

# 2018-2019 BICUP Course

## Section Seven Broker-in-Charge Considerations



1. Are there different standards for BIC supervision of provisional brokers and full brokers? Explain your answer. \_\_\_\_\_
2. Norman, a licensed broker, has been managing several properties for a particular owner-client for 10 years. He and the owner are friends. Each month, tenants submit rent checks to Norman. The checks are made payable to the owner, and Norman takes them to the owner's banking institution and deposits them into the owner's account. Norman is careful to deposit the checks within 3 days of receipt. In turn, the owner pays Norman a management fee each month.  
Is this an acceptable practice? \_\_\_\_\_  
Why or why not? \_\_\_\_\_

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### LEARNING OBJECTIVES

After completing this Section you should be able to:

- describe a BIC's responsibilities related to agency agreements and supervision of provisional brokers;
- explain various trust account considerations related to property management; and
- locate the Commission's *Broker-in-Charge Best Practices Guide*.

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## CASE #D17-0336: DOING BUSINESS AS?



Read the following case summary.

Determine what, if any, errors were made by the broker(s) and which License Laws and/or Commission Rules were violated.

### **PARTIES:**

The Complainant was the Buyer of a residential property. Respondents were the Buyer's Agent who was a Provisional Broker at the time of the transaction, the Provisional Broker's BIC and Firm (herein referred to as Firm 1), a different Firm under the same franchise in the same market (herein referred to as Firm 2), Firm 2's BIC, and a Broker-affiliate at Firm 2 who also acted as a Buyer's Agent in the subject transaction.

Both Firms were under the same franchise banner. However, each Firm used its own variation of the franchise name as an assumed (d/b/a) name, and they were each separate legal entities with their own firm licenses and Qualifying Brokers (QBs).

The Firm 1 Provisional Broker was only affiliated with Firm 1, and the Firm 2 Broker was only affiliated with Firm 2 at the time of the subject transaction.

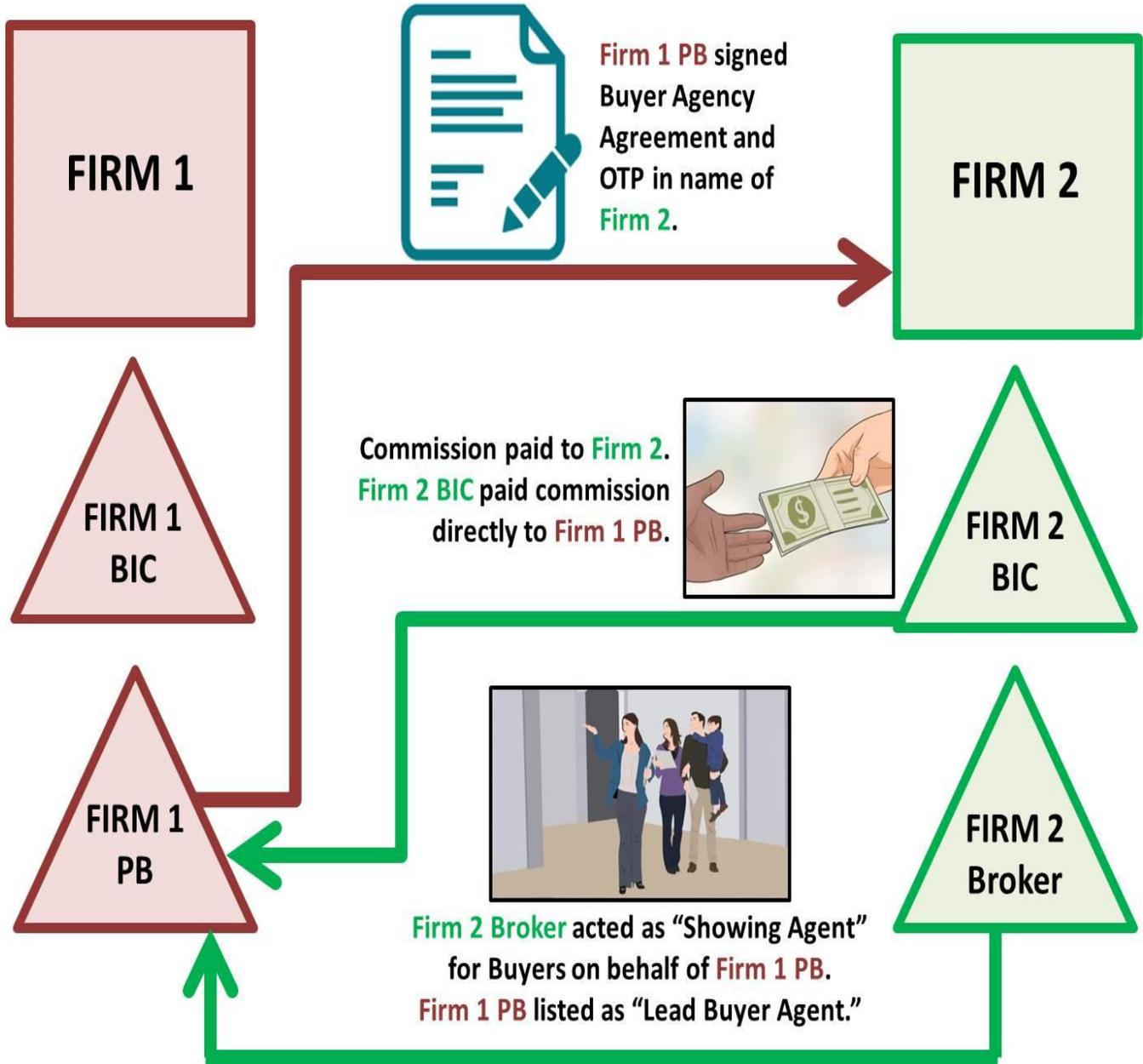
All Respondents refer to Firm 1 as a Branch office and Firm 2 as a Primary Office, with the Primary Office being responsible for central accounting and commission payments of the other franchise offices in the local market.

The BIC of Firm 1 was also the QB of Firm 1 and was also affiliated with Firm 2 under the Firm 2 BIC. Firm 2 had a different QB.

According to all Respondents, the Firm 2 Broker worked under the Firm 1 Provisional Broker as a "showing assistant" for Firm 1. Both BICs and the Firm 2 Broker stated that the Firm 2 Broker had worked at Firm 1 in the past; however, the Real Estate Commission had no record of such affiliation with Firm 1.

The Buyer's Agency Agreement was in the name of Firm 2, but it was signed by the Firm 1 Provisional Broker (who was affiliated with Firm 1).

# Graphic - Doing Business As?



## COMPLAINT AND FACTS:

In July 2016, the Buyer viewed the subject property with the Listing Agent (from another firm). The property included a barn, and, at the time of the initial showing, there were various tools, lumber, and machinery in the barn. The Seller had vacated the property.

In a July 2016 text message from the Buyer to the Firm 2 Broker, the Buyer stated that she wished to make an offer on the property “with everything remaining and property/house as is[.] There is some stuff on the property we like and would love to go through.” According to the Buyer, Firm 2 Broker expressed by phone to her that he understood that this primarily meant the tools, lumber, and tractors left in the barn. [Also, the Firm 2 Broker stated in one of his responses to the case inquiry that he understood that the Buyer wanted “all personal property that would help [her] maintain/repair the property.”] According to Firm 2 Broker, he relayed this information to the Firm 1 Provisional Broker who was negotiating the Buyer’s offer. Neither the Firm 2 Broker nor the Firm 1 Provisional Broker visited the property prior to the Buyer going under contract.

In July 2016, the Firm 1 Provisional Broker emailed the Buyer’s written offer of \$210,000 to the Listing Agent.

On July 17, the Listing Agent responded, stating that the Seller was countering at \$225,000.

On July 18, the Firm 1 Provisional Broker responded to the Listing Agent by email, stating that the Buyer was “ok” with the \$225,000 counteroffer, however “at that price [she] is wanting the home fully furnished. They would like to take the home as it is with everything in it.” This email from the Firm 1 Provisional Broker was cc’d to another agent at Firm 1 whose title was “Transaction Manager.” The Transaction Manager immediately responded only to the Firm 1 Provisional Broker, stating “You will need to remove all of the furniture from the contract. The lender will not allow that.” The Firm 1 Provisional Broker responded to the Transaction Manager stating “Yes, we will do that on the personal property thing that [we] used before. We won’t have that language on the contract.” A few minutes later, the Listing Agent responded to the Firm 1 Provisional Broker stating that she would contact the Seller about the Buyer’s latest offer.

Later the same afternoon, the Firm 1 Provisional Broker emailed the Buyer’s signed offer of \$225,000 to the Listing Agent which was accepted by the Seller. The offer contained no reference to personal property except a few kitchen appliances. Also, there was not a separate personal property agreement.

The Firm 1 Provisional Broker and Listing Agent had at least one phone conversation prior to the acceptance of the Buyer's final offer. According to the Listing Agent, she explained to the Firm 1 Provisional Broker that there was very little left in the home with the exception of some family heirlooms that the Seller would be taking.

The Firm 1 Provisional Broker characterized the phone conversation with the Listing Agent by stating "We were told that all things would stay in the home except for a few heirloom pieces...[w]e did not itemize the personal property" because the Buyer was not concerned about "any particular piece of furniture."

According to the Firm 1 BIC, the Buyer's offer was under the condition that "tools and other items - a large number of (mainly) farming items - were left on the property." She stated that the Buyer wasn't "specific about the items [she] wanted to stay saying only that [she] wanted the sellers to 'leave the stuff that would help...repair and maintain the property'." Firm 1 BIC stated that, based upon neighbor-eyewitness accounts, the Seller's son removed the items from the barn after the Friday settlement but before the Monday recording.

The Firm 1 Provisional Broker stated that the Firm 2 Broker performed a walkthrough prior to closing and found things "in a reasonably expected state." He acknowledged that neither he nor Firm 2 Broker visited the property until the Firm 2 Broker conducted a pre-closing walkthrough. Firm 2 Broker stated that he conducted the walkthrough of the property with the Buyer on the phone, and that although he could not access the locked barn, he described to the Buyer that he could see lumber and metal stock inside the barn through the siding boards from the exterior.

The Buyer conducted the settlement from out-of-state, and when she arrived at the property a few days after the closing, she discovered that all of the personal property had been removed. Shortly thereafter, the Buyer filed a complaint with NCREC, alleging she made an offer on the property contingent upon all of the personal property she observed during the initial showing conveying to her at closing.

In a post-closing October 2016 email to the Buyer, the Firm 1 Provisional Broker referred to his July 18 email to the Listing Agent where he stated that the Buyer wanted "the home fully furnished" at the \$225,000 price and suggested that the Seller's acceptance of the Buyer's \$225,000 counteroffer constituted "implied consent" regarding the personal property. He further suggested that the Listing Agent "expressed" in a phone call that the Seller leaving the personal property in the barn and home was "agreeable."

As stated above, Commission records show that Firm 2 Broker was affiliated only with Firm 2 through the transaction period. However, the Firm 1 BIC confirmed that the Firm 2 Broker worked at Firm 1 from April 2016 to November 2016 as the Firm 1 Provisional Broker's "showing assistant," and that both brokers' commissions were to be paid by Firm 2.

According to the Buyer, she was under the impression that the Firm 1 Provisional Broker was Firm 2 Broker's supervisor. She stated that the Firm 2 Broker handled showings and communications between the parties, and that the Firm 1 Provisional Broker managed the negotiations, contract, and closing details.

The Firm 2 BIC confirmed that the Firm 2 Broker worked at Firm 1 for the aforementioned 8 month period. Also, the Firm 2 BIC provided a copy of the commission disbursement form from Firm 2, documenting the payment of commissions for the subject transaction to Firm 1 and separately to the Firm 1 Provisional Broker. The form did not list the Firm 2 Broker, who claimed he was paid a nominal fee by Firm 1 BIC.

During the investigation, Commission Staff discovered that Firm 1 was using (advertising) a tradename (d/b/a) that was not reflected in Commission records and queried the Firm 1 BIC regarding the use of the name. After a second request to address this matter, the d/b/a was registered in Commission records.

## **Main Points - Doing Business As?**

July 2016:

- Buyer viewed the subject property with the Listing Agent from another firm. Tools, lumber, and machinery were in the barn at the time of the showing.
- Buyer told Firm 2 Broker that she wanted to make an offer on the property contingent on everything remaining. Firm 2 broker relayed information to Firm 1 PB.
- Firm 1 PB emailed offer to Listing Agent.
- Seller countered the offer.
- Firm 1 PB told Listing Agent that Buyer would accept counter if all personal property was included.
- Firm 1 "Transaction Manager" alerted Firm 1 PB to remove personal property from contract; PB said it would be added as a separate agreement.
- Listing Agent informed Firm 1 PB by phone that there was little left in the home except for family heirlooms that would be removed before closing.
- Firm 1 PB emailed signed offer (which included no reference to personal property) to Listing Agent. No separate agreement was attached.
- Neither Firm 1 PB nor Firm 2 broker visited property before offer was signed.

## Evaluation & Discussion - Doing Business As?

Errors made by Firm 1 BIC: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Errors made by Firm 1 Provisional Broker: \_\_\_\_\_  
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\_\_\_\_\_

Errors made by Firm 2 BIC: \_\_\_\_\_  
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\_\_\_\_\_  
\_\_\_\_\_

Errors made by Firm 2 Broker: \_\_\_\_\_  
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\_\_\_\_\_  
\_\_\_\_\_

## Related Law and Rule Considerations - Doing Business As?

### **BIC must ensure that Brokers are adhering to requirements for Agency Disclosure and Agreements**

Commission Rule 58A .0110(g)(7) states that a designated BIC shall “supervise all brokers employed at the office with respect to adherence to agency agreement and disclosure requirements.”

### **BIC must Supervise Provisional Brokers**

Commission Rule 58A .0506(d) states:

“A broker-in-charge who certifies to the Commission that he or she will supervise a provisional broker shall actively and directly supervise the provisional broker in a manner that reasonably 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.”

Refer to the 2017-18 *BICUP (Broker-in-Charge Update)* course for a full explanation of the Commission’s expectations for active and direct supervision.

## **Provisional Broker must be compensated by Supervising BIC**

G.S. 93A-6(a)(5) prohibits a provisional broker from “accepting a commission or valuable consideration as a real estate provisional broker for the performance of any of the acts specified in this Article ... from any person except his or her broker-in-charge or licensed broker by whom he or she is employed.”

Thus, all commissions, bonuses, incentives or other compensation paid to a provisional broker for real estate brokerage activity must flow through his or her broker-in-charge or employing broker-firm. If a provisional broker accepts compensation for brokerage activities from any person other than his/her broker-in-charge or employing broker/firm, then the provisional broker is subject to disciplinary action.

## **All Legal and Trade Names of a Firm must be registered with the Commission**

Commission Rule 58A .0103(b) and (c) state:

(b) Every broker shall notify the Commission in writing of each change of personal name, firm name, trade name, residence address, firm address, telephone number, and email address within 10 days of said change. A broker notifying the Commission of a change of legal name or firm name shall also provide evidence of a legal name change for either the individual or firm, such as a court order or name change amendment from the Secretary of State's Office.

(c) In the event that any broker shall advertise or operate in any manner using a name different from the name under which the broker is licensed, the broker shall first file an assumed name certificate in compliance with G.S. 66-71.4 and shall notify the Commission in writing of the use of such a firm name or assumed name. An individual broker shall not advertise or operate in any manner that would mislead a consumer as to the broker's actual identity or as to the identity of the firm with which he or she is affiliated.

Commission Rule 58A .0502(g)(4) states:

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

... (4) notifying the Commission of any change of business address or legal or trade name of the entity and the registration of any assumed business name adopted by the entity for its use....

Commission Rule 58A .0110(g)(2) states:

A designated BIC shall:

... (2) notify the Commission of any change of firm's business address or trade name and the registration of any assumed business name adopted by the firm for its use....

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## TRUST ACCOUNT CONSIDERATIONS IN PROPERTY MANAGEMENT

### The BIC is Responsible for the Trust Account

While all licensees must safeguard and protect the money and property of others entrusted to them, the ultimate responsibility to oversee and safeguard the monies of others passing through the office rests with the BIC.

Commission Rule 58A .0110 states, in relevant part:

“(i) The broker-in-charge shall, in accordance with the requirements of G.S. 93A and the rules adopted by the Commission, assume the responsibility at his or her office for:...

(4) the maintenance at such office of the trust or escrow account of the firm and the records pertaining thereto;...”

The BIC has the full responsibility for the trust account, even if the BIC has hired an assistant, accountant, or bookkeeper to assist with record-keeping.

### What is Trust Money?

In the context of real estate transactions, the definition of trust money is:

- money held for any period of time by broker which belongs to others;
- received by a real estate broker who is acting in a fiduciary capacity (i.e., as an agent) in a real estate transaction.

Common examples of trust money in property management:

- tenant security deposits
- rent payments
- advance rental deposits

### What is a “Trust Account”?

The Commission views the terms “trust account” and “escrow account” as being synonymous. In this course, the term “trust account” will be used exclusively.

A “trust account” is simply a properly designated business checking account into which trust money (and only trust money) is deposited.

The three primary features of a trust or escrow account are that it is:

- separate, containing only monies belonging to others,
- custodial, that is, titled or held in the name of the licensee or real estate company (e.g., Jones Realty, Trust Account), thereby preventing access (withdrawal) by those whose money is in the account, and
- available on demand, that is, the funds may be withdrawn without prior notice.

Also, the bank/institution must be federally insured, lawfully doing business in NC, and agree to make account records available for Commission inspection.

## Trust Account Must be Properly Designated

Brokers must ensure that the bank properly designates the account as a trust or escrow account and that the words “trust account” or “escrow account” appear on all signature cards, bank statements, deposit tickets and checks. [See Rule A.0117(b).]

Even though the account is in the name of the company or broker, so long as the broker properly designates the account as a “trust” or “escrow” account and keeps accurate records that identify each owner of the funds and/or depositor (buyer, seller, lessor, lessee, etc.), the depositors are protected from the funds being “frozen” or attached if the broker/trustee becomes insolvent, incapacitated, dies, has tax liens, or becomes involved in a lawsuit.

## How many Trust Accounts are Required?

No firm or broker is required to have a trust account **UNLESS** they hold trust money for even a short period of time. Then, a firm or broker **MUST** have one.

- **Sales & Rentals**

Except for brokers who are managing homeowner or property owner association funds, a broker holding trust money is only required to have one trust account. All earnest money deposits, tenant security deposits, rents, and other trust monies may be deposited into this one common trust account.

- **Property Owner Associations**

Rule 58A .0118 requires brokers who handle homeowner or property owner association funds to maintain a separate trust account for EACH property owner association or homeowner association they manage. The funds of one homeowner association are not to be commingled with funds from any other association nor with any other trust funds (e.g., rents, earnest money deposits and security deposits) held for other clients.

## Interest-Bearing Trust Account

Brokers may have interest-bearing trust accounts where the interest belongs to the broker, so long as they comply with the conditions set forth in Commission Rule 58A.0116(c), as follows:

- the broker first obtains written authorization from the persons for whom s/he holds the funds to deposit the funds into an interest-bearing account;
- the authorization must clearly specify how and to whom the interest will be disbursed; and
- the written authorization must be printed in a manner that will draw attention to the authorization and distinguish it from other provisions of the instrument (for example, italics, boldface type, underlining, a blank \_\_\_\_\_ to be filled in with the name of the party to whom the interest will be paid, or some similar means).

Brokers who are entitled to receive interest on interest-bearing trust accounts must transfer the accumulated interest from their trust account to their operating account each month upon receipt of the bank statement indicating the amount of interest credited to avoid commingling monies which belong to them with monies belonging to others.

## Commingling Prohibited

The mixing of monies belonging to others (i.e., trust funds) with a broker's personal or business funds in the same account constitutes unlawful commingling of funds.

The broker's trust account must be a separate, demand deposit custodial account that contains only monies belonging to others received by the broker when acting as an agent in a transaction. The account must not contain the broker's business or personal funds.

## Managing Your Own Property

A broker who sells or manages his or her own properties is not permitted to deposit trust monies into the company's primary trust account. The broker must open a separate trust account for security deposits and earnest monies collected in connection with the leasing or sale of his or her own properties.

Example: A Broker who manages properties for others and owns rental properties must keep two separate trust accounts, because the Broker must keep his monies separate from his clients' monies.

When a broker commingles trust monies with his or her own monies in the same bank account, the broker creates doubt whether the account is a trust account. This doubt may deprive the account of the special status given to trust accounts and may place the money of the broker's clients and customers in jeopardy.

## Company Funds and Fees

- **Company Funds for Bank Charges**

A broker is permitted to maintain a maximum of \$100 in company funds in a trust account for the purpose of covering service charges and check printing charges. A broker must create and maintain a ledger for company funds in the trust account. If the monthly bank fees exceed \$100, then a broker may increase the amount of company funds in the trust account to an amount necessary to cover the anticipated fees. However, a broker is not permitted to put a large lump sum of company funds into a trust account for the purpose of avoiding bank fees. As an alternative to keeping company funds in a trust account, a broker may arrange for his or her bank to deduct bank fees from the broker's operating account so that the trust monies will never be affected.

- **Brokerage Fees**

Each month, when a broker reconciles his or her trust account, s/he must remove from the trust account all brokerage fees arising from rents collected and/or earnest monies that have been credited toward sales commissions as well as accrued interest which exceeds \$100.

Failing to remove excess company funds from a trust account constitutes commingling and causes an overage in the trust account. In such a case, the reconciled bank balance and the journal balance (or check register balance) will be higher than the trial balance. Having an overage in a trust account is a violation and must therefore be avoided.

## Trust Monies must be deposited within Three (3) Banking Days

The general rule is that all trust monies received by a licensee must be deposited in a trust account within three banking days of receipt.

## Trust Account Deposits: Lease Transactions

Any broker who receives money from a tenant or landlord in the course of managing the landlord's property must deposit the money into his or her trust account.

**Brokers are prohibited from depositing rent monies or security deposits directly into an owner's account.** If a tenant tenders a check payable to the landlord, then the broker must return the check to the tenant and advise the tenant to make the check payable to the broker. The only monies that a property manager is not required to deposit into a trust account are monies that a tenant sends directly to the landlord so that they never touch the broker's hands.

## Receiving Payments

- Cash - If a tenant pays his or her rent or security deposit with cash, the broker must deposit the cash into his or her trust account within three banking days from receipt. Immediate deposit of cash is recommended to safeguard the money.
- Check - If a tenant pays his security deposit with a check or money order, the broker MAY deposit the payment immediately. However, the broker MUST deposit the money no later than three banking days following acceptance of the lease. Brokers should ensure that the parties sign and date leases to facilitate the timely deposit of trust monies.

If a landlord tenders monies to pay for repairs or other services, then the broker should deposit such monies into his or her trust account before paying the invoices from the trust account.

## Disbursing Payments

After depositing rent checks into his or her trust account, the broker should wait a reasonable time before disbursing the rent proceeds to the property owners to allow time for the checks to clear their respective banks. Brokers should address this delay in their property management agreements by specifying the deadline by which the brokers will disburse rent proceeds each month so that owner-clients will know about this delay and understand the reason for it.

## Ledger Entries

For each landlord or property for which a broker collects money, the broker must create a ledger on which s/he records all monies received and disbursed.

Ledger entries must:

- be made in chronological order;
- include a date;
- include an amount;
- include a statement of the purpose of the deposit/payment;
- include the name of the payor/payee; and
- include a running balance of funds.

## Owner Statements

Each month, a broker should send each owner-client a statement accounting for all monies collected and disbursed in connection with the broker's management of the property. Brokers must furnish owners with copies of invoices upon request and must be diligent in recording financial data accurately and in a timely manner.

## Deficit Spending Prohibited

A broker may never disburse from his or her trust account more monies than s/he is holding for a landlord-client. This is referred to as deficit spending.



*A broker is holding the following funds in his trust account:*

*118 Main St Rent: \$1000*

*342 Elm St Rent: \$2000*

*677 Poplar St Rent: \$2000*

*The water heater at 118 Main Street needs repair, and the repair cost will be \$3500.*

*Can this repair legally be paid in full from the Trust Account?*

**Answer:** No, the trust account only has \$1000 available for the repair.

## Disputed Tenant Security Deposits

Tenant security deposits must be handled in accordance with N.C.G.S. §42-50 through -56 and N.C.G.S. §42A-18 (Vacation Rental Act). In the event of a dispute between a landlord and tenant regarding the disposition of a tenant security deposit, the broker should follow the lawful instructions of the landlord. The tenant would then need to pursue the matter in small claims court.

## Managing Your Own Property

A broker who manages his or her own residential rental property and collects a tenant security deposit must hold the deposit in a trust account or furnish a bond to guarantee the timely refund of the deposit at the end of each tenancy.

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## BROKER-IN-CHARGE BEST PRACTICES GUIDE

The Commission has created a “Broker-in-Charge Best Practices Guide” to provide brokers-in-charge with guidance regarding written office policies, records management, and trust account maintenance.

The Guide is posted on the Commission’s website ([ncrec.gov](http://ncrec.gov)) under *Resources*.

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## ANSWERS TO DISCUSSION QUESTIONS

### For Discussion - page 107

1. Are there different standards for BIC supervision of provisional brokers and full brokers? Explain your answer.

**Answer:** Yes. A BIC is responsible for ALL brokerage activities of a PB. For full brokers, BICs are responsible for:

- ensuring they have active licenses and carry their pocket cards;
  - advertising;
  - agency disclosure and agreements compliance;
  - creation, maintenance, and retention of transaction files; and
  - proper handling of trust monies passing through or maintained by that office.
2. Norman, a licensed broker, has been managing several properties for a particular owner-client for 10 years. He and the owner are friends. Each month, tenants submit rent checks to Norman. The checks are made payable to the owner, and Norman takes them to the owner's banking institution and deposits them into the owner's account. Norman is careful to deposit the checks within 3 days of receipt. In turn, the owner pays Norman a management fee each month.  
Is this an acceptable practice? Why or why not?

**Answer:** No. Commission Rules require Norman to deposit trust monies into a trust/escrow account. Other than checks for Due Diligence Fees and Earnest Money Deposits, Norman may not "deliver" checks made payable to someone else. Norman may either direct the tenants to make checks payable to his firm and deposit the checks into his firm's trust/escrow account OR direct the tenants to mail the rent checks directly to the owner.

## Case Outcome - Doing Business As?

### Errors identified during the Commission's Investigation

- BIC(s) allowed a PB to sign an Exclusive Buyer Agency Agreement and Offer to Purchase on behalf of another licensed firm with which he was not affiliated.
- BIC(s) failed to actively and directly supervise the PB as he failed to ensure that certain personal property requested by the buyer client to be conveyed with the real property was actually conveyed at closing.
- BIC(s) allowed PB to receive compensation from someone other than the PB's supervising BIC.
- BIC(s) allowed a licensed broker from one firm to work for Buyer as a showing agent at another firm when the necessary secondary affiliation paperwork was never filed with the Commission.

### Law & Rule Violations identified during the Commission's Investigation

- N.C.G.S. § 93A-6(a) (4) - Acting for more than one party in a transaction without the knowledge of all parties for whom he or she acts.
- N.C.G.S. § 93A-6(a)(8) - Being unworthy or incompetent to act as a real estate broker in a manner as to endanger the interest of the public.
- N.C.G.S. § 93A-6(a)(15) - Violating any rule adopted by the Commission.
- Commission Rule 58A .0103(b)(c) - Broker Name and Address
- Commission Rule 58A .0110(i) - Broker-in-Charge (specifically, duties of the BIC)
- Commission Rule 58A .0502(g) - Firm Licensing (specifically, duties of the QB, including notifying Commission of changes in trade name)
- Commission Rule 58A .0506(d) - Provisional Broker to be Supervised by Broker-in-Charge

### Sanctions Imposed by Commission

- **Firm 1 BIC:** 12-month active Suspension - reduced to **12-month stayed Suspension** because the BIC timely completed the Commission's *Issues and Answers* course.
- **Firm 1 Provisional Broker:** 12-month active Suspension - reduced to **12-month stayed Suspension** because the PB timely completed the Commission's *Issues and Answers* course.
- **Firm 1:** 12-month active Suspension - reduced to **12-month stayed Suspension** because the BIC timely completed the Commission's *Issues and Answers* course.
- **Firm 2 BIC:** 6-month stayed suspension - reduced to **Reprimand** because the BIC timely completed the Commission's *Issues and Answers* course.
- **Firm 2 Broker:** Reprimand - reduced to **Dismissal** because the Broker timely completed the Commission's *Issues and Answers* course.
- **Firm 2:** 6-month stayed Suspension - reduced to **Reprimand** because the BIC timely completed the Commission's *Issues and Answers* course.

## 21 NCAC 58A .0110 BROKER-IN-CHARGE (as of July 1, 2018)

- (a) Every real estate firm shall designate one BIC for its principal office and one BIC for each of its branch offices. No office of a firm shall have more than one designated BIC. A BIC shall not serve as BIC for more than one office unless each of those offices share the same physical office space and delivery address.
- (b) Every broker who is a sole proprietor shall designate himself or herself as a BIC if the broker:
  - (1) engages in any transaction where the broker is required to deposit and maintain monies belonging to others in a trust account;
  - (2) engages in advertising or promoting his or her services as a broker in any manner; or
  - (3) has one or more other brokers affiliated with him or her in the real estate business.
- (c) A licensed real estate firm shall not be required to have a BIC if it:
  - (1) is organized for the sole purpose of receiving compensation for brokerage services furnished by its qualifying broker through another firm or broker;
  - (2) is treated for tax purposes as a Subchapter S corporation by the United States Internal Revenue Service;
  - (3) has no principal or branch office; and
  - (4) has no licensed person associated with it other than its qualifying broker.
- (d) A broker who maintains a trust or escrow account for the sole purpose of holding residential tenant security deposits received by the broker on properties owned by the broker in compliance with G.S. 42-50 shall not be required to be a BIC.
- (e) In order for a broker to designate as a BIC for a sole proprietor, real estate firm, or branch office, a broker shall apply for BIC Eligible status by submitting an application on a form available on the Commission's website. The BIC Eligible status form shall include the broker's:
  - (1) name;
  - (2) license number;
  - (3) telephone number;
  - (4) email address;
  - (5) criminal history and history of occupational license disciplinary actions;
  - (6) certification of compliance with G.S. 93A-4.2, including that:
    - (A) his or her broker license is on active status;
    - (B) the broker possesses at least two years of full-time or four years of part-time real estate brokerage experience within the previous five years or shall be a North Carolina licensed attorney with a practice that consisted primarily of handling real estate closings and related matters in North Carolina for three years immediately preceding application; and
    - (C) the broker completed the 12-hour Broker-in-Charge Course no earlier than one year prior to application and no later than 120 days after application; and
  - (7) signature.

- (f) A broker who holds BIC Eligible status shall submit a form to become the designated BIC for a sole proprietor, real estate firm, or branch office. The BIC designation form shall include:
  - (1) the broker's:
    - (A) name;
    - (B) license number;
    - (C) telephone number;
    - (D) email address; and
    - (E) criminal history and history of occupational license disciplinary actions; and
  - (2) the firm's:
    - (A) name; and
    - (B) license number, if applicable;
- (g) A designated BIC shall:
  - (1) assure that each broker employed at the office has complied with Rules .0503, .0504, and .0506 of this Subchapter;
  - (2) notify the Commission of any change of firm's business address or trade name and the registration of any assumed business name adopted by the firm for its use;
  - (3) be responsible for the conduct of advertising by or in the name of the firm at such office;
  - (4) maintain the trust or escrow account of the firm and the records pertaining thereto;
  - (5) retain and maintain records relating to transactions conducted by or on behalf of the firm, including those required to be retained pursuant to Rule .0108 of this Section;
  - (6) supervise provisional brokers associated with or engaged on behalf of the firm at such office in accordance with the requirements of Rule .0506 of this Subchapter;
  - (7) supervise all brokers employed at the office with respect to adherence to agency agreement and disclosure requirements; and
  - (8) notify the Commission in writing that he or she is no longer serving as BIC of a particular office within 10 days following any such change.
- (h) A broker holding BIC Eligible status shall take the Broker-in-Charge Update Course during the license year of designation, unless the broker has satisfied the requirements of Rule .1702 of this Subchapter prior to designation.
- (i) A broker's BIC Eligible status shall terminate if the broker:
  - (1) made any false statements or presented any false, incomplete, or incorrect information in connection with an application;
  - (2) fails to complete the 12-hour Broker-in-Charge Course pursuant to Paragraph (e) of this Rule;
  - (3) fails to renew his or her broker license pursuant to Rule .0503 of this Subchapter, or the broker's license has been suspended, revoked, or surrendered; or
  - (4) fails to complete the Broker-in-Charge Update Course and a four credit hour elective course pursuant to Rules .1702 and .1711 of this Subchapter, if applicable.

- (j) In order to regain BIC Eligible status after a broker's BIC Eligible status terminates, the broker shall complete the 12-hour Broker-in-Charge Course prior to application and then submit a BIC Eligible status form pursuant to Paragraph (e) of this Rule.
- (k) A nonresident commercial real estate broker licensed under the provisions of Section .1800 of this Subchapter shall not act as or serve in the capacity of a broker-in-charge of a firm or office in North Carolina.

*History Note:*

*Authority G.S. 93A-2; 93A-3(c); 93A-4; 93A-4.1; 93A-4.2; 93A-9;*

*Eff. September 1, 1983;*

*Amended Eff. July 1, 2014; May 1, 2013; July 1, 2010; July 1, 2009; January 1, 2008; April 1, 2006; July 1, 2005; July 1, 2004; April 1, 2004; September 1, 2002; July 1, 2001; October 1, 2000; August 1, 1998; April 1, 1997; July 1, 1995; July 1, 1994;*

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018;*

*Amended Eff. July 1, 2018.*

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