

## SECTION SIX

# BROKER-IN-CHARGE REMINDERS



1. A BIC personally manages his brokerage trust/escrow account. He deposits all trust monies into the account, including rents, tenant security deposits, earnest money deposits, etc. Each month when he receives the bank statement, he promptly reviews the statement to ensure accuracy. Once he verifies no unauthorized transactions have occurred, he signs the statement and places it in his file. Is the BIC properly maintaining his trust account records? \_\_\_\_ Why or why not? \_\_\_\_\_  
\_\_\_\_\_
2. Are there different standards for BIC supervision of provisional and full brokers? \_\_\_\_ Explain your answer: \_\_\_\_\_
3. A broker is a member of a MLS system that is a partner with a 3<sup>rd</sup> party syndicator. Consequently, each time the broker places a listing in the MLS system, the listing is sent to various other websites. Must the broker visit all of the syndicated websites on which the ad appears and make copies of the ad? \_\_\_\_\_ Explain your answer. \_\_\_\_\_  
\_\_\_\_\_

## Learning Objectives

Upon completing this section, you should be able to:

- explain 3-way trust account reconciliation;
- differentiate between a BIC's supervisory responsibilities for provisional vs "full" brokers; and
- explain a BIC's responsibility for advertising.

## Rule 58A .0117: Trust Account Record Keeping Requirements

### 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;...”

NOTE: 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.

### Terminology

#### Journal

The Journal is the “BIG PICTURE” or the “whole pie.” There is only one Journal per trust account.

A BIC must record **all monies going into and out of the trust account** on the Journal in the order the monies were received or paid, i.e., chronologically.

“All monies” means every penny in the account, including the monies that a BIC receives or disburses in a fiduciary capacity, bank service charges and fees, interest, etc.

The Journal must have a running balance, i.e., a column showing the account balance after each entry.

#### Ledgers

Ledgers are the “pieces of the pie.” There are multiple ledgers for every trust account.

The number of ledgers is determined by the number of clients and/or properties for which monies are being held in the account. Commonly, BICs create and maintain separate ledgers for each property address. However, if a BIC manages multiple properties for the same owner, the BIC may choose to maintain only one ledger for that owner.

**Only monies received or disbursed related to the specific property address or owner** are recorded on a ledger.

Every ledger must have a running balance.

**REMEMBER:** The Journal and bank statements indicate the total amount of money held in the trust account but neither shows individual ownership of the funds. Only the *ledgers* show how much money belongs to each client or customer and, in turn, the broker's liability to each consumer.

**Trial Balance**

This is the third step in the three-way monthly reconciliation required by Commission rule. To perform a trial balance, add the totals on each ledger sheet and compare the ledger sheet total to the Journal balance.

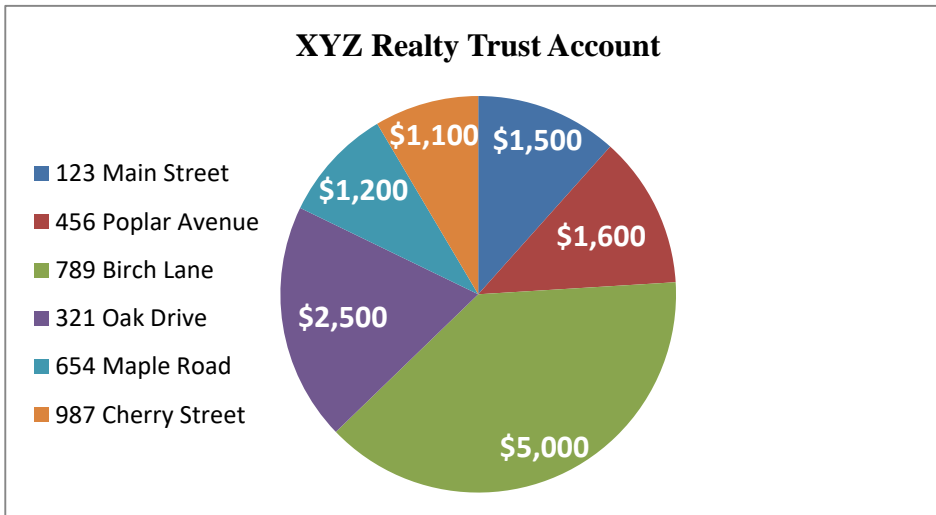
**The total of all ledger sheets should ALWAYS equal the Journal balance.**



**Example:**

XYZ Realty is currently holding trust monies for six (6) clients' properties in the trust account as follows:

XYZ Realty		
Address	Amount	Purpose
123 Main Street	\$1,500	Rent
456 Poplar Avenue	\$1,600	Rent
789 Birch Lane	\$5,000	Earnest Money Deposit
321 Oak Drive	\$2,500	Earnest Money Deposit
654 Maple Road	\$1,200	Rent
987 Cherry Street	\$1,100	Rent



Based on this information, how many ledger sheets should the BIC have? \_\_\_\_\_  
 What should the running balance for XYZ Realty's trust account be? \_\_\_\_\_

**Double Entry Required! For every entry on the Journal, there will be a duplicate or corresponding entry on one ledger. In the above example, the deposits for each of the rents and earnest money deposits would be reflected on the individual property ledgers PLUS in the Journal.**

### **Three-Way Reconciliation: Overview**

How do you reconcile your personal checking account each month? More than likely, you simply verify that all the entries on your monthly bank statement match your debit and deposit receipts and/or entries in your check register.

Monthly reconciliation of a trust account is more detailed and involves a three-step process. The third step is especially critical, because it reveals the broker's/firm's liability to each person for whom funds are being held.

Commission Rule 58A .0117 states, in relevant part:

(e) Brokers shall reconcile their trust or escrow accounts monthly. The trust account reconciliation shall be performed in the following manner as of a specific cutoff date selected by the broker:

- 1) a trial balance shall be prepared showing a list of the property or owner ledgers, their balances, and the total of all of the property or owner ledger balances as of the cutoff date;
- 2) a bank statement shall be reconciled by deducting from the statement's ending balance the amount of any outstanding checks and then adding to the balance the amount of any deposits-in-transit as of the cutoff date; and
- 3) the trial balance, reconciled bank statement balance, and the journal balance shall be compared as of the cutoff date. If the amounts on the trial balance, journal balance and reconciled bank balance do not agree, the broker shall investigate the reason for any variation between the balances and make the necessary corrections to bring the balances into agreement.

A broker shall maintain and retain a worksheet for each monthly trust account reconciliation showing the balance of the journal or check stubs, the trial balance and the reconciled bank statement balance to be in agreement as of the cutoff date.

### **How to Perform a Three-Way Reconciliation**

1. **Select a "cut-off date"** – the date to be used for comparing the Journal balance to the reconciled bank statement to the trial balance.
2. **Reconcile the bank statement.**
  - a. Add to the bank statement ending balance any deposits that have not been credited yet by the bank;  
and
  - b. deduct from the bank statement ending balance the total of checks you have written that have not yet cleared the bank.

### 3. Make appropriate Journal entries.

- a. Add deposits appearing on your bank statement that are not yet recorded in the Journal, and
- b. deduct bank service charges and other automatic fees on the bank statement that are not yet recorded in the Journal, and.

*Be sure to account for the personal/company funds ledger!*

*After completing step #3, your reconciled bank statement and Journal balance should be equal.*

### 4. Prepare the Trial Balance.

- a. List each ledger and its ending balance as of the cut-off date.
- b. Add all ledger ending balances together for a total balance.

#### **Trial Balance = Reconciled Bank Statement = Journal Balance**

The Trial Balance total should equal the reconciled bank balance and the Journal balance as of the cutoff date. If the balances do not match, the BIC must investigate, identify the problem, and correct any errors or omissions. Create and retain a worksheet each month comparing the three balances and showing that they were all equal as of the cut-off date.

### **Journal Balance and Trial Balance – Common Error**

If the Trial Balance and Journal balance do not match, but the difference is less than \$100.00, you may have forgotten to account for money deposited into the account to cover bank / service fees. To account for such funds, a BIC must maintain a “personal funds” or “company funds” ledger.

If that does not resolve the imbalance, begin a thorough investigation, starting with a review of each entry on the Journal and comparing it to the entry on the applicable ledger sheet.

### **Additional Resources**

**3-page Trust Account Tutorial:** <https://www.ncrec.gov/PDFS/Rules/TrustTutorials1-3.pdf>

This tutorial provides a summary of the Deposit Cycle, Disbursement Cycle, and monthly reconciliation requirements for a rental trust account. The monthly reconciliation cycle is reprinted at the end of this Section.

**Commission Videos:** “Trust Account Reconciliation,” “Accounting for the Deposit of Earnest Money,” and “Spot Audits.” <https://www.ncrec.gov/Resources/VideoLibrary>

**Private Audit:** If you hire an auditor to assess compliance with Commission rules, be sure to provide the auditor with a copy of Rules 58A .0116 and 58A .0117 (and A.0118 if you are managing owner association funds for a fee) so the auditor/examiner is aware of Commission requirements.

**Certified Fraud Examiner (CFE):** Hire a Certified Fraud Examiner (CFE), who has specialized training and education in detecting fraud. While auditors currently employed by the NC Real Estate

Commission may not provide personal services, there are several former Commission auditors or investigators who offer auditing and review services in the private sector.

## **BIC Supervisory Obligations**

The BIC must supervise all provisional brokers affiliated with the office in all brokerage activities they conduct. The BIC has more limited supervisory responsibilities for affiliated “full” brokers.

Understand that the company/firm may be held civilly liable for anything associated provisional or full brokers do within the scope of their employment.

## **BIC Liability/Responsibility for Provisional Brokers (PBs)**

Rule 58A .0110(i)(6) holds the BIC responsible for “the supervision of **PBs** associated with or engaged on behalf of the firm at such office in accordance with the requirements of Rule 58A .0506...”

The **KEY POINTS** of Rule 58A .0506 can be summarized as follows:

- A PB may engage in activities requiring a real estate license only when:
  - his or her license is on active statusand
  - s/he is supervised by a BIC at the office where the PB is associated.
- A PB may be supervised by only one BIC at a time.
- Upon a PB’s association with a real estate broker or brokerage firm, the PB and the BIC shall immediately file with the Commission a PB supervision notification (Form 2.08):
  - the BIC must certify that s/he will supervise the PB in the performance of all acts for which a license is required;
  - the date the BIC assumes responsibility for such supervision;
  - the form must be signed by at least the BIC; and
  - if applicable, a request to activate the PB’s license with a certification that the PB has completed all necessary Continuing Education and Postlicensing education.

NOTE: The PB may engage in real estate brokerage activities immediately upon sending Form 2.08 to the Commission. If the PB and BIC do not receive written acknowledgment from the Commission confirming the PB’s active status within 30 days of the date shown on the form, the BIC must immediately terminate the PB’s real estate brokerage activities pending receipt of the written acknowledgment of license activation from the Commission.

- A BIC shall actively and directly supervise the PB in a manner that reasonably assures the PB performs all acts for which a real estate license is required in accordance with the Real Estate License Law and Commission rules. A BIC who fails to supervise a PB as prescribed in this Rule may be subject to disciplinary action.

## Criteria for Assessing Proper Supervision of PBs

Understand that 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.

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. The **guiding criteria include:**

### **1. Is the BIC physically available to assist, advise, and review the PB's practices and is the PB physically able to be supervised?**

A BIC must be reasonably available to manage and supervise PBs during regular business hours. A BIC might consider providing all associated brokers his/her preferred contact information including office hours and availability by phone, email, etc. after hours.

If a BIC is a full-time employee elsewhere or is engaged in a full-time activity at a location other than the office to which s/he is assigned, then the presumption may arise that the BIC is unable to effectively manage the office as contemplated by Rules 58A .0506(d) and 58A .0110. "Ghost" BICs, those who lend their names but not their presence to offices, clearly are not permitted. Similarly, if the PB rarely visits the office, how can the BIC "*actively and directly supervise*" that PB?

### **2. Has the BIC established written policies and procedures under which all affiliated brokers are expected to operate?**

It is highly advisable to develop and distribute an Office Policy Manual detailing procedures, practices, and expectations for individuals associated with the brokerage firm. The policy manual should be mandatory reading for all affiliated licensees and assistants, licensed or unlicensed.

Office policies should be uniformly enforced. A firm can be disciplined for not abiding by its policies. Some BICs require brokers and employees to sign a statement at the time of affiliation indicating that they have read, understood, and agree to be bound by the office policies as expressed in the written manual.

This written office policy manual may address all types of issues, such as:

- type(s) of agency the firm practices;
- transaction file maintenance and retention;
- money handling/trust account practices and policies;
- advertising;
- training programs and staff meetings;
- office access, staffing, and phone duty obligations;
- licensed and unlicensed assistants;
- errors and omissions or other insurance;
- payment of commissions, advances, etc.;
- back-up coverage for transactions;
- mentoring or buddy systems; or
- policies regarding compensation, transaction files, clients, etc. upon broker departure.

**Note:** Rather than being carved in stone, the policy manual should be open to revision, with policies added, modified, or deleted as dictated by the realities of the firm's practice. The policy manual should address how changes/revisions will be implemented and if continued affiliation requires acceptance by all parties.

**3. Does the BIC review and monitor the brokerage activities of PBs?**

Regular meetings with individual PBs and review of their files is an excellent way to monitor the PB's practices, document preparation, understanding of and compliance with the License Law and rules, as well as to stay abreast of the brokerage activities in which the PB is engaged. Some training of multiple PBs might be accomplished in a group setting.

It should be emphasized to PBs that they are not to handle money. The Office Policy Manual should establish procedures that are strictly enforced regarding receipt and deposit of all monies by any affiliated broker, whether "full" or provisional.

**4. Does the BIC hold regular meetings and otherwise assure proper implementation of and adherence to office policies and procedures?**

Regular periodic meetings and communiques should be utilized to inform and update *all* individuals working out of that office on matters ranging from internal office procedures or issues to legislative or rule updates, to changes in forms, etc. A BIC may create specialized email templates that are only used to share new or changing information to reach all affiliated agents. If a physical meeting is needed and the entire firm is too large to gather in one location, consider regular meetings of smaller groups with similar job requirements or skill levels.

**NOTE:** Requiring independent contractors to attend periodic staff meetings and training sessions will not in and of itself invalidate the independent contractor status of the employee for IRS purposes.

**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?**

Have orientation programs for all newly affiliated agents, regardless of their experience level, to acquaint them with company policies and procedures. Provide a new agent training program for newly affiliated licensees who are new to the business. Mandatory prelicensing education provides knowledge of law and theory, but does not necessarily supply new licensees with many of the basic skills they will need to be successful.

Provide in-house training sessions covering topics such as:

- proper use and completion of preprinted forms;
- mandatory disclosures, when they must be made and consequences of failing to disclose (e.g., agency disclosures, Residential Property and Owners' Association Disclosure Statement, Mineral & Oil & Gas Disclosure, Lead-Based Paint, material facts, etc.);
- effective sales practices and advertising;
- how to measure/calculate square footage; or
- home inspections and repair negotiations.



Distribute written memoranda or newsletters notifying licensees of changes in License Law, rules, forms, federal or state laws, or other pertinent information impacting brokerage practice. Consider keeping copies of your training calendar and rosters of attendees.

## **6. What is the experience level of the PB?**

The level or amount of supervision will be influenced by the qualifications and experience of the PB. Typically, a novice will require significantly more supervision and assistance in applying what s/he has recently learned than an agent who has been actively engaged in brokerage activities for a year or two. Conversely, more experienced agents may not be as aware of current License Law and rules and may require closer supervision to ensure that their brokerage practices change to conform to current dictates. ***There is never a point at which a BIC is excused from supervising a PB, even one with years of experience.*** If a PB chafes under the BIC's supervisory restrictions, then suggest that the PB complete whatever Postlicensing education is required to terminate the provisional status of his/her license and become a full broker, allowing him/her to function more autonomously.

## **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?**

What procedures have been established to verify or ensure that the degree of supervision is adequate? Consider assigning more experienced brokers with great compliance records to mentor novice PBs (or even brokers) during their first year to 18 months of practice. The inexperienced licensee will have someone to whom s/he can turn with questions and for advice, particularly if the BIC is not readily available. However, the BIC remains liable for supervising all PBs in his/her office, regardless of delegation of some of these duties.

## **8. In what types of activity is a PB engaged?**

While a PB is obligated to fully inform his/her BIC of all brokerage activities s/he is performing or that may impact the BIC's responsibilities, the PB's failure to inform the BIC does not relieve or absolve the BIC of his/her Rule 58A .0110 and 58A .0506 duties and obligations. If a BIC agrees to supervise a PB who is authorized to do *only referrals* or some other limited activity, then that should be clearly stated in the written employment agreement to aid in the BIC's defense in the event the PB goes beyond the scope of the employment agreement and begins engaging in different brokerage activities, such as sales, vacation rentals, property management, etc.

## **9. How many PBs does the BIC supervise and what is the ratio of supervisors to PBs?**

How many people can one person effectively supervise? The answer is influenced by several of the foregoing factors (e.g., a licensee's experience level, knowledge of the law and rules, general competence, honesty/integrity, attention to detail, type of activity, BIC's availability, etc.). Each BIC must assess and conclude for him/herself how much supervision each PB (and to a lesser extent, "full" broker) requires. BICs of large offices may need to consider building a corps of competent brokers to assist in supervising PBs assigned to the broker, who then reports regularly to the BIC. The BIC still should meet personally with each PB periodically. Delegation of some duties does not relieve the BIC's obligation to review *all* transaction files, whether of PBs or full brokers, to both supervise and ensure proper advertising and file maintenance, a BIC responsibility for all affiliated agents.

**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 s/he is responsible?**

Does the BIC participate in, ratify or attempt to avoid learning of any such violation? As far as the Commission is concerned, honesty truly is the best policy. If an error has occurred, the correct response is not to try to sweep it under the rug and ignore it. Rather, the BIC should intervene and investigate to find out what happened, what the underlying documents reveal, who was supposed to do what, and then try to propose a reasonable remedy.

The Commission expects brokers-in-charge to be aware of what is going on in their offices, to have their fingers on the proverbial pulse, as it were. Whether with trust account maintenance, supervision issues, or administrative matters, BICs are likely to get into trouble when

- 1) a situation exists for an extended period of time without the BIC apparently being aware; and/or
- 2) when s/he tries to conceal, rather than address, a problem.

A broker who is willing to make amends and who attempts to right a wrong and then informs the Commission of the situation will fare much better before the Commission than one who refuses to accept his/her responsibilities.

**KEY POINTS**

- Maintain regular office hours and be available to respond to questions or issues which arise daily.
- Insist that your licensees (at least PBs) also establish a fairly regular schedule of days and times when they can be expected to be physically in the office.
- Facilitate and encourage communication.
- Schedule periodic meetings with each individual licensee; review their files and discuss any issues they might be confronting. These meetings generally should be more frequent for novice licensees and may be less frequent for more experienced licensees, depending on their demonstrated competence and proficiency.



*May I allow my PBs to work primarily from a home office?*

While most licensees invariably will conduct some work from or at their home, PBs should not be allowed to operate autonomously from home offices. Doing so would defeat the BIC's ability to "actively and directly" monitor their activities. All PBs should be required to conduct the bulk of their brokerage activities in the firm's office and all primary files and records should be maintained at the office.

## **BIC Liability/Responsibility for Full Brokers**

There is no separate rule that specifies supervisory responsibilities for “full” brokers as there is for PBs. Instead, the Broker-in-Charge rule (58A .0110) provides guidance.

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:

- (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.

Of the seven (7) duties, #2 and #6 don't apply to full broker supervision, but the remaining obligations do. Thus, a BIC has five (5) supervisory duties as to his/her full brokers, as follows:

- 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.

If a complaint is filed against a full broker related to something other than these five (5) issues, the BIC may not receive a copy of that Letter of Inquiry. For example, if a PB fails to disclose a material fact and the consumer later complains, the Letter of Inquiry would be sent to both the PB and his/her BIC. If a full broker failed to disclose the exact same material fact, the BIC most likely would not receive a copy of the letter, unless the BIC or the firm is also named in the complaint.

Understand that the real estate company may be civilly liable for the acts or misconduct of any of its affiliated licensees, because the company is representing to the public that the licensees are authorized to act as “agents” of the company (despite the fact that the company may be paying the associated brokers as independent contractors). Urging your PBs to remove provisional status by completing all

three 30-hour postlicensing courses sooner rather than later reduces a BIC’s chances of answering to or appearing before the Real Estate Commission, but it doesn’t affect the company’s civil liability for its agents.

## Advertising: Rule 58A .0105

### “Blind Ads” Prohibited



Which of the following ads placed by a licensee on behalf of a client would be considered an illegal blind ad? Select all that apply.

- a. 3 bedroom, 2 bath home on .14 acre. City water and sewer. Call Mary Jones at 919.555.5555.
- b. 3 bedroom, 2 bath home on .14 acre. City water and sewer. Call Mary Jones, Broker, at 919.555.5555.
- c. 3 bedroom, 2 bath home on .14 acre. City water and sewer. Call Jones Realty at 919.555.5555.
- d. 3 bedroom, 2 bath home on .14 acre. City water and sewer. Call 919.555.5555.

### BIC is Responsible for All Advertising



1. What are popular forms of advertising brokers use to promote properties for sale or lease? \_\_\_\_\_  
\_\_\_\_\_
2. May a BIC restrict where affiliated brokers advertise? \_\_\_\_\_
3. Sadie is a BIC with 250 affiliated brokers. Her firm has strict policies regarding advertising content but does not restrict where affiliated brokers may place advertisements. What policies might Sadie impose to ensure that advertisements are in compliance before being published? \_\_\_\_\_  
\_\_\_\_\_

The BIC of an office is responsible for "... the conduct of advertising by or in the name of the firm at such office." [Commission Rule 58A .0110(i)(3)]

BICs should be aware of ALL advertising originating in their offices regardless of who pays for the advertising, because the advertising (and brokerage services) are done in the name of the firm which might be liable for misstatements or omissions and law or rule violations.

A BIC should review and approve all advertising prepared by any affiliated agent prior to it being published. Personal review may be impractical for BICs responsible for supervising numerous affiliated agents. Accordingly, a BIC may establish and enforce as part of his/her office policy standard procedures:

- 1) a review process by delegated, trained persons;
- 2) specified forms and/or distribution outlets to be used by affiliated agents for advertising;
- 3) periodic instruction for all agents in the proper use of those procedures and forms; and
- 4) inclusion of all related advertising (e.g., MLS entry, property flyers, social media post, etc.) in each transactional file.

BICs need to address all types of advertising such as written publications, property flyers, social media, and the internet. Individual broker websites and social media accounts are frequently out of compliance; periodic internet searches under each affiliated licensee's name may alert BICs to hidden violations.

**NOTE:** Commission rules don't dictate the content of ads, other than the requirements noted above, but other laws and regulations address permissible content, including:

- 1) Regulation Z and Truth-in-Lending requirements
- 2) State/Federal Fair Housing laws
- 1) State/Federal Do Not Call, Do Not Fax, and CAN-SPAM rules

The Commission addressed advertising issues and content in the *2013-2014 Mandatory Update* and *Broker-in-Charge Annual Review (BICAR)* courses. The BICAR article also addressed accuracy as a requirement of advertisements. To read the articles, go to [www.ncrec.gov](http://www.ncrec.gov) \ Publications \ Update, BICAR Topics and select *Advertising Issues* or *Advertising and Syndication*.

## **BIC is Responsible for Retaining Copies of All Advertising**

The BIC of an office is responsible for "...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..." [Commission Rule 58A .0110(i)(5)].

Commission Rule 58A .0108 expressly requires retention of copies of "...advertising used to market a property" for three (3) years after the successful or unsuccessful termination of the transaction, or the disbursement of all monies from a broker's trust account related to that transaction, whichever is later.



1. A broker advertises a listed property on his firm's website, in the local MLS system, on his individual business website, on his Facebook page, and in the local newspaper. How many copies of advertisements should be stored in the firm's transaction file? \_\_\_\_\_
2. If broker advertises properties on her Facebook page, does she need to make copies of the ads for the transaction file, considering she can access the ads through her Facebook account at any time? \_\_\_\_\_
3. A broker places identical copies of an ad on various sites. Should he maintain multiple copies of the ad? \_\_\_\_\_ Why or why not \_\_\_\_\_  
\_\_\_\_\_

**The moral of the story...**

Brokers must retain copies of all property information submitted to any medium.

Review of all brokers' advertisements should comprise part of the BIC's regular transaction file review and should be discussed during the periodic meetings with each broker, especially provisional brokers.

## Answers to Discussion Questions

### For Discussion on page 91

1. A BIC personally manages his brokerage trust/escrow account. He deposits all trust monies into the account, including rents, tenant security deposits, earnest money deposits, etc. Each month when he receives the bank statement, he promptly reviews the statement to ensure accuracy. Once he verifies no unauthorized transactions have occurred, he signs the statement and places it in his file. Is the BIC properly maintaining his trust account records?

*Answer: No. Three-way trust account reconciliation is required.*

2. Are there different standards for BIC supervision of provisional and full brokers?

*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.*

3. A broker is a member of a MLS system that is a partner with a 3<sup>rd</sup> party syndicator. Consequently, each time the broker places a listing in the MLS system, the listing is sent to various other websites. Must the broker go to all of the syndicated websites on which the ad appears and make copies of the ad?

*Answer: No. The broker need only retain a copy of the MLS ad that was placed prior to the syndication but must diligently check other sites for discrepancies.*

### For Discussion on page 93

Based on this information, how many ledger sheets should the BIC have?

*Answer: At least six (6). The BIC must have one (1) ledger per property address. Also, if the company deposits funds into the account to cover basic service fees / charges, the BIC must have a 7th ledger to track such funds (often referred to as the "personal funds" or "company funds" ledger). Personal/company funds should not exceed \$100 per month.*

What should the running balance for XYZ's Realty's trust account be?

*Answer: \$12,900*

### For Discussion on page 102

Which of the following ads placed by a licensee on behalf of a client would be considered an illegal blind ad? Select all that apply.

- A. 3 bedroom, 2 bath home on .14 acre. City water and sewer. Call Mary Jones at 919.555.5555.
- B. 3 bedroom, 2 bath home on .14 acre. City water and sewer. Call Mary Jones, Broker, at 919.555.5555.
- C. 3 bedroom, 2 bath home on .14 acre. City water and sewer. Call Jones Realty at 919.555.5555.
- D. 3 bedroom, 2 bath home on .14 acre. City water and sewer. Call 919.555.5555.

*Answer: A and D. [Explanation: In item B, “Mary Jones, Broker” is the name of a sole proprietorship; in item C, “Jones Realty” is the name of a firm.]*

### **For Discussion on page 102**

1. What are popular forms of advertising brokers use to promote properties for sale or lease?

*Possible Answers: MLS, Craigslist, Facebook, personal & company websites, etc.*

2. May a BIC restrict where affiliated brokers advertise?

*Answer: Yes.*

3. Sadie is a BIC with 250 affiliated brokers. Her firm has strict policies regarding advertising content but does not restrict where affiliated brokers may place advertisements. What policies might Sadie impose to ensure that advertisements are in compliance before being published?

*Possible Answer: Internal review of the ad by a delegated person*

### **For Discussion on page 104**

1. A broker advertises a listed property on his firm’s website, in the local MLS system, on his individual business website, on his Facebook page, and in the local newspaper. How many advertisements should be stored in the firm’s transaction file?

*Answer: 5.*

2. If broker advertises properties through her Facebook account, does she need to make copies of the ads or are the stored Facebook pages sufficient?

*Answer: She should make copies for the transaction file.*

3. A broker places identical copies of an ad on various sites. Should he maintain multiple copies of the ad? Why or why not?

*Answer: A prudent broker will make a copy of the ad that is displayed on each site, as variations in site design may change the appearance of the ad. However, if he submitted exactly the same ad to each site, he might choose to retain a copy of the ad he submitted alongside a full listing of the sites to which he submitted it.*