date CE/Post Education

- ii. Proof of Licensure (Digital Pocket Card)
- iii. Notification Requirements
 - 1. Name/Address Changes within 10 days
 - 2. Firm Affiliation(s) within 10 days
 - 3. Convictions/Disciplinary Actions within 60 days
- iv. Activation Procedures
- v. Reinstatement Procedures
 - 1. Reinstatement Fee = 2 times Annual Renewal Fee
 - 2. Expired Less than 6 Months
 - 3. Expired 6 months-2 years or Surrendered/Revoked for no more than 2 years
 - 4. Expired, surrendered or revoked for more than 2 years
- e. Teams (*Teaming Up* section of the 2016-2017 Update course)
 - i. Overview
 - 1. Definition of Team: group of people with different skills and tasks who work together on a common project, service, or goal coordinating functions and cooperating and supporting each other to accomplish the same goal
 - 2. Team structure varies widely dependent on needs of team members
 - 3. Key questions about team structure
 - a. Has a broker created a licensed entity (e.g., corporation, LLC, etc.)
 - b. If yes, will the name of the licensed entity be used in advertising
 - ii. Examples of Team Structures
 - 1. Voluntary Team Cooperation; No Entity
 - a. "Voluntary" team name may be advertised with firm name
 - b. Provisional Brokers may be part of the team since there is only 1 BIC

- c. Agency agreements are only in the name of the primary company
 2. Voluntary Team Cooperation; Entity for Individual Broker Compensation Only (No advertising) [Rule 58A .0110(c)]
 - a. QB is the only broker in or affiliated with this entity
 - b. Created to receive fees for Entity's QB earned under another licensed broker
 - c. Does not need a BIC because not providing brokerage activity under its license and not advertising its name
 - d. Agency agreements are only in the name of the primary company
 3. Licensed Team Entity; All Team Members Dually Affiliated
 - a. Must have a Team Firm BIC
 - b. Dually Affiliated team members must advertise both firm names
 - c. Cannot have Provisional Brokers as part of the team since there are 2 BICs
 - d. Agency agreements must be in both firm names
- iii. Other Team Considerations
 1. Consumer Interaction
 2. Handling of transactional tasks
 3. Compensation of team members

Section 2: Brokerage Compensation Issues

[G.S. 93A-6(a)(9); Rule 58A .0109] (*Manual*, pp. 731-763; *LLCR*, pp. 99-100; *Compensation Issues* section of 2009-2010 BICAR course)

Required Activity: After each of the first four subsections, provide multiple transactional scenarios involving various compensation issues. Have students determine proper compensation practice and reference which rule(s) guided their decision. This should be an in-class small group assignment with a "town hall" discussion (with the entire class) at the end.

- I. Compensation for Brokerage Services Requires an Active Real Estate License
 - a. General Prohibition of Compensating Unlicensed Persons
 - b. Exceptions
 - i. Sharing Compensation with Parties to the Transaction
 - 1. Subject to Lender Approval
 - 2. Must Appear on Settlement Statement
 - ii. Payments to Travel Agents for Vacation Rentals **Level 1**
- II. Compensating Affiliated Licensees
 - a. Broker Eligibility for Compensation
 - b. Paying Provisional Brokers
 - c. Paying “Full” Brokers
 - d. Paying Brokers No Longer Affiliated with Firm
 - e. Miscellaneous Situations
 - i. Broker Working on a Pending Transaction After Leaving a Firm
 - ii. Expired or Inactive Individual Broker’s License
 - iii. Expired or Inactive Firm, QB, or BIC License
 - f. Paying Business Entities Created by Broker Associates for Compensation Purposes
- III. Sharing Compensation with Non-Affiliated Brokers or Firms
 - a. Current and Active License Required
 - b. Sharing Brokerage Fees through Cooperative Listing Services (e.g., MLS)
 - c. Sharing Brokerage Fees Outside of Cooperative Listing Services
 - d. Compensation Agreements “Should” be Written
 - e. Listing Company Limitations on Sharing Compensation
- IV. Third Party Payments to Brokers
 - a. Restrictions on Kickbacks, Rebates, Referral Fees, etc.
 - b. Compensation, Incentives, Bonuses, etc. to Broker from Anyone Other than Broker’s Principal [Rule 58A .0109(c, d, & e)]
 - i. Applies to All Sales Transactions

- ii. Full and Timely Disclosure to Principal
 - 1. Description of Compensation
 - 2. Identity of Source
 - 3. Written Confirmation Prior to Offer
 - iii. Nominal Value
- V. Assistants (LLCR, pp. 87-88; *Selected Topics in Property Management* section of 2018-19 Update course)
 - a. Who can hire an Assistant may be dictated by company policy
 - b. Permitted vs Prohibited Duties
 - i. Licensed vs. Unlicensed
 - ii. Sales vs. Lease Transactions
 - c. Compensation
 - i. May be paid directly for administrative duties whether Licensed or not
 - ii. Special Considerations for PBs
 - 1. Can only be paid for brokerage activity by BIC
 - 2. May be paid by anyone for administrative duties
- VI. Commercial Real Estate Broker Lien Act [G.S. 44A-24.1-14] (*Manual*, p.648-650)

Level 1

- a. Major Features
 - i. Entitlement
 - ii. Property Subject to Lien
 - iii. Filing & Enforcement Requirements

Section 3: Disciplinary Process

[G.S. 93A-6; Rule Section 58A .0600] (*Manual*, pp 719-730; *Handling Complaints* section of 2015-2016 BICUP; *Disciplinary Procedures* section of 2010-2011 BICAR)

Required Activity: Review the case studies in Chapter 20 of the *Manual* as a small group in-class assignment. Have students determine which of the prohibited acts and/or Commission rules were violated.

- I. NC Prohibited Acts (*LLCR*, pp. 89-95, 99-100, 103)
 - a. Misrepresentation and Omission [93A-6(a)(1)]
 - b. Making False Promises [93A-6(a)(2)]
 - c. Other Misrepresentations [93A-6(a)(3)]
 - d. Conflict of Interest [93A-6(a)(4) & (6)]
 - e. Improper Brokerage Commission [93A-6(a)(5) & (9)]
 - f. Failing to Account for Trust Funds [93A-6(a)(7)]
 - g. Unworthiness and Incompetence [93A-6(a)(8)]
 - h. Improper Dealing [93A-6(a)(10)]
 - i. Discriminatory Practices [93A-6(a)(10); Rule 58A .1601]
 - j. Practice of Law [93A-4(e); 93A-6(a)(11); Rule 58A .0111]
 - k. Commingling of Funds [93A-6(a)(12)]
 - l. Failure to Timely Deliver Completed Offers and Sales Contracts [93A-6(a)(13); Rule 58A .0106 & .0108]
 - m. Failure of Responsibility for Closing Statement Accuracy and Delivery [93A-6(a)(14)]
 - n. Violating any Commission Rule [93A-6(a)(15)]
 - o. Other Prohibited Acts [93A-6(b)]
 - i. Obtaining a License by False or Fraudulent Representation
 - ii. Conviction in the United States of an Offense involving Moral Turpitude
 - iii. Violation of 93A-6(a) Transactions involving Broker's Own Property
 - iv. Violation of 93A-6(a) by Broker's Exempt Unlicensed Employee
 - v. Disciplinary Action as a Licensee of another Profession or Occupation involving Fraud, Theft, Misrepresentation, Breach of Trust or Fiduciary Responsibility, or Willful or Negligent Malpractice
- II. Complaint Process **Level 1**
 - a. Commission's Authority
 - i. Take Disciplinary Action
 - ii. Investigate Licensees and Unlicensed Activity
 - iii. Issue Subpoenas

- iv. Impose Sanctions for Licensee Misconduct
 - 1. License Revocation
 - 2. License Suspension
 - 3. Reprimand
 - 4. Conditions, Restrictions, Limitations on the License (e.g., ability to serve as BIC)
- b. Broker's Obligations & Duties
 - i. Report to Commission within 60 days [Rule 58A .0113]
 - 1. Any Felony or Misdemeanor Conviction
 - 2. Disciplinary Action by a Government Agency in connection with any Occupational License
 - 3. Restriction, Suspension, or Revocation of a Notarial Commission
 - ii. File a Response to a Letter of Inquiry within 14 days of Receipt [Rule 58A .0601(e)]
 - iii. Make Records Available for inspection and reproduction by the Commission's Representative upon request without prior notice [Rules 58A .0108 & 58A .0117(h)]
 - iv. BIC Liability/Responsibility for Associated Brokers
 - 1. Provisional Brokers
 - a. BIC is fully accountable for affiliated PBs
 - b. Review concept of active and direct supervision
 - c. If a complaint is filed against a PB, the BIC will also be named in the complaint
 - 2. "Full" Brokers
 - a. 5 issues for which a BIC is accountable for all affiliated brokers (Agency, Active & Current Licensure, Advertising, Trust Accounts, and Transaction Files)
 - b. If a complaint is filed against a "full" broker, the BIC will also be named in the complaint if the issue falls within the 5 categories or there is indication of BIC knowledge

/ involvement

3. Written Office Policies
4. Providing Training

Section 4: Specialized Types of Real Estate

I. Condominiums & Townhouses (*Manual*, pp. 15-17; NCREC Brochure, *Questions & Answers on: Condos & Townhouses*)

a. Definitions

i. Land Ownership

1. Individual condo owners hold title to airspace of the unit (inside of exterior wall to inside of exterior wall)
2. Individual townhome ownership includes ownership of the exterior of the unit and the land upon which the unit sits

ii. Ownership of Common Areas

1. Individual condo owner owns a share of common elements (e.g., land, building exterior, amenities) as tenants in common without right to partition
2. Individual townhome owner has use of common elements (e.g., amenities) owned by the homeowners' association

iii. Found in All Use Types (e.g., Residential, Commercial, Industrial, Business)

b. Transactional Issues

Required Activity: (1) Complete a thorough review of NCAR Standard Form 2A12-T *Owners' Association Disclosure and Condominium Resale Statement Addendum*.

(2) At the end of this section, have students discuss concerns that are potentially unique to condo or townhouse purchase transactions and how to proactively address them. This could be a small group activity that reports back to the entire class.

i. Proper Hazard Insurance Coverage

1. Condo insurance (HO6) is a policy that covers the individual unit ("walls-in coverage") & should cover personal property plus fixtures, such as cabinets, that are attached to the common area walls

2. The Condominium Owners' Association master insurance policy will usually cover only the common areas or elements
 - ii. Owners' Association Dues
 1. Regular Assessments ("Dues")
 - a. May be due monthly, quarterly, or yearly
 - b. Should specify what is covered by the assessment
 - c. May include Reserved Funds for Major Repairs/Capital Improvements
 2. Separate Special Assessments, as needed
 - iii. Possible Transfer Fees
 - iv. Use Restrictions by Protective Covenants
 - c. Relevant Laws **Level 1**
 - i. North Carolina Condominium Act [G.S. 47C; or if created prior to 10/1/1986, G.S. 47A]
 - ii. Townhouses may be subject to Planned Community Act [G.S. 47F]
- II. Timeshares [G.S. 93A, Article 4; Rule Subchapter 58B] (*Manual*, p. 18) **Level 1**
- a. Definitions [G.S. 93A-41(2), (7a), (9), (9a), (12) and (13)]
 - b. Project Registration [G.S. 93A-40]
 - c. License Requirement [G.S. 93A-40]
 - d. Developer's Obligation to Record Time Share Instruments [G.S. 93A-42]
 - e. Escrow Requirements [G.S. 93A-42(c) and (d)]
 - f. Developer's Public Offering Statement [G.S. 93A-44]
 - g. Purchaser's Right to Cancel [G.S. 93A-45]
 - h. Commission's Disciplinary Authority [G.S. 93A-54]
 - i. Penalties [G.S. 93A-56]
 - j. Requirements for Registrar and Project Broker [G.S. 93A-58]
 - k. Time Share Sales Operations [Rules Section B.0400]
 - l. Handling and Accounting of Funds [Rules Section B.0500]
 - m. Project Broker [Rules Section B.0600]

III. Manufactured and Modular Homes [G.S. 143-143.9] (*Manual*, p. 8)

a. Characteristics of Factory Built Homes

i. Manufactured Housing

1. Description

- a. Built to HUD standards; HUD certification label
- b. Titled & regulated by Dept. of Motor Vehicles (DMV)
- c. Permanent non-removable steel chassis

2. Personal property until converted to real property by:

- a. Attaching to permanent foundation on land owned by owner of home;
- b. Removing wheels, axle and moving hitch; and
- c. Filing affidavit of conversion to cancel DMV title

ii. Modular Housing

1. Description

- a. Built to state building code
- b. State inspection label with serial number
- c. Assembled by builder on-site

2. Becomes real property as soon as assembled on building site

b. Financing Issues

IV. Commercial Property (*Manual*, pp. 639-681, 685-693) **Level 2**

a. Classifications

- i. Office
- ii. Retail
- iii. Industrial
- iv. Land/Specialty

b. Special Considerations

- i. Transaction Cycle
- ii. Zoning & Other Land Use Restrictions
- iii. Financing
- iv. Market Factor Concepts
- v. Like-Kind Exchanges [IRS Code 1031]

c. Commercial Real Estate Broker Lien [G.S. 44A-24.1-14] **Level 1**

Section 5: Property Management

NOTE: North Carolina Realtors ® publishes the *NCAR Residential Property Management Legal Handbook* that might be a useful resource that is available to both NCAR members and non-members. If interested, contact csansom@ncrealtors.org.

- I. Residential Tenant Laws (*Manual*, pp. 536-555; *Selected Property Management Issues* section of the 2011-2012 Update; 2 NCREC Brochures: *Questions & Answers on: Renting Residential Real Estate*, and *Tenant Security Deposits*)

Required Activity: Provide forms and identify provisions in both the NCAR Standard Form #401 *Exclusive Property Management Agreement (Long-term Rental Property)* and NCAR Standard Form #410-T *Residential Rental Contract* that reference or uphold these residential tenant laws.

- a. Residential Rental Agreement Act [G.S. 42-38, Article 5]
 - i. Waiver of Act is Prohibited
 - ii. “Mutuality of Obligations”
 - iii. Tenant’s Statutory Duties
 - iv. Landlord’s Statutory Duties
 - v. Broker’s Duties under Act
 - vi. Allocation of Public Utility Costs
 - vii. Tenant Remedies for Breach by Landlord
 - viii. Landlord's Liability under the Law of Negligence
- b. Eviction Procedures
 - i. Act Prohibiting Retaliatory Eviction [G.S. 42-37, Article 4A]
 - ii. Summary Ejectment (Eviction Procedure)
 1. Self-help Eviction Prohibited
 2. Seizure of Tenant’s Personal Property
 3. Expedited Eviction for Criminal Activity
- c. Tenant Security Deposit Act [G.S. 42-50, Article 6]
 - i. Permitted Uses of Security Deposits
 - ii. Accounting to the Tenant
 - iii. Security Deposit Limits
 - iv. Pet Fees Permitted
 - v. Limits on Late Payment Fees

II. NC Vacation Rental Act [G.S. 42A] (*Manual*, pp. 560-563; *Sales of Vacation Rentals* section of the 2015-2016 Update; NCREC Brochure, *Owning Vacation Rental Property*) **Level 2**

- a. Definitions
- b. Requirements for Valid Agreement
- c. Handling & Accounting for Funds
- d. Transfer of Property Subject to Act
- e. Expedited Eviction
- f. Landlord & Tenant Duties
- g. Mandatory Evacuation

III. Commercial Leases **Level 2**

- a. Types
 - i. Fixed Rental (Flat) Lease
 - ii. Percentage Lease
 - iii. Net Lease
 - iv. Graduated Lease
 - v. Index Lease
 - vi. Full Service Lease
 - vii. Leases for Special Circumstances
- b. Common Lease Provisions
 - i. Tenant's Proposed Use
 - ii. Environmental Matters
 - 1. Lessor's Perspective
 - 2. Lessee's Due Diligence
 - iii. Lessee's Trade Fixtures
 - iv. Repairs
 - v. Upfitting Improvements
 - vi. Assignments and Subleases
 - vii. Lease Renewal

- viii. Options for Purchase and Preemptive Rights
- ix. Lessor's Right to Enter Premises During Lease Term
- x. Lessee's Implied Covenant of Quiet Enjoyment
- xi. Breach of Lease by Lessor or Lessee

Section 6: Miscellaneous NC Laws and Legal Concepts

I. Unique NC Real Property Ownership (*Manual*, pp. 12-14)

NOTE: Brokers are reminded of the prohibition against the unlawful practice of law [G.S. 93A-6(a)(11)] which would include advising a consumer on how to take title to real property. This section is intended to raise broker awareness of situations when a consumer needs legal advice on how to take title. The broker should **only** advise the consumer to consult a real estate attorney to determine the best ownership type for his/her goals.

Required Activity: Have students discuss why it is important for brokers to be aware of different types of ownership since brokers are prohibited from the unlawful practice of law. Have the class create a list of questions to ask seller and/or buyer clients to uncover ownership issues. Discuss what situations might make "typical/default" NC ownership (e.g., Tenancy by the Entirety for married buyers; unequal marital interests and prospective buyers in middle of divorce, etc.) not in a buyer's best interest.

- a. Tenancy by the Entirety [G.S. 39.7]
 - i. Reserved for Legally Married Couples
 - ii. NC Default Conveyance to Buyers married at time of purchase
 - iii. Previously Owned Property not automatically converted at marriage
 - iv. Mutual Agreement Required to convey or transfer any interest
 - v. Termination
 - 1. Mutual Agreement
 - 2. Divorce
 - 3. Death
- b. Marital Interest
 - i. Without other Legal Agreement, Automatically held by Untitled Spouse
 - ii. "One to buy; two to sell"

- c. Joint Tenancy in North Carolina [G.S. 41.2]
 - i. Specific Language Required to create Survivorship; not automatic like most states
 - ii. Unequal Interests are Possible

II. Disclosure & *Caveat Emptor*

Required Activity: At the end of this section, have students discuss the pros and cons of the seller providing full disclosure of property conditions vs. using the “No Representation” options when available. Discuss how agent can observe fiduciary obligations while deescalating emotions when the seller’s use of “No Representation” is perceived to be withholding/hiding information.

- a. Doctrine of *Caveat Emptor* (*Manual*, pp. 166-167)
 - i. “Let the Buyer Beware”
 - ii. North Carolina Seller has NO affirmative duty to disclose property information to Buyer
- b. Residential Property Disclosure Act [G.S. 47E] (*Manual*, pp. 168-173, 187-191)
 - i. Applicability
 - 1. Residential 1-4 unit Properties
 - 2. Includes For-Sale-by-Owners (FSBO) and Broker-owners
 - 3. Disclosure Prior to Buyer making an Offer
 - 4. Buyer’s Right to Cancel Contract
 - 5. Exemptions
 - 6. Broker’s General Duty
 - a. Inform Parties of Rights and Obligations under Act
 - b. Material Fact Disclosure Unaffected by Act
 - ii. Mandatory Forms to be completed by Property Owner

Required Activity: Provide and review RPOADS and MOG line-by-line.

- 1. Broker Responsibility
 - a. Educate Parties about Disclosure Requirements
 - b. Assist in Delivery

- c. Broker-owned Properties
 - i. Can mark “No Representation”
 - ii. Must disclose material facts in some way
 - 2. Residential Property & Owners’ Association Disclosure Statement (RPOADS) [Rule 58A .0114]
 - 3. Mineral and Oil and Gas Disclosure (MOG) [Rule 58A .0119]
 - a. NOT Exempted Transactions like for RPOADS
 - i. Never-inhabited New Construction
 - ii. Lessee-occupied Lease-option
 - b. Transfers where Parties agree to Not Complete the RPOADS
- c. Materiality Laws [G.S. 93A-6(a)(1)] (*Manual*, pp. 147-148; *LLCR*, pp. 89-92; *Material Facts* section of the 2008-2009 Update course)
- i. Broker’s Duty to Discover & Disclose
 - 1. Affirmative Duty
 - 2. Misrepresentation and Omission Prohibited
 - ii. Material Fact Categories & Examples
 - 1. Facts about Property Itself
 - a. Manufactured Homes vs. Manufactured (Modular) Buildings [G.S. 20-286(11)(b)(6)] (*Manual*, p.8; <https://bulletins.ncrec.gov/manufactured-homes-real-estate-personal-property>, Bulletin article, June 2002)
 - b. Polybutylene Pipes
 - c. Square Footage
 - i. Measurement using NCREC’S *Residential Square Footage Guidelines*
 - ii. Broker must personally measure or hire an expert to measure
 - d. Synthetic Stucco / Exterior Insulating & Finishing System (EIFS)

- e. "Meth" Houses (Bulletin article, May 2005, <https://bulletins.ncrec.gov/meth-houses>)
 - f. Radon
 - i. Radon level of 4.0 pico curies per liter or higher is a material fact
 - ii. Radon Testing
 - iii. Radon Mitigation
 - g. Unpermitted Additions/Improvements
 - h. Partial Destruction of Property
 - i. Gravesites located on the Property
2. Matters Relating Directly to the Property
 - a. Zoning
 - b. Permitting Regulations
 - c. Flood Zones and Need for Flood Insurance
 - d. Insurability of the Property
 3. Matters Relating Directly to the Ability of Agent's Principal's to Complete the Transaction
 - a. Foreclosure
 - b. Short Sale
 - c. Inability to Obtain Financing
 4. Matters of Special Importance to a Party
- iii. Other Material Fact Considerations
 1. Death or Serious Illness of Previous Property Occupant [G.S. 39-50 and G.S. 42-14.2]
 2. Presence of Convicted Sexual Offender [G.S. 27A-14]
- III. NC Planned Community Act [G.S. 47F] (*Manual*, pp.124-126) **Level 1**
 - a. Expands Owner Associations' Authority and Covenant Enforcement Power
 - b. Requires Explanation to Prospective Buyers of owner association powers, assessments, and enforcement remedies

IV. Subdivision Regulations (*Manual*, pp.111-113) **Level 2**

- a. Definition of *Subdivision* [G.S.153A-335]:
 - i. Division into 2 or more Lots, Building Sites or other divisions for the Purpose of Sale of Building Development (now or in future)
 - ii. Any Division involving Dedication of a New Street or Change in Existing Streets
- b. Exclusions
- c. Criminal Penalty for Selling Lots in Unapproved Subdivision
 - i. In Counties or Municipalities that have Subdivision Ordinance
 - ii. Survey of Proposed Lots NOT equal to Approval
- d. Broker Responsibilities
 - i. Verify Approval Status on Plat Map
 - ii. Offer and Contract Possible after Preliminary Plat Approval

V. Streets Disclosure Law [G.S. 136-102.6] (*Manual*, pp.112-113; *Subdivision Street Disclosure* section of the 2014-2015 Update course; *The 4 S's" Septic, Streets, Underground Storage Tanks & Square Footage* section of the 2016-2017 Update course)

- a. Application
 - i. Subdivision into 2 or more Lots for Residential Purposes, **and**
 - ii. Either Changing an Existing Street or Construction of a New Street
- b. Recording Requirement
 - i. Owner must Record Final Plat with Register of Deeds prior to Conveying Any Portion of the Parcel
 - ii. Streets must be Designated as Private or Public
- c. Private vs. Public
- d. Dedication vs. Acceptance
- e. Broker's Responsibility
 - i. Reasonable Inquiry
 - ii. Responsibility for Adjacent Street Maintenance is Material Fact
 - iii. Disclosure on Resale Property

- VI. Environmental Laws (Manual, pp. 116-119) **Level 1**
 - a. NC Coastal Area Management Act (CAMA) [G.S. 133A-100]
 - b. NC Mountain Ridge Protection Act [G.S. 113A-14]
 - c. Waterway Vegetation Buffer Zones
 - d. Scenic Corridor Zones
 - e. NC Leaking Petroleum Underground and Storage Tank Cleanup Act [G.S. 143-215.94A] (*The 4 S's*" Septic, Streets, Underground Storage Tanks & Square Footage section of the 2016-2017 Update course)
 - f. NC Sediment Pollution Control Act [G.S. 113A-50]
 - g. Clean Water Acts [G.S. 143A-214.1 & 113-229]
 - h. Wastewater Systems
- VII. NC State Fair Housing Act [G.S. 41A] (*Manual*, pp. 609, 622-627; *Fair Housing Review* section of the 2013-2014 BICAR course)
 - a. Compared to Federal Fair Housing Act
 - i. Identical to Federal Fair Housing Act except for Exemptions
 - ii. Exemption Differences from Federal Act
 - 1. No Exemption for Private Owners that Sell without a Broker
 - 2. Exemption for Rental of 1-4 Residential Unit if Owner or Owner's Family Member Lives in One of the Units
 - 3. Exemption for Rental of Rooms in a Single-sex Dormitory
 - b. Enforced by NC Human Relations Commission
 - c. The More Restrictive Act Rules

--End of Course Syllabus--