

2020-2021 BICUP Course

Section Four Provisional Brokers on a Team



1. 15 “full” brokers and 3 provisional brokers (PBs) are affiliated with XYZ Realty at 123 Main St. Sally is the BIC of the office. Sally allows brokers to work as teams within the office. Hank, one of the full brokers with XYZ, has formed a team with two other “full” brokers to work together to increase productivity, and they are calling themselves the “The Hankster Team of XYZ Realty.” Hank wants one of the PBs to join the team. Is that ok? Why or why not?

2. The Hankster Team is growing fast, and Hank decides to create an entity for the team. Hank creates and registers The Hankster Team, LLC, with the NC Secretary of State and obtains a firm license from the Real Estate Commission. Hank and his team continue to advertise as “The Hankster Team of XYZ Realty.” May a PB legally be on Hank’s team? Why or why not?

LEARNING OBJECTIVES

After completing this section, you should be able to:

- explain various team structures;
- recognize when a team structure requires a firm license and/or a BIC;
- recognize when a provisional broker (PB) may affiliate with a team within a firm; and
- describe a BIC’s responsibility for supervision of a PB.

PROVISIONAL BROKERS AND TEAMS

Historically, Commission Rule 58A. 0506 dictated that PBs were only allowed to affiliate with and be supervised by one BIC at a time.

Effective July 1, 2020, Rule 58A. 0506 states:

A provisional broker shall be supervised by only one broker-in-charge at a time except that a provisional broker may be supervised by no more than two brokers-in-charge of two licensed affiliated firms located in the same physical location and acting as co-listing or co-selling agents in real estate transactions. When a provisional broker is supervised by more than one broker-in-charge, both brokers-in-charge shall bear all supervision responsibility at all times.

Consequently, it is now legal for a PB to be affiliated with two BICs of two licensed firms, as long as the firms are affiliated and located in the same physical location. In such case, BOTH BICs will share responsibility for supervision of the dually-affiliated PB.

Let's explore several different team structures and determine whether a PB may be legally part of each team.

Team Scenario 1:
No Team Entity; All Team Members Affiliated ONLY with XYZ Realty



KEY POINTS: Scenario 1

- XYZ Realty is a large firm with multiple office locations.
- Betty is the Broker-in-Charge at the Downtown office location, and she has 10 affiliated brokers in the office.
- Bill Starr is a high producing broker in the Downtown office, and he wants to recruit other brokers within the same office to work together with him on transactions.
- Bill does not create a business entity for the team (e.g., a corporation, limited liability company (LLC), or partnership).
- Bill and all team members will advertise the team as "The Bill Starr Team of XYZ Realty."
- The team will continue to work out of the Downtown office location.

QUESTIONS FOR DISCUSSION: Scenario 1

1. Does Bill's team need a firm license? Why or why not?

Answer: No, because there is not a separate entity for this team.

2. Does Bill's team need a designated team BIC? Why or why not?

Answer: No, because there is not a separate entity for this team. Also, the team is operating out of the Downtown office, which already has a BIC (Betty).

3. Commission records will show that team members are affiliated with which firm(s) and with which BIC(s)?

Answer: All team members will be affiliated with XYZ Realty, with Betty as BIC.

4. Who will be responsible for supervising team members?

Answer: Betty is the BIC of the Downtown office, and she is responsible for supervising all brokers affiliated with that office.

5. What company name will team members use when completing agency disclosures and agreements with consumers?

Answer: XYZ Realty will be the agent for all agency agreements with consumers, including property management agreements, listing agreements, buyer agency agreements, and dual agency agreements.

6. How may the team name be advertised?

Answer: The team's advertising (e.g., signs, business cards, websites, etc.) must always include the name of the brokerage firm with which the agents are affiliated (XYZ Realty). Example: "The Bill Starr Team of XYZ Realty."

7. Must the team name be registered as an assumed name (d/b/a)?

Answer: No, because the team name is only being used for branding. There is no change in the name of the registered entity, XYZ Realty.

8. Is it legal for a PB to be a part of *The Bill Starr Team of XYZ Realty*? Why or Why not?

Answer: Yes, because all team members are affiliated with XYZ Realty, at the Downtown office location, under the supervision of Betty BIC.

9. If a PB is on the team, how / by whom must the PB receive compensation for brokerage activities performed on behalf of the team?

Answer: As required by N.C.G.S. § 93A-6, a PB may only be compensated for brokerage activities by the PB's supervising BIC. Thus, only Betty may legally pay the PB for brokerage activities.

**Team Scenario 2:
A Licensed Entity for the Team; All Team Members Dually Affiliated
with Both Firms at Same Physical Address**



KEY POINTS: Scenario 2

- XYZ Realty is a large firm with multiple office locations.
- Betty is the Broker-in-Charge at the Downtown office location, and she has 10 affiliated brokers in the office.
- Bill Starr is a high producing broker in the Downtown office, and he wants to recruit other brokers within the same office to work together with him on transactions.
- Bill creates an entity for the team, named Best Brokers, Inc.
- Bill and all team members will advertise the team as "Best Brokers of XYZ Realty."
- The team will continue to work out of the Downtown office location.

QUESTIONS FOR DISCUSSION: Scenario 2

1. Does Bill's team need a firm license? Why or why not?

Answer: Yes, because there is a separate entity for this team.

Remember: To create an entity and obtain a firm license, Bill must:

- a) create and register the entity with the NC Secretary of State;
- b) if the business name is different than the legal name, register a d/b/a with the County Register of Deeds office; and
- c) submit a Firm License Application to the Real Estate Commission.

To submit a firm license application, a Qualifying Broker (QB) must be designated for the firm, and a BIC must be designated for each office location.

2. Does Bill's team need a designated team BIC? Why or why not?

Answer: Yes, because there is a separate firm license. To obtain a firm license, a Qualifying Broker (QB) must be designated for the firm, and a BIC must be designated for each office location.

3. Commission records will show that team members are affiliated with which firm(s) and with which BIC(s)?

Answer: All team members must be dually affiliated with XYZ Realty, with Betty as BIC, and with Best Brokers, Inc., with Bill as BIC.

Remember: To affiliate a broker with a firm / office location, a BIC must complete and submit a *License Activation & Broker Affiliation form (REC 2.08)* for each broker.

4. Who will be responsible for supervising team members?

Answer: Betty and Bill will share responsibility for supervising team members.

5. What company name(s) will team members use when completing agency disclosures and agreements with consumers?

Answer: Both Best Brokers, Inc., and XYZ Realty must be named as the agents on all agency agreements with consumers, including property management agreements, listing agreements, buyer agency agreements, and dual agency agreements.

6. How may the team name be advertised?

Answer: The team's advertising (e.g., signs, business cards, websites, etc.) must always include the name of the brokerage firm(s) with which the agents are

affiliated (XYZ Realty); therefore, dually affiliated team members must include the names of both firms. Example: "Best Brokers, Inc., of XYZ Realty."

7. Must the team name be registered as an assumed name (d/b/a)?

Answer: No, because Best Brokers, Inc., is the legal name of the entity.

8. Is it legal for a PB to be a part of Best Brokers, Inc., of XYZ Realty? Why or Why not?

Answer: Yes, because all team members are dually affiliated with two BICs of two firms that are affiliated and are located at the same physical location (Downtown office).

9. If a PB is on the team, how / by whom must the PB receive compensation for brokerage activities performed on behalf of the team?

Answer: Because the PB has two BICs, both of the BICs may compensate the PB for brokerage activities. A firm policy may dictate which BIC distributes compensation.

**Team Scenario 3:
A Licensed Entity for the Team; All Teams Members Dually Affiliated
with Both Firms at Separate Office Locations.**



KEY POINTS: Scenario 3

- XYZ Realty is a large firm with multiple office locations.
- Betty is the Broker-in-Charge at the Downtown office location, and she has 10 affiliated brokers in the office.
- Bill Starr is a high producing broker in the Downtown office, and he wants to recruit other XYZ brokers to work together with him on transactions.
- Bill creates an entity for the team, named Best Brokers, Inc.
- Bill and all team members will advertise the team as "Best Brokers of XYZ Realty."
- The team decides to move to a new office location, a few miles away from the Downtown office.

QUESTIONS FOR DISCUSSION: Scenario 3

1. Does Bill's team need a firm license? Why or why not?

Answer: Yes, because there is a separate entity for this team.

Remember: To create an entity and obtain a firm license, Bill must:

- a) create and register the entity with the NC Secretary of State;
- b) if the business name is different than the legal name, register a d/b/a with the County Register of Deeds office; and
- c) submit a Firm License Application to the Real Estate Commission.

To submit a firm license application, a QB must be designated for the firm, and a BIC must be designated for each office location.

2. Does Bill's team need a designated team BIC? Why or why not?

Answer: Yes, because there is a separate firm license. To obtain a firm license, a QB must be designated for the firm, and a BIC must be designated for each office location.

3. Commission records will show that team members are affiliated with which firm(s) and with which BIC(s)?

Answer: All team members must be dually affiliated with XYZ Realty, with Betty as BIC, and with Best Brokers, Inc., with Bill as BIC.

Remember: To affiliate a broker with a firm / office location, a BIC must complete and submit a License Activation & Broker Affiliation form (REC 2.08) for each broker.

4. Who will be responsible for supervising team members?

Answer: Betty and Bill will share responsibility for supervising team members.

5. What company name(s) will team members use when completing agency disclosures and agreements with consumers?

Answer: Both Best Brokers, Inc., and XYZ Realty must be named as the parties on all agency agreements with consumers, including property management agreements, listing agreements, buyer agency agreements, and dual agency agreements.

6. How may the team name be advertised?

Answer: The team's advertising (e.g., signs, business cards, websites, etc.) must always include the name of the brokerage firm with which the agents are affiliated (XYZ Realty). Example: "Best Brokers, Inc., of XYZ Realty."

7. Must the team name be registered as an assumed name (d/b/a)?

Answer: No, because Best Brokers, Inc., is the legal name of the entity.

8. Is it legal for a PB to be a part of Best Brokers, Inc., of XYZ Realty, in this scenario? Why or Why not?

Answer: NO, because the two licensed firms are NOT at the same physical address.

NOTE: Scenario 3 assumes that the team, Best Brokers, Inc., has moved to another office location. In such case, no provisional brokers may legally be on the team. However, if XYZ Realty wishes to establish a branch office in the same office location as the team [in scenario 3], then a BIC will be needed for the branch location, which may, in turn, make it possible for PBs to be part of the team. Please direct specific questions regarding team and branch office setup to the Commission's Regulatory Affairs Division.

9. If a PB is on the team, how / by whom must the PB receive compensation for brokerage activities performed on behalf of the team?

Answer: N/A. A PB may not be on this team.

BROKER-IN-CHARGE: HOW MUCH RESPONSIBILITY FOR A PB?

A BIC will be held accountable for all of a PB's brokerage conduct, because the PB cannot have an active license, and thus cannot engage in brokerage activity, without a supervising BIC.

If a PB is affiliated with two BICs, as permitted by Rule 58A .0506(a), BOTH BICs will share responsibility and accountability for the PB.

Commission Rule 58A .0506(d) states:

A broker-in-charge shall supervise the provisional broker in a manner that assures that the provisional broker performs all acts for which a real estate license is required in accordance with the Real Estate License Law and Commission rules. A supervising broker who fails to supervise a provisional broker as prescribed in this Rule may be subject to disciplinary action pursuant to Rule .0110 of this Subchapter.

The Commission has developed criteria to guide in assessing how adequately a BIC supervises a PB. The presence or absence of these factors will be considered along with all other pertinent information in arriving at a disciplinary decision. As noted in the 2017-18 BICUP course, the guiding criteria include:

- 1) Is the BIC available to assist, advise, and review the PB's practices and is the PB available to be supervised?
- 2) Has the BIC established written policies and procedures under which all affiliated brokers are expected to operate?
- 3) Does the BIC review and monitor the brokerage activities of PBs?
- 4) Does the BIC hold regular meetings and otherwise assure proper implementation of and adherence to office policies and procedures?
- 5) Does the BIC provide ongoing quality training programs and materials to affiliated licensees and disseminate in a timely manner all regulatory information s/he receives pertaining to real estate brokerage practice?
- 6) What is the experience level of the PB?
- 7) Has the BIC delegated supervisory duties to another licensee in the office and, if so, what is the level of training and experience of that supervisory licensee?
- 8) In what types of brokerage activities is the PB engaged?
- 9) How many PBs does the BIC supervise and what is the ratio of supervisors to PBs?
- 10) What, if any, corrective or remedial action does the BIC take upon learning of a violation of the License Law or rules by a PB for whom the BIC is responsible?

Refer to the 2017-18 BICUP course for a full explanation of these criteria.
[Direct link: <https://www.ncrec.gov/Pdfs/bicupdate/bicreminders.pdf>]

ANSWERS TO DISCUSSION QUESTION

For Discussion on page 59

1. 15 "full" brokers and 3 provisional brokers (PBs) are affiliated with XYZ Realty at 123 Main St. Sally is the BIC of the office. Sally allows brokers to work as teams within the office. Hank, one of the full brokers with XYZ, has formed a team with two other "full" brokers to work together to increase productivity, and they are calling themselves the "The Hankster Team of XYZ Realty." Hank wants one of the PBs to join the team. Is that ok? Why or why not?

Answer: Yes, because all team members are affiliated with XYZ Realty, at 123 Main Street, under the supervision of Sally BIC.

2. The Hankster Team is growing fast, and Hank decides to create an entity for the team. He creates and registers The Hankster Team LLC with the NC Secretary of State and obtains a firm license from the Real Estate Commission. Hank and his team continue to advertise as "The Hankster Team of XYZ Realty." May a PB be legally be on Hank's team? Why or why not?

Answer: Yes, because all team members are dually affiliated with two BICs of two firms that are affiliated and are located at the same physical location.