SECTION FIVE

BROKER-IN-CHARGE ALERTS

LEARNING OBJECTIVES

After completing this Section you should be able to:

- describe how the BIC failed in his/her supervisory obligations in each of the disciplinary cases below.
- explain disclosure obligations under Commission Rule 58A .0109 when suggesting a "preferred vendor" list to a client or customer.
- describe what "marketing service agreements" are and related disclosure requirements.

DISCIPLINARY CASES INVOLVING A BROKER-IN-CHARGE

This Section reviews disciplinary cases heard by the Commission within the past five years involving a broker-in-charge (BIC). Some cases relate to a BIC's supervisory obligations over affiliated agents, while others concern brokerage activities contrary to License Law and Commission rules.

What disciplinary action, if any, would you recommend for the BIC in each of the following cases?

[After reading each case,
enter your recommendations as to the sanctions imposed by the Commission for each respondent.]

Case 1

A licensed North Carolina real estate brokerage company had an office in North Carolina near the border of South Carolina and conducted brokerage business in both states. The company maintained two offices in North Carolina at different locations, one for residential sales and another office for property management, each with its own BIC.

The BIC of the sales office was approached by a licensed South Carolina salesperson, who was in the process of getting her NC license. The BIC agreed to affiliate the SC salesperson with her office for South Carolina brokerage purposes in October 2014, and ordered business cards for the salesperson that had the company's name and NC office address. The salesperson then unsuccessfully attempted several times before the end of 2014 to pass the NC state license examination to obtain her NC license. The BIC maintained that the salesperson was affiliated with the office solely for SC brokerage activity and that she was not to engage in any brokerage activity in NC since she was not licensed in NC.

In March 2015, the BIC was notified by another NC property management company that the salesperson was due some commission checks for leasing NC properties. According to the BIC, she confronted the salesperson, demanded that she cease engaging in brokerage activity in NC until appropriately licensed, and followed up with an email to that effect.

The salesperson maintained that the email was merely to protect the BIC/company and that the BIC verbally agreed to hold any further fees/commissions earned by the salesperson related to NC properties until the salesperson was appropriately licensed in NC, which the BIC denied.

In May 2015, the NC property management firm again contacted the BIC and informed her that the salesperson persisted in trying to show rentals managed by the company, that she had given the lock box combination to an unaccompanied prospective tenant, and that the property management company had received a rental application from a couple who listed the salesperson as "the showing Realtor." The property management company filed a complaint with the Commission.

The BIC obtained a list of showing appointments the salesperson had made in May 2015 and noticed that some of the properties were in NC (22 out of 145 confirmed appointments). The salesperson refused to provide an explanation, so the BIC fired her.

The salesperson alleged that she did not realize she could not show rental properties in NC without an active NC broker license, yet she was told to cease and desist by the BIC in March 2015. Upon further investigation, the BIC admitted that the salesperson had received approximately $2,000 in fees for 12 rentals prior to March 16, 2015 (7 in NC and 5 in SC), and that the company was holding an additional $27,932.50 earned by the salesperson after March 16, 2015 related to properties in NC. The company returned the nearly $28,000 in fees when it learned it could not legally receive any compensation related to the salesperson's illegal activities in NC. [D15-0748.]

Disciplinary Action?

BIC: _____

Company: _____

SC salesperson: _____

Case 2

A BIC of a residential sales company agreed to affiliate a newly licensed provisional broker (PB) in July, 2012. The PB completed all 90 hours of the required postlicensing courses by August 2013 and became a full broker, but continued his affiliation with the BIC/company. Without the BICs knowledge, the affiliated broker was managing and advertising vacation rentals through an unlicensed limited liability company (LLC) he had formed in 2010, initially to manage two vacation rentals he personally owned.

The Commission became aware of the situation when a tenant filed a complaint upon learning that the property to be rented had been sold and the new owners were not required to honor the tenant's reservation. The broker refunded all of the tenant's funds on deposit. Upon investigation, the Commission discovered that:

- the online vacation rental agreement used by the broker did not contain any disclosures required by state law;
- the lease agreement did not authorize interest bearing trust accounts or address how payments were to be held and disbursed; and
- while the broker maintained two business checking accounts, one of which was labeled "Escrow Account," he paid personal expenses from the escrow account, commingled funds, and failed to maintain any ledgers, journals, trial balances or other documents required by the Commission's trust account rules.

When asked to describe the flow of receipts and disbursements, the broker explained that the rents ran through the escrow account first, and then into the operating account so he could disburse net rents to the property owners, and that all of his expenses came out of the escrow account so long as they were somehow related to his business.

The broker admitted that he was completely unfamiliar with: 1) how trust accounts function, 2) Commission trust account rules, or 3) state laws concerning vacation rentals. He offered to hire an accountant, obtain a firm license for his LLC, and otherwise do whatever was necessary to become compliant. He also confirmed that neither his BIC nor the sales company had any knowledge of his independent vacation rental activity. [D14-0702.]

Disciplinary Action?

BIC: _____

Company: _____

Broker/Vacation Rental Mgr.: _____

Case 3-A

A full broker who provided property management services was also an affiliated broker with a sales company under a BIC. When one of the affiliated company's listings did not sell and the property owner wanted to rent it, the firm's BIC suggested his affiliated broker as someone who handled rentals. The property owner entered into a property management agreement signed by the affiliated broker in the name of the brokerage company. The property was leased to a tenant. According to the lease agreement, the broker received a $1,000 tenant security deposit to be held at a named bank.

When the tenant breached the lease and the property owner requested the security deposit, the BIC informed the owner that:

- the property management broker no longer worked for his company;
- his company did not provide property management services;
- the broker was to engage independently in property management under her own company; and
- the BIC did not realize the affiliated broker had used his company's name on property management agreements nor that she had opened a trust account in the name of the BIC's company at the company's bank.

The BIC had no signatory authority on the trust account, nor was there any evidence of a $1,000 deposit into the account. The BIC failed to inquire or investigate, even though the account appeared on the BIC's monthly bank statements. The BIC reimbursed the tenant the $1,000 tenant security deposit. [D13-0769.]

Case 3-B

The above BIC filed a complaint against his former broker-associate alleging that she deposited commission checks earned under his firm's name into her personal account without informing the BIC and that she collected rental income from properties without informing her owner-landlords that the property was rented. The Commission inquiry revealed that the broker-associate had deposited a $26,000 commission check due the BIC's company into her rental trust account, supposedly as repayment of a $25,000 loan she had made to the BIC almost three years earlier. The BIC discovered two other transactions where the affiliated broker deposited the commission check payable to the company into the rental trust account mentioned above that she had opened in the company's name, but to which the BIC had no access.

Upon discovering these conversions, the BIC contacted the manager of a condominium complex in which the affiliated broker managed several units for owners and requested a copy of the guest list. It showed several rentals of which the owners were not aware and had not received any rent proceeds. At the time of the Commission's investigation, the broker-property manager had been indicted for appropriating the three commission checks and two instances of taking money from owner-clients. [D13-0512.]

Case 3-C

The Commission received a third complaint against the property management broker filed by an owner-landlord in Florida who hired the broker in 2010 to manage her NC resort condo. The owner originally had the unit cleaned by someone she knew and paid the person directly, but when the broker informed the owner that the cleaning person was not doing a good job and that the broker's husband would be happy to provide cleaning services and charge the tenants directly, the owner agreed. Rental income diminished in 2011 which the broker blamed on the economy. The owner noticed during a 2011 visit that her guest book was missing and the unit was not as clean as previously.

When the owner was informed by the broker's former BIC that the property management broker may have hidden rental income, the owner obtained a tenant list from the condominium management that revealed numerous undisclosed rentals and income of approximately $23,000 that the owner never received. [D13-0579.]

Disciplinary Action?

Broker/Property Manager: _____

Broker's Former BIC: _____

Former Sales Company: _____

Case 4 - (aka "Who Needs a BIC?")

In 1997, the Commission revoked the license of a broker/sole proprietor/BIC due to a $184,000 shortage in his trust account. Undeterred, the revoked broker-sole proprietor hired one of his associates to serve as the BIC (BIC #2) of his sole proprietorship and the company continued providing brokerage services from 1997-2002.

BIC #2 had his license suspended for 30 days in 2002 for failing to comply with trust account rules and allowing a salesperson to engage in brokerage activities while her license was on inactive status. When BIC #2's license was suspended, the owner-sole proprietor appointed another broker who had been affiliated with the company under BIC #2's reign to be BIC (BIC #3) of the sole proprietorship. In March 2006, the Commission revoked BIC #3's license due to a $21,000+ trust account shortage, for failing to maintain required trust account records and reconcile monthly, and for allowing the revoked owner/sole proprietor to engage in brokerage.

BIC #2's license had been restored April 1, 2002, so BIC #2 re-declared himself BIC of the sole proprietorship in March 2006. He was subsequently removed as BIC by the Commission in October 2006 for failing to take the 12-hour Broker-in-Charge Course within 120 days of declaring as BIC. Although BIC #2 continuously maintained his license on active status until June 30, 2013, the Commission has no records of any official affiliation by this broker with any company after his second removal as BIC. It does not appear that any successor BIC was ever appointed for the sole proprietorship, yet it, its unlicensed owner, and BIC #2 continued to provide brokerage and property management services until an inquiry was initiated in November 2013 upon the receipt of a complaint from an unhappy owner-landlord.

The property owner alleged that he hired the sole proprietorship to manage three of his properties from 2011-2013, that he dealt primarily with the revoked owner-sole proprietor, although BIC #2 signed checks, and the company owed him at least $13,000 in unpaid rental income. The revoked owner-sole proprietor asked to set up a payment plan. When the Commission's investigator spoke with the office secretary, she identified BIC #2 as being the BIC of the office. He was sent two letters of inquiry, but failed to respond or provide trust account records, as requested.

The Commission confirmed that the remaining property management activity was transferred to a properly licensed property manager and that neither the revoked sole proprietor nor BIC #2 would be permitted to have any further involvement. [D14-0370.]

Disciplinary Action?

BIC #2: _____

Note: *BIC #1's license already was revoked and a sole proprietorship did not have a firm license, so the Real Estate Commission had no jurisdiction over either.*

Case 5

The broker in this case was the qualifying broker (QB) and BIC of a licensed real estate company he owned under which he engaged in commercial brokerage. A commercial property owner filed a complaint against the broker alleging that the broker allowed a tenant to occupy the owner's property in August 2014 but did not obtain a written lease agreement until October 2014 which was for $500 per month less than what the owner authorized, and that the broker failed to timely deliver at least two tenant checks mailed to the broker, instead of the owner.

Upon inquiry, the investigation revealed that while the broker renewed his LLC's firm broker license each year, unknowing to the Commission the LLC had been administratively dissolved by the Secretary of State in September 2010. Although the LLC had no authority to engage in business in North Carolina, it continued to operate and provide brokerage services. Furthermore, the broker lost his BIC status when he allowed his license to expire June 30, 2010. He reinstated his license and returned to active status on July 7, 2010, but did not re-declare as BIC (and thus had no legal "office") until January 2011. He was removed as BIC of his company by the Commission in May 2011 for failing to complete the 12-hour Broker-in-Charge Course within 120 days of declaring as BIC.

Thus, from May 2011 until June 2015, the broker and his LLC illegally engaged in brokerage activity without an office or a BIC under a company that did not have permission to do business in NC. [D15-0551.]

Disciplinary Action?

BIC: _____

Licensed LLC: _____

PREFERRED VENDORS & MARKETING SERVICE AGREEMENTS

Some real estate firms offer a preferred vendor program and/or marketing service agreements (MSAs) with one or more service providers. Examples of service providers include home inspectors, closing attorneys, home warranty providers, lenders, pest inspectors, etc. Does your firm rent space to a service provider? If so, have you wondered if such an arrangement is legal? Does such an agreement require any disclosure by brokers to the consumer(s) under RESPA, NC Real Estate License Law, or Commission rules? The answer may depend on what the real estate company is receiving from the service provider for the office space or for inclusion on the recommended vendor list.

Commission Rule 58A .0109 – Brokerage Fees and Compensation

Commission rule requires brokers to disclose to *parties* any consideration the provider has supplied the broker or brokerage company in exchange for being included on an approved service provider list that is given to consumers. **Rule 58A .0109(b)** states:

> A licensee shall not receive, either directly or indirectly, any commission, rebate, or other valuable consideration of more than nominal value *for services which the licensee recommends*, procures, or arranges relating to a real estate transaction for *a party*, without full and timely disclosure to such party.

The rule states that "… nominal value means of insignificant, token or merely symbolic worth" and subparagraph (d) of the same rule defines "full and timely disclosure" as:

> Full disclosure shall include a description of the compensation, incentive, bonus, rebate, or other consideration including its value and the identity of the person or party by whom it will or may be paid. A disclosure is timely when it is made in sufficient time to aid a reasonable person's decision-making.

Rule 58A .0109(b) requires the company through its associated agents to *inform **any** party*, whether a customer or client, to whom a list of providers is presented, of the monetary value of any contribution made by each service provider for inclusion on the preferred provider list.

Disclosure – Oral or Written?

Must the consumer disclosure be in writing? Rule 58A .0109(b) does not require the disclosure to be in writing or a written acknowledgment of receipt by the party, but without a written acknowledgment, a broker has no proof that the disclosure was made. Other disclosures under Rule 58A .0109 do require written disclosure. Therefore, prudence would suggest that all disclosures be in writing and that the broker ask the party to initial/sign and date acknowledging receipt. The rule also expressly prohibits a broker from accepting any consideration that would violate RESPA.

Real Estate Settlement Procedures Act (RESPA)

The federal Real Estate Settlement Procedures Act (RESPA) applies to transactions involving "*federally related mortgage loans*," loosely defined as

1) loans made by institutional lenders *or* to be sold on the secondary market that
2) are secured by a lien on real property on which a one-to-four family dwelling is or will be situated within two years.

It covers any loan that would be secured by a lien against such property, whether a purchase or refinance loan, home equity loan, home improvement loan, or reverse mortgage.

Bottom line: RESPA prohibits all referral fees between settlement service providers; the term is broadly construed and encompasses most third parties involved in the transaction (e.g., home inspectors, pest inspectors, home warranty companies, surveyors, lenders, closing attorneys, appraisers, etc.). No settlement service provider may share consideration with any other settlement service provider for having referred business in a RESPA governed transaction.

The key to a permissible fee under RESPA is that it is reasonable compensation for goods or services actually performed. One of the few exceptions however is a payment "pursuant to cooperative brokerage and referral arrangements or agreements <u>between real estate agents and brokers</u>" which are expressly permitted under RESPA. [Section 8(c)(3).] The two-pronged test to determine lawful payments for goods, services or facilities actually provided requires that:

1) the goods or services provided must be actual, necessary and distinct,

   and

2) the payment is reasonable for the value of the goods or services provided.

When HUD applied this test to payments by home warranty companies (HWC) to real estate brokers for "selling" the home warranty policy it concluded that *payments from home warranty companies to real estate brokers when acting as an agent in a transaction are (generally) illegal kickbacks*. A broker who merely recommends the services of a particular company or distributes promotional materials for a company at the broker's office or an open house has not provided any "service" and may not receive any consideration from the warranty company for marketing the company's product.

Understand as well that **Commission Rule 58A .0109 applies to <u>any</u> transaction**, even those not subject to RESPA requirements. Thus, while consideration may be shared between various service providers for referring business in non-RESPA transactions, the broker still must *fully and timely disclose to the principal or party the value of what s/he or the company is or will receive to comply with Commission Rule 58A .0109*.

CFPB Compliance Bulletin 2015-05 and Marketing Service Agreements

[The Compliance Bulletin may be viewed or downloaded at the following link:

http://files.consumerfinance.gov/f/201510_cfpb_compliance-bulletin-2015-05-respa-compliance-and-marketing-services-agreements1.pdf .]

RESPA enforcement was transferred from HUD to the Consumer Financial Protection Bureau (CFPB) in 2010 pursuant to the Dodd-Frank Act. The CFPB has initiated several enforcement actions since 2010, primarily targeting lenders, title insurance companies, and appraisers for RESPA violations related to marketing service agreements (MSAs). Its Compliance Bulletin issued October 8, 2015 expresses its opinion regarding the "substantial risks" of MSAs, at least as to the mortgage industry, stating:

> "Any agreement that entails exchanging a thing of value for referrals of settlement service business likely violates federal law, regardless of whether a marketing services agreement is part of the transaction."
> [See link above.]

What is a marketing services agreement? There does not appear to be a succinct definition under RESPA, but a November 2015 blog written by Nicole S. Sohn of Berger Singerman LLP on Lexology.com responding to the **CFPB Compliance Bulletin 2015-05** defines a MSA as

> "…a relationship between a real estate broker or developer and a title company or mortgage broker whereby the real estate office agrees to market the service of the title company or mortgage broker in exchange for a "marketing" fee. The fee is supposed to be based on the "fair market value of marketing and advertising services to be formed."
> [http://www.lexology.com/library/detail.aspx?g=45f98d0f-2793-4993-8151-c3ee12805979]

The CFPB says that most of its RESPA enforcement actions involve illegal kickbacks or referrals. The CFPB has levied fines on "industry participants" in excess of $146 million as of November 2015. Parties to the MSA often include real estate brokers, title insurance companies, and lenders. An agreement, whether oral or written, is subject to RESPA.

At the outset the CFPB Bulletin observes that the "primary purpose" of RESPA was/is to "eliminate kickback and referral fees that tend to increase unnecessarily the costs of settlement services." It notes that ***settlement services*** include *any service provided in connection with a real estate settlement*, specifically listing:

- title searches, examinations and insurance,
- services of an attorney,
- document preparation,
- property surveys,
- appraisals,
- obtaining credit reports,
- inspections,
- real estate brokerage services, and
- loan origination, processing and underwriting.

The following are quotes from the five-page Compliance Bulletin.

- Based on the Bureau's investigative efforts, it appears that many MSAs are designed to evade RESPA's prohibition on the payment and acceptance of kickbacks and referral fees.
- MSAs are usually framed as payments for advertising or promotional services, but in some cases the payments are actually disguised compensation for referrals.
- The steering incentives that are inherent in many MSAs are clear enough to create tangible legal and regulatory risks for the monitoring and administration of such agreements.
- The Bureau has also seen cases where companies fail to provide some or all of the services required under their agreements. When services promised under an MSA are not performed but payments are being made, a reasonable inference can be drawn that the MSA is part of an agreement to refer settlement services business in exchange for kickbacks.

In a 2015 cautionary notice to its members, the Mortgage Bankers' Association summarizes the prevailing attitude toward MSAs:

> **"…**notably absent from the CFPB's bulletin is any guidance on how to properly construct a MSA. Instead, the CFPB bulletin only cites the potential flaws that exist within the current MSA structure…the lack of guidance on the future of MSAs, outside of the potential negative issues, is a warning in and of itself.
>
> The CFPB has targeted MSAs several times in the last few months, fining lenders and other organizations for alleged kickbacks and other violations related to MSAs, and have looked with suspicion at the entire business model."
> [http://www.housingwire.com/articles/35343-mba-issues-warning-cfpb-is-coming-for-marketing-services-agreements]

The CFPB will review the facts and circumstances surrounding the creation and implementation of each agreement in determining whether RESPA has been violated on a case by case basis**. However, such agreements are disfavored with the CFPB holding most of these agreements to be improper referral fees.** While there no doubt are those in the industry who offer advice regarding how to properly construct a MSA that will be legal, any licensee entering into a MSA should exercise extreme caution. **Brokers are encouraged to seek the advice of a competent NC attorney prior to entering into any MSA or similar arrangement.**

NC Home Inspector Licensure Board Rule

Lastly, remember that the NC Home Inspector Licensure Board (NCHILB, the regulatory agency for all home inspectors in North Carolina) amended its Standards of Practice/Code of Ethics May 1, 2013 to prohibit home inspectors from giving consideration to brokers or brokerage companies in exchange for referrals or inclusion on a preferred providers list. [See Rule 11 NCAC 08.1116.]

What if a broker solicits contributions from a home inspector in return for inclusion on the broker's preferred provider list despite the new home inspector rule? The broker's request for such consideration could cause the home inspector to violate one of NCHILB's rules, possibly resulting in disciplinary action against the home inspector. Such conduct by a broker could constitute improper dealing under real estate License Law, due to the broker's attempt to solicit or tempt someone to engage in conduct that will cause that person to violate a law or rule.

21 NCAC 58A .0110: BROKER-IN-CHARGE RULE

Because the BIC Rule is so long, captions have been inserted to identify and clarify each paragraph's subject/requirement.

Definition of an "Office"

(a) When used in this Rule, the term:

(1) "Office" means any place of business where acts are performed for which a real estate license is required or where monies received by a broker acting in a fiduciary capacity are handled or records for such trust monies are maintained;
(2) "Principal Office" means the office so designated in the Commission's records by the qualifying broker of a licensed firm or the broker-in-charge of a sole proprietorship; and
(3) "Branch Office" means any office in addition to the principal office of a broker which is operated in connection with the broker's real estate business.

Every Office must have a BIC

(b) Except as provided in Paragraphs (d) and (e) of this Rule, every real estate firm, including a sole proprietorship, shall have a broker designated by the Commission as provided in Paragraph (f) of this Rule to serve as the broker-in-charge at its principal office and a broker to serve as broker-in-charge at any branch office. No broker shall be broker-in-charge of more than one office at a time. No office of a firm shall have more than one designated broker-in-charge.

Broker may serve as BIC of 2 firms ONLY IF offices are located at EXACT SAME address

(c) If a firm shares office space with one or more other firms, the same broker may serve as broker-in-charge of multiple firms at that location. All firms at that location having the same designated broker-in-charge shall maintain with the Commission as a delivery address the same delivery address as that of the single designated broker-in-charge.

When an entity does not need a BIC

(d) A licensed real estate firm is not required to have a broker-in-charge if it:

(1) has been 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 or unlicensed person associated with it other than its qualifying broker.

Does a sole proprietorship need a BIC?

(e) A broker who is a sole proprietor shall obtain the Commission's designation of himself or herself as a broker-in-charge if the broker engages in any transaction where the broker is required to deposit and maintain monies belonging to others in a trust account, engages in advertising or promoting his or her services as a broker in any manner, or has one or more other brokers affiliated with him or her in the real estate business. Maintenance of a trust or escrow account by a broker solely for holding residential tenant security deposits received by the broker on properties owned by the broker in compliance with G.S. 42-50 shall not, standing alone, subject the broker to the requirement to designate himself or herself as a broker-in-charge.

Designation as BIC

(f) A broker desiring to be a broker-in-charge shall request in writing his or her designation as broker-in-charge by the Commission on a form provided by the Commission. The form shall include the broker's name, license number, firm affiliation, and a certification that he or she possesses the experience described in Subparagraph (g)(2) of this Rule. Upon receipt of notice from the Commission that the broker has been designated as broker-in-charge, the broker shall assume the duties of broker-in-charge.

BIC Qualification Requirements for Initial Designation

(g) To qualify to become a broker-in-charge, a broker shall:

(1) have a license on active status but not on provisional status;

(2) possess at least two years of full-time real estate brokerage experience or equivalent four years of part-time real estate brokerage experience within the previous five years or real estate education, such as the completion of the North Carolina GRI program or other education with a subject matter relating to brokerage practice and the supervision of brokers, or experience in real estate transactions that the Commission finds equivalent to such experience, such as a 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 or full-time, lawful experience selling new homes owned by a corporate homebuilder as a bonafide employee of the corporate home builder for three years immediately preceding the application; and

(3) complete the Commission's 12 classroom hour broker-in-charge course either within three years prior to designation as a broker-in-charge or within 120-days following designation as a broker-in-charge.

Upon the request of the Commission, a broker shall provide evidence to the Commission that he or she possesses the requisite experience. A broker-in-charge designation shall be immediately terminated if a broker-in-charge fails to complete the broker-in-charge course during the required time period or if the Commission finds the broker-in-charge does not possess the required experience. A broker who is removed as broker-in-charge for failure to timely complete the Commission's 12 hour broker-in-charge course must first complete the 12 hour broker-in-charge course before he or she may again be designated as broker-in-charge.

How to obtain BIC and BIC-Eligible Statuses

(h) By submission of a broker-in-charge designation request to the Commission, a broker certifies that he or she possesses the experience required to become a broker-in-charge and upon designation by the Commission, the broker shall be authorized to act as a broker-in-charge. Upon his or her designation as broker-in-charge and completion of the broker-in-charge course within the time period prescribed in Subparagraph (g)(3) of this Rule, the designated broker-in-charge acquires the eligibility to be re-designated as a broker-in-charge at any time in the future after a period of not actively serving as a broker-in-charge without having to again satisfy the qualification requirements for initial designation stated in this Paragraph so long as the broker continuously satisfies the requirements to retain such eligibility described in Paragraph (k) of this Rule.

BIC Duties

(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:

(1) the retention of current license renewal pocket cards by all brokers employed at the office for which he or she is broker-in-charge; the display of licenses at such office in accordance with Rule .0101 of this Section; and assuring that each broker employed at the office has complied with Rules .0503, .0504, and .0506 of this Subchapter;

(2) the notification to the Commission of any change of business address or trade name of the firm and the registration of any assumed business name adopted by the firm for its use;

(3) the conduct of advertising by or in the name of the firm at such office;

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

(5) the retention and maintenance of records relating to transactions conducted by or on behalf of the firm at such office, including those required to be retained pursuant to Rule .0108 of this Section;

(6) the supervision of 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) the supervision of all brokers employed at the office for which he or she is broker-in-charge with respect to adherence to agency agreement and disclosure requirements.

Brokers who were BICs as of April 1, 2006

(j) A broker who was the broker-in-charge of a real estate office on April 1, 2006, whose broker-in-charge declaration was received by the Commission prior to that date, and who completed the Commission's broker-in-charge course prior to April 1, 2006 or within 120 days following designation as a broker-in-charge, may continue to serve as a broker-in-charge thereafter until his or her eligibility to serve as a broker-in-charge is terminated as provided in Paragraph (l) of this Rule.

How to Achieve and Maintain BIC and BIC Eligible Statuses

(k) Once a broker has been designated as a broker-in-charge and completed the 12 hour broker-in-charge course as prescribed by Paragraph (g) of this Rule, the broker may maintain broker-in-charge eligibility by timely annual renewal of his or her broker license and completion each license year of the four hour mandatory continuing education update course for brokers-in-charge known as the "Broker-In-Charge Update Course" described in Rule 58E .0102(b), and any Commission-approved four hour continuing education elective course described in Rule 58E .0305. The Broker-In-Charge Update Course shall be taken initially by a broker-in-charge during the first full license year following the license year in which the broker was designated as a broker-in-charge and each license year thereafter in order for the broker to maintain broker-in-charge eligibility. Enrollment in the Broker-In-Charge Update Course shall be limited exclusively to current brokers-in-charge, and brokers who are not currently acting as a broker-in-charge but who desire to retain their broker-in-charge eligibility. Only these brokers shall receive continuing education credit for taking the Broker-In-Charge Update Course. A broker-in-charge or broker who is broker-in-charge eligible who takes the General Update Course described in Rule .1702 of this Subchapter rather than the Broker-In-Charge Update Course shall receive continuing education update course credit for taking such course only for the purpose of retaining his or her license on active status and shall not be considered to have satisfied the requirement to take the Broker-In-Charge Update Course in order to retain his or her broker-in-charge status or eligibility.

Loss of BIC or BIC Eligible Status

(l) A broker's broker-in-charge eligibility and, if currently designated as a broker-in-charge, his or her broker-in-charge designation shall be terminated upon the occurrence of any of the following events:

(1) the broker's license expires or the broker's license is suspended, revoked or surrendered;

(2) the broker's license is made inactive for any reason;

(3) the broker fails to complete the Broker-In-Charge Update Course described in Paragraph (k) of this Rule; or

(4) the broker is found by the Commission to have not possessed the experience required in Paragraph (g) of this Rule at the time of either initial designation as a broker-in-charge or re-designation as a broker-in-charge.

How to Regain BIC or BIC Eligible Status

(m) When a broker who is a former broker-in-charge desires to be re-designated as a broker-in-charge following termination of his or her broker-in-charge designation or eligibility, he or she must first have a license on active status. The broker then must satisfy the experience requirements for initial designation set forth in Paragraph (g) of this Rule, and the broker must complete the 12-hour broker-in-charge course prior to re-designation as broker-in charge.

BIC must notify Commission when stepping down (as BIC)

(n) A broker-in-charge shall notify the Commission in writing that he or she no longer is serving as broker-in-charge of a particular office within 10 days following any such change.

Nonresident BICs excused from NC BIC Education

(o) A non-resident broker who has been designated by the Commission as the broker-in-charge of an office not located in North Carolina is not required to complete the broker-in-charge course or the Broker-In-Charge Update Course prescribed for brokers-in-charge under Paragraph (k) of this Rule. However, if such broker-in-charge either becomes a resident of North Carolina or becomes broker-in-charge of an office located within North Carolina, then he or she must take the 12 hour broker-in-charge course within 120 days of such change, unless he or she has taken the 12 hour course within the preceding three years. Such broker-in-charge shall take the Broker-In-Charge Update Course prescribed in Paragraph (k) of this Rule during the first full license year following the change and each license year thereafter so long as the broker-in-charge remains a resident of North Carolina or continues to manage an office located in North Carolina.

Licensees with NC Limited Nonresident Commercial Licenses MAY NOT be designated as NC BICs

(p) 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.

DISCIPLINARY CASE OUTCOMES (Underline indicates final outcome.)

Case 1, page 92. **BIC** = 30-day suspension, but dismissed if completes three CE courses;

Real Estate Company = 30-day suspension reduced to reprimand if BIC completes specified CE.

SC salesperson = NCREC had no jurisdiction to discipline as she was not licensed in NC. She subsequently applied for a NC license after passing the state portion of the exam, but when confronted with several character issues, she withdrew her license application. Thus, as of July 1, 2016, she still was not licensed in NC.

Case 2, page 93. **BIC and Sales Company** = Commission closed complaint file.

Broker = 24-month suspension; active 30 days immediately; probation remaining 23 months if completes four CE classes (including Basic Trust Account, 2 about property management, and Commission's Issues & Answers).

Case 3, pages 93-94. **Former BIC** = six-month suspension reduced to reprimand if completes two CE classes and refunds $1,000 tenant security deposit.

Former **Sales Company** = same as BIC.

PM **Broker** = Voluntary Surrender for five years.

Case 4, page 95. **BIC #2** = Permanent Voluntary Surrender.

Case 5, page 96. **QB/BIC** = 12-month suspension, 1 month active and probation for remaining 11 months if completes "Issues and Answers" course, **and** cannot be a BIC for 36 months.

Licensed LLC = Voluntary Surrender for one year.

NOTE: Each sanction is specific not only to the violation but also to the respondent/situation.