

REVISED COMMISSION RULES

2014-2015 GENERAL UPDATE

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Learning Objective: To learn and understand changes in Commission rules effective July 1, 2014 that impact licensees' brokerage activities.

SUMMARY OF REVISED COMMISSION RULES

Brokers should be aware of a few substantive rule changes pertaining to real estate brokers. Important changes were made to rules concerning:

- (1) brokers selling their own property;
- (2) brokers interested in buying a property listed by the broker or brokerage company;
- (3) the Broker-in-Charge Annual Review (BICAR) course; and
- (4) cheating and other prohibited conduct when taking the license examination.

While there were some changes in Subchapter 58C, "Real Estate Prelicensing Education," and Subchapter 58E, "Real Estate Continuing Education," these rules apply primarily to instructors, schools and sponsors and won't be discussed here due to the limited impact on licensees' conduct. All revisions discussed below are effective July 1, 2014.

Rule 58A.0104: Agency Agreements and Disclosure

New subparagraphs (o) and (p) of the agency rule address the following situations:

- (1) a licensee who has an ownership interest in property being sold;
- (2) a firm listing a property in which an affiliated broker has an ownership interest; and
- (3) a listing broker or firm that wants to purchase his/her principals' property.

New Rule A.0104(o) reads as follows:

- (o) A broker who is selling property in which the broker has an ownership interest shall not undertake to represent a buyer of that property. A firm listing a property owned by a broker affiliated with the firm may represent a buyer of that property so long as any individual broker representing the buyer on behalf of the firm does not have an ownership interest in the property and the buyer consents to the representation after full disclosure of the broker's ownership interest.

1) Broker Has Ownership Interest

The rule now prohibits an individual licensee from attempting to act as a buyer agent whenever the licensee has an ownership interest in the property being sold. Why? Because the broker has an inherent conflict between his or her own interest in making a good deal when selling the property, and helping the buyer get a good deal in purchasing it. The rule change is designed to help licensees avoid situations where they might be accused of failing to work in their buyer-client's best interests, because their ability to put the principal's interests (the buyer) ahead of their own self-interest is impaired. Remember, agency law requires that the client's interest is primary.

***Example #1:** Sally Broker and her three brothers decide to sell a property that they own in their individual names as tenants in common. Because Sally has a license and is local, her brothers ask her to handle the marketing and sale of the property, not in her broker capacity, but as one of the co-owners in a "for sale by owner" situation. Sally advertises the property, disclosing "broker-owner," arranges showings, and answers various questions about the property. While Sally certainly can meet and communicate with prospective buyers, *Sally must wear her seller-owner hat **only** and is prohibited from attempting to represent any prospective buyer who may be interested in that property because she has an ownership interest in the property.* Sally should disclose that she has a broker license, that she is representing only her own interests, and that the buyer should seek representation if s/he chooses.*

What if, after a broker-owner provides the required disclosures, the prospective buyer indicates his/her understanding and wants to make an offer. May the broker-owner:

- 1) provide the buyer with a blank NCAR Standard Form 2-T?
If Sally is a member of the North Carolina Association of Realtors® (NCAR), then under the *NCAR Forms policy*, she is permitted to use the Standard form in a transaction in which she is a party, but the current NCAR policy *prohibits her from giving a blank form to a buyer who is not her client*. If Sally is not a member of NCAR, she and the buyer will need assistance from an attorney or a broker authorized to use the standard form in compliance with its copyright.
- 2) explain how to complete the form?
No, but the broker may suggest that the buyer seek representation from a broker or attorney if s/he has questions.
- 3) receive written offers, make counter-offers and otherwise negotiate directly with buyers?
Yes, *as the seller-owner of the property only*.

[ASIDE: Will Sally need the signatures of her three brothers *and their spouses*, if any, before any offer will become a contract?

Yes, otherwise Sally should seek advice from a licensed North Carolina attorney about how to act for herself, her brothers and their spouses.]

Example #2: Broker is one of five member-managers of a limited liability company (LLC) that owns various properties and decides to sell an office building it owns. The broker, *as a manager of the owner-LLC*, markets the property as “for sale by owner” and provides both the LLC’s business office telephone number and the broker’s cell phone number. A prospective buyer contacts the broker to view the property. Upon meeting the buyer at the subject property, the broker explains that he is a member-manager of the LLC-owner and that he has a broker license. May the broker offer to act as a buyer agent in this transaction?

No, because, as a *member* of the LLC, the broker has an ownership interest in the property that is the subject of the sales transaction. The broker must advise any interested buyer that although he has a broker license, he is acting only as a manager of the owner-LLC.

CONCLUSION: A broker (*individual or firm*) must **never** attempt to represent a buyer as a buyer agent if the broker has any ownership interest in the real property that is the subject of the sales transaction. The broker *as a seller-owner* may engage in arms-length good faith negotiations with buyers, *only after* disclosing to the prospective buyer that the broker is an owner of the property and will be representing only the seller-owner’s interest in the transaction and that the buyer is free to seek whatever representation, advice or counsel the buyer chooses. In addition, brokers are strongly encouraged to disclose to all parties in a transaction the fact that they are licensed, even though they are not acting as a broker.

Why must a broker disclose his/her ownership interest? Because of the broker’s ***inherent conflict of interest***.

For example, suppose an owner-broker knows that s/he and the other sellers would readily accept 90% of the list price. Would the broker-owner be prepared to share that information with his/her buyer-client as required by the fiduciary duties flowing from the agency relationship? Even if the other owners didn’t want her to tell the buyer, she is obligated to do so, *if she is acting as a buyer agent*. Sally would be doing a disservice to the other owners by working as a buyer agent or she would be disserving the buyer’s interests, if she was not fully working on the buyer’s behalf in accordance with her fiduciary duties.

Example #3: XYZ Realty Company is a limited liability company that has five members and two managers. It has a firm broker license on active status and operates out of one office with 20 affiliated agents. XYZ Realty also holds title to various properties. It decides to sell a 50 acre tract it owns and advertises the property through a cooperative listing service disclosing “broker/owner” in the advertising. May any of the 20 agents affiliated with XYZ Realty represent a buyer as a buyer agent? As a dual agent?

No, because the real estate company/broker ***owns the property***; it can’t attempt to represent a buyer in any capacity through any of its agents and if it can’t be a buyer agent, then it can’t be a dual agent.

2) Company Listing Affiliated Broker's Property

What if a company acts as the listing agent for the sale of an affiliated broker's property? Is the company prohibited from acting as a buyer/dual agent?

The new rule permits the real estate company to act as a buyer/dual agent **IF**:

- 1) the individual broker working with the buyer has no ownership interest in the property, *and*
- 2) the buyer consents to the representation *after full disclosure of the affiliated broker's ownership interest.*

Of necessity, *the real estate company, whether operating as a sole proprietorship or as a licensed entity must have more than one affiliated agent in order to represent a buyer under these circumstances*; otherwise, the property listed with the company would belong to the lone broker affiliated with the company who would be ineligible to represent the buyer because s/he has an ownership interest in the property.

However, where the company (e.g., sole proprietorship, corporation, limited liability company, limited liability partnership, etc.) has a listing **AND** has more than one affiliated broker, then the company may offer to represent a buyer as a dual agent **IF**:

- 1) the individual broker working with the buyer has no ownership interest in the subject property;
AND
- 2) the buyer consents to the company's representation **after** full disclosure of the affiliated broker's ownership interest.

Example #4: A broker is one of three member-managers of an unlicensed LLC that holds title to various parcels and develops and improves those properties to sell to others. The broker also is a member-manager of another LLC that has a firm real estate license. The broker-manager is an affiliated broker with the real estate company and serves as its qualifying broker. The owner-LLC enters into a listing agreement with the real estate company/LLC to market its property and authorizes dual agency. May the real estate company act as a buyer agent/dual agent with buyers who are interested in the owner-LLC's property?

Yes, so long as: 1) the real estate company has more than one affiliated broker, 2) the broker-manager does *not* work with or represent the buyer on behalf of the real estate company nor supervises a provisional broker working with the buyer; 3) the broker-manager's ownership interest in the property is disclosed to the buyer *and* 4) the buyer consents to the representation after full disclosure of the broker's interest in the property.

IN SUM: If the listing company also holds title to the real property, then the company may not act as a buyer/dual agent, *because the real estate company/broker owns the property.* Where the broker-in-charge has an ownership interest in the property, then the company should not represent a buyer as a buyer/dual agent unless the company has *at least* one other broker to act as the buyer/dual agent. [Note too: pursuant to existing Rule A.0104, the company must also explain to any buyer-client its reduced advocacy and advisory abilities under traditional dual agency, or explain its practice of designated dual agency, if applicable. If practicing designated dual agency, then the company must have *at least* one broker *not* on provisional status to represent one of the parties *if* the broker-in-charge is representing his/her own interests as the seller.]

Understand as well that the company must have a written listing agreement with its seller-client (the affiliated broker, regardless of who it is) authorizing not only the listing, but some form of dual agency. Further, as required in explaining agency choices to any prospective buyer, *brokers must clearly explain to buyers not only buyer agency, but dual agency, whether designated dual agency is an option, and, if not, the limitations on the company's ability to advise and counsel the buyer as a traditional dual agent.*

New Rule A.0104(p) reads as follows:

- (p) A broker or firm with an existing listing agreement for a property shall not enter into a contract to purchase that property unless, prior to entering into the contract, the listing broker or firm first discloses in writing to their principal that the listing broker or firm may have a conflict of interest in the transaction and that the principal may want to seek independent counsel of an attorney or another licensed broker. Prior to the listing broker entering into a contract to purchase the listed property, the listing broker and firm shall either terminate the listing agreement or transfer the listing to another broker affiliated with the firm. Prior to the firm entering into a contract to purchase the listed property, the listing broker and firm shall disclose to the principal in writing that the principal has the right to terminate the listing and the listing broker and firm shall terminate the listing upon the request of the principal.

This rule addresses the potential conflict of interest a company or broker may face when the company/individual broker has a listing, and thus the attendant fiduciary obligations to the seller-client, but now wishes to make an offer on its seller/principal/client's property. The company's options are best illustrated by examples.

Example #1 – Individual Broker Working with Seller Wants to Purchase Property:

Jane Doe enters into a six month listing agreement with XYZ Realty Inc., a large brokerage firm, to list and sell her condo. Sally Broker is the listing agent. Four months into the listing period, Sally has presented Jane with a few offers, but none have been acceptable. The more Sally has looked at the property, the more she thinks it might make a nice home for her and her husband who are looking to down-size. Sally wants to make an offer. May she?

Answers:

- 1) ***Before*** Sally may extend any offer, she should talk with her broker-in-charge and determine *whether the firm will permit her to make an offer on its listing*, and if so whether the firm would prefer to release the listing prior to her submission of an offer or reassign the listing to another broker with the firm. If the firm's policy prohibits brokers employed by the firm from purchasing the firm's listings, Sally should search for another property to purchase.
- 2) If the firm will allow Sally to negotiate with its seller-client, but its policy is to terminate the listing, Sally needs to explain to Jane that she is interested in making an offer, that Sally cannot continue to represent Jane if she is going to offer to purchase the property as she would have a conflict of interest, and that if Jane is willing to entertain Sally's offer, then the firm's policy is that the company must first terminate the listing with Jane and Jane may want to seek independent advice and counsel of an attorney or outside broker.
- 3) If the firm *will* allow Sally to negotiate with its seller-client, but its policy is to reassign the listing to another broker with the firm, then Sally needs to explain to Jane that she is

interested in making an offer, that she cannot continue to represent Jane under these circumstances as she (Sally) would have a conflict of interest in this situation, and that if Jane is willing to entertain and negotiate Sally's offer, the firm must first reassign the listing to another broker in the firm who can work with Jane and Jane may want to seek independent advice and counsel of an attorney or outside broker.

Can Jane compel the company to terminate the listing? No, in this scenario because the firm has multiple agents, the firm may choose to reassign the listing or terminate it. Jane does not have the right to insist on termination of the listing agreement.

Example #2 – Listing Firm Wants to Purchase Property

Jane Doe enters into a six month listing agreement with XYZ Realty Inc., a large brokerage firm, to list and sell her condo. Sally Broker is the listing agent. Four months into the listing period, Sally has presented Jane with a few offers, but none have been acceptable. XYZ Realty becomes interested in purchasing Jane's condo to add it to their rental pool. May XYZ make an offer on its own listing?

Before XYZ may enter into any contract to purchase the listed property, XYZ and Sally must disclose to Jane **in writing** that Jane has the right to terminate the listing. *Sally and XYZ must terminate the listing upon Jane's request.*

Can Jane wait until just before closing to terminate the listing to avoid paying a commission to XYZ Realty?

No. Jane's opportunity to terminate the listing agreement must be exercised prior to Jane entering into any contract with Sally or the firm.

What if XYZ Realty is a one-broker sole proprietorship or firm (Corp, LLC, LLP, etc.) and either Sally or the firm wants to purchase Jane's property?

In this case, the listing must be terminated prior to Sally or the firm beginning negotiations with Jane. Sally should advise Jane that she may want to seek independent advice and counsel of an attorney or outside broker.

Example #3 – Affiliated Broker Wants to Purchase Property

Jane Doe enters into a six month listing agreement with XYZ Realty Inc to market and sell her property with Sally Broker acting as the individual listing agent. Four months into the listing period, Jane has received a few offers, but has found none acceptable. An affiliated broker with XYZ Realty *who has not been working with Jane* develops an interest in the property and wants to make an offer. May s/he?

Answer: IF the firm permits affiliated brokers to make offers on its listed properties, then **BEFORE** the affiliated broker may extend any offer, the broker working with Jane needs to explain that another broker in the firm is interested in making an offer, that the firm may be in a dual agency situation, and must provide the required disclosures and obtain the written agreement of the parties.

May Jane terminate the listing agreement before negotiating with the affiliated agent?

No, in this situation, Jane has no right to terminate the listing agreement, as neither the listing company nor the individual listing agent working with Jane wants to make an offer on Jane's property.

Rule 58A.0110(k): Broker-in-Charge

The Commission changed the broker-in-charge rule this year to require that brokers-in-charge take a special version of the *Update* course. The new four-hour **Broker-in-Charge Update** course (**BICUP**), will essentially combine the old *Broker-in-Charge Annual Review* (**BICAR**) course and the mandatory *Update* course. Because the new **BICUP** is only a four hour class, BICs and those desiring to maintain BIC eligibility will now be able to complete their required 8 hours of CE each year by taking *any elective of their choice*. The **BICUP** will satisfy both the broker's mandatory Update Course requirement *as well as* maintain his/her BIC eligibility or BIC status.

How does this affect you if you are not a BIC or BIC-eligible? Your CE requirements will remain the same. Each year, all provisional brokers and non-BIC eligible brokers must take the four-hour *Update* course and an approved four-hour elective. However, **the name of your mandatory Update course will change to the "General" Update course** (as opposed to the Broker-in-Charge Update course or **BICUP**).

WARNING: If you are not a BIC or BIC eligible, be sure to take the *General Update* course each year, and **not the BICUP**. **Licensees who are neither BICs nor BIC-eligible will not receive any CE credit if they mistakenly take the BICUP course** rather than the *General Update* course.

What if you are a BIC and take the *General Update* by mistake? A BIC or BIC-eligible broker who mistakenly takes the *General Update* course, rather than the *Broker-in-Charge Update* course (**BICUP**), *will receive CE credit for the General Update, but will lose his/her BIC status or eligibility the following July 1*. The only way to prevent loss of BIC status/eligibility is to also take the **BICUP** course **and** a four hour approved elective.

The BIC rule still requires BICs to *take their special CE course beginning the first full license year after the license year in which the BIC declares her/himself as BIC* and every year thereafter to maintain his/her BIC status or eligibility. What's this mean?

1. If you are **already a BIC or BIC-eligible broker**, you must **take the new BICUP by June 10, 2015 (and every year thereafter)**.
2. If you declare yourself a broker-in-charge between July 1, 2014 and June 30, 2015, you must begin taking the **Broker-in-Charge Update Course (BICUP)** beginning in the 2015-16 license year, i.e. between July 1, 2015 and June 10, 2016 which is the first full license year after the license year in which you declared.

The **BICUP** will contain the entire text of the mandatory *General Update* course that non-BICs must take each year. It will also include additional content specific to BICs and their duties. Brokers taking the **BICUP** will find that instruction in the *General Update* topics will be condensed to 2.5-3 hours of time to allow another 1-1.5 hours to be devoted to the BIC-specific topics.

In sum, brokers who took the **BICAR** course as their elective in 2013-2014, and all those brokers who declared themselves a BIC between July 1, 2013 and June 30, 2014 **should begin taking the Broker-in-Charge Update Course (BICUP) each year effective with the 2014-2015 license year** (i.e., between July 1, 2014 and June 10, 2015). In addition to the **BICUP**, as of July 1, 2014 BICs and BIC-eligible brokers should now take any other approved 4-hour course they choose as their elective. Under the revised rule, the required eight hours of continuing education each year for BICs or BIC-eligible brokers will be the **BICUP** plus any other approved four hour class that is not the *General Update* course.

Commercial Update?

What about brokers who typically take the “*RE Update-Commercial*” course each year to satisfy the mandatory Update course requirement? The sponsors of the commercial version of the General Update course have informed Commission staff that they intend to offer commercial versions of both the *General Update* course materials as well as the *Broker-in-Charge Update (BICUP)* course materials. Brokers who are not BICs or BIC-eligible should be sure to take the *General Update-Commercial edition* and BICs and BIC-eligible brokers should take the *BICUP-Commercial edition*. As with the regular *General Update* and *BICUP* courses, non-BIC or BIC-eligible licensees will not receive any CE credit if they take any version of the BICUP course. BICs and BIC-eligible brokers may receive CE credit if they take the General Update, either version, but they will lose their BIC status/eligibility the following July 1 if they don’t take both the BICUP and an approved elective.

Related rules, such as 58A.1702, 58E.0102, and 58E.0202, were revised as necessary to distinguish between the two new mandatory courses, namely, the *General Update* course and the new *BICUP (Broker-in-Charge Update)* course. Section 58E.0600 concerning the former Broker-in-Charge Annual Review course was repealed in its entirety.

**SUMMARY OF REQUIRED CE
beginning July 1, 2014 - June 10, 2015**

Provisional brokers & Non-BIC Brokers	Brokers who are BICs or BIC-Eligible
<p><i>General RE Update Course</i> OR <i>General RE Update-Commercial</i></p> <p>AND Any other approved 4 hour elective course</p>	<p><i>BIC Update (BICUP)</i> OR <i>BIC Update - Commercial</i></p> <p>AND Any other approved 4 hour elective course</p>

Rule 58A.0404: Examination Related Conduct

This rule has been totally rewritten to state more specifically the type of conduct that is prohibited during examinations. Previously the rule merely prohibited (1) cheating or attempting to cheat, whether giving or receiving assistance, and (2) communicating with any person other than the examination supervisor. The completely revised rule is reprinted below and should be self-explanatory. Language that is stricken has been removed and underlined language is new.

~~Rule 58A.0404 CHEATING AND RELATED MISCONDUCT~~ EXAMINATION RELATED CONDUCT

~~Applicants shall not cheat or attempt to cheat on an examination by any means, including both giving and receiving assistance, and shall not communicate in any manner for any purpose with any person other than an examination supervisor during an examination. Applicants shall not disrupt the quiet and orderly administration of an examination in any manner.~~

When taking a license examination, an applicant shall not engage in any of the following actions:

- (1) cheat or attempt to cheat on the examination by any means, including giving or receiving assistance or using notes of any type;
- (2) communicate in any manner for any purpose with any person other than an examination supervisor;
- (3) have in his or her possession or utilize in any manner study materials or notes or any device that may be used to communicate with others, to access information or to record or store photographs, visual images, audio or other information about the examination;
- (4) have in his or her possession or utilize a calculator that permits the storage, entry or retrieval of alphabetic characters or that is not silent, hand-held and either battery-powered or solar-powered;
- (5) have in his or her possession a wallet, pocketbook, bag or similar item that can be used to store materials prohibited by this Rule;
- (6) refuse to demonstrate to the examination supervisor that pockets on any item of clothing do not contain materials prohibited by this Rule;
- (7) leave or attempt to leave the testing area with any materials provided for the purpose of taking the examination or with any information, notes or other information about the content of the examination;
or
- (8) refuse to comply with the instructions of the Commission and the Commission's test provider for taking the examination or disrupt in any manner the quiet and orderly administration of the examination.

Violation of this Rule shall be grounds for dismissal from an examination, invalidation of examination scores, forfeiture of examination and application fees and denial of a real estate license, as well as for disciplinary action if the applicant has been issued a license.

While this rule change should have no effect on most licensees, note that it does permit the Commission to take disciplinary action against a broker who obtained his or her license by cheating on the license examination or related misconduct as described in the rule.

Rule 58A.0503: License Renewal; Penalty for Operating While License Expired

The Commission has long encouraged licensees to renew their licenses online each year. It is the simplest and quickest method of assuring payment of the renewal fee. There is no chance for the envelope to become lost in the mail, payment may be made at any time of the day or night, and the licensee can print confirmation of payment at the end of the transaction. It is also the most economical and efficient way for the Commission to handle annual renewal of its approximately 90,000 licensees during the forty-five day period from May 15 to June 30. In light of these benefits, another rule change *requires electronic license renewal* beginning with this license year, with a limited exception. Licensees will be expected to renew their licenses online at the Commission's website between May 15 and June 30, 2015, and each year thereafter.

As noted above, there is one small exception: licensees who do "...not have the ability to renew online may renew by calling the Commission's office during normal business hours ..." during the period May 15-June 30.

The revised rule also now requires every broker to provide an email address at renewal for the Real Estate Commission's use in communicating with the broker, unless the broker doesn't have an email address. In that case, the broker will not be required to obtain an email account. The broker has the option of designating this email address as private, which means that the email address will not be subject to the public records laws and will be used by the Commission for communicating with the broker. **NOTE:** *The broker's email address will be considered "public record" and may be displayed with other contact information for the broker UNLESS the broker elects the "private" designation for his/her email address.*

Minor Technical Revisions

The following rules had minor technical revisions to correct rule citations, terminology or grammatical matters.

Rule 58A.0112: Offers and Sales Contracts. Correct reference in (a)(7) from "Rule .0107" which was repealed April 1, 2013 to "Rule .0116."

Rule 58A.0114: Residential Property and Owners Association Disclosure Statement. *Question 24* on the Residential Property and Owners Association Disclosure Statement (RPOADS) concerns whether the property to be conveyed is in violation of any local zoning ordinances, restrictive covenants, land-use restrictions, building codes or includes unpermitted additions/improvements. This question was changed to *eliminate the reference to notification by a governmental agency*. The question now reads: "Is the property to be conveyed in violation of any local zoning ordinances, restrictive covenants, or other land-use restrictions, or building codes (including the failure to obtain proper permits for room additions or other changes/improvements)?" Remember that when a seller answers this and other questions on the Disclosure Statement, an "actual knowledge" standard applies. This means that the owner will answer "yes" only if the owner actually knows of a violation.

The newly revised disclosure form should be used for and applies to all properties placed on the market on or after July 1, 2014. The January 1, 2013 version of the form applies to all properties placed on the market on or after January 1, 2013 and prior to June 30, 2014. However, if a disclosure statement for a property listed prior to June 30, 2014 must be revised after July 1, 2014, then the July 1, 2014 disclosure statement should be used.

Example: Property goes on the market on June 12, 2014 with the seller completing the January 1, 2013 Residential Property and Owners Association Disclosure Statement. The seller accepts an offer on July 7, 2014 and the buyer proceeds with various inspections. The buyer's home inspector discovers structural issues needing major repairs and the buyer timely terminates the contract prior to the expiration of the due diligence period. If the seller originally answered "No" to Question #2 on the RPOADS, s/he would now need to provide an amended RPOADS and check either "Yes" or "No representation" and, since it is after July 1, 2014, the seller should use the July 1, 2014 version of the RPOADS.

[**ASIDE:** The RPOADS is the **seller's** disclosure statement, not the broker's. Regardless of how the seller chooses to answer each question, the broker must disclose all material facts and should remind his principal of the broker's obligation. If the seller chooses to answer "no representation" on any given issue, but the broker is aware of a problem that is a material fact, the broker must disclose it to everyone. *If the broker wants proof that s/he disclosed all material facts, then s/he should put it in writing, **but not on the RPOADS.***]

Rule 58A.0116: Accounting for Trust Money. Subparagraph (f) reference to paragraph (d) corrected to paragraph (c).

Rule 58A.0118: Trust Money Belonging to Property Owner Associations. Technical corrections were made in subparagraphs (a) and (b) to cross reference Rules .0116 and .0117.

Rule 58A.0502: Business Entities. Minor technical revisions were made to correct cross-references to other applicable rules.

Rule 58A.1702: Continuing Education Requirement. This rule was revised to create a distinction between the mandatory "**General Update Course**" which all non-BIC/BIC-eligible licensees must take each year (plus an elective) to remain on active status, and the "**Broker-in-Charge Update Course**" that all BICs and BIC-eligible brokers must take, given the elimination of the BICAR course effective July 1, 2014. [See the foregoing discussion about changes to the BIC Rule, 58A.0110(k), for more detailed information.] As discussed more fully above, BICs and BIC-eligible brokers must begin taking the Broker-in-Charge Update (BICUP) each year *beginning the first full license year after the license year in which they were designated a BIC.* The BICUP will be in lieu of the General Update course and will satisfy both the mandatory Update course requirement as well as maintain the broker's BIC status or eligibility, but the broker must also complete a 4 hour approved elective to remain on active status. Licensees who are not BIC or BIC eligible will not receive any CE credit if they take the BICUP.

Rule 58A.1709: Extensions of Time to Complete Continuing Education. The rule was revised to clarify that requests for extension of time to complete continuing education “... *must be received by the Real Estate Commission on or before June 10 of the license year for which the extension is sought*” **while the licensee’s license is still on active status**. The test for determining whether a licensee may qualify for an extension of time has not changed. The rule continues to require a licensee to provide:

... evidence satisfactory to the Commission that he or she was unable to obtain the necessary education due to an *incapacitating illness or other circumstance which existed for a substantial portion of the license period* and which constituted a severe and verifiable hardship such that to comply with the continuing education requirement would have been impossible or unreasonably burdensome. The **Commission shall in no case grant an extension of time** to satisfy the continuing education requirement for reasons of *business or personal conflicts*. The Commission also shall not grant such an extension of time when, in the opinion of the Commission, the principal reason for the licensee’s broker’s inability to obtain the required education in a timely manner was *unreasonable delay on the part of the broker in obtaining such education*.

Rule 58A.1808: Trust Monies. (This rule addresses money received by a licensee holding a North Carolina limited non-resident commercial broker license.) A technical revision was made to correct a reference to former “Rule A.0107” repealed effective April 1, 2013 and replace it with “Rule A.0116.”

Lastly, several rules were revised to replace “licensee” with “broker” to make the terminology in the rules more uniform.

★ ★ CAUTION TO LICENSEES CREATING ENTITIES ★ ★

The General Assembly has classified approximately 22 occupations as “professional services” under North Carolina law. (See GS 55B-2(6) for a complete list.) Know that real estate brokerage is **NOT** a “professional service” in North Carolina. (Most likely this is because licensure doesn’t require even a high school diploma, whereas most of the professional service occupations require at least a college, if not post-graduate, education.) Thus, if a licensee chooses to create an entity under which to engage in brokerage, *know that the entity must be a regular corporation, limited liability company, limited liability partnership, or whatever entity form the license decides to create*.

If anyone tells the licensee that the entity must be a “professional” corporation, limited liability company or whatever, they are incorrect. *If you create a professional entity, whether a professional limited liability company (PLLC), or professional corporation (PC), or professional limited liability partnership (PLL), etc., the Commission won’t be able to license that entity for real estate brokerage purposes because brokerage is not a “professional service” in North Carolina, although it may be in other states.*