

2019-2020

General Update Course

Student Manual



August 2019

Copyright © August 2019 by North Carolina Real Estate Commission

ALL RIGHTS RESERVED. This manual may be reproduced only by (1) Commission-approved *Update* course sponsors for distribution to licensees enrolled in the sponsors' courses and (2) "Vendors" who have obtained in advance the written permission of the Commission to reproduce and sell the manual to *Update* course sponsors in accordance with guidelines established by the Commission. Any other person or entity wishing to reproduce this manual or any portion thereof must first obtain the express written permission of the Commission.

This manual was reproduced and distributed by Vendor No. 1 with the express written permission of the Commission.

INTRODUCTION

The *2019-2020 General Update (GENUP) Course* is a four (4) hour course that must be completed by all provisional and non-provisional brokers who are not brokers-in-charge and/or do not have *BIC-Eligible* status and who wish to renew their licenses on active status on July 1, 2020, for the 2020-2021 license year. Refer to Commission Rules 58A .1702 and 58A .1703 for a full explanation of brokers' annual continuing education requirements and continuing education required for license activation.

Brokers-in-charge and brokers with *BIC-Eligible* status must take the *BICUP* course each year to maintain *BIC-Eligible* status, as prescribed by Commission Rules 58A .1702 and 58A .0110.

This four (4) hour course will include 210 minutes of classroom instruction and 30 minutes of breaks.

Comments and Complaints

This course was developed by the staff of the North Carolina Real Estate Commission and is provided by Commission-approved sponsors and instructors.

Comments and complaints about the course, sponsor, or instructor may be directed in writing to:

North Carolina Real Estate Commission
Education and Licensing Division
P.O. Box 17100
Raleigh, NC 27619-7100
Email address: educ@ncrec.gov

TABLE OF CONTENTS

	Page
Section 1: Competence of Licensees	1
Section 2: Material Facts	27
Section 3: Home Inspections	39
Section 4: Wire Fraud	55
Section 5: Law and Rule Updates	65
Section 6: Licensing and Education	77

Section 1

COMPETENCE OF LICENSEES



1. Tina, a provisional broker with XYZ Realty, has been approached by a prospective client who wishes to purchase a commercial property. Tina has only worked on residential sales transactions since she was licensed, and she has not completed any Postlicensing courses or other education since her Prelicensing course. However, Tina's firm, XYZ Realty, offers both residential and commercial brokerage services.

How should Tina proceed with this prospective client? _____

2. Tom, the BIC of XYZ Realty, wants to add property management to the list of services his firm provides, but Tom does not have experience in property management. Due to his lack of knowledge, Tom hires Frances, a full broker, to oversee the property management transactions. Tom knows that Frances worked previously for a property management firm and that she assisted property managers in that firm.

Did Tom take the proper steps as BIC? Why or why not? _____

3. Sue, a full broker with 123 Realty, wants to assist a residential buyer with a purchase; however, she has only worked on commercial transactions since she was licensed. Sue's BIC tells Sue she cannot work with the residential buyer on her own and assigns another experienced broker to assist Sue with the transaction. Sue protests, stating that the majority of her Prelicensing and Postlicensing education focused on residential practice, so she feels she is fully competent to handle the transaction.

Who is correct? Why? _____

LEARNING OBJECTIVES

This Section will review the broker's duty to provide clients with skill, care, and diligence.

After completing this section, you should be able to:

- define key terms related to agency and fiduciary duties;
- describe the concept of skill, care, and diligence;
- identify ways to determine whether a broker is competent in his/her area of practice; and
- describe the BIC's role in assuring that licensees are competent in their areas of practice.

TERMINOLOGY

Agency Concepts

- **Agency:** The relationship that exists when one person is authorized to act for and on behalf of another.
- **Principal / Client:** The person who authorizes another (the agent) to act on the principal's behalf within specified parameters and to whom the agent owes certain legal duties.
- **Agent:** The firm or sole proprietorship that acts for and on behalf of the principal within the bounds of the authority granted and who owes fiduciary (legal) duties to the principal.

Agent's Fiduciary Duties

A "fiduciary" is a person who acts for another in a relationship of trust and who is obligated to act in the other's best interests, placing the other's interests before any self-interest.

A fiduciary must:

- be **loyal** to the principal and preserve personal, confidential information about the principal;
- operate in **good faith** to promote the principal's interests; and
- **disclose** all facts to the principal that may influence the principal's decision.

Skill, Care, and Diligence

Agency law requires that a real estate broker, like any other agent, exercise a high degree of **skill, care, and diligence** in the conduct of the agent's duties.

The level of skill, care, and diligence required of a real estate broker is determined by:

- North Carolina General Statutes,
- North Carolina Real Estate Commission Rules,
- court decisions, and
- professional standards within the community.

An agent must exert reasonable diligence on the principal's behalf and strive to obtain the most advantageous bargain possible under the circumstances.

- A broker must exercise that degree of skill, care, and diligence that a *reasonably prudent real estate broker* would exercise under similar circumstances.
 - Agents who do not perform with the required degree of skill, care, and diligence, or are guilty of negligence or misconduct, not only are liable to the principal for any damages the principal may sustain but may have to forfeit any claim to compensation. The broker-agent will be liable to the principal for all damages that are a direct or "proximate" consequence of the negligence.

A *reasonably prudent real estate broker* would possess the knowledge and competence to represent a principal in a real estate transaction by:

- Providing reliable information on matters relevant to the transaction
 - A broker should be knowledgeable about the real estate industry based on the licensing and continuing education courses they have taken. In addition, a broker should conduct research regarding matters that affect buyers and sellers in the real estate industry so they can provide valuable information to their principal.
- Providing competent advice on a property's probable selling price
 - In an effort to provide competent advice on the probable selling price of a property, a broker should possess the requisite skill and knowledge of the industry to complete a comparative market analysis for their principal. A broker should never try to estimate the probable selling price of a property without completing a thorough analysis and researching the subject property.
- Discovering pertinent facts related to a property
 - Brokers should utilize their due diligence skills to research property-specific information to give to their principals.

- Effectively advertising a listed property
 - A broker should be knowledgeable about the area in which the property is located in an effort to advertise it effectively and not violate state and federal fair housing laws.
- Advising about offers
 - A broker who has knowledge of the market and effectively analyzes the probable selling prices of homes can efficiently assist their principals in determining the best offer to accept or submit for a transaction.
- Assisting with contract preparation
 - A broker should be proficient in understanding the terms, clauses, and language in contract forms to adequately assist their buyers and sellers in completing and reviewing forms in a transaction.

A broker who fails to exercise skill, care, and diligence while representing a principal is in breach of their fiduciary duties under agency law and License Law and Rules.

NC's BROKER LICENSE

Some states and jurisdictions offer separate real estate licenses for specialty practice areas, such as a property management. However, in North Carolina, there is only one type of real estate license for individuals, the **broker** license.

NC's *75-hour Broker Prelicensing Course* educates students on the basic principles of real estate. A broker who has successfully completed that course and who has passed the NC Real Estate License Examination is deemed to have the *minimal competency* to engage in brokerage in North Carolina. However, before engaging in any type of transaction, brokers should evaluate whether additional knowledge or skills are necessary to be able to provide skill, care, and diligence to their clients.



What special skills or knowledge must a broker possess in order to competently practice each of the following types of brokerage?

Type of Brokerage	Special skills or knowledge
Residential sales	
Residential property management	
Commercial sales	
Commercial property management	

QUESTIONS A BROKER SHOULD CONSIDER BEFORE ENGAGING IN A TRANSACTION

The next few pages proposes a model for brokers to use to assess their competence. In short, before engaging in a transaction, brokers should be asking themselves...

1. Am I authorized to engage in this type of transaction? *Aka, do I have my BIC's/company's permission?*
2. Do I have the necessary education and training to engage in this type of transaction?

For this discussion, the specialty areas of residential sales, residential property management, vacation rental management, and commercial sales and property management are used as examples. However, the “competence road map” may be (and should be) applied to any specialty practice area. Other examples of specialty areas include, but are not limited to short sales, foreclosures, land sales, historic properties, farmland, and ocean and lakefront properties.

RESIDENTIAL SALES

DEFINITION

Residential Sales Brokerage is defined as any person, partnership, corporation, limited liability company, association, or other business entity who:

- lists or offers to list, sells or offers to sell, buys or offers to buy, auctions or offers to auction, or negotiates the purchase or sale or exchange of real estate; or who leases or offers to lease, or who sells or offers to sell leases of whatever character, or rents or offers to rent,
- residential properties,
- for others, and
- for compensation or something of value.



Read the following scenario to determine whether the licensee acted competently.

Sam is a provisional broker who just listed his first home. During the listing presentation, the seller indicated that he did not want Sam to practice dual agency.

Later, Sam receives a call from a prospective buyer (Dan) who wishes to purchase the property after viewing it through a virtual tour.

Sam and Dan meet, and Sam explains agency. While Sam is reviewing the WWREA brochure, he explains the concept of dual agency.

Dan signs an exclusive buyer agency agreement after the presentation and authorizes Sam to engage in dual agency. Sam then assists Dan with preparing an offer.

Did Sam act competently in this transaction? Why or why not?

DETERMINING COMPETENCE

Question #1: Are you authorized to practice residential sales brokerage? (Aka, do you have your BIC's permission?)

Before engaging in any type of transaction as a broker, including residential sales, a broker must obtain their BIC's permission to do so.

Here are a few reasons a BIC might prohibit a broker from practicing residential brokerage:

1. The company does not engage in these types of transactions. Even though residential sales is widely practiced by real estate brokerage companies, it is not practiced by every company.
2. The company has special policies regarding newly affiliated brokers, like requiring newly affiliated brokers to partner with more experienced brokers for a period of time before engaging in a transaction independently.
3. The BIC lacks the skill, knowledge, and experience to broker a residential sales transaction. A reasonable BIC knows that supervision is not possible when the BIC lacks necessary knowledge and skills.

Question #2: Do you have the necessary education and training in residential sales transactions?

If you have your BIC's permission to continue with a transaction, then you and your BIC should evaluate whether you may need additional knowledge or skills. The following questions will also help you decide.

What courses or educational programs have you completed?

As noted earlier, the *75-hour Broker Prelicensing Course* educates students on the basic principles of real estate, and it focuses on residential sales transactions. Although the course provides the education for minimal competency, there are many courses that will enable a broker to delve deeper into those basic concepts or to explore information that is specific to the local area or marketplace. Examples include:

- 90-hour Postlicensing Education program
 - This program is designed to encourage newly licensed (provisional) brokers to explore real world implementation of the more complex real estate concepts taught in the Broker Prelicensing course, such as agency formation and practice, contract preparation, and determination of material facts, etc. Also, the program exposes students to all real estate laws and rules that are unique to North Carolina practice, so that licensees from other jurisdictions who have opted out of the license examination will be appropriately prepared for brokerage practice in North Carolina.
- Courses related to residential properties offered by the National Real Estate Institute
- Courses that explain residential contract forms / documentation
- Courses related to local zoning or land use issues
- Courses related to pricing strategies for residential properties
- Courses related to negotiation strategies
- Accredited Buyer's Representative/ABR® Designation courses, offered by the Real Estate Buyer's Agent Council
- Certified Residential Specialist Designation courses, offered by the Residential Real Estate Council
- Seller's Representative Specialist Designation courses, offered by the Real Estate Business Institute

Note: Brokers who take “specialty” courses in any educational discipline may be eligible for equivalent continuing education credit. In order to receive this credit, brokers must complete the *Request for Continuing Education Equivalent Credit* (Form 7.13). This form can be found at: <https://www.ncrec.gov/Resources/Forms>

Have you conducted residential transactions before?

If you have engaged in a residential transaction, you have probably been exposed to some of the “special considerations” of this type of transaction, such as:

- the types of questions that residential clients ask;
- residential contract forms and documentation; and
- CMAs.

If you haven't engaged in a residential transaction, you may find it helpful to *shadow* an experienced broker:

- interactions with potential clients
- observe their negotiation techniques, and
- methods used to complete contract documents.

Note: A broker may have an experienced mentor to assist them in conducting a residential transaction with the BIC's approval. A good mentor will possess the following skills:

- knowledge and experience in the area of real estate in which they are mentoring and the willingness to share information obtained,
- the ability to provide guidance, positive reinforcement, and constructive feedback regarding brokerage activity, and
- achievement of personal and professional goals in real estate.

It is important to remember the inexperienced broker will be held to the same standard as a broker who practices residential transactions regularly in the industry. Therefore, the broker should exhibit caution when solely relying on a mentor to complete an unfamiliar transaction.

RESIDENTIAL PROPERTY MANAGEMENT

DEFINITION

Residential Property Management Brokerage is defined as:

- leasing / renting (or offering to lease or rent),
- for others; and
- for compensation or something of value.

Property managers may also engage in advertising, collecting funds, and organizing and maintaining records.



Read the following scenario to determine whether the licensee acted competently.

Sally is a sole practitioner and a BIC. Since she was licensed 6 years ago, Sally has practiced residential sales. She does not have a trust account, because her clients' funds are always held by other real estate companies or attorneys.

Recently, one of Sally's long-time clients asked her to act as a property manager for one of his residential properties. Sally agrees and they execute a property management agreement.

Is Sally competent to act as a property manager? Why or why not? _____

DETERMINING COMPETENCE

Question #1: Are you authorized to practice residential property management? (Aka, do you have your BIC's permission?)

Before engaging in any type of transaction, including residential property management, a broker must obtain their BIC's permission to do so.

Here are a few reasons a BIC might prohibit a broker from practicing residential property management:

1. The company does not engage in these types of transactions.

Note: Some real estate companies that do not practice property management allow their affiliated brokers to engage in property management on the side. In other words, they allow the brokers to create their own entities and to obtain firm licenses for the entities. This allows them to engage in property management through their own, separate company. In these cases, the brokers and BICs must have a clear understanding of which transactions are handled through the sales firm versus the broker's own company.

Example:

Broker Yolanda is affiliated with XYZ Realty. XYZ only practices residential sales, but Yolanda wants to manage properties. Yolanda's BIC tells her she may not engage in property management on behalf of XYZ, but that she may operate her own separate property management company on the side.

Yolanda creates an entity, *Yolanda's PM Company, LLC*, registers it with the NC Secretary of State, and obtains a firm license from the Real Estate Commission. (In order to obtain the firm license, Yolanda must qualify to be the QB and BIC of *Yolanda's PM Company, LLC*.)

Going forward, Yolanda practices sales transactions under XYZ Realty and property management transactions under *Yolanda's PM Company, LLC*.

2. The company has special policies regarding newly affiliated brokers, such as requiring newly affiliated brokers to partner with more experienced brokers for a period of time before engaging in a transaction independently.
3. The BIC lacks the skill, knowledge, and experience to engage in a residential property management transaction. A reasonable BIC knows that supervision is not possible when the BIC lacks necessary knowledge and skills.

Question #2: Do you have the necessary education and training in residential property management transactions?

If you have your BIC's permission to continue with a transaction, then you and your BIC should evaluate whether you may need additional knowledge or skills. The following questions will also help you decide.

What courses or educational programs have you completed?

As noted earlier, the *75-hour Broker Prelicensing Course* educates students on the basic principles of real estate, but it focuses on residential sales transactions. Although the law allows a licensed broker to engage in property management once licensed, there are many courses that will enable a broker to delve deeper into the specialty practice area. Examples include:

- Property Management version of the General Update/BICUP course
- CE Elective courses dedicated to property management topics
- Courses related to certifications in international properties and accreditations as residential manager(s)
- CERTIFIED PROPERTY MANAGER® (CPM) Designation courses, offered through Institute of Real Estate Management
- Courses offered by the National Association of Residential Property Managers, e.g. Residential Management Professional (RMP®) and Master Property Manager (MPM®)

Have you conducted property management transactions before?

If you have engaged in a property management transaction, you have probably been exposed to some of the “special considerations” of this type of transaction, such as:

- the types of questions that prospective tenants ask;
- leasing and management contract forms and documentation;
- administrative fees, deposits, and other fees;
- landlord and tenant laws, including the NC Tenant Security Deposit Act; and
- tenant screening issues.

If you haven't engaged in a property management transaction, you may find it helpful to observe an experienced broker or request the assistance of a mentor before attempting to represent clients in this type of transaction.

A broker may have an experienced mentor to assist them in conducting a residential property management transaction with the BIC's approval. However, the inexperienced broker will be held to the same standard as a broker who practices property management transactions regularly in the industry. Therefore, the broker should exhibit caution when solely relying on a mentor to complete an unfamiliar transaction.

CASE: Property Mismanagement



Read the following case summary.

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

PARTIES:

The complaining witnesses are 6 disgruntled landlords. The Respondents are the QB/BIC property manager and her firm.

COMPLAINT:

The Commission received 6 complaints from property owners that allege essentially the same set of violations: that Respondent does not inspect properties; that her failure to inspect properties has resulted in significant property damage; that maintenance work is invoiced and paid for but often the work is incomplete; that rents are not always collected on time; that TSDs are improperly used; and that the Respondent has failed to appear in summary ejection hearings.

FACTS:

Respondent property manager was the qualifying broker and broker-in-charge and was the only licensee of her firm. She managed 46 units in addition to being a full-time school librarian. Her only help was an unlicensed handyman through which she contracted all of the maintenance.

According to some, but not all of the leases, Respondent was required to inspect the properties on a quarterly basis. Respondent admitted that she did not inspect the properties as often as required. The complainants produced evidence that demonstrated significant damage to properties and alleged that quarterly inspections would have caught and/or prevented some of the damages.

Respondent property manager exclusively used a maintenance company for all its maintenance needs. The sole employee of that company is not a licensed broker or contractor. The complaining witnesses alleged that they would be charged, or the Tenant Security Deposit would be charged, for maintenance performed by this company but the work would not be completed. The complaining witnesses paid other contractors to finish the jobs, thus paying double for the work.

On at least one occasion Respondent inappropriately used the Tenant Security Deposit. In one instance, one of the landlords complained that the tenant had not paid rent that month. Respondent wanted to take immediate action because she was friends with this particular landlord. She decided to use part of the Tenant Security Deposit to pay her landlord friend that month's rent. Respondent justified her actions claiming that the tenant was going to be evicted anyway. The tenant vacated the property the following month which was prior to the conclusion of the tenant's lease and still owed rent and other bills.

On at least two occasions Respondent failed to appear on behalf of her clients for a summary ejectment hearing. In one instance Respondent failed to show and still charged the landlord an appearance fee. When questioned on the matter, Respondent claimed the charge was for a different appearance, but the Commission's investigator did not find any evidence that the second appearance ever occurred. On the other occasion, Respondent sent the unlicensed handyman in her place. The magistrate dropped the case because Respondent failed to appear, but an appearance fee was charged and deducted from the Tenant Security Deposit.

Respondent maintained two trust accounts: one for rent payments and the other to hold Tenant Security Deposits. Respondent failed to properly list the purpose of disbursement on canceled checks and in the journal. Also, Respondent failed to prepare a monthly trial balance, but the accounts did reconcile. The Commission's auditor found a few instances in which owner balances were in the negative.

Main Points - Property Mismanagement

- Respondent property manager was the QB and BIC and only member of her firm.
- She managed 46 units while being a full-time school librarian.
- Respondent was required to inspect most properties quarterly and indicated she did not do so.
- Complainants produced evidence that showed significant damage to properties that would have been prevented by quarterly inspections.
- Respondent manager used one maintenance company exclusively and charged tenants for work that was not performed or deducted it from their Tenant Security Deposit.
- Respondent used the Tenant Security Deposit of the tenant to pay the tenants rent for a month.
- Respondent failed to show for two ejectment proceedings on behalf of her clients and still charged the landlord an appearance fee.
- Respondent sent the unlicensed handyman to one of the ejectment proceedings, the magistrate dropped the case and the Respondent still charged the landlord an appearance fee and deducted it from the Tenant Security Deposit.

- Respondent maintained two trust accounts and failed to:
 - list the purpose of disbursements on cancelled checks and in the journal, and
 - failed to prepare a monthly trial balance although the accounts were reconciled.
- Commission’s auditor found instances where the owner balances were found to be in the negative.

Evaluation and Discussion - Property Mismanagement

Errors made by Property Manager:

Related law and Rule Considerations - Property Mismanagement

Competency

N.C.G.S. § 93A-6(a)(2) states:

- The Commission has the power to suspend, revoke, reprimand, or censure any licensee if they make false promises of character likely to influence, persuade, or induce.

N.C.G.S. § 93A-6(a)(8) states:

- The Commission has the power to suspend, revoke, reprimand, or censure any licensee if they act unworthy or incompetent as a real estate broker in a manner as to endanger the interest of the public.

N.C.G.S. § 93A-6(a)(10) states:

- The Commission has the power to suspend, revoke, reprimand, or censure any licensee if they engage in conduct which constitutes improper, fraudulent, or dishonest dealing.

Broker-in-Charge

Commission Rule 58A .0110 requires:

1. A Broker-in-Charge of a firm must maintain the trust or escrow account of the firm and retain the records.
2. A Broker-in-Charge shall retain and maintain records relating to the transactions conducted by or on behalf of the firm.

Handling of Trust Money

Commission Rule 58A .0116 requires:

1. A broker shall not disburse trust money to or on behalf of a client in an amount exceeding the balance of trust money belonging to the client held in the trust account.
2. A broker shall safeguard any money or property of others that comes into the broker's possession in a manner consistent with Real Estate License Law and Commission rules.
3. A broker shall not convert the money or property of others to his or her own use or apply such money or property to a purpose other than that it was intended.

Accounting for Trust Money

Commission Rule 58A .0117 requires:

1. A broker shall create, maintain, and retain records sufficient to identify the ownership of all funds belonging to others.
2. A broker's records shall be sufficient to show proper deposit and disbursement of such funds into and from a trust or escrow account.
3. A broker shall no later than ten days after receipt of a written request by a client, furnish the client with copies of any records retained as required by Rule 58A .0108 of this Section that pertains to the transaction to which the client was a party.

VACATION RENTAL MANAGEMENT: A SPECIALTY WITHIN A SPECIALTY

DEFINITION

A “vacation rental” is defined as a:

- residential property,
- used for vacation, leisure, or recreational purposes,
- for fewer than 90 days,
- by a person who has a permanent residence to which they plan to return.

Residential property that is the subject of a vacation rental agreement may include *condominiums, townhomes, single family homes, cottages, apartments, and etc.*

DETERMINING COMPETENCE

Question #1: Are you authorized to practice vacation rental management?

A broker must obtain the approval of their BIC before practicing this type of transaction.

A BIC may prohibit the practice of vacation rental management for several reasons such as:

1. The BIC lacks knowledge, skill, and experience in vacation rental management.
2. The company has policies that restricts vacation rental management.
3. The company requires brokers to partner with an experienced broker before engaging in vacation rental management.

Question #2: Do you have the necessary education and training in vacation rental management transactions?

Once a broker obtains the BIC’s permission to conduct a transaction, the BIC and broker must collectively decide if the broker is competent to practice.

What courses or educational programs have you completed?

Vacation rental management is a specialty within property management. Therefore, brokers must possess the foundational knowledge of property management by completing continuing education courses before attempting to practice vacation rental management.

A broker should be knowledgeable about the similar provisions in the Vacation Rental Act and the Residential Tenant Security Deposit Act regarding the disbursements of tenant security deposits in property or vacation rental management. The similarities are as follows:

1. Advance payments (i.e. security deposits and/or rent) must be deposited into a trust or escrow account.
2. A landlord or agent does not have the ability to post a bond for the security deposit.
3. A landlord or agent may not disburse security deposits prior to the termination of the tenancy or material breach by the tenant *except* to refund money to the tenant.

Also, the broker should know the three modifications the Vacation Rental Act provides to owners/landlords regarding the deposit such as:

- the owner/landlord cannot post a bond in lieu of maintaining an escrow account;
- the owner/landlord may deduct the amount of any long distance or per call telephone charges and cable television charges that the tenant was obligated to pay under the lease but failed to do so; and
- requires the owner/landlord to account to the tenant for the deposit within 45 days of the termination of the tenancy.

Examples of vacation rental management education include:

- Courses offered by the Vacation Rental Management Association
- CE elective courses dedicated to vacation rental management topics
- Courses offered through the NC Vacation Rental Managers Association

Have you conducted vacation rental management transactions before?

If you have engaged in vacation rental management before, you are aware that the following fees may be paid out prior to tenancy:

1. Administrative fees that are permitted by the contract.
2. Fees owed to third parties for goods, services or benefits procured on the tenant's behalf.
3. Not more than 50% of the total rent due for the reserved period.

If you have not engaged in vacation rental management previously, you may find the assistance of a mentor beneficial or observation of an experienced broker necessary before representing clients.

Alert: It is a broker's duty to ensure that any applications, software programs or technology a broker uses in vacation rental management complies with License Law and Commission Rules. It is a broker's duty to ensure that any applications or software programs allow for the appropriate documentation of agency agreements and accurately account for trust monies.

COMMERCIAL BROKERAGE - SALES & PROPERTY MANAGEMENT

DEFINITIONS

Commercial Brokerage is defined as:

- listing, buying, selling, leasing (or offering to list, buy, sell, lease),
- commercial properties,
- for others,
- for compensation or something of value.

Commercial Real Estate is defined by Commission Rule 58A .1802 as follows:

"Commercial Real Estate" means any real property or interest therein, whether freehold or nonfreehold, which at the time the property or interest is made the subject of an agreement for brokerage services:

(a) is lawfully used primarily for sales, office, research, institutional, warehouse, manufacturing, industrial or mining purposes or for multifamily residential purposes involving five or more dwelling units;

(b) may lawfully be used for any of the purposes listed in Sub item (1)(a) of this Rule by a zoning ordinance adopted pursuant to the provisions of G.S. 153A, Article 18 or G.S. 160A, Article 19 or which is the subject of an official application or petition to amend the applicable zoning ordinance to permit any of the uses listed in Sub item (1)(a) of this Rule which is under consideration by the government agency with authority to approve the amendment; or

(c) is in good faith intended to be immediately used for any of the purposes listed in Sub item (1)(a) of this Rule by the parties to any contract, lease, option, or offer to make any contract, lease, or option.

DETERMINING COMPETENCE

Question #1: Are you authorized to practice commercial brokerage? (Aka, do you have your BIC's permission?)

Before engaging in any type of transaction, including commercial transactions, a broker must obtain their BIC's permission to do so.

Here are a few examples of reasons a BIC might prohibit a broker from practicing commercial brokerage:

1. The company does not engage in these types of transactions.
2. The company has special policies regarding newly affiliated brokers, such as requiring newly affiliated brokers to partner with more experienced brokers for a period of time before engaging in a transaction independently.
3. The BIC lacks the skill, knowledge, and experience to engage in a residential property management transaction. A reasonable BIC knows that adequate supervision is not possible when the BIC lacks necessary knowledge and skills.

Question #2: Do you have the necessary education and training in commercial brokerage?

If you have your BIC's permission to continue with a transaction, then you and your BIC should evaluate whether you may need additional knowledge or skills. The following questions will also help you decide.

What courses or educational programs have you completed?

As noted earlier, commercial practice requires the most specialized education and training. Examples of commercial brokerage education include:

- Commercial version of the General Update/BICUP course
- CE Elective courses dedicated to commercial topics
- *Certified Commercial Investment Member (CCIM)* designation courses
- Society of Industrial and Office REALTORS® designation courses
- International Council of Shopping Centers
- Building Owners and Managers Association
- REALTORS® Land Institute

Brokers with the requisite skill, care, and diligence to engage in commercial transactions should certainly be able to define and explain various terms and concepts that are unique to commercial brokerage practice. Examples include:

- LOIs or Letters of Intent: negotiation instruments used during the initial stages of most commercial real estate transactions.
- Net Lease: the lessee, in addition to paying rent, is responsible for some or all of the expenses and costs relating to the property.
- Office Space: space that is used for clerical, management, professional or other similar functions.
- Retail space: space that is used to offer and sell goods or services to the consuming public.
- Industrial facilities: typically defined as facilities used for the manufacturing, storage or distribution of goods.
- Percentage leases: all or part of the rent is calculated with reference to a stated percentage of receipts from the business of the lessee. A common commercial lease involves a percentage of gross sales.

Have you conducted commercial transactions before?

If you have engaged in a commercial transaction, you have probably been exposed to some of the “special considerations” of this type of transaction, such as:

- transaction cycles,
- market factors, and
- property types.

If you haven’t engaged in a commercial transaction, you may find it helpful to observe an experienced broker or request the assistance of a mentor before attempting to represent clients in this type of transaction.

NOTE: A broker may have an experienced mentor to assist them in conducting a commercial transaction with the BIC’s approval. However, the inexperienced broker will be held to the same standard as a broker who practices commercial transactions regularly in the industry. Therefore, the broker should exhibit caution when solely relying on a mentor to complete an unfamiliar transaction.

THE BIC's ROLE

Rule 58A .0110, states a designated BIC shall:

- supervise provisional brokers associated with or engaged on behalf of the firm at such office in accordance with the requirements of Rule .0506 of this Subchapter; and
- supervise all brokers employed at the office with respect to adherence to agency agreement and disclosure requirements.

A competent BIC could delegate authority and authorize the broker to utilize the services of a mentor if the BIC does not possess the knowledge.

A BIC MAY delegate his authority if: (1) the mentor is within the same firm, (2) the mentor and broker agree with the mentorship, (3) and the BIC understands that the delegation of authority does not eliminate his/her duty to supervise affiliated brokers.



The BIC of an office engages only in residential transactions on behalf of his firm. One of the BIC's affiliated "full" brokers wants to begin working in commercial transactions. The broker has several years of experience practicing commercial brokerage at another firm.

What are the BIC's responsibilities for this "full" broker and how can the BIC ensure the broker is complying with License Law and Commission rules?

DETERMINING COMPETENCE

BICs who allow their affiliated brokers to practice all areas of brokerage should be knowledgeable about those brokerage areas as well. A BIC should not allow an affiliated broker to practice any area of brokerage the BIC is not competent to practice. Therefore, an affiliated broker should only have authorization to practice the areas of brokerage that the BIC practices and can adequately supervise pursuant to Rule 58A .0110.

The following questions will help BICs determine whether they possess the competency to supervise affiliated provisional and “full” brokers in various brokerage practice areas.

Question #1: Have you obtained specialized education?

A BIC who takes specialized educational courses and obtains certifications is a tremendous asset to the firm and its affiliated brokers. A BIC should obtain specialized knowledge in all brokerage areas the firm will practice before the BIC authorizes affiliated brokers to practice that specific type of brokerage.

Question #2: Have you engaged in all types of brokerage transactions?

If the BIC has not practiced in all areas of brokerage, it would be wise to limit the types of brokerage an affiliated broker practices until the BIC gains knowledge and/or experience.

Question #3: Do you allow mentors to assist your affiliated brokers?

BICs can delegate authority to mentors to assist their brokers in the firm with transactions, listings, and the completion of documents. However, BICs are responsible for the supervision of the broker although authority has been delegated to the mentor. If the BIC fails to exercise their duty of supervision over the brokers, they are in violation of Rule 58A .0110.

ANSWERS TO DISCUSSION QUESTIONS

For Discussion on page 1

1. Tina, a provisional broker with XYZ Realty, has been approached by a prospective client who wishes to purchase a commercial property. Tina has only worked on residential sales transactions since she was licensed, and she has not completed any Postlicensing courses or other education since her Prelicensing course. However, Tina's firm, XYZ Realty, offers both residential and commercial brokerage services.

How should Tina proceed with this prospective client?

Answer: Tina should notify her BIC of her clients' needs and request assistance from an experienced broker in commercial transactions or her BIC. If an experienced broker or the BIC is not available, Tina should consult with her BIC about referring the client.

2. Tom, the BIC of XYZ Realty, wants to add property management to the list of services his firm provides, but Tom does not have experience in property management. Due to his lack of knowledge, Tom hires Frances, a full broker, to oversee the property management transactions. Tom knows that Frances worked previously for a property management firm and that she assisted property managers in that firm.

Did Tom take the proper steps as BIC? Why or why not?

Answer: It depends. Tom should first register for some educational courses in property management before he hires Frances. Also, Tom should ask Frances about her responsibilities at the previous firm. Although Frances has familiarity with property management, Tom will still be responsible for Frances' actions; therefore, he should be knowledgeable about all of the brokerage activities practiced in the firm.

3. Sue, a full broker with 123 Realty, wants to assist a residential buyer with a purchase; however, she has only worked on commercial transactions since she was licensed. Sue's BIC tells Sue she cannot work with the residential buyer on her own and assigns another experienced broker to assist Sue with the transaction. Sue protests, stating that the majority of her Prelicensing and Postlicensing education focused on residential practice, so she feels she is fully competent to handle the transaction.

Who is correct? Why?

Answer: The BIC is correct. The BIC is responsible for supervising the affiliated brokers. Sue has not practiced residential transactions. Regardless of Sue's belief that she is knowledgeable about residential transactions, she needs the assistance of an experienced broker.

For Discussion on page 6

Sam is a provisional broker who just listed his first home with XYZ Realty. During the listing presentation, the seller indicated that he did not want Sam to practice dual agency. Later, Sam receives a call from a prospective buyer who wishes to purchase the property after viewing it through a virtual tour. Sam requests a meeting with Dan, the prospective buyer, to review the appropriate documents to create an agency relationship. While Sam is reviewing the WWREA brochure, he explains the concept of dual agency. Dan signs an exclusive buyer agency agreement after the presentation and authorizes Sam to engage in dual agency. Sam immediately assisted Dan with preparing the 2T, negotiating the earnest money deposit and the due diligence fee.

Did Sam's actions constitute minimal competency in conducting brokerage activities? Why or why not? _____

Answer: *No. Sam violated agency law by practicing dual agency without written authority from both parties in the transaction. Although Sam acquired written permission from Dan, the seller prohibited Sam from practicing dual agency when he listed his home. Therefore, Sam violated the fiduciary duties he owed to the seller.*

For Discussion on page 9

Sally is a sole practitioner and a BIC. Since she was licensed 6 years ago, Sally has practiced residential sales. She does not have a trust account, because her clients' funds are always held by other real estate companies or attorneys.

Recently, one of Sally's long-time clients asked her to act as a property manager for one of his residential properties. Sally agrees and they execute a property management agreement.

Is Sally competent to act as a property manager?

Answer: *Probably not. Even though there is no separate license for property management, it is considered a specialty area of practice. It does not appear that Sally has any experience with the specialty area or that she has taken any special education to prepare her for these types of transactions. Consequently, Sally should complete special education and/or training in order to meet the fiduciary expectation of skill, care, and diligence.*

Case Outcome - Property Mismanagement on pages 12-15

Errors identified during the Commission's Investigation

- The Respondent indicated that they were going to act as an agent and property manager of the owner's property but failed to do so.
- The Respondent was incompetent.
- The Respondent collected the property management fee but failed to execute her duties in the contract.
- The Respondent failed to maintain the trust account and retain records.
- The Respondent failed to maintain and retain records relating to the transactions and disburse funds into and from the trust account.

Law & Rule Violations identified during the Commission's Investigation

- N.C.G.S. § 93A-6(a)(2) - Making false promises
- N.C.G.S. § 93A-6(a)(8) - Being incompetent to act as a real estate broker
- N.C.G.S. § 93A-6(a)(10) - Conduct which constitutes improper, fraudulent or dishonest dealing
- N.C.G.S. § 93A-6(a)(15) - Violation of Commission Rules
- Commission Rule 21 NCAC 58A .0110-Broker-in-Charge
- Commission Rule 21 NCAC 58A .0116-Handling of Trust Money
- Commission Rule 21 NCAC 58A .0117-Accounting for Trust Money

Sanctions Imposed by the Commission

- Property Manager - Suspension for a period of 12 months; Stayed after 3 months if the broker submitted a course certificate evidencing satisfactory completion of the *Issues in Answers in NC Real Estate Practice Course* within 4 months. The broker was prohibited from being a BIC or engaging in property management for a period of 5 years from the effective date of the Order.
- Firm - Voluntarily surrendered the firm real estate license and any renewal or reinstatement right it may have possessed.

For Discussion on page 21

The BIC of an office engages only in residential transactions on behalf of his firm. One of the BIC's affiliated "full" brokers has several years of experience practicing commercial brokerage.

What are the BIC's responsibilities for this "full" broker and how can the BIC ensure the commercial broker is complying with License Law and Commission rules?

Answer: According to Commission Rule 58A .0110, a BIC is responsible for:*

- *ensuring affiliated brokers maintain active and current licensure;*
- *all advertising placed on behalf of the firm / office;*
- *proper maintenance of the trust account;*
- *retention of firm/office records;*
- *ensuring brokers are properly disclosing agency and executing agency agreements.*

**Note that these responsibilities apply to all brokers who are affiliated with the BIC. However, the BIC has a significantly greater level of supervisory responsibility for provisional brokers. Per Rule 58A .0506, the BIC must supervise PBs, meaning the BIC has full responsibility for all of a PB's actions.*

Following are some recommendations as to how a BIC may ensure effective supervision of brokers who are practicing in areas in which the BIC is not an expert:

- *The BIC attends specialized trainings and workshops in commercial brokerage.*
- *The BIC creates a mentor system between experienced commercial brokers in the office.*

A prudent BIC would cease allowing specialty practice until the BIC is reasonably sure they can supervise affiliated brokers.

Section 2

MATERIAL FACTS



1. Tom, a seller, has decided to list his property. Tom has noticed that the water heater has begun to leak. He completed the *Residential Property and Owners' Association Disclosure Statement and Mineral and Oil and Gas Rights Mandatory Disclosure Statement* before he listed the property. On the *Residential Property and Property Owners' Association Disclosure Statement* he marked "No Representation" on question 8, which stated, "Is there any problem, malfunction or defect with the dwellings plumbing system (water heater)."

- a) Must Tom disclose the leaking water heater to potential buyers? Yes/No
- b) Has Tom complied with the Residential Property Disclosure Act? Yes/No
- c) What if Tom has a real estate license? _____

2. Bill, a broker, is inspecting a house during a listing presentation. He notices that there are several stains in the cabinet under the kitchen sink. Bill asks the owner if the sink leaks. The owner tells Bill that the sink leaks on occasion but not enough to really worry about. However, the owner also states that he has had the sink repaired multiple times in the past.

Bill lists the property. On the *Residential Property and Property Owners' Association Disclosure Statement*, the seller marks "No Representation" for all items. Bill does not include any information about the leak in the listing information.

Jeff, a broker from another firm, and his buyer-client, view the property. While viewing the house, the buyer's agent notices the stains under the kitchen cabinet and immediately closes the door. The buyer's agent does not point out the stain to his potential buyer, nor does he ask Bill about it.

- a) Would this be an example of Misrepresentation or Omission?
 - b) Which broker is at fault? Bill (listing agent) / Jeff (buyer's agent) / Both
 - c) What are the responsibilities of the listing and buyer's agent?
-

LEARNING OBJECTIVES

After completing this section, you should be able to:

- evaluate a fact to determine if a material fact exists;
- explain the categories of material fact;
- explain the duties of a listing agent;
- explain the duties of a buyer's agent; and
- differentiate between misrepresentation and omission.

TERMINOLOGY

Material Fact: Any fact that could affect a reasonable person's decision to buy, sell, or lease is considered a material fact and must be disclosed by a broker to the parties in the transaction and any interested third parties regardless of the broker's agency role within the transaction.

N.C.G.S. §93A-6(a)(1) indicates that licensees are subject to disciplinary action if they make any willful or negligent misrepresentation, or omission and/or failure in disclosing material facts to all parties in a transaction.

CATEGORIES OF MATERIAL FACTS

Facts about the property itself

This category comprises significant property defects or abnormalities such as:

- structural defect(s),
- malfunctioning system(s),
- leaking roof, or
- drainage or flooding problem(s).

Facts that relate directly to the property

This category includes external factors that affect the use, desirability, or value of a property such as:

- a pending zoning change,
- existence of restrictive covenants,
- plans to widen a street, or
- plans to build a shopping center adjacent to a property.

Facts directly affecting the principal's ability to complete the transaction

This category includes any fact that might adversely affect the ability of a principal (seller or buyer) to consummate the transaction such as:

- buyer's inability to qualify for a loan,
- inability to close on a home without selling a currently owned home, or
- seller's inability to convey clear title due to the commencement of a foreclosure sale or judgment lien on the property.

Facts that are known to be of special importance to a party

This category includes facts of special interest or importance to a party such as:

- specific zoning restrictions,
- the refusal to purchase a home within a neighborhood governed by an HOA,
- the refusal to purchase a home within the city limits, or
- the refusal to purchase a home that has been previously occupied by a pet.

Additional Facts That Must Be Disclosed to an Agent's Principal

Under agency law, an agent must disclose to the principal any information that may affect the principal's rights and interests or influence the decision of the principal in the transaction. Relevant information that a broker-agent must share only with his/her principal includes:

- the other party's willingness to agree to price or terms different from those previously stated,
- the other party's motivation for engaging in the transaction, or
- any other information that might affect the principal's rights and interests or influence the principal's decision in a transaction.

State Law and Disclosure of Certain Facts

Certain facts that may seem material may be excused by state and fair housing laws such as:

- disclosing the death or serious illness of a previous property occupant,
- disclosing a convicted sex offender occupying, having occupied, or residing near a property, or
- disclosing a current or former occupants' AIDS/HIV status.

IS IT A MATERIAL FACT?



Brokers are often presented with a multitude of “facts” regarding a property or the parties in the transaction. Can you match the material fact with the appropriate category?

Material Fact Examples

- ___ 1. Smoke-free home
- ___ 2. Pet-free home
- ___ 3. Electrical system is malfunctioning
- ___ 4. Seller is behind on mortgage payments
- ___ 5. Seller is in a foreclosure proceeding
- ___ 6. Zoning laws will affect the property in 2 months
- ___ 7. Roof has leaked in the past on two separate occasions
- ___ 8. No HOA governs the residential community

Categories of Material Facts

- A. Facts about the property itself
- B. Facts that relate directly to the property
- C. Facts directly affecting the principal’s ability to complete the transaction
- D. Facts that are known to be of special importance to a party
- E. Not a material fact

If a material fact exists, brokers must disclose the material fact to all parties within the transaction. Brokers should analyze the following questions to help determine the existence of a material fact.

- Is a broker involved in the transaction?
- What should the broker do to prepare for listing the property?
- What is a “red flag?”
- Are any “red flags” present?
- What is the broker’s responsibility?
- What if the broker acts irresponsibly?



Is a broker involved in the transaction?

Yes. If a broker is involved in the transaction, N.C.G.S. §93A-6(a)(1) states:

- The broker must not misrepresent or omit (or fail to disclose) any material facts about the property
- A broker must disclose material facts to all parties in the transaction

The duty of disclosure of material facts is mandatory under License Law and Rule.

No. Seller, buyers, lessors, or lessees do not have a duty to discover and disclose material facts unless they hold a North Carolina Real Estate License.



What should the broker do to prepare for listing the property?

The broker should prepare for the transaction by completing the following:

- state the duty to discover and disclose material facts under License Law and Rules to their clients and/or consumers,
- research property-specific information,
- interview the owner(s) regarding property-specific information, and
- evaluate and conduct a preliminary inspection of the property to determine if any “red flags” exist before making any statements.



What is a “red flag?”

A “red flag” is the presence of any fact or issue that should make a reasonably prudent broker working with a buyer or seller suspect that the information provided by another party may be incorrect.

The broker has a duty to investigate any issue or fact that could mean a potential problem with the property.



Are any “red flags” present?

Yes. If “red flags” are present, a broker must conduct more research and use due diligence to determine the severity of the issue and the effect that these “red flags” will have on their client’s decision to buy the property.

Examples of “red flags” are:

- stains on the ceiling, floors, or in the cabinets;
- discoloration of flooring;
- absence of septic permits;
- unpermitted spaces;
- leaks;
- cracked foundational issues; or
- miscalculations of square footage.

If a red flag exists the broker can complete additional research by:

- asking the owner about known issues with the property,
- asking the owner to receive and review service records for repairs conducted on the property,
- researching the existence of septic permits and building permits with the local municipality, or
- advising the owner to hire a contractor to estimate and/or repair issues

No. As a best practice, the broker should advise their client(s) to hire a property inspector to thoroughly evaluate the property for issues.



What is the broker’s responsibility?

The broker’s responsibility is to research whether a material fact exists and disclose the presence of a material fact or potential material fact to their client so they can possess the adequate knowledge to:

- make an intelligent decision regarding acquiring the property,
- negotiate repair services, or
- decide to terminate the contract.

Additionally, the broker’s responsibility includes the following:

- researching the issue to determine if it was repaired and the likelihood of the fact existing in the future,
- asking about repair timelines and prior records of completion,
- determining the seller’s willingness to repair the defect, and
- disclosing the defect to all parties in the transaction.

The disclosure of material facts are mandatory and must be disclosed freely to all parties in a transaction. The broker cannot decide to refrain from disclosing the material fact to any party because they believe that the material fact was common knowledge.



What if the broker acts irresponsibly?

If a broker has determined that a material fact exists but fails to disclose or misrepresents the existence of such fact, he is engaging in misrepresentation and/or omission of a material fact.

- **Misrepresentation:** communication of false or incorrect information.
- **Omission:** failure to disclose material information.



Does a buyer's agents have a responsibility to inquire about material facts?

Yes. The buyer's agent has a responsibility to inquire about the presence of material facts for their client. In an effort to determine whether material facts exist, the buyer's agent should complete the following:

- research zoning codes/requirements of the property,
- determine facts of special interest or relevance to the client,
- research property-specific information,
- evaluate and inspect the property for issues, and
- inquire with the listing agent about the presence of material facts.



What questions should a buyer's agent ask?

Examples of questions a prudent buyer's agent should ask a listing agent include:

- Are there any issues like leaks, stains, or improper permitting associated with this property?
- When is the last time this property or systems on the property been serviced?
- Is this property correctly zoned for the specified usage?
- Is the seller currently in a foreclosure proceeding?

Examples of questions a prudent buyer's agent should ask a buyer include:

- What are some "facts" of special importance to you?
- Are you having difficulty acquiring financing for your purchase?
- Do you have to sell another home before you acquire this one?

A buyer's agent may rely on a listing agent's assertions regarding a property; however, the buyer's agent is still responsible for following up on any red flag issues.

CASE: Was that a fact?

Read the following case summary.

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

PARTIES:

The Complaining witness was the potential Buyer of a residential property. The Respondent was the listing agent.

COMPLAINT:

On March 20, 2018, the potential buyer filed a complaint with the North Carolina Real Estate Commission indicating that the Broker failed to accurately state the square footage of the property in advertisements, and disclose issues with the property truthfully.

FACTS:

On February 5, 2018, the broker of the subject property completed the *Residential Property and Owners' Association Disclosure Statement* and the *Mineral and Oil and Gas Rights Form* when she listed the property for sale. On the *RPOADS* form, she indicated that the heating and cooling sources on the property were 2 years old upstairs and 13 years old downstairs. Furthermore, the broker stated in the Multiple Listing Services that the square footage of the subject property was 3,175 by utilizing the county tax records.

In addition, the broker failed to disclose that material defects existed on the property. The buyers entered into an *Offer to Purchase and Contract* with the broker on March 2, 2018.

The buyers discovered during the due diligence period that the actual square footage of the property was 2,956. Also, the property inspection report indicated that material defects existed on the property and that the furnace was 13 years old.

Main Points - Was that a fact?

- February 5, 2018, the broker completed the *RPOADS* and *MOG* disclosure statements and indicated the inaccurate age of the heating and cooling units as 2 years old upstairs and 13 years old downstairs on the *RPOADS* statement.
- February 2018, the broker represented the property as 3,175 square feet using the county tax records.
- February 5, 2018, the broker indicated there were no issues with the property by selecting “No” on the *RPOADS* form except when she selected “No Representation” in reference to the pipes in the home.
- March 2, 2018, the potential buyer signed the *Offer to Purchase and Contract* and property disclosure statements.
- March 2018, the potential buyers had an appraisal conducted and the report determined that the square footage of the property was 2,956. The potential buyers were also alerted to the presence of material facts that were not disclosed on the *RPOADS* statement or disclosed during the contract.
- March 20, 2018, the potential buyers filed a complaint with NCREC.

Evaluation and Discussion - Was that a fact?

Errors made by the Listing Broker:

Related Law and Rule Considerations - Was that a fact?

Misrepresentation

N.C.G.S. § 93A-6(a)(1) states:

- The Commission has the power to suspend, revoke, reprimand, or censure any licensee if they make any willful or negligent misrepresentation or any willful or negligent omission of material fact.

N.C.G.S. § 93A-6(a)(3) states:

- The Commission has the power to suspend, revoke, reprimand, or censure any licensee if they pursue a course of misrepresentation or making of false promises through agents, advertising or otherwise.

N.C.G.S. § 93A-6(a)(10) states:

- The Commission has the power to suspend, revoke, reprimand, or censure any licensee if they engage in conduct which constitutes improper, fraudulent, or dishonest dealing.

ANSWERS TO DISCUSSION QUESTIONS

For Discussion on page 27

1. Tom, a seller, has decided to list his property. Tom has noticed that the water heater has begun to leak. He completed the *Residential Property and Owners' Association Disclosure Statement and Mineral and Oil and Gas Rights Mandatory Disclosure Statement* before he listed the property. On the *Residential Property and Property Owners' Association Disclosure Statement* he marked "No Representation" on question 8, which stated, "Is there any problem, malfunction or defect with the dwellings, plumbing system (water heater)."

Does Tom have to disclose the leaking hot water heater to potential buyers?

Answer: *No. However, if a listing agent is involved, a listing agent would have to disclose the leaking water heater. Also, if the seller is licensed, he must disclose the leaking water heater.*

Has Tom complied with the Residential Property Disclosure Act?

Answer: *Yes.*

What if Tom has a real estate license?

Answer: *If Tom has a real estate license, he must comply with the law and answer all questions truthfully. Furthermore, he must disclose material facts.*

2. Bill, a broker, is inspecting a house during a listing presentation. He notices that there are several stains in the cabinet under the kitchen sink. Bill asks the owner if the sink leaks. The owner tells Bill that the sink leaks on occasion but not enough to really worry about. However, the owner also states that he has had the sink repaired multiple times in the past.

Bill lists the property. On the *Residential Property and Property Owners' Association Disclosure Statement*, the seller marks "No Representation" for all items. Bill does not include any information about the leak in the listing information.

Jeff, a broker from another firm, and his buyer-client, view the property. While viewing the house, the buyer's agent notices the stains under the kitchen cabinet and immediately closes the door. The buyer's agent does not point out the stain to his potential buyer, nor does he ask Bill about it.

Would this be an example of...?

Answer: *Omission*

Which broker is at fault?

Answer: *Both*

What are the responsibilities of the listing and buyer's agents?

Answer: *The listing agent's responsibilities are to disclose material facts and facts that they should have reasonably known to be material to all parties in the transaction. The buyer's agent has the responsibility to inquire about red flags and/or material facts that have been repaired but are likely to be an issue again on the property. Also, they must notify their buyer if a potential issue they observe could be viewed as a material fact.*

For Discussion on page 30

- D 1. Smoke-free home
- D 2. Pet-free home
- A 3. Electrical system is outdated
- E 4. Seller is behind on the mortgage
- C 5. Seller is in a foreclosure proceeding
- B 6. Zoning laws will affect the property in 2 months
- A 7. Roof has leaked in the past on two separate occasions
- D 8. No HOA governs the residential community

Note: Some “facts” may have more than one answer choice.

Case Outcome - Was that a fact? on pages 34-35

Errors identified during the Commission’s Investigation

- The broker advertised the square footage as 3,175 per county tax records
- The broker identified the property had two HVAC systems and identified the upstairs unit was 2 years old and the downstairs unit was 13 years old on the *Residential Property Owners’ Association Disclosure Form*
- The property inspection report identified the furnace was 13 years old

Law & Rule Violations identified during the Commission’s Investigation

- N.C.G.S. §93A-6(a)(1) - Making any willful or negligent misrepresentation or any willful or negligent omission of material fact
- N.C.G.S. §93A-6(a)(3) - Making false promises through agents, advertising, or otherwise
- N.C.G.S. §93A-6(a)(10) - Conduct which constitutes improper, fraudulent or dishonest dealing

Sanctions Imposed by the Commission

- Listing Broker - Suspension for a period of 3 months; Stayed if the broker submitted a course completion certificate evidencing satisfactory completion of the *Issues in Answers in NC Real Estate Practice Course* within 1 month.
- Firm - Reprimand; Dismissed if the broker submitted a course completion certificate evidencing satisfactory completion of the *Issues in Answers in NC Real Estate Practice Course* within 1 month.

Section 3

HOME INSPECTIONS



1. Sue has found a house she loves and wants to close quickly. Tom, Sue's agent, advises her to hire a home inspector to determine the home's condition. Sue is eager to close on the home and tells Tom that she has lots of experience with home repair and doesn't need to have an inspection. She believes the home is in fine condition.

Is Sue required to hire a home inspector? YES / NO

2. Amy, a buyer's agent, is assisting Luke in his purchase of a starter home. Amy advises Luke to hire a home inspector to determine the condition of the home. Instead, Luke wants to have his friend John, who does some light carpentry work as a side business, inspect the home.

How should Amy advise Luke?

LEARNING OBJECTIVES

After completing this section, you should be able to:

- explain what a home inspection is, and
- explain the broker's responsibilities related to the inspection and inspection period.

TERMINOLOGY

Home Inspection: An evaluation of the visible and accessible systems and components of a home which provides an understanding of the condition of the home.

Home Inspection Report: A written evaluation that describes the condition of the functioning and malfunctioning systems within the home.

Summary Page: This page describes any system or component that does not appear to function as intended, based upon documented tangible evidence, and that requires either subsequent examination or further investigation by a specialist.

HOME INSPECTIONS



What is a home inspection?

According to N.C.G.S. §43-151.45, a home inspection consists of a written evaluation of two or more of the following components of a residential building: heating system, cooling system, plumbing system, electrical system, structural components, foundation, roof, masonry structure, exterior, and interior components, or any other related residential housing component.

The home inspection gives a potential homebuyer a preliminary understanding of the condition of the home. A home inspection evaluates the condition of the home on the day it is inspected, but it does not guarantee compliance with building codes, nor does it guarantee that systems within the home will not fail in the future.

An inspection is not exhaustive or conclusive. Inspections serve as preliminary information for a potential homebuyer to make a determination to proceed with the purchase of a home or terminate the contract based on the findings in the home inspection.



Is a home inspection required?

The North Carolina Real Estate Commission and the North Carolina General Statutes do not require a homebuyer to conduct a home inspection. Although a home inspection is not required, a homebuyer can gain an understanding of the condition of the home (i.e. defective systems) by hiring a licensed home inspector.

Note: All home inspectors are not created equal. Buyers should understand that home inspectors have varying levels of experience with systems within the home (i.e. HVAC, plumbing, electrical, etc.).



When is a home inspection conducted?

One of the primary considerations in a real estate sales contract is the home inspection period. A buyer needs time to investigate the home and, in some cases, to request repairs. The home inspection period is a negotiable period of time and will depend on factors such as the size and age of the home, the type of loan the buyer is obtaining, and general market conditions.

In North Carolina's *Standard Form 2T-Offer to Purchase and Contract Form*, the home inspection is part of the "due diligence period." During the due diligence period, the buyer will investigate the home and determine whether to proceed with or to terminate the transaction based on the results of inspections. A prudent buyer will negotiate a due diligence period that will provide enough time to perform a thorough evaluation of the home and to negotiate any needed repairs.

Note: A prudent listing agent may encourage a seller to complete a home inspection prior to listing the home for sale.



What is the broker's responsibility during the inspection / due diligence period?

A broker has the fiduciary duty to ensure they represent their clients' interests at all times, including during the inspection period. A broker who represents a prospective buyer should encourage the client to conduct a home inspection even if the home is a new construction, the seller indicates they are selling the home "As Is," or a seller performed a prelisting inspection.

Note: If a broker advises a buyer to conduct a home inspection and the client declines, a prudent broker would document the fact that the buyer chose not to have one completed.

During the inspection / due diligence period a broker should:

- recommend the buyer order a home inspection.
 - A prudent broker will advise the buyer to order an inspection even if one has previously been conducted by the seller.
 - A broker should make the homebuyer aware that inspectors are not all created equal due to having specialized knowledge or additional experience. Therefore, all inspection reports will not be the same. The home inspection report is good for the day of the inspection and issues can arise after the inspection is conducted. If issues do arise after the inspection is complete, this does not mean the home inspector is incompetent.
- ensure that the buyer orders an inspection in a timeframe that will allow ample time for the report to be performed and for the buyer to evaluate the results and ask for repairs, if necessary.
- assist the buyer in understanding the parameters of a home inspection, which include:
 - the inspection is visual and not exhaustive;
 - latent defects will not be discovered, and the prevention of future defects or system failures cannot be guaranteed;
 - the inspection considers normal wear and tear of the home and is an observation of the condition of the home on a certain date, and;
 - all home inspectors are not created equal due to their varying levels of knowledge and skills.
- attend the home inspection with the buyer.
- ensure the buyer receives the full home inspection report including the summary page during the home inspection / due diligence period, assist the buyer in evaluating the results and:
 - disclosing material facts in the home inspection report and summary page.
 - following the recommendations of the home inspection report such as a hiring a licensed plumber or electrician. The broker should assist the buyer in identifying a professional and scheduling the evaluation.
 - assisting the buyer in identifying the correct paperwork, such as the Due Diligence Repair Agreement, and communicating the repair requests to the seller.
 - advising the buyer as to their options if the home inspection/due diligence period timeframe may expire before the buyer is able to complete a full evaluation of the property. The options are: requesting an extension, moving forward without completing negotiations, or terminating the agreement if necessary.



What should a broker do upon receipt of a home inspection report?



FOR DISCUSSION

Tom recommends that his client Sue conduct an inspection on a home she wishes to purchase. Sue agrees and authorizes Tom to order a home inspection.

The home inspector sends the report to Tom but not Sue. Tom receives the report and calls Sue to discuss the contents of the written report and summary page.

Even though the report identifies a long list of potential issues, Tom advises Sue to ask for only a few repairs. Sue disagrees with Tom's advice and tells him she wants to ask the seller to address all the issues that were listed on the Summary Page.

Tom tells Sue that most of the inspector's suggestions are minor issues she shouldn't be worried about and that he (Tom) has identified the significant issues. Tom emails the short list of repair requests to the Listing Agent.

Did Tom act appropriately in this scenario? Why or why not? _____

When a broker receives a home inspection report on behalf of a client, they should share the entire report with the client and thoroughly review it [with the client]. If the broker or client has any questions about items discussed in the report, the broker should ask for clarification or an explanation from the inspector.

The broker has an affirmative duty to disclose all material facts to clients and customers. Consequently, the broker must disclose any issues identified on the inspection report; however, the broker should not attempt to step outside of their area of expertise by interpreting the condition of the home.



Statement in the Home Inspection Report: *The junction box needs further evaluation by a licensed electrician.*

Which of the following would be an appropriate way for the broker to explain this statement to a client?

- 1: *The home inspector identified a potential problem with the junction box and recommended an inspection by a licensed electrician. I recommend you hire an electrician to take a closer look.*
- 2: *The home inspector identified a problem with the junction box and recommended an inspection by a licensed electrician. Obviously, the junction box is failing and will have to be replaced, which will be very expensive.*
- 3: *The home inspector identified a potential problem with the junction box and recommended an inspection by a licensed electrician. I've seen this type of statement on reports, but it's nothing to worry about. Inspectors limit their liability by adding statements like this.*

Statement #1 is the right answer. If a broker attempts to interpret the issues, they may be liable for their interpretation. Therefore, it is wise for a broker to reiterate the findings of the report and to encourage the client to adhere to recommendations made by the inspector.

Best Practice: A prudent buyer's agent would suggest the buyer perform the recommended additional inspection(s) if needed instead of the seller.

Repair Negotiations

If, upon reviewing the report, the buyer decides to request repairs, the broker should assist the buyer in preparing the appropriate request form / agreement and submitting the request(s) to the seller in a timely manner.

The broker should make the buyer aware of the seller's obligations. Generally speaking, there is no requirement for a seller to make repairs, unless the seller agrees to do so. If the buyer and seller are using the *Standard Form 2T-Offer to Purchase and Contract Form*, the broker should also explain the due diligence period and the buyer's right to terminate the contract during that time.

If the seller agrees to make repairs, the broker should ensure the buyer has the opportunity to re-inspect the home to ensure the repairs were completed based on the terms of the contract. In the Standard Form 2T, for example, provision 8(c) states:

Access to Property: Seller shall provide reasonable access to the Property (including working, existing utilities) through the earlier of Closing or possession by Buyer, including, but not limited to, allowing Buyer and/or Buyer's agents or representatives, an opportunity to (i) conduct Due Diligence, (ii) verify the satisfactory completion of negotiated repairs/improvements, and (iii) conduct a final walk-through inspection of the Property.

Note: Brokers should be very diligent in assisting their buyers with reading the inspection report and completing any repair agreements. For example, specific language should be used as to which repairs are requested and who will complete the repairs (i.e. licensed general contractor, licensed plumber, etc.). Brokers are also encouraged to seek the advice of an attorney if needed when completing a repair agreement request.



What happens to a buyer's home inspection report if the buyer terminates the Offer to Purchase and Contract?



Billy has a home listed that goes under contract. During the due diligence period, the buyer orders a home inspection and ultimately terminates the contract based on the results of the inspection. The buyer forwarded a copy of the home inspection to Billy prior to terminating the contract.

Now Billy's listing is back on the market for sale. Even though the seller asks him not to do so, Billy discloses the material facts identified in the first buyer's inspection to prospective purchasers. However, Billy refuses to share the first buyer's actual inspection report, stating that the report is confidential.

Is Billy correct that he cannot share the report?

When a homebuyer hires an inspector to evaluate a home, the findings within the home inspection report and the information on the summary page are considered confidential information. However, once the buyer shares or disseminates this information to a seller or listing agent, the report is no longer confidential.

If a buyer decides to terminate the contract, some of the findings of the home inspection report may be considered material facts and must be disclosed to all parties.

If the buyer has provided a copy of the home inspection report and/or summary page to the listing agent, then the listing agent *can* but is not required to provide the inspection report and summary page to other prospective buyers.

North Carolina License Law and Commission Rules require material facts to be disclosed. Therefore, the listing agent must disclose all the material facts to the buyer's agents and/or buyers interested in the home even if the seller opposes this disclosure.

Alert: Brokers must follow their client's directions in regard to the distribution of the home inspection report. However, it is mandatory that brokers disclose all material facts.

For more information on handling home inspections, review this article:

<https://bulletins.ncrec.gov/handling-inspections-guidelines-for-brokers/>



How / when is an inspector compensated?

Most inspectors require payment when services are rendered, so the buyer may have to pay for the report before or at the time of the inspection. In such case, the broker should ensure that the inspection appears on the Settlement Statement and is noted as a POC (Paid Outside of Closing) item.

Inspectors will sometimes allow a buyer to pay for services at the time of settlement. In this case, the broker should ensure that the inspection is noted on the Settlement Statement as a standard debit to the buyer.

If the transaction is terminated before closing, a prudent broker will remind the buyer to pay the inspection fee to the inspector.

BIC Alert: A broker cannot be a courier of funds. The buyer is responsible for ensuring that the home inspector is compensated properly.



The following activity is a mandatory class exercise that must be completed by all brokers in the course.

Directions: Your client, Sue, just received the home inspection report for the home located at 123 Apple Street and has forwarded it to you. Assist Sue with understanding the findings on the summary page and advise her on the next steps.

After reviewing EXHIBIT A, answer these questions:

1. What additional questions, if any, do you have for the home inspector?
2. What additional inspections and repairs have been recommended?

EXHIBIT A

Summary of Recommended Repairs

ABC Home Inspections, Inc.

Phone: 919.333.1111, N.C. Home Inspector's License #000

Note: This summary page is not the entire report. The complete report may include additional information of interest or concern to you. It is strongly recommended that you promptly read the complete report. For information regarding the negotiability of any item in this report under the real estate purchase contract, contact your North Carolina real estate agent or an attorney.

123 Apple Street, Anytown, NC 12345

For: Sue Savvy Buyer
Monday, July 1, 2019

The following items are not functioning as intended, posing a safety concern, warranting further investigation by a specialist or subsequent observation.



1. Grading

Slope from foundation: Reversed grading was documented along the left back wall, permitting surface water to drain against the foundation. In order for the surface water to drain away from the home, grading should be repaired.



2. Exterior Stairs

Handrails: The bottom of the pickets on the side step railings are rotting. All rotted wood needs to be replaced.



3. Foundation

Condition: A hairline crack approximately 3/16” wide was found at the left side wall in the basement. A home inspection cannot determine if movement will continue or has been stabilized. You should consult with a Structural Engineer specializing in residential structural issues. The foundation poses a safety concern.



Moisture: Excessive condensation was found in the crawl space. This condensation can cause wood rot and the growth of fungus that can destroy wood. The crawl space should be thoroughly dried by a qualified moisture control specialist. The crawl space poses a safety concern.



4. Floor Structure

Condition: The subflooring revealed wood rot under the powder room. The subflooring should be removed, and the floor structure evaluated, repaired, and replaced by a licensed contractor. The floor structure poses a safety concern.



5. Roof Coverings

Condition: Loose shingles were found at the right rear and at the top of the rear bay window. A professional roofer should repair or replace loose shingles to prevent leaks and damage to the home.



6. Gutters

Condition: The gutters are clogged with debris and leaves. Gutters should be cleaned regularly for proper drainage and the prevention of roof water from destroying the foundation.



7. Insulation

Condition: The crawl space insulation is wet and hanging down. This wet insulation should be removed and replaced to eliminate the possibility of organic growth. Insulation that is missing or has fallen should be reinstalled or replaced for energy conservation.



8. Walls

Condition: Cracking and possible movement was found at the left rear wall of the family room. Evidence of foundation movement was not found. However, the drywall should be repaired and continuously monitored for evidence of movement. The walls pose a safety concern.



9. Countertops

Condition: The grout is cracked and loose between the quartz countertop and tile backsplash to the left of the sink. Cracks should be caulked to prevent water penetration and damage to the cabinets.



10. Sinks

Condition: The faucet leaks in the center when it is turned on. This should be repaired by a licensed plumber to prevent water damage to the home.



11. Tubs and Showers

Condition: It was observed at the left end of the tub that caulking has broken loose. This will permit water to leak through if it is splashed. This caulking should be repaired by a licensed general contractor.

ANSWERS TO DISCUSSION QUESTIONS

For Discussion on page 39

1. Sue has found a house she loves and wants to close quickly. Tom, Sue's agent, advises her to hire a home inspector to determine the home's condition. Sue is eager to close on the home and tells Tom that she has lots of experience with home repair and doesn't need to have an inspection. She believes the home is in fine condition.

Is Sue required to hire a home inspector?

Answer: *No. Sue is not required to hire an inspector to evaluate the condition of home. However, a prudent broker will document the advice given to Sue.*

2. Amy, a buyer's agent, is assisting Luke in his purchase of a starter home. Amy advises Luke to hire a home inspector to determine the condition of the home. Instead, Luke wants to have his friend John, who does some light carpentry work as a side business, to inspect the home.

How should Amy advise Luke?

Answer: *Amy should explain to Luke that a licensed home inspector will evaluate all of the systems in the house and provide a comprehensive report. She might show him an example of a report. Ultimately, Luke may hire who he wishes to perform the inspection, but the broker should fully explain his options and document that she has given the buyer the options.*

For Discussion on page 43

Tom recommends that his client Sue conduct an inspection on a home she wishes to purchase. Sue agrees and orders a home inspection. Tom receives the report three days later and calls Sue to discuss the contents of the written report and summary page. Even though the report identified a long list of potential issues, Tom advises Sue to ask for only a few repairs. Sue disagrees with Tom's advice and tells him she wants to ask the seller to address all the issues that were listed on the summary page. Tom tells Sue that most of the inspector's suggestions were minor issues she shouldn't be worried about and that he (Tom) has identified the significant issues. Tom emails the short list of repair requests to the Listing Agent.

Did Tom act appropriately in this scenario? Why or why not?

Answer: *No. First, Tom should have shared the entire written report with Sue and should have reviewed and explained every item in the report to her. Then Tom should have assisted Sue in making an informed decision.*

For Discussion on page 46

Billy has a home listed that goes under contract. During the due diligence period, the buyer orders a home inspection and ultimately terminates the contract based on the results of the inspection. The buyer forwarded a copy of the home inspection to Billy prior to terminating the contract.

Now Billy's listing is back on the market for sale. Even though the seller asks him not to do so, Billy discloses the material facts identified in the first buyer's inspection to prospective purchasers. However, Billy refuses to share the first buyer's actual inspection report, stating that the report is confidential.

Is Billy correct that he cannot share the inspection report?

Answer: No, Billy is not necessarily correct. The report is not "confidential" and Billy would not be in violation for sharing the report with other buyers or agents as long as his client, the seller, allowed it. Regardless of the seller's desires, Billy has a mandatory duty to disclose material facts; however, everything in the report may not be considered material.

Activity on pages 48-52

1. What additional questions, if any, do you have for the home inspector?

Possible answer includes: Provide more detail as to how issues cited for foundation, floor structure, and walls pose safety concerns.

2. What additional inspections and repairs have been recommended?

Possible answers include: Repairs: grading, stairs, roof, insulation, walls, countertops, sink, tub and shower. Further inspection and/or repair: foundation (structural engineer and moisture control specialist) and floor structure (contractor).

Section 4

WIRE FRAUD



1. Anya uses a free email account to communicate with her clients regarding brokerage transactions. She believes that this method of communication is secure because the networks at her firm and home office are password protected. Is Anya correct? Why or why not?

2. Broker Terrence's buyer-client is under contract to purchase her first home. Two weeks before closing, the closing attorney's paralegal emails Terrence the wiring instructions for the buyer's settlement funds, which Terrence forwards to the buyer.

Two days before closing, the buyer receives another message from Terrence, alerting her that the wiring instructions have changed. The buyer, in turn, notifies her bank of the change.

The closing attorney never receives the buyer's settlement funds. It is later determined that Terrence's email had been hacked, which ultimately resulted in the loss of the buyer's funds.

What, if anything, should Terrence have done differently? Could Terrence be held responsible for the buyer's loss?

3. May is the accountant for ABC Properties. Bill, the property manager, sends May an email requesting a paper check to be sent to 123 Plumbing to pay an outstanding invoice immediately. May is slightly confused by the email because ABC Properties and other vendors are usually paid electronically at the end of each month. However, May follows the instructions in the email and sends the check.

What should May have done? _____

4. Jim owns several properties in NC, and they are managed by 123 Properties, Inc. Jim was instructed to register an account with the firm's cloud-based management system to ensure timely receipt of payments and access to monthly statements.

Once an owner establishes an online account, 123 Properties, Inc., has a policy that mandates employees are not allowed to change the account numbers for the owners. However, 123 Properties, Inc., receives an email from Jim asking them to change his routing and account number. How should they proceed?

5. Sue is a payroll specialist at Properties R' US. She receives an email from Tim, the receptionist. The email was sent from Tim's gmail account and requested that Sue change the financial institution in which he receives his direct deposit. A voided check was attached to the email with Tim's demographic information handwritten on the check.

Sue processed the request and sent a confirmation email to Tim's work email address. Tim immediately called Sue and indicated he did not request this change. What should Sue do? _____

LEARNING OBJECTIVES

This section will review fraudulent activities that can occur in brokerage firms or transactions.

After completing this section, you should be able to describe:

- common fraudulent activity in the real estate industry; and
- best practices for real estate brokers to help protect themselves and their clients from fraudulent activities.

WHAT IS WIRE FRAUD?

Settlement Funds Scams

The following explanation is provided on investors-title.com:

“When it comes to real estate-related wire fraud, thieves typically target home buyers in the final stages of their transactions.

Hackers gain access to the email accounts of key personnel - whether it be attorneys, mortgage lenders, title companies, buyers, sellers or real estate agents - and monitor their messages for details of the deal as it unfolds.

The criminals then create a fake email address that mimics the seller, seller’s agent, a title company, an attorney or other stakeholder in the transaction and sends a request to wire the closing money to a specific account. By copying logos, email signatures and using language that sounds legitimate to the buyers, they are able to fool their victims.

The victim, assuming that the email is a legitimate request and a logical next step in their deal, complies and wires the payment.

Once the transfer is completed the money is in the hands of the thief and has likely been lost forever.”

Excerpt from “Stay Protected from Wire Fraud in 2019.” To read the full article, go to: <https://investors-title.com/stay-protected-from-wire-fraud-in-2019/>

THE THREAT IS GROWING

In a 2018 article titled, “Real Estate’s Wire Fraud Vulnerability,” Erica Christoffer stated:

“Indeed, according to the FBI, there was a 136 percent increase between December 2016 and May 2018 in financial losses globally due to business email accounts being compromised, including sophisticated scams targeting both businesses and individuals performing wire transfer payments.

Scams specifically directed at the real estate sector rose 1,100 percent from 2015 to 2017. From June 2016 to May 2018, FBI data shows there was a loss of more than \$1.6 billion in the U.S. alone. What’s more, cybersecurity company eSentire reported in October that real estate was the second highest industry hit with malware events in the second quarter of 2018.”

Excerpt from REALTOR® Magazine. To read the full article, go to: <https://magazine.realtor/for-brokers/network/article/2018/11/real-estate-s-wire-fraud-vulnerability>

CAN REAL ESTATE BROKERS BE HELD ACCOUNTABLE FOR CLIENTS' LOSSES?

If a broker's email is hacked and a client's or customer's funds are compromised or stolen, could the broker be held responsible for the theft? The answer is yes.

These types of cases are beginning to pop up across the country. The first significant case, *Bain v. Platinum Realty, LLC*, happened in July 2018. Here is a recap of that case, courtesy of nar.org:

Licensee Liable for Wire Fraud Losses

Kansas federal court upholds jury verdict that determined that a real estate licensee was 85% responsible for the buyer's losses, which occurred when the buyer transferred purchase money to fake account after licensee allegedly forwarded email containing fake wiring instructions to the buyer.

A real estate buyer ("Buyer") purportedly received an email from the listing broker ("Broker") that provided new wiring instructions for the upcoming closing on a property. The Buyer used the false instructions to wire the purchase money to the fraudulent account and lost \$196,622. The criminal had infiltrated the email exchanges between the parties to the transaction and created fake email accounts that were very similar to the email accounts used by the parties. The criminal had used these accounts to transmit the false wire instructions that were eventually sent to the Buyer.

The Buyer brought a lawsuit against a number of parties, including the Broker. The Broker claimed that she had never sent the email with the false wiring instructions. She had initially forwarded an email with the false wire instructions but she had sent it to one of the fake accounts set up by the criminal. She claimed that she had not sent the later email that the Buyer did receive and used to send the purchase money to the fraudulent account.

The case went to trial, and the jury found that the Broker was 85% responsible for the loss and the court entered judgment against the Broker for \$167,129. The Broker filed a post-trial motion seeking a determination in her favor.

The United States District Court for the District of Kansas affirmed the jury verdict. The court rejected the Broker's argument that she did not send the email to the Buyer that was used to send the wire, finding this was an issue of fact for the jury to resolve as there was some evidence that the Broker had sent the later email. The jury determined that the Broker had sent the email, and so the court affirmed the jury verdict in favor of the Buyer.

Bain v. Platinum Realty, LLC, No. 16-2326-JWL, 2018 WL 3105376 (D. Kan. June 25, 2018). [This is a citation to a Westlaw document. Westlaw is a subscription, online legal research service. If an official reporter citation should become available for this case, the citation will be updated to reflect this information.]

Reprinted from <https://www.nar.realtor/legal-case-summaries/licensee-liable-for-wire-fraud-losses>

HOW CAN YOU PROTECT YOUR CLIENTS AND YOURSELF?

NAR's "Window to the Law: How to Avoid Wire Fraud in Transactions" video provides excellent tips for brokers, including:

1. Educate [clients] about schemes.
2. Never send wire instructions via email.
3. Monitor email for unrecognized activity.
4. Never click attachments.
5. Use strong passwords.

Watch video: <https://www.youtube.com/watch?v=C9lIZtloYJs&feature=youtu.be>

Security in Electronic Communications

Security DO's

- DO maintain multiple email accounts for your various purposes, e.g., one for online shopping, a separate account for personal emails, and a third account for business purposes.
- DO enable **Two Factor Authentication (2FA)**; this process requires both a password and a second identifier.
- DO install firewalls, and use anti-virus and anti-malware/spyware applications.
- DO choose ***strong passwords*** and change all passwords periodically.

The more unique the password is to you, the harder it is to crack. A "strong" password should be at least 12 characters, including upper and lower case letters, numbers and permissible symbols, or alternately, three random words (that you can remember) containing the foregoing features.

- DO choose tough security questions.

If you can't create your own question and must select from a menu of questions, consider providing a false answer (but remember what the false answer is!). For example, if the question asks for a town where you were born or raised, name a town in which you never lived or a school you never attended, etc.

- DO encrypt your server, devices, and messages.

Encryption is a process to protect data by converting readable data (called *plaintext*) into unreadable data (called *cipher text*) by using an algorithm (called a *cipher*). Decryption is the reverse process to convert unreadable text into readable text. The conversion is accomplished with *paired keys*. So long as the decryption key is protected, the data is safe.

There are various encryption software products available for protection of data on networks, desktop computers, laptops, and other portable devices. Brokers and firms should consult with an IT specialist to determine the products that will best protect their data and devices.

- DO monitor your account for suspicious activity.
- DO turn your electronic devices off when you leave your office or aren't using them.

Security DON'Ts

- DON'T use unsecured public Wi-Fi sites or public computers to check your email, financial accounts, or transaction files, as none of it is private or protected.

If you must check email or a document, either use a mobile data service, e.g., 4G, or if you must use a public computer or Wi-Fi, use Virtual Private Network (VPN) which will encrypt the data passing through the VPN.

- DON'T open messages from unknown senders or click on links within or attachments to a message, particularly if there is no subject specified or the subject is generic.
- DON'T use the same password for all your online accounts.

Since most people don't use multiple passwords or change them that frequently, hackers will use passwords found in one account to break into other accounts of the same user.

OTHER TYPES OF SCAMS

Employment Scams

An employer receives:

- a “phishing” email from a hacker that looks similar to the employee’s email address, is grammatically correct, and bypasses email spam/junk filters, or
- a request from a hacker to change the direct deposit information of an employee before the next pay cycle.
 - The tone of the email is urgent, and
 - provides new routing and accounting numbers for the employee that is linked to an offshore bank account or prepaid debit card.

Property Management Scams

A property management firm receives:

- an email from an owner requesting the firm to update their account information in the owner’s portal.
 - The tone of the email request is urgent, and
 - the owner is not available to speak over the phone.

OR

The property management firm receives:

- a telephone call from the owner requesting a change to their account in the owner’s portal.
 - The owner indicates that they cannot log into the system and need the property management firm to update their information before the next disbursement.

Note: Wire Fraud Scams do not only happen in real estate closings. These types of scams can happen to employers and property management firms as well. It is important for brokers, attorneys, human resource personnel, office assistants, etc. to have established policies to contact individuals via a telephone conference to confirm receipt of the request and validate requested changes.

ANSWERS TO DISCUSSION QUESTIONS

PAGE 55-56

1. A broker uses a free email account to communicate with his clients regarding brokerage transactions. He believes that this method of communication is secure because his internet connection at the firm and his home office is password protected.

Is this broker correct?

Answer: It depends. The broker should be using a secure server to send and receive emails, and have the capability to encrypt attachments and all files. If the sender of the emails and the broker's servers are not secure, then the emailed information is at a greater risk of being hacked.

2. Broker Terrence's buyer-client is under contract to purchase her first home. Two weeks before closing, the closing attorney's paralegal emails Terrence the wiring instructions for the buyer's settlement funds, which Terrence forwards to the buyer.

Two days before closing, the buyer receives another message from Terrence, alerting her that the wiring instructions have changed. The buyer, in turn, notifies her bank of the change.

The closing attorney never receives the buyer's settlement funds. It is later determined that Terrence's email had been hacked, which ultimately resulted in the loss of the buyer's funds.

What, if anything, should Terrence have done differently?

Answer: Terrence should have verified the initial information with the paralegal first, before forwarding it onto the buyer, and then verified that it reached the buyer. Terrence should have also educated the buyer about possibility of scams and told her to call and question any future changes.

Ideally, Terrence should not have been serving as the go-between for the wire instructions. Such information would be best communicated directly between the paralegal and the buyer.

Could Terrence be held responsible for the buyer's loss?

Answer: Yes, he could. There are many questions to consider, such as (but not limited to): Had Terrence educated the buyer about the possibility of scams? Had he taken steps to secure his email?

3. May is the accountant for ABC Properties. Bill, the property manager, sends May an email from his email account requesting a paper check to be sent to 123 Plumbing to pay an outstanding invoice immediately. May is slightly confused by the email because 123 Plumbing and other vendors are usually paid electronically at the end of each month. However, May follows the instructions in the email and sends the check.

What should May have done?

Answer: May should have called Bill to verify that he sent an email with instructions to pay a vendor for business using a paper check when the company usually performs these transactions electronically and monthly.

4. Jim owns several properties in Elk, NC, and they are managed by 123 Properties, Inc. Jim was instructed to register an account with the firm's cloud-based management system to ensure timely receipt of payments and access to monthly statements.

Once an owner establishes an online account, 123 Properties, Inc., has a policy that mandates employees are not allowed to change the account numbers for the owners. However, 123 Properties, Inc., receives an email from Jim asking them to change his routing and account number. How should they proceed?

Answer: 123 Properties, Inc., should contact Jim and verify that he sent the email and inform him of their policy. If they ascertain the request was valid, they should instruct Jim to change the information in his owner's portal.

5. Sue is a payroll specialist at Properties R' US. She receives an email from Tim, the receptionist. The email was sent from Tim's gmail account and requested that Sue change the financial institution in which he receives his direct deposit. A voided check was attached to the email with Tim's demographic information handwritten on the check.

Sue processed the request and sent a confirmation email to Tim's work email address. Tim immediately called Sue and indicated he did not request this change.

Answer: Sue should have noticed that the email was sent from a domain outside of the company and included financial information in an unencrypted email. Next, she should have called Tim to verify whether or not he sent the email before she changed his payroll information.

THIS PAGE INTENTIONALLY LEFT BLANK.

Section 5

LAW & RULE UPDATES



1. Bob Buyer is unhappy with the purchase of his residence. Bob contends that the electrical system was malfunctioning before his purchase, but he was not informed of the problem. Bob wants to file a complaint against the listing agent and the buyer's agent.

What must Bob do to file a complaint? _____

2. Sally Smith has been practicing real estate brokerage in Virginia on a full-time basis for 10 years. She applies for a NC real estate license based on her Virginia license and opts out of NC's license examination. Sally is licensed as a Provisional Broker in NC.

As soon as Sally receives her NC license, she submits a request for waiver of Postlicensing education, based on her 10 years of experience in Virginia.

Is Sally eligible for waiver of Postlicensing education? Why or why not?
_____+

3. Julie, a Provisional Broker, is licensed on December 1, 2019. When must she complete the 90-hour Postlicensing education program?
_____+

4. Broker Sue receives a Letter of Inquiry from the Commission.
What type of response must Sue submit to the Commission?

How many days does Sue have to submit the response to the Commission?

5. What is a Provisional Broker (PB)? _____

6. How does a PB become active? _____

7. Who is responsible for the brokerage activities of a PB? _____

LEARNING OBJECTIVES

After completing this Section you should be able to describe updates to Commission rules that:

- were effective on July 1, 2019, and
- will be effective on July 1, 2020.

OVERVIEW

Six Commission rules in Chapters 58A and 58H were revised as of July 1, 2019, and one Commission rule was revised and will be effective on July 1, 2020. The changes that directly impact brokers will be summarized in this section. In addition, revised rules may also be viewed on the Commission's website.

IMPORTANT NOTE: *A number of statutes and laws changed during the May-August 2019 legislative session. Some of the changes will impact brokers and brokerage. Your instructor will provide a handout with brief summaries of those law changes. No discussion of the law changes will happen during 2019-20 Update course, but you are welcome to contact the Commission if you have questions. Some of the changes will be discussed during the 2020-2021 Update course.*

COMMISSION RULE CHANGES EFFECTIVE JULY 1, 2019

Rule 58A .0506: Supervision of Provisional Brokers

According to N.C.G.S. §93A-2(a2), the term PB is a real estate broker, who pending acquisition and documentation to the Commission of their education or experience must be supervised by a BIC when performing any act for which a real estate license is required.

Rule 58A. 0506(a), specifies that a PB may only become active by affiliating with a BIC. To affiliate a PB, the BIC must complete Form 2.08, entitled *License Activation and Broker Affiliation* according to Rule 58A .0506(b). This form provides demographic information about the PB and BIC, a statement from the BIC certifying that they will supervise the PB in the performance of all acts for which a license is required, the date the BIC assumes responsibility, and the signature of the BIC.

Upon submission, the PB may engage in real estate brokerage activities under the supervision of the BIC. However, pursuant to 58A .0506(c), if neither the provisional broker nor their affiliated BIC receive from the Commission a written acknowledgement of the license activation within 30 days of the date shown on the form, the broker shall immediately terminate their brokerage practice activities pending receipt of the written acknowledgement from the Commission.

Rule 58A .0506(a) states, a PB's license shall be assigned by the Commission to an inactive status when the PB is not supervised by the BIC.

A BIC must certify to the Commission that they will supervise a PB in a manner that reasonably assures that the provisional broker performs all acts for which a real estate license is required in accordance with License Law and Commission Rules.

Therefore, a PB must be affiliated with a BIC at *all times* to practice brokerage.

Rule 58A .0110(g)(6), states a designated BIC shall supervise a PB associated with or engaged on behalf of the firm at such office in accordance with the requirements of Rule 58A .0506.



BIC Alert: The Broker-in-Charge Best Practice Guide provides recommendations for supervising provisional brokers. The guide can be accessed here:

<https://www.ncrec.gov/Pdfs/bicguide.pdf>

What are some examples of proper supervision of provisional brokers?

The Commission considers the following conduct to determine whether adequate supervision is present:

- established written policies and procedures that address training programs,
- delegation of some duties to qualified supervisors,
- existence of communication channels to ensure compliance, and
- evidence of remedial action taken by the BIC when needed.

Also, adequate supervision is determined by whether the BIC is available to assist, advise, and review the PB's practices and the availability of the PB to be supervised.

RULE 58A .0601: COMPLAINTS

Rule 58A .0601 dictates the complaint process. The rule was revised as of July 1, 2019, mainly for clarity.

According to the rule, a valid complaint must:

- be in writing;
- identify the respondent licensee; and
- reasonably apprise the Commission of the facts which form the basis of the complaint.

Upon receipt of a complaint, a Commission staff attorney evaluates the complaint to ensure that it includes these three elements. If it does, a case is opened. The case is first assigned to a Consumer Protection Officer (CPO), who initiates an investigation.

Most investigations are handled via correspondence, meaning the CPO first sends a Letter of Inquiry to the broker against whom the complaint was filed.

Rule 58A .0601 requires a broker to submit a written response within 14 days of receipt of a Letter of Inquiry. The response must include:

- a full disclosure of requested information; and
- copies of all requested documents.

Note: The Commission does not act as a mediator between two parties. A person who files a complaint is a *complaining witness*, not a party in the case. The Commission becomes the Complainant. Cases are between the Commission (Complainant) and the broker or firm against whom the complaint is filed, called the Respondent.

RULE 58A .1905: WAIVER OF 90-HOUR POSTLICENSING EDUCATION REQUIREMENT

Commission Rule 58A .1905 dictates circumstances under which provisional brokers may be eligible for waiver of some or all of the 90-hour Postlicensing education program. In short, the rule states that a PB may be eligible for a waiver of one or more of the three 30-hour Postlicensing courses if the PB:

- has obtained equivalent education that parallels to the Postlicensing education topics; or
- has experience equivalent to 40 hours per week as a licensed broker or salesperson in another state for at least five of the seven years immediately prior to application; or
- obtained experience equivalent to 40 hours per week as a licensed NC attorney practicing primarily real estate matters for two years preceding application.

Requests for a waiver must be submitted via the *Postlicensing Education Waiver and Equivalent Credit Request* form, which is provided on the Commission’s website. Upon receipt of a Postlicensing waiver request form, Commission staff evaluates the request and determines whether a waiver may be granted.

Subsection (c) of Rule 58A .1905 was added as of July 1, 2019, as follows:

“A broker shall be ineligible for a waiver of the 90-hour postlicensing education requirement if the broker was issued a license pursuant to Rule .0511(b)(2) of this Section.”

In other words, an individual who was issued a license on provisional status based on holding a current real estate salesperson or broker license in another jurisdiction and who opted NOT to take the NC Real Estate license examination will NOT be eligible for any waiver of any portion of the Postlicensing education requirement.

RULE 58H .0209: POSTLICENSING COURSE ENROLLMENT

Effective July 1, 2019, Commission Rule 58H .0209 states:

A school shall not enroll an individual in a Postlicensing course if:

- the first day of the Postlicensing course occurs while the individual is enrolled in a Prelicensing course; or
- the first day of the Postlicensing course occurs while the individual is taking another Postlicensing course at the same school or a different school if such enrollment results in the individual being in class for more than 30 instructional hours in any given seven day period.



1. Tia has almost completed NC’s 75-hour Broker Prelicensing course. She is eager to get started in the brokerage business and wants to get a jump-start on the Postlicensing education program. Can she go ahead and begin one of the Postlicensing courses? YES / NO
2. Alex is taking a POST 302 course that meets on Mondays and Tuesdays from 9:00AM-5:00PM. Actual class time is 7 hours per day. Alex is also taking POST 301 on Fridays from 8:30AM-4:30PM at a different school. Actual class time is 7 hours per day.

Will Alex get credit for both Postlicensing courses? Why or why not?

RULE 58H .0302: APPLICATION AND CRITERIA FOR ORIGINAL PRELICENSING, POSTLICENSING, OR UPDATE COURSE INSTRUCTOR APPROVAL

Commission Rule 58H .0302 dictates requirements for approval as a real estate Prelicensing, Postlicensing, or Update course instructor in North Carolina.

Effective July 1, 2019, subsections (b) and (c) of the rule dictate:

- (b) An instructor applicant shall demonstrate that he or she possesses good reputation and character pursuant to G.S. 93A-34(c)(9) and has:
 - (1) a North Carolina real estate broker license that is not on provisional status;
 - (2) completed continuing education sufficient to activate a license under 21 NCAC 58A .1702;
 - (3) completed 60 semester hours of college-level education at an institution accredited by any college accrediting body recognized by the U.S. Department of Education; and
 - (4) completed the New Instructor Seminar within the previous six months; and
 - (5) within the previous seven years has either:
 - (A) two years full-time experience in real estate brokerage with at least one year in North Carolina;
 - (B) three years of instructor experience at a secondary or post-secondary level;
 - (C) real estate Prelicensing or Postlicensing instructor approval in another jurisdiction; or
 - (D) qualifications found to be equivalent by the Commission, including a current North Carolina law license and three years' full-time experience in commercial or residential real estate transactions or representation of real estate brokers or firms.
- c) In order to complete the New Instructor Seminar, a broker shall:
 - (1) attend at least ninety percent of all scheduled hours; and
 - (2) demonstrate the ability to teach a 15-minute block of a single Prelicensing topic in a manner consistent with the course materials.

Prior to July 1, 2019, this rule required prospective instructor applicants to submit digital recordings of themselves teaching a 50-minute block of a single topic in Prelicensing, Postlicensing, or an Update course. Recordings were evaluated by Commission staff.

The revised rule requires applicants to deliver a live presentation during the New Instructor Seminar in lieu of submitting a video recording.

COMMISSION RULE CHANGES EFFECTIVE JULY 1, 2020

RULE 58A .1902: POSTLICENSING EDUCATION

Currently, Rule 58A .1902 requires a PB to complete at least one of the 30-hour courses during each of the first three years following the date of their initial licensure as a broker in order to retain eligibility to actively engage in real estate brokerage.

Beginning July 1, 2020, a PB will be required to complete the Postlicensing Education program within 18 months of initial licensure. In other words, all three Postlicensing courses - Post 301, Post 302, and Post 303 - must be completed within 18 months of licensure if the PB wishes to maintain active license status. The PB's license will be placed on inactive status if the PB fails to complete the required Postlicensing courses within 18 months. See Table 3.1 for examples.

Also, newly added subsection (d) states:

A provisional broker seeking to activate a license that was placed on an inactive status due to failure to complete the Postlicensing education program within 18 months following initial licensure shall:

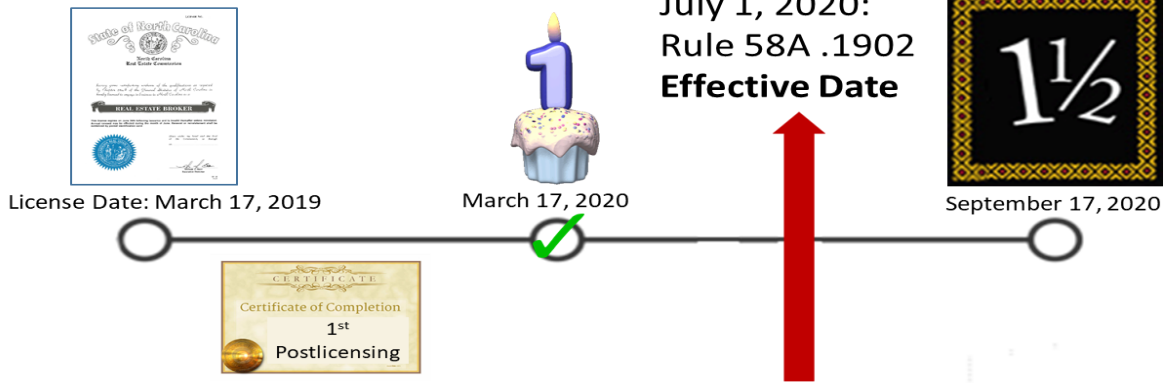
- *complete all three Postlicensing courses within the previous two years;*
- *satisfy the continuing education requirements for license activation; and*
- *file an activation form with the Commission.*

In other words, as of July 1, 2020, the Postlicensing courses will “time out” after 2 years. Consequently, if a PB does not timely complete the Postlicensing courses, their license will be Inactive. Before being eligible to re-activate the license, the PB will have to show completion of all three Postlicensing courses within 2 years prior to requesting activation.

Table 3.1: Examples

<p>1.</p>	<p>July 1, 2020: Rule 58A .1902 Effective Date</p> <p>License Date: February 1, 2018</p> <p>February 1, 2019</p> <p>February 1, 2020</p> <p>February 1, 2021</p>
	<p>Example #1: Licensed on February 1, 2018</p> <ul style="list-style-type: none"> • 1st Postlicensing course deadline: February 1, 2019 • 2nd Postlicensing course deadline: February 1, 2020 • 3rd Postlicensing course deadline: June 30, 2020
<p>2.</p>	<p>July 1, 2020: Rule 58A .1902 Effective Date</p> <p>License Date: December 30, 2018</p> <p>December 30, 2019</p> <p>December 30, 2020</p> <p>December 30, 2021</p>
	<p>Example #2: Licensed on December 30, 2018</p> <ul style="list-style-type: none"> • 1st Postlicensing course deadline: December 30, 2019 • 2nd & 3rd Postlicensing course deadline: June 30, 2020

3.



Example #3: Licensed on March 17, 2019

- 1st Postlicensing course deadline: March 17, 2020
- **2nd & 3rd Postlicensing course deadlines: September 17, 2020**

4.



Example #4: Licensed on August 2, 2020

- **1st, 2nd, & 3rd Postlicensing course deadlines: February 2, 2022**

ANSWERS TO DISCUSSION QUESTIONS

For Discussion on page 65

1. Bob Buyer is unhappy with the purchase of his residence. Bob contends that the electrical system was malfunctioning before his purchase, but he was not informed of the problem. Bob wants to file a complaint against the listing agent and the buyer's agent.

What must Bob do to file a complaint?

Answer: *Complete and submit the "Complaint Form" on the Commission's website.*

2. Sally Smith has been practicing real estate brokerage in Virginia on a full-time basis for 10 years. She applies for a NC real estate license based on her Virginia license and opts out of NC's license examination. Sally is licensed as a Provisional Broker in NC.

As soon as Sally receives her NC license, she submits a request for waiver of Postlicensing education, based on her 10 years of experience in Virginia.

Is Sally eligible for waiver of Postlicensing education? Why or why not?

Answer: *No, because she opted not to take the NC License Examination.*

3. Julie, a Provisional Broker, is licensed on December 1, 2019. When must she complete the 90-hour Postlicensing education program?

Answer: *Currently, she must complete one 30-hour Post course each year by December 1. However, as of July 1, 2020, her deadline will change to June 1, 2021 (18 months from her date of initial licensure).*

4. Broker Sue receives a Letter of Inquiry from the Commission.

- a. What type of response must Sue submit to the Commission?

Answer: *Sue must provide a written response and include all documentation requested by the CPO.*

- b. How many days does Sue have to submit the response to the Commission?

Answer: *14 days.*

5. What is a provisional broker?

Answer: *A provisional broker is a newly licensed broker who has not completed 90 hours of Postlicensing courses.*

6. How does a provisional broker license become active?

Answer: *A provisional broker becomes active by affiliating with a BIC. The BIC must certify that they will supervise the provisional broker.*

7. Who is responsible for the brokerage activities of a provisional broker?

Answer: *The provisional broker and the BIC are both responsible.*

For Discussion Page 67

What are some examples of supervision of a provisional broker?

Answers:

- *BIC's availability to supervise the provisional broker*
- *PB's availability to be supervised*
- *existence of training programs*
- *existence of office policies and procedures*
- *PB's knowledge of policies and procedures of the firm, and rule changes*

For Discussion Page 69

1. Tia has almost completed NC's 75-hour Broker Prelicensing course. She is eager to get started in the brokerage business and wants to get a jump-start on the Postlicensing education program. Can she go ahead and begin one of the Postlicensing courses?

Answer: *NO. She may not begin a Post course until she has successfully completed the Prelicensing course.*

2. Alex is taking a POST 302 course that meets on Mondays and Tuesdays from 9:00AM-5:00PM. Actual class time is 7 hours per day. Alex is also taking POST 301 on Fridays from 8:30AM-4:30PM at a different school. Actual class time is 7 hours per day.

Will Alex get credit for both Postlicensing courses? Why or why not?

Answer: *Yes. The combined class time during each 7-day period is only 21 classroom hours.*

THIS PAGE INTENTIONALLY LEFT BLANK.

Section 6

LICENSING & EDUCATION



1. Sam is a “full” broker. He fails to complete all CE by June 10, 2019 but pays the \$45 renewal fee by June 30, 2019.
 - a) What will be the status of Sam’s license on July 1, 2019? _____
 - b) May Sam continue working with clients and customers? _____
 - c) What must Sam do to reinstate his license on active status until Dec. 31, 2019?
Step 1: _____
Step 2: _____

2. Jackie has an active NC broker license. She pays her renewal fee every year and takes CE. One of Jackie’s friends wants to sell her house and asks her to recommend a broker.
 - a) May Jackie refer her friend to a broker and collect a referral fee? _____
 - b) Would the answer to (a) change if Jackie makes the referral while her license is inactive? _____

3. Chris is the designated BIC for ABC Realty. 6 provisional brokers are affiliated with his office. Chris completes the correct CE by June 10 but forgets to renew his license by June 30.
 - a) What will be the status of Chris’s license on July 1? _____
 - b) What will be the license status of the six (6) PB’s? _____
 - c) What must Chris do to reinstate his license on active status? _____
 - d) Once Chris’s license is active, what must he do to regain BIC Eligible status and BIC designation? _____

LEARNING OBJECTIVES

After completing this Section, you should be able to:

- define license categories and statuses;
- explain how to maintain a current and active license;
- describe how to attain *BIC Eligible* status;
- explain how to request or terminate BIC designation;
- explain how to regain *BIC Eligible* status and BIC designation; and
- describe the new format of the Commission’s distance 12-hour Broker-in-Charge Course.

LICENSE CATEGORIES AND STATUSES

Category: Individual Broker License

North Carolina is a “broker only” state, meaning there are not separate salesperson and broker licenses. Instead, there are several categories of the individual broker license as follows:

Provisional Broker (PB) Status

- Entry-level license status.
- A PB must be under the supervision of a BIC to be on active status and legally provide brokerage services.
- Until June 30, 2020, a PB must complete at least one 30-hour Postlicensing course each year by the license anniversary date to maintain active license status.
- Beginning July 1, 2020, a PB must complete the 90-hour Postlicensing education program within 18 months of initial licensure to maintain active license status.

Broker (B) Status

- Primary individual license status.
- A “full” broker can engage in brokerage:
as an affiliated agent of a real estate brokerage company
(firm or sole proprietorship) under a (BIC),

OR

independently as a sole proprietor or an entity. In such case, the broker must also be designated as BIC.

BIC Eligible Status

This status is granted to a broker who has...

- satisfied the qualification requirements for BIC Eligible status;
- submitted a *Request for BIC Eligible Status and/or BIC Designation* form (REC 2.25); and
- successfully completed the *12-hour Broker-in-Charge Course* within one year prior to or 120 days after submitting form REC 2.25.

Broker-in-Charge (BIC) Designation

- A broker with BIC Eligible status may be designated as broker-in-charge (BIC).
- Each real estate firm or sole proprietorship must have a BIC for each office.
- A BIC is responsible for:
 - (1) assuring that all brokers employed at the office are maintaining active, current licenses and are maintaining up-to-date information in Commission records;
 - (2) notifying the Commission of firm name or address changes;
 - (3) advertising;
 - (4) maintaining trust/escrow account(s);
 - (5) retaining records;
 - (6) supervising provisional brokers;
 - (7) ensuring that all affiliated brokers are adhering to agency agreement and disclosure requirements; and
 - (8) notifying the Commission in writing that he or she is no longer serving as BIC of a particular office within 10 days following any such change.

Category: Firm License

- This license is issued to a business entity, such as a corporation, limited liability company, limited partnership, general partnership, association, or joint business venture.
- A sole proprietorship does NOT need a firm license because no entity has been created.

Category: Limited Nonresident Commercial License (LCB)

A limited nonresident commercial broker (LCB) license is a license issued to a person who:

- does NOT live in North Carolina (NC),
- has an active real estate broker or salesperson license in another state,
- wants to enter NC to engage in a commercial transaction, and
- must enter into a Declaration of Affiliation and a Brokerage Cooperation Agreement with a resident NC broker who will be responsible for supervising the nonresident.

This restricted license permits the nonresident to enter NC to engage only in “commercial real estate transactions” as defined in Commission Rule 58A .1802(1).

If the LCB obtains any home, business or delivery address in North Carolina, the individual must apply for and obtain a NC broker license in order to engage in brokerage.

CURRENT AND ACTIVE LICENSURE

To lawfully engage in brokerage activity, an individual or entity must have a **CURRENT** real estate broker license on **ACTIVE STATUS** at the time the licensee provides the brokerage services.

Renewing a license every year allows the person or entity to keep the license; if the person/entity fails to pay the annual renewal fee on time, the person/entity no longer has a license. One may renew and keep a license for years without it being on active status, but those with licenses on **inactive status** may **NOT** engage in brokerage services during that period.

Current vs. Expired **INDIVIDUAL BROKER** Licenses



CURRENT license status means the annual renewal fee (\$45) was paid between May 15-June 30.



EXPIRED license status means the renewal fee was not paid prior to June 30 and the person/entity no longer has a license.

ALL LICENSES EXPIRE ON JUNE 30.

Brokers, firms, and LCBs must renew their licenses every year between May 15 and June 30. A licensee must have a Current license on Active status to legally engage in brokerage.

The \$45 renewal fee...

- must be received by the Commission by 11:59:59 pm on June 30.
- must be paid online at the Commission's website.

There is no grace period. If your license expires on June 30, you may not engage in brokerage activities on July 1. You may not resume brokerage practice until your license has been reinstated and back on "active" status.

Brokers who serve in the military and are on active deployment during the renewal period may be granted special consideration under federal law.

Reinstating an Expired Individual License (21 NCAC 58A .0505)

License expired up to 6 months:

Pay \$90 reinstatement fee online.

NOTE: To regain active status, a license activation form (**REC 2.08**) must be submitted.

License expired more than 6 months and up to 2 years:

1. Successfully complete one 30-hour Postlicensing course (course must be completed within 6 months prior to submitting reinstatement application);
2. submit a reinstatement application with \$90 application fee and all required documentation, including criminal background report; and
3. submit license activation form (**Rec 2.08**).

-OR-

1. Submit a reinstatement application with \$90 application fee and all required documentation, including criminal background report;
2. pass National and State sections of license exam; and
3. submit license activation form (**Rec 2.08**).

License expired more than 2 years: START OVER AS IF NEVER LICENSED

1. Successfully complete 75-hour NC Broker Prelicensing course;
2. Submit a license application with \$100 original application fee and all required documentation, including criminal background report; and
3. Pass National and State sections of license exam.

For a detailed review of reinstatement requirements, please visit the “Reinstate your License” page on the Commission’s website. You may also contact the Commission’s Education & Licensing Division for specific instructions.

Current vs. Expired FIRM License

Firm licenses must be renewed each year by paying the \$45 renewal fee during the May 15-June 30 period.

The QB (Qualifying Broker) must renew the entity’s license each year (as well as his/her individual broker license) and periodically verify with the North Carolina Secretary of State’s Office that the company remains in good standing.

An entity that fails to renew its license by June 30 will not have a license as of July 1.

Reinstating an Expired FIRM License (21 NCAC 58A .0505)

Firm license expired up to 6 months:

Pay \$90 reinstatement fee online.

NOTE: If the QB's individual broker license is on active status, the firm's license will be returned to active status as soon as the reinstatement fee is processed.

Firm license expired more than 6 months and up to 2 years:

Submit a firm reinstatement application with \$90 application fee and all required documentation.

Firm license expired more than 2 years:

Submit a firm license application with \$100 original application fee and all required documentation.

Active vs. Inactive INDIVIDUAL BROKER Licenses

To legally receive any income from brokerage activity, including referral fees, you must have an ACTIVE North Carolina license at the time you provide the brokerage service or make the referral.

To maintain active status, brokers* must both timely renew their licenses and complete the appropriate 8 hours of Continuing Education by June 10 each year.

*Provisional Brokers must also timely complete Postlicensing Education and be affiliated with a BIC to maintain active status.

Continuing Education (CE)

MINIMUM REQUIRED CE:

Provisional Brokers and non-BIC Brokers must take:	Brokers with BIC Eligible status/BIC Designation* must take:
GenUp (General Update) AND ONE Commission-approved Elective Between July 1 - June 10	BICUP (Broker-in-Charge Update) AND ONE Commission-approved Elective Between July 1 - June 10

*To determine whether you have BIC Eligible status and/or BIC designation, log into your license record on the Commission's website.

If you don't complete the correct CE courses by June 10, your license will be changed to "inactive" status on July 1. You must CEASE all brokerage activity at 12:01 am on July 1. You may not resume brokerage practice until your license is back on "active" status.



I took the Update in May but forgot to take an elective by June 10. Can I go online and take an elective on June 12?

Answer: No. NC licensees may not take courses for CE credit from June 11 through June 30, and providers of NC real estate CE courses are not allowed to offer CE during the period. This period is used as an administrative period, during which CE providers upload CE course results and the Commission updates its databases to determine which licensees will have active status as of July 1.



***My license is Inactive because I didn't take CE.
What do I need to do to reactivate it?***

Answer: It depends on how long your license has been on inactive status.

Individual broker license on Inactive status with NO CE deficiency:

Submit the License Activation form (REC 2.08 - available online).

Individual broker license on Inactive status for LESS THAN 2 license years with a CE deficiency:

Complete the current year's CE requirement in full (i.e., take the General Update + 1 Commission-approved elective),

AND

take either 1 or 2 approved electives to make up for the number of hours you did not complete during the preceding license year;

AND THEN

submit the License Activation form (REC 2.08 - available online).

Individual broker license on Inactive status for MORE THAN 2 license years with a CE deficiency:

Successfully complete two 30-hour Postlicensing courses (courses must be completed within 6 months prior to submitting activation form),

AND

complete the current year's CE requirement in full (i.e., take the General Update + 1 Commission-approved elective);

AND THEN

submit the License Activation form (REC 2.08 - available online).

NOTE:

The Commission doesn't automatically activate licenses.

A broker (or the BIC with whom the broker will be affiliated) must submit the License Activation form (REC 2.08) to notify the Commission of the broker's desire for Active status and of the office with which s/he will be affiliated and doing business.



Since entities don't take education, what determines whether a firm's license is on active or inactive status?

The firm must have a QB (Qualifying Broker) whose license is on active status. As long as the firm has an actively licensed QB, and the firm's license is timely renewed, the firm license will remain active.

If the QB's license expires or is inactive on July 1, the firm's license will also be inactive, meaning no brokers may engage in brokerage under the firm's umbrella. While losing a BIC only takes one office down, ***losing a QB takes the entire firm down.***

In such case, the firm license cannot be activated until either the QB's license has returned to active status or the firm appoints a new QB. Note that even if the firm license is active, the firm cannot legally perform brokerage at any office location without a designated BIC.

Postlicensing Education

Until June 30, 2020, a PB must complete at least one 30-hour Postlicensing course each year by the license anniversary date to maintain active license status.

Beginning July 1, 2020, a PB must complete the 90-hour Postlicensing education program within 18 months of initial licensure to maintain active license status.



What are the Postlicensing courses?

Answer: Post 301-Broker Relationships & Responsibilities, Post 302-Contracts & Closing, and Post 303-NC Law, Rules, and Legal Concepts. Course syllabi are available on the Commission’s website.



Do I have to take the Postlicensing courses in a certain order?

Answer: No. Postlicensing courses may be taken in any sequence. However, the Commission recommends that you follow the course number sequence (301, 302, & 303), as course materials were developed with that sequence in mind.



When do I have to complete the Postlicensing courses?

Answer: Currently, Rule 58A .1902 requires a PB to complete at least one of the 30-hour courses during each of the first three years following the date of their initial licensure as a broker in order to retain eligibility to actively engage in real estate brokerage.

Beginning July 1, 2020, a PB will be required to complete the Postlicensing Education program within 18 months of initial licensure. In other words, all three Postlicensing courses - Post 301, Post 302, and Post 303 - must be completed within 18 months of licensure if the PB wishes to maintain active license status. [See Section 5 for more information and examples.]



Can I get CE credit for Postlicensing courses?

Answer: No. Postlicensing courses do not provide CE credit.



Are there course exams in Postlicensing courses?

Answer: Yes, and you must pass the end-of-course examinations to successfully complete the courses.



What happens if I don’t take the Postlicensing courses before the deadline?

Answer: If you do not take the courses before the deadline, your license will be placed on inactive status. You may NOT perform any brokerage activities or collect brokerage fees (including referral fees) while your license is Inactive. Refer to Rule 58A.1902.



Where can I take the Postlicensing courses?

Answer: The courses are offered by the same schools that conduct the Prelicensing course. A list of approved schools is available on the Commission’s website.

SUMMARY: Maintaining a Current and Active License

Provisional Brokers	“Full” Brokers (non-BIC)	Brokers-in-Charge AND Brokers with BIC Eligible Status
<p>Renew license each year between May 15-June 30</p> <p>Complete GenUP + 1 Elective by June 10 each year (after first renewal)</p> <p>Timely complete three 30-hour Postlicensing courses.</p> <p>Maintain affiliation with a BIC</p>	<p>Renew license each year between May 15-June 30</p> <p>Complete GenUP + 1 Elective by June 10 each year</p>	<p>Renew license each year between May 15-June 30</p> <p>Complete BICUP + 1 Elective by June 10 each year</p>



May has renewed her “full” broker license every year but hasn’t taken any CE since 2016.

- What is the status of May’s license? _____
- How many classes must May take to activate her license? _____
- Which classes must she take? _____
- Will May’s license be “active” once she completes the course(s)? YES / NO
Why or Why not? _____
- Assume May was a BIC before her license changed to “inactive” status. Will that change the courses she should take now to reactivate? YES / NO
- When she reactivates, will she be a BIC? YES / NO

BIC ELIGIBLE STATUS AND BROKER-IN-CHARGE DESIGNATION

As of July 1, 2018, in order for a broker to designate as a BIC for a sole proprietorship, real estate firm, or branch office, a broker must FIRST have BIC Eligible status.

Obtaining BIC Eligible Status

To qualify for and obtain BIC Eligible Status, a broker must:

1. hold a **“full” broker license** (not provisional) **on active status**;
AND
2. have acquired at least **2 years of full-time** or 4 years of part-time real estate **brokerage experience within the previous 5 years** or be a North Carolina licensed attorney with a practice that consisted primarily of handling real estate closings and related matters in North Carolina for 3 years immediately preceding application;
AND
3. submit the ***Request for BIC Eligible Status and/or BIC Designation form (REC 2.25)***;
AND
4. complete the Commission’s ***12-hour Broker-in-Charge Course*** no earlier than one year prior to and no later than 120 days after submission of form REC 2.25.



What is “full-time” brokerage experience?

Answer: The intent is that the individual’s primary occupation is real estate brokerage. Accordingly, the rough formula is:
 $50 \text{ weeks/year at } 40 \text{ hours per week} = 2000 \text{ hours/year} \times 2 \text{ years} = 4000 \text{ hours total.}$
Thus, if a broker has acquired 4000 hours of brokerage experience within a five-year period, the broker may request BIC Eligible status.

Note: Merely taking the *12-hour Broker-in-Charge Course* does NOT automatically make you BIC Eligible. You will not gain BIC Eligible status until you submit the ***Request for BIC Eligible Status and/or BIC Designation form (REC 2.25)***.



What will happen if I obtain BIC Eligible status, but I don’t complete the 12-hour Broker-in-Charge course within 120 days?

Answer: Your BIC Eligible status will be terminated, and it will not be re-granted until the course is completed.



I am a nonresident. Do I have to take the 12-hour Broker-in-Charge Course?

Answer: Yes. The Commission offers a distance version of the *12-hour Broker-in-Charge Course*. Contact the Commission's Education and Licensing Division for more information and to register.

Broker-in-Charge Designation

Once a broker has obtained BIC Eligible status, the broker may step in and out of active Broker-in-Charge designation by submitting a request form.

As long as the broker maintains BIC Eligible status by timely renewing his/her license and completing the correct CE each year, the broker will not be required to take the *12-hour Broker-in-Charge Course* upon redesignation.

Requesting Broker-in-Charge Designation:

Submit the ***Request for BIC Eligible Status and/or BIC Designation form (REC 2.25)***. You must indicate the firm or sole proprietorship for which you will be serving as BIC.

Terminating Broker-in-Charge Designation:

If another broker submits a *Request for BIC Eligible Status and/or BIC Designation form* to be designated as the BIC at your office, your BIC designation will be automatically terminated when the new BIC's form is processed.

However, if you wish to be removed as BIC immediately, you may submit a *Request for Termination of Affiliation form (REC 2.22)*.



I am not BIC Eligible, but I need to be designated as BIC right away. Can I request BIC Eligible status and BIC designation at the same time?

Answer: Yes. The ***Request for BIC Eligible Status and/or BIC Designation form (REC 2.25)*** enables a broker to request both statuses at the same time.

Maintaining BIC Eligible Status and BIC Designation

A broker may maintain BIC Eligible status and BIC designation by:

- renewing his/her license between May 15-June 30 each year;
AND
- completing the BICUP (Broker-in-Charge Update) course plus 1 Commission-approved elective by June 10 each year.



When do I have to begin taking the BICUP course?

Answer: Immediately. As of July 1, 2018, Commission Rule 58A .0110(h) states:

A broker holding BIC Eligible status shall take the Broker-in-Charge Update Course during the license year of designation, unless the broker has satisfied the requirements of Rule .1702 of this Subchapter prior to designation.



FOR DISCUSSION

1. Broker Alex completes the General Update (GENUP) course and a four-hour elective on February 7, 2020. On March 5, 2020, he submits a *Request for BIC Eligible Status and/or BIC Designation* form (REC 2.25) to the Commission to request BIC Eligible Status. The form is processed on March 15, 2020.

Does Alex need to take the BICUP course by June 10, 2020? Why or why not?

2. Broker Pam submits a *Request for BIC Eligible Status and/or BIC Designation* form (REC 2.25) to the Commission and it is processed on April 25, 2020. Pam has not completed her CE for the current license year.

Which CE courses must Pam take in order to maintain BIC Eligible status, and when must she complete the courses?

Loss of BIC Eligible Status and BIC Designation

BIC Eligible status and BIC designation will be lost if:

- the broker’s license is inactive, expired, surrendered, suspended, or revoked, OR
- the broker fails to take the BICUP course during any license year.



What happens to the licenses of affiliated brokers in an office if a BIC's license expires or goes inactive?

When a BIC's license expires or goes inactive on July 1, his/her office may not continue to provide brokerage services. The "full" brokers will still be on active status but will no longer be affiliated with the company, and all provisional brokers will be on inactive status.



How can the office get back in business while the former BIC is expired or inactive?

Answer:

It depends on whether the former BIC was acting only as BIC for an office or was both BIC for the office and QB for the entity.

If the former BIC was serving only as BIC...

The firm still has an active license, but brokerage services may NOT be legally provided at this office location without a designated BIC.

The QB may appoint a new broker to serve as BIC and direct that broker to submit a ***Request for BIC Eligible Status and/or BIC Designation form (REC 2.25)*** to the Commission. Once the form is processed, the newly designated BIC must file activation/affiliation forms (REC 2.08) to re-associate all full and provisional brokers with the office.

If the former BIC was both the BIC and the QB...

The firm's license will be on inactive status (assuming the firm's license was timely renewed) because it doesn't have a QB.

As long as the QB's license is on inactive status the firm's license will also be on inactive status, meaning the company may NOT legally engage in brokerage anywhere in NC. The firm's license will remain on inactive status until EITHER the former QB activates his/her individual license OR the QB is replaced. To inform the Commission of a new QB, the ***Change in Qualifying Broker form (REC 2.20)*** must be submitted.

Then, the QB may appoint a broker to serve as BIC and direct that broker to submit a ***Request for BIC Eligible Status and/or BIC Designation form (REC 2.25)*** to the Commission. Once the form is processed, the newly designated BIC must file activation/affiliation forms (REC 2.08) to re-associate all full and provisional brokers with the office.

Regaining BIC Eligible Status and Broker-in-Charge Designation

A broker who attains but later loses BIC Eligible status must complete the following steps in the order indicated to regain the status.

1. Do whatever is necessary to return the license to active status, i.e., pay reinstatement fee and/or complete required continuing education;
THEN
2. Submit the *License Activation form (REC 2.08)* to the Commission;
THEN
3. Complete the Commission's *12-hour Broker-in-Charge Course*,
AND THEN
4. Submit the *Request for BIC Eligible Status and/or BIC Designation form (REC 2.25)* requesting BIC Eligible status (and BIC designation if needed).

NOTE: You must meet the qualification requirements for BIC Eligible status as prescribed by Rule 58A .0110(e)(6)(b).

12-HOUR BROKER-IN-CHARGE COURSE

The Commission's 12-hour Broker-in-Charge course has changed. **Effective October 2019**, the course is comprised of two segments, an 8-hour online prerequisite segment and a 4-hour live instruction segment. Both segments must be completed within the same 120-day period.

Licensees will register for both segments of the 12-hour Broker-in-Charge course at the same time.

The 8-hour online segment is a required prerequisite for the 4-hour live segment. A licensee who has not completed the 8-hour segment will not be permitted entry into the 4-hour live segment.

Upon timely completion of the 4-hour live segment, a licensee will be awarded 4 hours of CE elective credit in the license year the course was completed.



Will the Broker-in-Charge course still be offered in the traditional 12-hour live classroom format?

No. The 12-hour Broker-in-Charge course will only be offered via the new format.



What happens if I fail to complete the first 8 hours of instruction within 120 days?

If a broker fails to complete both segments of the 12-hour course within a 120-day period, the broker will be required to register and pay for the course again and will be required to restart the course.



What happens if I complete the 8-hour segment but fail to complete the 4-hour segment within 120 days?

If a broker fails to complete both segments of the 12-hour course within a 120-day period, the broker will be required to register and pay for the course again and will be required to restart the course.

ANSWERS TO DISCUSSION QUESTIONS

For Discussion on page 77

1. Sam is a “full” broker. He fails to complete any CE by June 10, 2019 but pays the \$45 renewal fee by June 30, 2019.
 - a. What will be the status of Sam’s license on July 1?
Answer: Inactive
 - b. May Sam continue working with clients and customers?
Answer: No. He does not have an active license.
 - c. What must Sam do to reinstate his license on active status between July 1-Dec. 31, 2019?
Step 1: Answer: Complete the current year’s CE requirement in full AND take 2 approved electives to make up for the number of hours he did not complete during the preceding license year.
Step 2: Answer: Submit an Activation form (REC 2.08), showing affiliation with a BIC if he intends to actively practice full brokerage.

2. Jackie has an active NC broker license. She pays her renewal fee every year and takes CE. One of Jackie’s friends wants to sell her house and asks her to recommend a broker.
 - a. May Jackie refer her friend to a broker and collect a referral fee?
Answer: Yes. Jackie’s license is on Active status when she makes the referral.
 - b. Would the answer to (a) change if Jackie makes the referral while her license is inactive?
Answer: Yes, because her license must be on Active status when she makes the referral in order to legally accept a fee.

3. Chris is the designated BIC for ABC Realty. 6 provisional brokers are affiliated with his office. Chris completes the correct CE by June 10 but forgets to renew his license by June 30.
 - a. What will be the status of Chris’s license on July 1?
Answer: Expired. Chris will no longer have a license.
 - b. What will be the license status of the six (6) provisional brokers?
Answer: The six provisional brokers will be on inactive status at their home addresses because they no longer have a supervising BIC.
 - c. What must Chris do to reinstate his license on active status?
Answer: Chris must:
pay the \$90 reinstatement fee online before December 31; and
submit the License Activation form (REC 2.08).
 - d. Once Chris’s license is active, what must he do to regain BIC Eligible status and BIC designation?
Answer:
Step 1: Complete the Commission’s *12-hour Broker-in-Charge Course*, regardless of when Chris last took it.
Step 2: Submit the *Request for BIC Eligible Status and/or BIC Designation* form (REC 2.25) to request BIC Eligible status and BIC designation.
Step 3: Submit affiliation forms online (REC 2.08) to re-associate his six provisional brokers.

For Discussion on page 86

May has renewed her “full” broker license every year but hasn’t taken any CE since 2016.

- a. What is the status of May’s license?

Answer: Inactive.

- b. How many classes must May take to activate her license?

Answer: 4 classes totaling 68 hours (two 30-hour Postlicensing courses PLUS GenUp PLUS an elective)

- c. Which classes must she take?

Answer: Two 30-hour Postlicensing courses PLUS current year’s GenUp PLUS one Commission-approved elective.

- d. Will May’s license be “active” once she completes the course(s)?

Answer: No, because she still needs to submit the License Activation form.

- e. Assume May was a BIC before her license changed to “inactive” status. Will that change the courses she should take now to reactivate?

Answer: No, because she lost BIC Eligible status when her license became inactive.

- f. When she reactivates, will she be BIC or BIC Eligible?

Answer: No. She still needs to take the 12-hour BIC Course and file form REC 2.25.

Note: At this point she may not have the requisite brokerage experience to qualify again to be a BIC.

For Discussion on page 89

1. Broker Alex completes the General Update (GENUP) course and a four-hour elective on February 7, 2020. On March 5, 2020, he submits a *Request for BIC Eligible Status and/or BIC Designation* form (REC 2.25) to the Commission and it is processed on March 15, 2020.

Does Alex need to take the BICUP course by June 10, 2020? Why or why not?

Answer: *No, because Alex completed the GENUP course prior to receiving BIC Eligible status. Therefore, he took the appropriate Update course according to his license status in February. He will have to take the BICUP in the upcoming license year.*

2. Broker Pam submits a *Request for BIC Eligible Status and/or BIC Designation* form (REC 2.25) to the Commission and it is processed on April 25, 2020. Pam has not completed her CE for the current license year.

Which CE courses must Pam take in order to maintain BIC Eligible status, and when must she complete the course(s)?

Answer: Pam must take the BICUP and one elective by June 10, 2020.