

Burgos, Alexander N

Subject: FW: [External] RE: RFC for Rules Review Commission May 2023

From: Ascher, Seth M <seth.ascher@oah.nc.gov>
Sent: Thursday, May 11, 2023 4:42 PM
To: Melissa A. Vuotto <Melissa@NCREC.GOV>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: [External] RE: RFC for Rules Review Commission May 2023

Melissa,

I have finished reviewing the Commission's responses and revisions. At this point, I anticipate recommending that the RRC approve the updated rule package. If anything new comes up, I'll let you know.

Sincerely,

Seth Ascher
Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984) 236-1934

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

Burgos, Alexander N

Subject: FW: [External] RE: RFC for Rules Review Commission May 2023
Attachments: 21 NCAC 58A .1705.docx; 21 NCAC 58A .1708.docx; 21 NCAC 58H .0202.docx; 21 NCAC 58H .0216.docx; 21 NCAC 58H .0307.docx; RFC Real Estate Commission_REC Response.docx; 21 NCAC 58A .0113.docx; 21 NCAC 58A .0301.docx; 21 NCAC 58A .0505.docx

From: Melissa A. Vuotto <Melissa@NCREC.GOV>
Sent: Tuesday, May 9, 2023 2:09 PM
To: Ascher, Seth M <seth.ascher@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: [External] RE: RFC for Rules Review Commission May 2023

CAUTION: External email. Do not click links or open attachments unless verified. Report suspicious emails with the Report Message button located on your Outlook menu bar on the Home tab.

Good afternoon Seth,

Attached are the Commission's responses to the technical changes along with the revised rules. Please let me know if there's any further changes or clarifications that can be made.

Thank you,



Melissa Vuotto
Paralegal Supervisor
Regulatory Affairs Division
North Carolina Real Estate Commission
Phone 919-875-3700, ext. 142
Web www.ncrec.gov **Email** melissa@ncrec.gov
P.O. Box 17100, Raleigh, NC 27619-7100



North Carolina State Bar Certified Paralegal

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by authorized state officials.

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Real Estate Commission

RULE CITATION: 21 NCAC 58A .0113

DEADLINE FOR RECEIPT: May 12, 2023

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

How is "a notarial commission sanction" (lines 14 and 26) different from a "disciplinary action" (lines 11 and 26)? **IN ORDER TO CLARIFY THAT A NOTARIAL COMMISSION SANCTION IS A DISCIPLINARY ACTION, THE COMMISSION FELT IT WAS IMPORTANT TO LIST IT SEPARATELY TO AVOID CONFUSION.**

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Seth Ascher
Commission Counsel
Date submitted to agency: May 1, 2023

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Real Estate Commission

RULE CITATION: 21 NCAC 58A .0301

DEADLINE FOR RECEIPT: May 12, 2023

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*On line 28, you are missing a word. Consider, "In addition to **the application required by Paragraph(a)**" – LANGUAGE REVISED*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Real Estate Commission

RULE CITATION: 21 NCAC 58A .0505

DEADLINE FOR RECEIPT: May 12, 2023

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*On lines 21 and 22, what is the difference between a “notarial commission sanction” and a “disciplinary action”? See comment on 21 NCAC 58A .0113. **IN ORDER TO CLARIFY THAT A NOTARIAL COMMISSION SANCTION IS A DISCIPLINARY ACTION, THE COMMISSION FELT IT WAS IMPORTANT TO LIST IT SEPARATELY TO AVOID CONFUSION.***

*G.S. 93A-4.1 was repealed in 2020, so this should not be in your history note. Does this change the board’s authority regarding this rule? **NO, 4.1 WAS REPEALED AND REPLACED WITH NCGS 93A-38.5, HISTORY NOTE AMENDED***

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Real Estate Commission

RULE CITATION: 21 NCAC 58A .1705

DEADLINE FOR RECEIPT: May 12, 2023

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In reviewing this Rule, the staff recommends the following changes be made:

*G.S. 93A-4.1 was repealed in 2020, so this should not be in your history note. How does this change the board's authority regarding this rule? **NO, 4.1 WAS REPEALED AND REPLACED WITH NCGS 93A-38.5, HISTORY NOTE AMENDED***

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Seth Ascher
Commission Counsel
Date submitted to agency: May 1, 2023

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Real Estate Commission

RULE CITATION: 21 NCAC 58A .1708

DEADLINE FOR RECEIPT: May 12, 2023

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*On page 2, line 20, consider adding a time zone, i.e. "5:00 p.m. **Eastern Time** on".*
LANGUAGED REVISED

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Real Estate Commission

RULE CITATION: 21 NCAC 58A .1711

DEADLINE FOR RECEIPT: May 12, 2023

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The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

No changes.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Seth Ascher
Commission Counsel
Date submitted to agency: May 1, 2023

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Real Estate Commission

RULE CITATION: 21 NCAC 58B .0202

DEADLINE FOR RECEIPT: May 12, 2023

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

No changes.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Seth Ascher
Commission Counsel
Date submitted to agency: May 1, 2023

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Real Estate Commission

RULE CITATION: 21 NCAC 58H .0202

DEADLINE FOR RECEIPT: May 12, 2023

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The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

On p. 2, line 7, I'm not sure "shall be prohibited from filing an application" is consistent with your authority. As written, the filing of the application would be a new violation of the rule. Do you mean that the agency would "deny issuance" of a license in these circumstances under G.S. 93A-38? **YES, THE COMMISSION WOULD DENY A LICENSE IS FILED WITHIN ONE YEAR - LANGUAGE REVISED**

How will the agency determine whether someone has "an ownership interest of 10 percent or greater"? **THE COMMISSION REVIEWS THE NC SECRETARY OF STATE'S FILINGS BASED ON THE NCSOS'S IDENTIFICATION NUMBER SUBMITTED IN THE APPLICATION TO DETERMINE OWNERSHIP INTEREST.**

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Real Estate Commission

RULE CITATION: 21 NCAC 58H .0216

DEADLINE FOR RECEIPT: May 12, 2023

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

What happens when a written petition is submitted? Does another rule establish how the decision can be revisited? **21 NCAC 58H .0216 IS THE PROCESS FOR REVIEWING THE DETERMINATION MADE BY 21 NCAC 58H .0210(c). IF AN EDUCATION PROVIDER'S CERTIFICATE IS LIMITED PURSUANT TO 58H .0210(c), THE EDUCATION PROVIDER MAY SUBMIT A WRITTEN PETITION FOR THE DETERMINATION TO BE RECONSIDERED BY THE COMMISSION.**

LANGUAGE ADDED IN PARAGRAPH (c) TO CLARIFY THE PROCESS.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Real Estate Commission

RULE CITATION: 21 NCAC 58H .0302

DEADLINE FOR RECEIPT: May 12, 2023

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The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

No changes.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Seth Ascher
Commission Counsel
Date submitted to agency: May 1, 2023

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Real Estate Commission

RULE CITATION: 21 NCAC 58H .0307

DEADLINE FOR RECEIPT: May 12, 2023

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

What happens when a written petition is submitted? Does another rule establish how the decision can be revisited? **21 NCAC 58H .0307 IS THE PROCESS FOR REVIEWING THE DETERMINATION MADE BY 21 NCAC 58H .0303(b). IF AN INSTRUCTOR'S APPROVAL IS LIMITED PURSUANT TO 58H .0303(b), THE INSTRUCTOR MAY SUBMIT A WRITTEN PETITION FOR THE DETERMINATION TO BE RECONSIDERED BY THE COMMISSION.**

LANGUAGE ADDED IN PARAGRAPH (c) TO CLARIFY THE PROCESS.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

1 21 NCAC 58A .0113 is amended with changes as published in 37:16 NCR 1107 as follows:

2
3 **21 NCAC 58A .0113 REPORTING CRIMINAL CONVICTIONS AND DISCIPLINARY ACTIONS**

4 ~~(a) Any broker who is convicted of any felony or misdemeanor, or who is disciplined by or enters into a conciliation~~
5 ~~agreement or consent order with any governmental agency in connection with any occupational license, or whose~~
6 ~~notarial commission is restricted, suspended, or revoked, shall file with the Commission a Criminal Conviction~~
7 ~~Disciplinary Action Reporting Form of such conviction or action within 60 days of the final judgment, order, or~~
8 ~~disposition in the case. A broker shall file with the Commission a Criminal Conviction Disciplinary Action Reporting~~
9 ~~Form within 60 days of:~~

10 (1) a final judgment, order, or disposition of any felony or misdemeanor conviction;

11 (2) a disciplinary action or entering into a conciliation agreement or consent order with a governmental
12 agency or occupational licensing agency;

13 (3) a final judgment, order, or disposition of a military court-martial conviction; or

14 (4) a notarial commission sanction pursuant to G.S. 10B-60.

15 (b) The Criminal Conviction Disciplinary Action Reporting Form is available on the Commission's website at
16 www.ncrec.gov or upon request to the Commission. In the Form, the broker Commission and shall set forth the
17 broker's:

18 (1) full legal name;

19 (2) physical and mailing address;

20 (3) real estate license number;

21 (4) telephone number;

22 (5) email address;

23 (6) social security number;

24 (7) date of birth; and

25 (8) description of the criminal conviction and disciplinary conviction, military court-martial conviction,
26 notarial commission sanction, or professional license disciplinary action, including the jurisdiction
27 and file number.

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29 *History Note: Authority G.S. 93A-3(c); 93A-6(a); 93A-6(a)(10); 93A-6(b)(2);*

30 *Eff. August 1, 1996;*

31 *Amended Eff. July 1, 2016; July 1, 2009; January 1, 2008; April 1, 2006; July 1, 2003; July 1, 2000;*

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

33 *May 1, 2018;*

34 *Amended Eff. July 1, 2023.*

21 NCAC 58A .0301 is amended with changes as published in 37:16 NCAC 1108 as follows:

SECTION .0300 – APPLICATION FOR LICENSE

21 NCAC 58A .0301 FORM LICENSE APPLICATION

~~An individual or business entity who wishes to file an application for a broker license shall make application on a form prescribed by the Commission and may obtain the required form upon request to the Commission. The application form for an individual calls for the applicant's name and address, the applicant's social security number, proof of the applicant's identity, places of residence, education, prior real estate licenses, and other information necessary to identify the applicant and determine the applicant's qualifications and fitness for licensure. The application form for a business entity is described in Rule .0502 of this Section.~~

(a) An individual seeking licensure as a real estate broker shall submit a license application that is available on the Commission's website and shall include the applicant's:

- (1) legal name;
- (2) mailing, physical, and email address;
- (3) telephone number;
- (4) social security number and date of birth;
- (5) qualification for license application;
- (6) real estate license history;
- (7) places of residence for the past seven years;
- (8) employment history for the past three years;
- (9) criminal offenses, military courts-martial convictions, professional license disciplinary actions, including the jurisdiction, file number, and explanation of each offense;
- (10) liens or unpaid judgments;
- (11) certification the applicant has read the Real Estate Licensing in North Carolina brochure that is available on the Commission's website; and
- (12) declaration and signature.

(b) In addition to the application required by Paragraph (a) of this Rule, the applicant shall submit:

- (1) the license application fee pursuant to Rule .0302 of this Section; and
- (2) a criminal records report from a [designated] Commission-designated criminal reporting service obtained within six months prior to application submission.

*History Note: Authority G.S. 93A-3(c); 93A-4(a),(b),(d);-93A-4;
Eff. February 1, 1976;
Readopted Eff. September 30, 1977;
Amended Eff. April 1, 2006; July 1, 2000; February 1, 1991; February 1, 1989; August 1, 1988;
December 1, 1985;*

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*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. ~~May 1, 2018.~~
May 1, 2018;
Amended Eff. July 1, 2023.*

1 21 NCAC 58A .0505 is amended with changes as published in 37:16 NCAC 1108 as follows:

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3 **21 NCAC 58A .0505 REINSTATEMENT OF A LICENSE**

4 (a) The fee for reinstatement of a license that has been expired, revoked, or surrendered for less than two years shall
5 be an amount equal to two times the current renewal license fee pursuant to Rule .0503 of this Section.

6 (b) The reinstatement application form is available on the Commission's website and shall include the applicant's:

- 7 (1) legal name;
- 8 (2) mailing, physical, and email address;
- 9 (3) telephone number;
- 10 (4) previous license number;
- 11 (5) Secretary of State identification number, if applicable;
- 12 (6) social security number and date of birth, if applicable;
- 13 (7) qualifying broker and broker-in-charge's legal name and license number, if applicable;
- 14 (8) criminal record report from a designated criminal reporting service obtained prepared within six
15 months ~~of prior to~~ application;
- 16 (9) certification; and
- 17 (10) signature.

18 (c) An individual seeking reinstatement of a license that has been expired for less than six months shall:

- 19 (1) submit the reinstatement fee pursuant to Paragraph (a) of this Rule;
- 20 (2) disclose any criminal ~~conviction or conviction~~, court-martial conviction, notarial commission
21 sanction, or disciplinary action pursuant to Rule .0113 of this Section, including any conviction or
22 disciplinary action incurred while the individual's license was expired; and
- 23 (3) satisfy the license activation requirements of Rule .1703 of this Subchapter, if applicable.

24 (d) An individual seeking reinstatement of a license that has been expired for six months but no more than two years
25 or revoked or surrendered for no more than two years shall:

- 26 (1) submit a complete reinstatement application pursuant to Paragraph (b) of this Rule;
- 27 (2) submit the reinstatement fee pursuant to Paragraph (a) of this Rule; and
- 28 (3) pass:
 - 29 (A) one Postlicensing course within six months prior to submitting ~~his or her a~~ reinstatement
30 application;
 - 31 (B) the "National" and "State" sections of the current license examination within 180 days after
32 submitting ~~his or her a~~ reinstatement application; or
 - 33 (C) the "State" section of the current license examination within 180 days after submitting ~~his~~
34 ~~or her a~~ reinstatement application if the individual possesses an active broker license in
35 another state.

1 (e) An individual seeking reinstatement of a license that has been expired, revoked, or surrendered for more than two
2 years shall submit ~~an original a~~ license application and application fee pursuant to G.S. 93A-4 and ~~Rules .0301 and~~
3 ~~.0302~~ Rules .0301, .0302, and .0511 of this Subchapter.

4 (f) A reinstated license ~~shall be reinstated with the same license number and status, either full or provisional, it held~~
5 ~~before expiration, revocation, or surrender if reinstated within three years from the expiration, revocation, or surrender~~
6 ~~and~~ shall be effective as of the date of reinstatement, not the date of ~~original~~ initial licensure. If a license is reinstated
7 after three years from the expiration, revocation, or surrender, the license shall be on provisional broker status pursuant
8 to G.S. 93A-4(a1).

9 (g) A business entity seeking reinstatement of a license shall submit:

10 (1) the reinstatement fee pursuant to Paragraph (a) of this Rule if the license has been expired for less
11 than six months;

12 (2) the reinstatement fee and a complete reinstatement application pursuant to Paragraphs (a) and (b) of
13 this Rule if the license has been expired for six months but no more than two years or revoked or
14 surrendered for no more than two years; or

15 (3) ~~an original a~~ firm license application pursuant to G.S. 93A-4 and Rules .0301, .0302, and .0502 of
16 this Subchapter if the license has been expired, revoked, or surrendered for more than two years.

17 (h) A broker seeking reinstatement of a license shall satisfy to the Commission that ~~he or she~~ the broker possesses the
18 character requisites pursuant to G.S. 93A-4(b).

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20 *History Note:* Authority G.S. 93A-3(c); 93A-4; 93A-4.1; 93A-38.5;

21 *Eff. February 1, 1976;*

22 *Readopted Eff. September 30, 1977;*

23 *Temporary Amendment Eff. April 24, 1995 for a period of 180 days or until the permanent rule*
24 *becomes effective, whichever is sooner;*

25 *Amended Eff. July 1, 2017; January 1, 2012; July 1, 2009; January 1, 2008; April 1, 2004; July 1,*
26 *2000; August 1, 1998; July 1, 1996; August 1, 1995; July 1, 1995;*

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

28 *Amended Eff. July 1, 2023; July 1, 2018.*

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1 21 NCAC 58A .1705 is amended with changes as published in 37:16 NCR 1109 as follows:

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21 NCAC 58A .1705 ATTENDANCE AND PARTICIPATION REQUIREMENTS

- (a) In order to receive credit for completing an approved continuing education course, a broker shall:
 - (1) attend at least 90 percent of the scheduled instructional hours for the course;
 - (2) provide ~~his or her~~ the broker's legal name and license number to the ~~course sponsor~~; education provider;
 - (3) present ~~his or her~~ the broker's pocket card or photo identification card, if necessary; and
 - (4) personally perform all work required to complete the course.
- (b) With the instructor or the ~~sponsor's~~ education provider's permission, a 10 percent absence allowance may be permitted at any time during the course, except that it may not be used to skip the last 10 percent of the course unless the absence is:
 - (1) approved by the instructor; and
 - (2) for circumstances beyond the broker's control that could not have been reasonably foreseen by the broker, such as:
 - (A) an illness;
 - (B) a family emergency; or
 - (C) acts of God.

*History Note: Authority G.S. 93A-3(c); 93A-4.1; 93A-38.5;
Eff. July 1, 1994;
Amended Eff. July 1, 2017; July 1, 2010;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018;
Amended Eff. July 1, 2023; January 1, 2020.*

1 21 NCAC 58A .1708 is amended with changes as published in 37:16 NCR 1109 as follows:

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3 **21 NCAC 58A .1708 EQUIVALENT CREDIT**

4 (a) The Commission shall award ~~a broker~~ an approved instructor continuing education credit for teaching a
5 Commission Update Course. ~~A broker~~ An approved instructor seeking continuing education credit for teaching a
6 Commission Update Course shall submit a form, available on the Commission's website, that requires the ~~broker~~
7 approved instructor to set forth the:

- 8 (1) ~~broker's~~ approved instructor's name, license number, instructor number, address, telephone number,
9 and email address;
10 (2) Update Course number;
11 (3) education provider's name and number;
12 (4) education provider's address; and
13 (5) date the course was taught.

14 (b) The Commission shall award a broker continuing education elective credit ~~for teaching a Commission approved~~
15 ~~continuing education elective for the first time any given continuing education elective is taught.~~ the first time an
16 approved continuing education elective course is taught by the broker. A broker seeking continuing education credit
17 under this Paragraph shall submit a form, available on the Commission's website, that requires the broker to set forth
18 the:

- 19 (1) broker's name, license number, address, telephone number, and email address;
20 (2) course title;
21 (3) course number;
22 (4) education provider's name and number;
23 (5) education provider's address; and
24 (6) date the course was taught.

25 ~~(c) The Commission may award continuing education elective credit for completion of an unapproved course that the~~
26 ~~Commission finds equivalent to the elective course component of the continuing education requirement set forth in~~
27 ~~21 NCAC 58H .0402. The broker shall submit a course completion certificate issued by the education provider, a copy~~
28 ~~of the course description or course outline, and a fifty dollar (\$50.00) fee for each course for which the broker seeks~~
29 ~~credit. A broker seeking continuing education credit for a course that is not approved by the Commission shall submit~~
30 ~~a form, available on the Commission's website, that requires the broker to set forth the:~~

- 31 ~~(1) broker's name, license number, address, telephone number, and email address;~~
32 ~~(2) course title;~~
33 ~~(3) number of instructional hours;~~
34 ~~(4) course instructor's name; and~~
35 ~~(5) education provider's name, address, telephone number, and email address.~~

36 ~~(d)~~(c) The Commission may award continuing education elective credit for developing a continuing education elective
37 course the first time that it is approved by the Commission pursuant to 21 NCAC 58H .0401. However, a broker shall

1 only receive credit for the year in which the continuing education elective course is approved. A broker seeking
2 continuing education credit under this Paragraph shall submit a form, available on the Commission's website, that
3 requires the broker to set forth the broker's name, license number, address, telephone number, and email address.
4 Along with the form, the broker shall submit the course title, the course number, the date of the course approval, and
5 a fifty dollar (\$50.00) fee for each course for which the broker seeks credit.

6 ~~(e) The Commission may award continuing education elective credit for authoring a real estate textbook. However, a
7 broker shall receive credit for any single textbook only once. A broker seeking continuing education credit under this
8 Paragraph shall submit a form, available on the Commission's website, that requires the broker to set forth the broker's
9 name, license number, address, telephone number, and email address. Along with the form, the broker shall submit
10 the title page of the textbook, showing the title, publisher, and publication date, the table of contents, and a fifty dollar
11 (\$50.00) fee for each textbook for which the licensee seeks credit.~~

12 ~~(f) The Commission may award continuing education elective credit for authoring of a scholarly article on a real
13 estate topic published in a professional journal or periodical. A broker shall receive credit for any single article only
14 once. A broker seeking continuing education credit under this Paragraph shall submit a form, available on the
15 Commission's website, that requires the broker to set forth the broker's name, license number, address, telephone
16 number, and email address. Along with the form, the broker shall submit a copy of the article, proof of publication,
17 and a fifty dollar (\$50.00) fee for each article for which the broker seeks credit.~~

18 ~~(g)~~(d) In order for any application for equivalent credit to be considered and credits applied to the current licensing
19 period, a complete application, the appropriate fee, and all supporting documents shall be received by the Commission
20 no later than 5:00 p.m. **Eastern Time** on June 17.

21 ~~(h) Any equivalent continuing education credit awarded under this Rule shall be applied first to make up any
22 continuing education deficiency for the previous license period and then to satisfy the continuing education
23 requirement for the current license period; however, credit for an unapproved course or educational activity, other
24 than teaching an approved elective course, that was completed during a previous license period shall not be applied to
25 a subsequent license period.~~

26
27 *History Note: Authority G.S. 93A-3(c); 93A-38.5;*

28 *Eff. July 1, 1994;*

29 *Amended Eff. July 1, 2017; April 1, 2006; July 1, 2001; July 1, 2000; March 1, 1996; July 1, 1995;*

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

31 *Amended Eff. July 1, 2023; July 1, 2020.*

1 21 NCAC 58H .0202 is amended with changes as published in 37:16 NCR 1111 as follows:

2
3 **21 NCAC 58H .0202 APPLICATION FOR EDUCATION PROVIDER CERTIFICATION**

4 (a) Any community college, junior college, or university located in this State and accredited by the Southern
5 Association of Colleges and Schools seeking education provider certification shall apply to the Commission on a form
6 available on the Commission's website and shall set forth the:

- 7 (1) education provider's name;
- 8 (2) education director's name and contact information;
- 9 (3) education director's email address;
- 10 (4) education provider's address;
- 11 (5) education provider's telephone number;
- 12 (6) education provider's website address;
- 13 (7) type of public institution;
- 14 (8) Prelicensing, Postlicensing, and Continuing Education courses to be offered by the applicant; and
- 15 (9) a signed certification by the education director that courses shall be conducted in compliance with
16 the rules of this Subchapter.

17 (b) Any other person or entity seeking education provider certification shall apply to the Commission on a form
18 available on the Commission's website and shall set forth the following criteria in addition to the requirements in G.S.
19 93A-34(b1):

- 20 (1) the website, physical and mailing address, and telephone number of the principal office of the
21 education provider;
- 22 (2) the education director's license number, if applicable, email and mailing address, and telephone
23 number;
- 24 (3) the North Carolina Secretary of State Identification Number, if applicable;
- 25 (4) the physical address of each proposed branch location, if applicable;
- 26 (5) the type of ownership entity;
- 27 (6) a signed Consent to Service of Process and Pleadings form available on the Commission's website,
28 if a foreign entity;
- 29 (7) the Prelicensing, Postlicensing, and Continuing Education courses to be offered by the applicant;
30 and
- 31 (8) a signed certification by the education director that courses shall be conducted in compliance with
32 the rules of this Subchapter.

33 (c) The certification application fee for an education provider applying under Paragraph (b) of this Rule shall be two
34 hundred dollars (\$200.00) for each proposed education provider location. Provided however, education providers shall
35 not be required to obtain a certification for every location a Continuing Education course is offered.

36 (d) If any education provider relocates any location or opens additional branch locations during any licensing period,
37 the education director shall submit an original application for certification of that location pursuant to this Rule.

1 (e) In the event that any education provider advertises or operates in any manner using a name different from the
2 name under which the education provider is certified, the education provider shall first file an assumed name certificate
3 in compliance with G.S. 66-71.4 and shall notify the Commission in writing of the use of such an assumed name. An
4 education provider shall not advertise or operate in any manner that would mislead a consumer as to the education
5 provider's actual identity.

6 (f) An application from an individual or entity with an ownership interest of 10 percent or greater in a certified
7 education provider that has been limited, denied, withdrawn, or terminated pursuant to Rule .0210 of this Section shall
8 be denied if filed within ~~prohibited from filing an application pursuant to this Rule for~~ one year from the effective
9 date of the limitation, denial, withdrawal, or termination.

10

11 *History Note: Authority G.S. 93A-4; 93A-34; ~~93A-35~~;*

12 *Eff. July 1, 2017;*

13 *Amended Eff. July 1, 2023; July 1, 2020.*

1 21 NCAC 58H .0216 is adopted with changes as published in 37:16 NCR 1111 as follows:

2

3 **21 NCAC 58H .0216 LIMITED EDUCATION PROVIDER PETITION FOR RECONSIDERATION**

4 (a) An education provider may submit a written petition to reconsider the determination made pursuant to Rule
5 .0210(c) of this Section. The petition shall be accompanied by any documentary evidence that contradicts the
6 Commission’s determination pursuant to Rule .0210(c) of this Section.

7 (b) The petition pursuant to Paragraph (a) of this Rule shall be submitted to the Commission within 60 days from the
8 date of receipt of notification of the certification limitation or the Commission’s determination shall be final.

9 (c) The Commission shall review a petition pursuant to Paragraph (b) of this Rule and any response submitted in
10 writing by Commission staff and enter a final determination within 90 days from the date of receipt of such petition.

11

12 *History Note: Authority G.S. 93A-3(c); 93A-4(d); 93A-38;*

13 *Eff. July 1, 2023.*

1 21 NCAC 58H .0307 is adopted with changes as published in 37:16 NCR 1112 as follows:

2

3 **21 NCAC 58H .0307 LIMITED INSTRUCTOR PETITION FOR RECONSIDERATION**

4 (a) An instructor may submit a written petition to reconsider the determination made pursuant to Rule .0303(b) of this
5 Section. The petition shall be accompanied by any documentary evidence that contradicts the Commission's
6 determination pursuant to Rule .0303(b) of this Section.

7 (b) The petition pursuant to Paragraph (a) of this Rule shall be submitted to the Commission within 60 days from the
8 date of receipt of notification of the approval limitation or the Commission's determination shall be final.

9 (c) The Commission shall review a petition pursuant to Paragraph (b) of this Rule and any response submitted in
10 writing by Commission staff and enter a final determination within 90 days from the date of receipt of such petition.

11

12 *History Note: Authority G.S. 93A-3(c); 93A-4(d);*

13 *Eff. July 1, 2023.*

Burgos, Alexander N

From: Ascher, Seth M
Sent: Monday, May 1, 2023 3:40 PM
To: melissa@ncrec.gov
Cc: Burgos, Alexander N
Subject: RFC for Rules Review Commission May 2023
Attachments: RFC Real Estate Commission May 2023.docx

Good afternoon,

I'm the attorney who reviewed the Rules submitted by the North Carolina Real Estate Commission for the May 2023 RRC meeting. The RRC will formally review these Rules at its meeting on Thursday, May 18, 2023, at 9:00 a.m. The meeting will be a hybrid of in-person and WebEx attendance, and an evite should be sent to you as we get close to the meeting. If there are any other representatives from your agency who want to attend virtually, let me know prior to the meeting, and we will get evites out to them as well.

Attached are Requests for Changes Pursuant to G.S. 150B-21.10. Please submit the revised Rules and forms to me via email, no later than 5 p.m. on May 12, 2023.

In the meantime, please let me know if you have any questions or concerns.

Seth Ascher

Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984) 236-1934

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