

## **REQUEST FOR TECHNICAL CHANGE**

AGENCY: Real Estate Commission

RULE CITATION: 21 NCAC 58A .0104, .0105, .0120, .1601, and .2202

**DEADLINE FOR RECEIPT: May 14, 2021**

**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 call our office to inquire concerning the staff recommendation.

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

*For the addition of the language "that brings about inequity, discrimination, or prejudice on account of", was this post-publication change made in response to public comment? Also, please address whether the change produces an effect that could not reasonably been expected based upon the text published in the Register. Does the post-publication change require your regulated public to meet a higher standard?*

*Please define "inequity."*

*You added similar language to .0104(b), .0105(d), .0120(d), .1601(b), and .2202(d). Is it repetitive and therefore unnecessary to include this language in multiple rules or are you regulating different conduct in each individual rule?*

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

Ashley Snyder  
Commission Counsel  
Date submitted to agency: April 30, 2021

## **REQUEST FOR TECHNICAL CHANGE**

AGENCY: Real Estate Commission

RULE CITATION: 21 NCAC 58A .0104

**DEADLINE FOR RECEIPT: May 14, 2021**

**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 call our office to inquire concerning the staff recommendation.

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

*At line 24, please highlight "that brings about inequity, discrimination, or prejudice on account of" since this text was added after publication in the Register.*

*What authority are you relying upon for the proposed amendments to Paragraph (b)? As I read (b), it is a stricter standard than required by G.S. 41A-4. Do you have authority to set a higher standard?*

*For the changes in (b), what is being prohibited? What factors are considered when determining whether a broker conducted activities in a manner that brought about "inequity, discrimination, or prejudice?"*

*How does the new language in (b) differ from the language already required in listing agreements at lines 26-28? Is it repetitive? If so, why is it necessary? If not, please clarify what is now being required that is not already covered by the language in lines 26-28.*

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

Ashley Snyder  
Commission Counsel  
Date submitted to agency: April 30, 2021

21 NCAC 58A .0104 is amended with changes as published in 35:12 NCAC 1388 as follows:

**21 NCAC 58A .0104      AGENCY AGREEMENTS AND DISCLOSURE**

(a) Every agreement for brokerage services in a real estate transaction and every agreement for services connected with the management of a property owners association shall be in writing and signed by the parties thereto. Every agreement for brokerage services between a broker and an owner of the property to be the subject of a transaction shall be in writing and signed by the parties at the time of its formation. Every agreement for brokerage services between a broker and a buyer or tenant shall be express and shall be in writing and signed by the parties thereto not later than the time one of the parties makes an offer to purchase, sell, rent, lease, or exchange real estate to another. However, every agreement between a broker and a buyer or tenant that seeks to bind the buyer or tenant for a period of time or to restrict the buyer's or tenant's right to work with other agents or without an agent shall be in writing and signed by the parties thereto from its formation. A broker shall not continue to represent a buyer or tenant without a written, signed agreement when such agreement is required by this Rule. Every written agreement for brokerage services of any kind in a real estate transaction shall be for a definite period of time, shall include the broker's license number, and shall provide for its termination without prior notice at the expiration of that period, except that an agency agreement between a landlord and broker to procure tenants or receive rents for the landlord's property may allow for automatic renewal so long as the landlord may terminate with notice at the end of any contract period and any subsequent renewals. Every written agreement for brokerage services that includes a penalty for early termination shall set forth such a provision in a clear and conspicuous manner that shall distinguish it from other provisions of the agreement. For the purposes of this Rule, an agreement between brokers to cooperate or share compensation shall not be considered an agreement for brokerage services and, except as required by Rule .1807 of this Subchapter, need not be memorialized in writing.

(b) A broker shall not conduct brokerage activities in a manner [that is neither determined nor predicated by bias or ideology as to] that brings about inequity, discrimination, or prejudice on account of race, color, religion, national origin, sex, familial status, or disability. Every listing agreement, written buyer agency agreement, or other written agreement for brokerage services in a real estate transaction shall contain the following provision: "The broker shall conduct all brokerage activities in regard to this agreement without respect to the race, color, religion, sex, national origin, handicap, or familial status of any party or prospective party." The provision shall be set forth in a clear and conspicuous manner that shall distinguish it from other provisions of the agreement. For the purposes of this Rule, the term, "familial status" shall be defined as it is in G.S. 41A-3(1b).

(c) In every real estate sales transaction, a broker shall, at first substantial contact with a prospective buyer or seller, provide the prospective buyer or seller with a copy of the publication "Working with Real Estate Agents," set forth the broker's name and license number thereon, review the publication with the buyer or seller, and determine whether the agent will act as the agent of the buyer or seller in the transaction. If the first substantial contact with a prospective buyer or seller occurs by telephone or other electronic means of communication where it is not practical to provide the "Working with Real Estate Agents" publication, the broker shall at the earliest opportunity thereafter, but in no event later than three days from the date of first substantial contact, mail or otherwise transmit a copy of the publication

1 to the prospective buyer or seller and review it with him or her at the earliest practicable opportunity thereafter. For  
2 the purposes of this Rule, "first substantial contact" shall include contacts between a broker and a consumer where the  
3 consumer or broker begins to act as though an agency relationship exists and the consumer begins to disclose to the  
4 broker personal or confidential information. The "Working with Real Estate Agents" publication may be obtained on  
5 the Commission's website at [www.ncrec.gov](http://www.ncrec.gov) or upon request to the Commission.

6 (d) A real estate broker representing one party in a transaction shall not undertake to represent another party in the  
7 transaction without the written authority of each party. The written authority shall be obtained upon the formation of  
8 the relationship except when a buyer or tenant is represented by a broker without a written agreement in conformity  
9 with the requirements of Paragraph (a) of this Rule. Under such circumstances, the written authority for dual agency  
10 shall be reduced to writing not later than the time that one of the parties represented by the broker makes an offer to  
11 purchase, sell, rent, lease, or exchange real estate to another party.

12 (e) In every real estate sales transaction, a broker working directly with a prospective buyer as a seller's agent or  
13 subagent shall disclose in writing to the prospective buyer at the first substantial contact with the prospective buyer  
14 that the broker represents the interests of the seller. The written disclosure shall include the broker's license number.  
15 If the first substantial contact occurs by telephone or by means of other electronic communication where it is not  
16 practical to provide written disclosure, the broker shall immediately disclose by similar means whom he or she  
17 represents and shall immediately mail or otherwise transmit a copy of the written disclosure to the buyer. In no event  
18 shall the broker mail or transmit a copy of the written disclosure to the buyer later than three days from the date of  
19 first substantial contact with the buyer.

20 (f) In every real estate sales transaction, a broker representing a buyer shall, at the initial contact with the seller or  
21 seller's agent, disclose to the seller or seller's agent that the broker represents the buyer's interests. In addition, in every  
22 real estate sales transaction other than auctions, the broker shall, no later than the time of delivery of an offer to the  
23 seller or seller's agent, provide the seller or seller's agent with a written confirmation disclosing that he or she  
24 represents the interests of the buyer. The written confirmation may be made in the buyer's offer to purchase and shall  
25 include the broker's license number.

26 (g) The provisions of Paragraphs (c), (d) and (e) of this Rule do not apply to real estate brokers representing sellers  
27 in auction sales transactions.

28 (h) A broker representing a buyer in an auction sale transaction shall, no later than the time of execution of a written  
29 agreement memorializing the buyer's contract to purchase, provide the seller or seller's agent with a written  
30 confirmation disclosing that he or she represents the interests of the buyer. The written confirmation may be made in  
31 the written agreement.

32 (i) A firm that represents more than one party in the same real estate transaction is a dual agent and, through the  
33 brokers associated with the firm, shall disclose its dual agency to the parties.

34 (j) When a firm represents both the buyer and seller in the same real estate transaction, the firm may, with the prior  
35 express approval of its buyer and seller clients, designate one or more individual brokers associated with the firm to  
36 represent only the interests of the seller and one or more other individual brokers associated with the firm to represent  
37 only the interests of the buyer in the transaction. The authority for designated agency shall be reduced to writing not

1 later than the time that the parties are required to reduce their dual agency agreement to writing in accordance with  
2 Paragraph (d) of this Rule. An individual broker shall not be so designated and shall not undertake to represent only  
3 the interests of one party if the broker has actually received confidential information concerning the other party in  
4 connection with the transaction. A broker-in-charge shall not act as a designated broker for a party in a real estate  
5 sales transaction when a provisional broker under his or her supervision will act as a designated broker for another  
6 party with a competing interest.

7 (k) When a firm acting as a dual agent designates an individual broker to represent the seller, the broker so designated  
8 shall represent only the interest of the seller and shall not, without the seller's permission, disclose to the buyer or a  
9 broker designated to represent the buyer:

- 10 (1) that the seller may agree to a price, terms, or any conditions of sale other than those established by  
11 the seller;
- 12 (2) the seller's motivation for engaging in the transaction unless disclosure is otherwise required by  
13 statute or rule; and
- 14 (3) any information about the seller that the seller has identified as confidential unless disclosure of the  
15 information is otherwise required by statute or rule.

16 (l) When a firm acting as a dual agent designates an individual broker to represent the buyer, the broker so designated  
17 shall represent only the interest of the buyer and shall not, without the buyer's permission, disclose to the seller or a  
18 broker designated to represent the seller:

- 19 (1) that the buyer may agree to a price, terms, or any conditions of sale other than those established by  
20 the seller;
- 21 (2) the buyer's motivation for engaging in the transaction unless disclosure is otherwise required by  
22 statute or rule; and
- 23 (3) any information about the buyer that the buyer has identified as confidential unless disclosure of the  
24 information is otherwise required by statute or rule.

25 (m) A broker designated to represent a buyer or seller in accordance with Paragraph (j) of this Rule shall disclose the  
26 identity of all of the brokers so designated to both the buyer and the seller. The disclosure shall take place no later  
27 than the presentation of the first offer to purchase or sell.

28 (n) When an individual broker represents both the buyer and seller in the same real estate sales transaction pursuant  
29 to a written agreement authorizing dual agency, the parties may provide in the written agreement that the broker shall  
30 not disclose the following information about one party to the other without permission from the party about whom the  
31 information pertains:

- 32 (1) that a party may agree to a price, terms, or any conditions of sale other than those offered;
- 33 (2) the motivation of a party for engaging in the transaction, unless disclosure is otherwise required by  
34 statute or rule; and
- 35 (3) any information about a party that the party has identified as confidential, unless disclosure is  
36 otherwise required by statute or rule.

1 (o) A broker who is selling property in which the broker has an ownership interest shall not undertake to represent a  
2 buyer of that property except that a broker who is selling commercial real estate as defined in Rule .1802 of this  
3 Subchapter in which the broker has less than 25 percent ownership interest may represent a buyer of that property if  
4 the buyer consents to the representation after full written disclosure of the broker's ownership interest. A firm listing  
5 a property owned by a broker affiliated with the firm may represent a buyer of that property so long as any individual  
6 broker representing the buyer on behalf of the firm does not have an ownership interest in the property and the buyer  
7 consents to the representation after full written disclosure of the broker's ownership interest.

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

17  
18 *History Note: Authority G.S. 41A-3(1b); 41A-4(a); 93A-3(c); 93A-6(a);*

19 *Eff. February 1, 1976;*

20 *Readopted Eff. September 30, 1977;*

21 *Amended Eff. July 1, 2015; July 1, 2014; July 1, 2009; July 1, 2008; April 1, 2006; July 1, 2005;*  
22 *July 1, 2004; April 1, 2004; September 1, 2002; July 1, 2001; October 1, 2000; August 1, 1998;*  
23 *July 1, 1997; August 1, 1996; July 1, 1995;*

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

25 *May 1, 2018;*

26 *Amended Eff. July 1, 2021.*

## **REQUEST FOR TECHNICAL CHANGE**

AGENCY: Real Estate Commission

RULE CITATION: 21 NCAC 58A .0105

**DEADLINE FOR RECEIPT: May 14, 2021**

**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 call our office to inquire concerning the staff recommendation.

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

*For the changes in (d), what is being prohibited? What factors are considered when determining whether a broker advertised in a manner that brought about "inequity, discrimination, or prejudice?"*

*In your History Note, why is 93A-9 listed?*

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

Ashley Snyder  
Commission Counsel  
Date submitted to agency: April 30, 2021

21 NCAC 58A .0105 is amended with changes as published in 35:12 NCAC 1390 as follows:

**21 NCAC 58A .0105      ADVERTISING**

(a) Authority to Advertise.

(1) A broker shall not advertise any brokerage service or the sale, purchase, exchange, rent, or lease of real estate for another or others without the consent of his or her broker-in-charge and without including in the advertisement the name of the firm or sole proprietorship with which the broker is affiliated.

(2) A broker shall not ~~advertise or display~~ a "for sale" or "for rent" sign on any real estate or otherwise advertise any real estate without the written consent of the owner or the owner's authorized agent.

(b) Blind Ads. A broker shall not advertise the sale, purchase, exchange, rent, or lease of real estate for others in a manner indicating the offer to sell, purchase, exchange, rent, or lease is being made by the broker's principal only. Every such advertisement shall indicate that it is the advertisement of a broker or firm and shall not be confined to publication of only contact information, such as a post office box number, telephone number, street address, internet web address, or e-mail address.

(c) A person licensed as a limited nonresident commercial broker shall comply with the provisions of Rule .1809 of this Subchapter in connection with all advertising concerning or relating to his or her status as a North Carolina broker.

(d) A broker shall not advertise any brokerage service or the sale, purchase, exchange, rent, or lease of real estate, conduct brokerage services, promote their status as a real estate broker, or engage in other real estate related activities in any manner [which is predicated by bias or ideology as to] that brings about inequity, discrimination, or prejudice on account of race, color, religion, national origin, sex, familial status, or disability.

*History Note: Authority G.S. 93A-2(a1); 93A-3(c); 93A-9;*

*Eff. February 1, 1976;*

*Readopted Eff. September 30, 1977;*

*Amended Eff. July 1, 2015; April 1, 2013; July 1, 2009; January 1, 2008; April 1, 2006; July 1, 2004; October 1, 2000; August 1, 1998; April 1, 1997; July 1, 1989; February 1, 1989;*

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

*Amended Eff. July 1, 2021; July 1, 2018.*



## **REQUEST FOR TECHNICAL CHANGE**

AGENCY: Real Estate Commission

RULE CITATION: 21 NCAC 58A .0110

**DEADLINE FOR RECEIPT: May 14, 2021**

**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 call our office to inquire concerning the staff recommendation.

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

*In (a), please spell out "broker-in-charge (BIC)" the first time the term is used.*

*Were the post-publication changes made in response to public comment?*

*Where is your statutory authority for (g)(9)? Is this course part of the four hours per year of continuing education for brokers-in-charge in G.S. 93A-38.5(b) or part of the annual 8 hours of continuing education in G.S. 93A-38.5(a)?*

*In your History Note, please delete G.S. 93A-4.1 because it has been repealed. Did you intend to list G.S. 93A-38.5 instead?*

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

Ashley Snyder  
Commission Counsel  
Date submitted to agency: April 30, 2021

21 NCAC 58A .0110 is amended with changes as published in 35:12 NCAC 1390 as follows:

**21 NCAC 58A .0110      BROKER-IN-CHARGE**

(a) Every real estate firm shall designate one BIC for its principal office and ~~one~~ ~~[a different]~~ BIC for each of its branch offices. No office of a firm shall have more than one designated BIC. ~~[A BIC shall not serve as the BIC for more than one office.]~~ A BIC shall not serve as BIC for more than one ~~office~~ ~~[firm]~~ unless each of those ~~offices~~ ~~[firms]~~ share the same physical office space and delivery address.

(b) Every sole proprietorship shall designate a BIC if the sole proprietorship:

- (1) engages in any transaction where a broker is required to deposit and maintain monies belonging to others in a trust account;
- (2) engages in advertising or promoting services as a broker in any manner; or
- (3) has one or more other brokers affiliated with the sole proprietorship in the real estate business.

(c) A licensed real estate firm shall not be required to have a BIC if it:

- (1) is organized for the sole purpose of receiving compensation for brokerage services furnished by its qualifying broker through another firm or broker;
- (2) is treated for tax purposes as a pass-through business by the United States Internal Revenue Service;
- (3) has no principal or branch office; and
- (4) has no licensed person associated with it other than its qualifying broker.

(d) A broker who maintains a trust or escrow account for the sole purpose of holding residential tenant security deposits received by the broker on properties owned by the broker in compliance with G.S. 42-50 shall not be required to be a BIC.

(e) In order for a broker to designate as a BIC for a sole proprietor, real estate firm, or branch office, a broker shall apply for BIC Eligible status by submitting an application on a form available on the Commission's website. The BIC Eligible status form shall include the broker's:

- (1) name;
- (2) license number;
- (3) telephone number;
- (4) email address;
- (5) criminal history and history of occupational license disciplinary actions;
- (6) certification of compliance with G.S. 93A-4.2, including that:
  - (A) his or her broker license is on active status;
  - (B) the broker has obtained at least two years of real estate brokerage experience equivalent to 40 hours per week within the previous five years or shall be a North Carolina licensed attorney with a practice that consisted primarily of handling real estate closings and related matters in North Carolina for three years immediately preceding application; and
  - (C) the broker completed the 12-hour Broker-in-Charge Course no earlier than one year prior to application and no later than 120 days after application; and

- 1 (7) signature.
- 2 (f) A broker who holds BIC Eligible status shall submit a form to become the designated BIC for a sole proprietor,  
3 real estate firm, or branch office. The BIC designation form shall include:
- 4 (1) the broker's:
- 5 (A) name;
- 6 (B) license number;
- 7 (C) telephone number;
- 8 (D) email address; and
- 9 (E) criminal history and history of occupational license disciplinary actions; and
- 10 (2) the firm's:
- 11 (A) name; and
- 12 (B) license number, if applicable;
- 13 (g) A designated BIC shall:
- 14 (1) assure that each broker ~~employed~~ affiliated at the office has complied with Rules .0503, .0504, and  
15 .0506 of this Subchapter;
- 16 (2) notify the Commission of any change of firm's business address or trade name and the registration  
17 of any assumed business name adopted by the firm for its use;
- 18 (3) be responsible for the conduct of advertising by or in the name of the firm at such office;
- 19 (4) maintain the trust or escrow account of the firm and the records pertaining thereto;
- 20 (5) retain and maintain records relating to transactions conducted by or on behalf of the firm, including  
21 those required to be retained pursuant to Rule .0108 of this Section;
- 22 (6) supervise provisional brokers associated with or engaged on behalf of the firm at such office in  
23 accordance with the requirements of Rule .0506 of this Subchapter;
- 24 (7) supervise all brokers ~~employed~~ affiliated at the office with respect to adherence to agency agreement  
25 and disclosure requirements;
- 26 (8) notify the Commission in writing that he or she is no longer serving as BIC of a particular office  
27 within 10 days following any such change; ~~and~~
- 28 (9) complete the Commission's Basic Trust Account Procedures Course within 120 days of ~~opening~~  
29 assuming responsibility for a trust account in accordance with G.S. 93A-6(g). 93A-6(g), however  
30 the BIC shall not be required to complete the course more than once in three years; and
- 31 (10) supervise all unlicensed individuals employed at the office and ensure that unlicensed individuals  
32 comply with G.S. 93A-2(c)(6).
- 33 (h) A broker holding BIC Eligible status shall take the Broker-in-Charge Update Course during the license year of  
34 designation, unless the broker has satisfied the requirements of Rule .1702 of this Subchapter prior to designation.
- 35 (i) A broker's BIC Eligible status shall terminate if the broker:
- 36 (1) made any false statements or presented any false, incomplete, or incorrect information in connection  
37 with an application;

- 1 (2) fails to complete the 12-hour Broker-in-Charge Course pursuant to Paragraph (e) of this Rule;  
2 (3) fails to renew his or her broker license pursuant to Rule .0503 of this Subchapter, or the broker's  
3 license has been suspended, revoked, or surrendered; or  
4 (4) fails to complete the Broker-in-Charge Update Course and a four credit hour elective course  
5 pursuant to Rules .1702 and .1711 of this Subchapter, if applicable.

6 (j) In order to regain BIC Eligible status after a broker's BIC Eligible status terminates, the broker shall complete the  
7 12-hour Broker-in-Charge Course prior to application and then submit a BIC Eligible status form pursuant to  
8 Paragraph (e) of this Rule.

9 (k) A nonresident commercial real estate broker licensed under the provisions of Section .1800 of this Subchapter  
10 shall not act as or serve in the capacity of a broker-in-charge of a firm or office in North Carolina.

11 (l) A broker shall not be granted BIC Eligible status or designated as BIC of a firm if there is a pending Commission  
12 investigation against the broker.

13  
14 *History Note: Authority G.S. 93A-2; 93A-3(c); 93A-4; 93A-4.1; 93A-4.2; 93A-9;*

15 *Eff. September 1, 1983;*

16 *Amended Eff. July 1, 2014; May 1, 2013; July 1, 2010; July 1, 2009; January 1, 2008; April 1, 2006;*  
17 *July 1, 2005; July 1, 2004; April 1, 2004; September 1, 2002; July 1, 2001; October 1, 2000; August*  
18 *1, 1998; April 1, 1997; July 1, 1995; July 1, 1994;*

19 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018;*  
20 *Amended Eff. July 1, 2021; July 1, 2020; July 1, 2018.*

21 NCAC 58A .0114 is amended with changes as published in 35:12 NCAC 1391 as follows:

**21 NCAC 58A .0114      RESIDENTIAL PROPERTY AND OWNERS' ASSOCIATION DISCLOSURE  
STATEMENT**

(a) Every owner of real property subject to a transfer of the type governed by Chapter 47E of the General Statutes shall complete the following Residential Property and Owners' Association Disclosure Statement and furnish a copy of the complete statement to a buyer in accordance with the requirements of G.S. 47E-4. The form shall bear the seal of the North Carolina Real Estate Commission and shall read as follows:

**[N.C. REAL ESTATE COMMISSION SEAL]**

**STATE OF NORTH CAROLINA  
RESIDENTIAL PROPERTY AND OWNERS' Association DISCLOSURE STATEMENT**

**Instructions to Property Owners**

1. The Residential Property Disclosure Act (G.S. 47E)("Disclosure Act") requires owners of residential real estate (single-family homes, individual condominiums, townhouses, and the like, and buildings with up to four dwelling units) to furnish buyers a Residential Property and Owners' Association Disclosure Statement ("Disclosure Statement"). This form is the only one approved for this purpose. A disclosure statement must be furnished in connection with the sale, exchange, option, and sale under a lease with option to purchase where the tenant does not occupy or intend to occupy the dwelling. A disclosure statement is not required for some transactions, including the first sale of a dwelling which has never been inhabited and transactions of residential property made pursuant to a lease with option to purchase where the lessee occupies or intends to occupy the dwelling. For a complete list of exemptions, see G.S. 47E-2.
2. You must respond to each of the questions on the following pages of this form by filling in the requested information or by placing a check (✓) in the appropriate box. In responding to questions, you are only obligated to disclose information about which you have actual knowledge.
  - a. If you check "Yes" for any question, you must explain your answer and either describe any problem or attach a report from an attorney, engineer, contractor, pest control operator or other expert or public agency describing it. If you attach a report, you will not be liable for any inaccurate or incomplete information contained in it so long as you were not grossly negligent in obtaining or transmitting the information.
  - b. If you check "No," you are stating that you have no actual knowledge of any problem. If you check "No" and you know there is a problem, you may be liable for making an intentional misstatement.

- 1
- 2 c. If you check "No Representation," you are choosing not to disclose the conditions or characteristics of the
- 3 property, even if you have actual knowledge of them or should have known of them.
- 4
- 5 d. If you check "Yes" or "No" and something happens to the property to make your Disclosure Statement
- 6 incorrect or inaccurate (for example, the roof begins to leak), you must promptly give the buyer a corrected
- 7 Disclosure Statement or correct the problem.
- 8
- 9 3. If you are assisted in the sale of your property by a licensed real estate broker, you are still responsible for
- 10 completing and delivering the Disclosure Statement to the buyers; and the broker must disclose any material
- 11 facts about your property which he or she knows or reasonably should know, regardless of your responses
- 12 on the Statement.
- 13
- 14 4. You must give the completed Disclosure Statement to the buyer no later than the time the buyer makes an
- 15 offer to purchase your property. If you do not, the buyer can, under certain conditions, cancel any resulting
- 16 contract (See "**Note to Buyers**" below). You should give the buyer a copy of the Disclosure Statement
- 17 containing your signature and keep a copy signed by the buyer for your records.
- 18
- 19
- 20

**Note to Buyers**

If the owner does not give you a Residential Property and Owners' Association Disclosure Statement by the time you make your offer to purchase the property, you may under certain conditions cancel any resulting contract without penalty to you as the buyer. To cancel the contract, you must personally deliver or mail written notice of your decision to cancel to the owner or the owner's agent within three calendar days following your receipt of the Disclosure Statement, or three calendar days following the date of the contract, whichever occurs first. However, in no event does the Disclosure Act permit you to cancel a contract after settlement of the transaction or (in the case of a sale or exchange) after you have occupied the property, whichever occurs first.

- 21
- 22 5. In the space below, type or print in ink the address of the property (sufficient to identify it) and your name.
- 23 Then sign and date.
- 24

Property Address: \_\_\_\_\_

Owner's Name(s): \_\_\_\_\_

Owner(s) acknowledge(s) having examined this Disclosure Statement before signing and that all information is true and correct as of the date signed.

Owner Signature: \_\_\_\_\_ Date \_\_\_\_\_, \_\_\_\_

Owner Signature: \_\_\_\_\_ Date \_\_\_\_\_, \_\_\_\_

Buyers acknowledge receipt of a copy of this Disclosure Statement; that they have examined it before signing; that they understand that this is not a warranty by owners or owners' agents; that it is not a substitute for any inspections they may wish to obtain; and that the representations are made by the owners and not the owners' agents or subagents. Buyers are strongly encouraged to obtain their own inspections from a licensed home inspector or other professional. As used herein, words in the plural include the singular, as appropriate.

Buyer Signature: \_\_\_\_\_ Date \_\_\_\_\_, \_\_\_\_

Buyer Signature: \_\_\_\_\_ Date \_\_\_\_\_, \_\_\_\_

Property Address/Description: \_\_\_\_\_

The following questions address the characteristics and condition of the property identified above about which the owner has actual knowledge. Where the question refers to "dwelling," it is intended to refer to the dwelling unit, or units if more than one, to be conveyed with the property. The term "dwelling unit" refers to any structure intended for human habitation.

- |   | Yes                      | No                       | No Representation        |
|---|--------------------------|--------------------------|--------------------------|
| 1. In what year was the dwelling constructed? _____<br>Explain if necessary: _____  |                          |                          | <input type="checkbox"/> |
| 2. Is there any problem, malfunction or defect with the dwelling's foundation, slab, fireplaces/chimneys, floors, windows (including storm windows and screens), doors, ceilings, interior and exterior walls, attached garage, patio, deck or other structural components including any modifications to them?   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. The dwelling's exterior walls are made of what type of material? <input type="checkbox"/> Brick Veneer <input type="checkbox"/> Wood <input type="checkbox"/> Stone <input type="checkbox"/> Vinyl <input type="checkbox"/> Synthetic Stucco <input type="checkbox"/> Composition/Hardboard <input type="checkbox"/> Concrete <input type="checkbox"/> Fiber Cement <input type="checkbox"/> Aluminum <input type="checkbox"/> Asbestos <input type="checkbox"/> Other _____<br>(Check all that apply) |                          |                          | <input type="checkbox"/> |

4. In what year was the dwelling's roof covering installed? \_\_\_\_\_ ☐  
 (Approximate if no records are available.) Explain if necessary:  
 \_\_\_\_\_
5. Is there any leakage or other problem with the dwelling's roof? ☐ ☐ ☐
6. Is there any water seepage, leakage, dampness or standing water in the dwelling's basement, crawl space, or slab? ☐ ☐ ☐
7. Is there any problem, malfunction or defect with the dwelling's electrical system (outlets, wiring, panel, switches, fixtures, generator, etc.)? ☐ ☐ ☐
8. Is there any problem, malfunction or defect with the dwelling's plumbing system (pipes, fixtures, water heater, etc.)? ☐ ☐ ☐
9. Is there any problem, malfunction or defect with the dwelling's heating and/or air conditioning? ☐ ☐ ☐
10. What is the dwelling's heat source? ☐ Furnace ☐ Heat Pump ☐ Baseboard ☐  
☐ Other \_\_\_\_\_ (Check all that apply)  
 Age of system: \_\_\_\_\_
11. What is the dwelling's cooling source? ☐ Central Forced Air ☐ Wall/Window Unit(s) ☐  
☐ Other \_\_\_\_\_ (Check all that apply)  
 Age of system: \_\_\_\_\_
12. What is the dwelling's fuel sources? ☐ Electricity ☐ Natural Gas ☐ Propane ☐ Oil ☐  
☐ Other \_\_\_\_\_ (Check all that apply)  
 If the fuel source is stored in a tank, identify whether the tank is ☐ above ground or ☐ below ground, and whether the tank is ☐ leased by seller or ☐ owned by seller.  
 (Check all that apply)
13. What is the dwelling's water supply source? ☐ City/County ☐ Community System ☐  
☐ Private Well ☐ Shared Well ☐ Other \_\_\_\_\_  
 (Check all that apply)

**[14. What is the dwelling's water heater fuel type? ☐ Natural Gas ☐ Propane ☐ Fuel Oil ☐**



☐ Electricity ☐ Other \_\_\_\_\_ (Check all that apply)

Age of system: \_\_\_\_\_

14. ~~15.~~ The dwelling's water pipes are made of what type of material? ☐ Copper ☐ Galvanized ☐  
☐ Plastic ☐ Polybutylene ☐ Other \_\_\_\_\_  
(Check all that apply)

~~16. Does the property have available internet service?~~ ☐ ☐ ☐

15. ~~17.~~ Is there any problem, malfunction or defect with the dwelling's water supply  
(including water quality, quantity or water pressure)? ☐ ☐ ☐

16. ~~18.~~ What is the dwelling's sewage disposal system? ☐ Septic Tank ☐ Septic Tank ☐  
with Pump  
☐ Community System ☐ Connected to City/County System ☐ City/County System available  
☐ Straight pipe (wastewater does not go into a septic or other sewer system [note: use of this  
type of system violates State law])  
☐ Other \_\_\_\_\_  
(Check all that apply)

17. ~~19.~~ If the dwelling is serviced by a septic system, do you know how many  
bedrooms are allowed by the septic system permit? If your answer is "Yes," how many ☐ ☐ ☐  
bedrooms are allowed? \_\_\_\_\_ ☐ No records available.

18. ~~20.~~ Is there any problem, malfunction or defect with the dwelling's sewer and/or ☐ ☐ ☐  
septic system?

19. ~~21.~~ Is there any problem, malfunction or defect with the dwelling's central  
vacuum, pool, hot tub, spa, attic fan, exhaust fan, ceiling fans, sump pump, irrigation system,  
TV cable wiring or satellite dish, garage door openers, gas logs, or other systems? ☐ ☐ ☐

20. ~~22.~~ Is there any problem, malfunction or defect with any appliances that may be  
included in the conveyance (range/oven, attached microwave, hood/fan, dishwasher, ☐ ☐ ☐  
disposal, etc.)?

- 21.[23.] Is there any problem with present infestation of the dwelling, or damage from past infestation of wood destroying insects or organisms which has not been repaired? ☐ ☐ ☐
- 22.[24.] Is there any problem, malfunction or defect with the drainage, grading or soil stability of the property? ☐ ☐ ☐
- 23.[25.] Are there any structural additions or other structural or mechanical changes to the dwelling(s) to be conveyed with the property? ☐ ☐ ☐
- 24.[26.] Is the property to be conveyed in violation of any local zoning ordinances, restrictive covenants, or other land-use restrictions, or building codes (including the failure to obtain proper permits for room additions or other changes/improvements)? ☐ ☐ ☐
- 25.[27.] Are there any hazardous or toxic substances, materials, or products (such as asbestos, formaldehyde, radon gas, methane gas, lead-based paint) which exceed government safety standards, any debris (whether buried or covered) or underground storage tanks, or any environmentally hazardous conditions (such as contaminated soil or water, or other environmental contamination) ~~which affect the property?~~ located on or which otherwise affect the property? ☐ ☐ ☐
- 26.[28.] Is there any noise, odor, smoke, etc. from commercial, industrial or military sources which affects the property? ☐ ☐ ☐
- 27.[29.] Is the property subject to any utility or other easements, shared driveways, party walls or encroachments from or on adjacent property? ☐ ☐ ☐
- 28.[30.] Is the property subject to any lawsuits, foreclosures, bankruptcy, leases or rental agreements, judgments, tax liens, proposed assessments, mechanics' liens, materialmens' liens, or notices from any governmental agency that could affect title to the property? ☐ ☐ ☐
- 29.[31.] Is the property subject to a flood hazard or is the property located in a federally-designated flood hazard area? ☐ ☐ ☐
- 30.[32.] Does the property abut or adjoin any private road(s) or street(s)? ☐ ☐ ☐

31.~~33.~~ If there is a private road or street adjoining the property, is there in existence any owners' association or maintenance agreements dealing with the maintenance of the road or street? ☐ ☐ ☐

If you answered "yes" to any of the questions listed above (1-31) ~~(4-33)~~ please explain (attach additional sheets if necessary):

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In lieu of providing a written explanation, you may attach a written report to this Disclosure Statement by a public agency, or by an attorney, engineer, land surveyor, geologist, pest control operator, contractor, home inspector, or other expert, dealing with matters within the scope of that public agency's functions or the expert's license or expertise.

The following questions pertain to the property identified above, including the lot to be conveyed and any dwelling unit(s), sheds, detached garages, or other buildings located thereon.

	Yes	No	No Representation
32. <del>34.</del> Is the property subject to governing documents which impose various mandatory covenants, conditions, and restrictions upon the lot or unit?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

If you answered "yes" to the question above, please explain (attach additional sheets if necessary):

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33.~~35.~~ Is the property subject to regulation by one or more owners' association(s) including, but not limited to, obligations to pay regular assessments or dues and special assessments? ☐ ☐ ☐

If your answer is "yes," please provide the information requested below as to each owners' association to which the property is subject [insert N/A into any blank that does not apply]:

(specify name) \_\_\_\_\_ whose regular assessments ("dues") are \$ \_\_\_\_\_ per \_\_\_\_\_. The name, address and telephone number of the president of the owners' association or the association manager are \_\_\_\_\_

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(specify name) \_\_\_\_\_ whose regular assessments ("dues") are \$ \_\_\_\_\_ per \_\_\_\_\_. The name, address and telephone number of the president of the owners' association or the association manager are \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**\* If you answered "Yes" to question 33 above, you must complete the remainder of this Disclosure Statement. If you answered "No" or "No Representation" to question 33 above, you do not need to answer the remaining questions on this Disclosure Statement. Skip to the bottom of the last page and initial and date the page.**

		Yes	No	No Representation
<b>34.[36.]</b>	Are any fees charged by the association or by the association's management company in connection with the conveyance or transfer of the lot or property to a new owner? If your answer is "yes," please state the amount of the fees:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

\_\_\_\_\_  
 \_\_\_\_\_

<b>35.[37.]</b>	As of the date this Disclosure Statement is signed, are there any dues, fees or special assessment which have been duly approved as required by the applicable declaration or by-laws, and that are payable to an association to which the lot is subject? If your answer is "yes," please state the nature and amount of the dues, fees or special assessments to which the property is subject:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

<b>36.[38.]</b>	As of the date this Disclosure Statement is signed, are there any unsatisfied judgments against or pending lawsuits involving the property or lot to be conveyed? If your answer is "yes," please state the nature of each pending lawsuit and the amount of each unsatisfied judgment:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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\_\_\_\_\_  
 \_\_\_\_\_

<b>37.[39.]</b>	As of the date this Disclosure Statement is signed, are there any unsatisfied judgments against or pending lawsuits involving the planned community or the association to which the property and lot are subject, with the exception of any action filed by the association	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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for the collection of delinquent assessments on lots other than the property and lot to be conveyed? If your answer is "yes," please state the nature of each pending lawsuit and the amount of each unsatisfied judgment:

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38. [40.] Which of the following services and amenities are paid for by the owners' association(s) identified above out of the association's regular assessments ("dues")? (Check all that apply.)

	Yes	No	No Representation
Management Fees	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Exterior Building Maintenance of Property to be Conveyed			
Master Insurance			
Exterior Yard/Landscaping Maintenance of Lot to be Conveyed	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Common Areas Maintenance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Trash Removal	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Recreational Amenity Maintenance (specify amenities covered) _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____			
Pest Treatment/Extermination	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Street Lights	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Water	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sewer	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Storm Water Management/Drainage/Ponds	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Internet Service	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Cable	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Private Road Maintenance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Parking Area Maintenance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Gate and/or Security	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other: (specify) _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____			
_____			

Buyer Initials and Date \_\_\_\_\_ Owner Initials and Date \_\_\_\_\_

Buyer Initials and Date \_\_\_\_\_ Owner Initials and Date \_\_\_\_\_

1 (b) The form described in Paragraph (a) of this Rule may be reproduced, but the text of the form shall not be altered  
2 or amended in any way.

3 (c) The form described in Paragraph (a) of this Rule as amended effective ~~July 1, 2018~~, July 1, 2021, applies to all  
4 properties placed on the market on or after ~~July 1, 2018~~. July 1, 2021. The form described in Paragraph (a) of this  
5 Rule as amended effective ~~July 1, 2014~~, July 1, 2018, applies to all properties placed on the market prior to ~~July 1,~~  
6 ~~2018~~, July 1, 2021. If a corrected disclosure statement required by G.S. 47E-7 is prepared on or after ~~July 1, 2018~~,  
7 July 1, 2021, for a property placed on the market prior to ~~July 1, 2018~~, July 1, 2021, the form described in Paragraph  
8 (a) of this Rule as amended effective ~~July 1, 2018~~, July 1, 2021, shall be used.

9  
10 *History Note: Authority G.S. 47E-4(b); 47E-4(b1); 93A-3(c); 93A-6;*

11 *Eff. October 1, 1998;*

12 *Amended Eff. July 1, 2014; January 1, 2013; January 1, 2012; July 1, 2010; July 1, 2009; January*  
13 *1, 2008; July 1, 2006; September 1, 2002; July 1, 2000;*

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

15 *Amended Eff. July 1, 2021; July 1, 2018.*  
16  
17

## **REQUEST FOR TECHNICAL CHANGE**

AGENCY: Real Estate Commission

RULE CITATION: 21 NCAC 58A .0120

**DEADLINE FOR RECEIPT: May 14, 2021**

**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 call our office to inquire concerning the staff recommendation.

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

*At line 6, what is an "affiliated broker?"*

*At line 9, please add a comma after "report."*

*At line 9, please consider deleting such and starting the sentence with "Service providers..."*

*At line 10, to be more concise, consider "Service providers include appraisers, attorneys, ..."*

*In (d), what are "brokerage or other real estate related activities?" Is this defined?*

*In (d), does the prohibition tied to "or otherwise promote their status as a real estate broker" repeat .0105(d)? If so, why is this necessary?*

*For the changes in (d), what is being prohibited? What factors are considered when determining whether a broker conducted brokerage or other real estate activities in a manner that brought about "inequity, discrimination, or prejudice?"*

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

Ashley Snyder  
Commission Counsel  
Date submitted to agency: April 30, 2021

21 NCAC 58A .0120 is adopted with changes as published in 35:12 NCAC 1397 as follows:

**21 NCAC 58A .0120 PROHIBITED ACTS**

(a) A broker shall not require or demand of any escrow agent or attorney that a broker's commission be split with or paid to another person or entity.

(b) **A An affiliated** broker shall not be paid a commission or referral fee directly by anyone other than their current BIC or the person who served as their BIC at the time of the transaction.

(c) A broker shall not coerce, extort, collude, instruct, induce, bribe, or intimidate a service provider in a real estate transaction in order to influence or attempt to influence their findings, report or decision. Such service providers include, but are not limited to, appraisers, attorneys, inspectors, financial lenders, and contractors.

(d) A broker shall not conduct brokerage or other real estate related activities, or otherwise promote their status as a real estate broker in any manner **which is predicated by bias or ideology as to that brings about inequity, discrimination, or prejudice on account of** race, color, religion, national origin, sex, familial status, or disability.

*History Note: Authority G.S. 93A-3(c); 93A-6;  
Eff. July 1, 2021.*



## **REQUEST FOR TECHNICAL CHANGE**

AGENCY: Real Estate Commission

RULE CITATION: 21 NCAC 58A .0503

**DEADLINE FOR RECEIPT: May 14, 2021**

**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 call our office to inquire concerning the staff recommendation.

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

*In your History Note, please delete 93A-4.1 because it has been repealed.*

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

Ashley Snyder  
Commission Counsel  
Date submitted to agency: April 30, 2021

21 NCAC 58A .0503 is amended as published in 35:12 NCR 1397 as follows:

**21 NCAC 58A .0503      LICENSE RENEWAL**

(a) All real estate licenses issued by the Commission under G.S. 93A, Article 1 shall expire on June 30 following issuance. Any broker desiring renewal of his or her license shall renew on the Commission's website within 45 days prior to license expiration and shall submit a renewal fee of forty-five dollars (\$45.00).

(b) During the renewal process, every individual broker shall provide an email address to be used by the Commission. The email address may be designated by the broker as private in order to be exempt from public records disclosures pursuant to G.S. 93A-4(b2). ~~A broker who does not have an email address is not required to obtain an email address to comply with this Rule.~~

(c) During the renewal process, every designated broker-in-charge shall disclose:

- (1) each federally insured depository institution lawfully doing business in this State where the trust account(s) for the broker-in-charge or the entity for which the broker-in-charge is designated is held, if applicable; and
- (2) any criminal conviction or occupational license disciplinary action that occurred within the previous year.

*History Note: Authority G.S. 93A-3(c); 93A-4; 93A-4.1; 93A-6;*  
*Eff. February 1, 1976;*  
*Readopted Eff. September 30, 1977;*  
*Amended Eff. July 1, 1994; February 1, 1991; February 1, 1989;*  
*Temporary Amendment Eff. April 24, 1995 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;*  
*Amended Eff. July 1, 2017; July 1, 2014; April 1, 2013; April 1, 2006; January 1, 2006; July 1, 2004; December 4, 2002; April 1, 1997; July 1, 1996; August 1, 1995;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018;*  
*Amended Eff. July 1, 2021; July 1, 2018.*

## **REQUEST FOR TECHNICAL CHANGE**

AGENCY: Real Estate Commission

RULE CITATION: 21 NCAC 58A .1601

**DEADLINE FOR RECEIPT: May 14, 2021**

**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 call our office to inquire concerning the staff recommendation.

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

*What authority are you relying upon for the proposed amendments to Paragraph (b)? As I read (b), it is a stricter standard than required by G.S. 41A-4 and 41A-5. Do you have authority to set a higher standard?*

*For the changes in (b), what is being prohibited? What factors are considered when determining whether a broker "promot[ed] the distribution of resources or opportunities" in a manner that brought about "inequity, discrimination, or prejudice?"*

*How does the new language in (b) differ from the language already required in listing agreements at lines 26-28? Is it repetitive? If so, why is it necessary? If not, please clarify what is now being required that is not already covered by the language in lines 26-28.*

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

Ashley Snyder  
Commission Counsel  
Date submitted to agency: April 30, 2021

21 NCAC 58A .1601 is amended with changes as published in 35:12 NCAC 1397 as follows:

**SECTION .1600 - DISCRIMINATORY PRACTICES PROHIBITED**

**21 NCAC 58A .1601 FAIR HOUSING AND RACIAL EQUITY**

(a) Conduct by a licensee broker which violates the provisions of the State Fair Housing Act constitutes improper conduct or dealing in violation of G.S. 93A-6(a)(10).

(b) Conduct by a licensee broker in connection with a real estate transaction, real estate related services, or promotion of their status as a real estate broker that promotes the distribution of resources or opportunities in any manner [is either determined or predicated by] that brings about inequity, discrimination, or prejudice on account of race, racial bias or racial ideology, color, religion, national origin, sex, familial status, or disability constitutes improper conduct or dealing in violation of G.S. 93A-6(a)(10).

*History Note: Authority G.S. 41A-4; 41A-5; 41A-6; 93A-3(c);*

*Eff. July 1, 1989;*

*Amended Eff. April 1, 1997;*

*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, 2021.*

## **REQUEST FOR TECHNICAL CHANGE**

AGENCY: Real Estate Commission

RULE CITATION: 21 NCAC 58A .2202

**DEADLINE FOR RECEIPT: May 14, 2021**

**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 call our office to inquire concerning the staff recommendation.

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

*For the changes in (d), what is being prohibited? What factors are considered when determining whether a broker's price opinion or comparative market analysis was provided in a manner that brought about "inequity, discrimination, or prejudice?"*

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

Ashley Snyder  
Commission Counsel  
Date submitted to agency: April 30, 2021

21 NCAC 58A .2202 is amended with changes as published in 35:12 NCAC 1398 as follows:

**21 NCAC 58A .2202      STANDARDS**

(a) A broker performing a broker price opinion or comparative market analysis for a fee shall comply with all the requirements in G.S. 93A-83 and in this Rule.

(b) A broker shall only accept an assignment to provide a broker price opinion or comparative market analysis for a property if the broker has knowledge of the real estate market, direct access to real estate market sales or leasing data, and brokerage or appraisal experience in the subject property's geographic location.

(c) A broker shall not provide a broker price opinion or comparative market analysis for a property unless the broker can exercise objective, independent judgment free of any influence from any interested party in the performance of his or her analysis of the facts relevant to determination of a probable selling or leasing price.

~~(d)~~ A broker shall not provide a broker price opinion or comparative market analysis ~~that is either determined or predicated by~~ in any manner that brings about inequity, discrimination, or prejudice on account of race, racial bias or racial ideology, color, religion, national origin, sex, familial status, or disability.

~~(d)~~ (e) A broker shall not provide a broker price opinion or comparative market analysis for a property unless the broker has personally inspected the exterior and interior of that property, provided, however, that an inspection of the exterior or interior is not required if this is waived in writing by the party for whom the opinion or analysis is being performed.

~~(e)~~ (f) When developing a broker price opinion or comparative market analysis for a property or interest therein, a broker shall utilize methodology such as analysis of sales or income of sold or leased properties comparable to the subject property or capitalization as is appropriate for the assignment and type of subject property.

~~(f)~~ (g) When analyzing sales or income of properties comparable to the property that is the subject of a broker price opinion or comparative market analysis assignment, a broker shall comply with the following standards:

(1) The broker shall select from reliable information sources a minimum of three sold or leased comparable properties for use in his or her analysis that are similar to the subject property with regard to characteristics such as property type, use, location, age, size, design, physical features, amenities, utility, property condition and conditions of sale. The comparable properties selected shall reflect the prevailing factors or market conditions influencing the sale or lease prices of similar properties in the subject property's local market; and

(2) The broker shall make adjustments to the selling or leasing price of selected comparable properties for differences between the characteristics of the comparable properties and the subject property as necessary to produce a credible estimate of the probable selling or leasing price. Adjustments shall be considered for differences in property characteristics such as location, age, size, design, physical features, amenities, utility, condition, economic or functional obsolescence and conditions of sale. The amounts of adjustments shall reflect the values that the local real estate market places on the differences in the characteristics in question.

1 ~~(g)~~ (h) A broker price opinion or comparative market analysis provided to the party for whom the opinion or analysis  
2 is being performed shall address, in addition to matters required to be addressed by G.S. 93A-83 and other provisions  
3 of this Rule, the following items:

- 4 (1) a description of the comparable properties used in the analysis (including any unsold properties  
5 listed for sale or rent that were used as comparable properties);
- 6 (2) the adjustments made to the selling or leasing prices of comparable properties;
- 7 (3) local real estate market conditions;
- 8 (4) if the date on which the sale or lease of a comparable property became final is more than six months  
9 prior to the effective date of the broker price opinion or comparative market analysis, an explanation  
10 of why the comparable property was used in the analysis and a description of the market conditions  
11 affecting the comparable property at the time the sale or lease became final; and
- 12 (5) each method used in deriving the estimate of probable selling or leasing price.

13 ~~(h)~~ (i) In connection with a broker price opinion or comparative market analysis, an estimated probable leasing price  
14 may be reported by a broker as a lease rate and an estimated probable selling or leasing price may be reported by a  
15 broker either as a single figure or as a price range. When the estimated probable selling or leasing price is stated as a  
16 price range and the higher figure exceeds the lower figure by more than 10 percent, the broker shall include an  
17 explanation of why the higher figure exceeds the lower figure by more than 10 percent.

18  
19 *History Note: Authority G.S. 93A-83(d);*

20 *Temporary Adoption Eff. October 1, 2012;*

21 *Eff. April 1, 2013;*

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

23 *May 1, 2018;*

24 *Amended Eff. July 1, 2021.*

## **REQUEST FOR TECHNICAL CHANGE**

AGENCY: Real Estate Commission

RULE CITATION: 21 NCAC 58H .0210

**DEADLINE FOR RECEIPT: May 14, 2021**

**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 call our office to inquire concerning the staff recommendation.

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

*At line 7, should the word "official" be deleted?*

*At line 8, please capitalize "State" if you are only referring to North Carolina.*

*In (a)(6), did you intend to refer to G.S. 93A-38.5(e)?*

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

Ashley Snyder  
Commission Counsel  
Date submitted to agency: April 30, 2021



21 NCAC 58H .0210 is amended as published in 35:12 NCR 1398 as follows:

**21 NCAC 58H .0210      DENIAL, WITHDRAWAL, OR TERMINATION OF EDUCATION PROVIDER  
CERTIFICATION**

(a) The Commission may deny or withdraw certification of an education provider or suspend, revoke, or deny renewal of the certification of an education provider upon finding that an education provider:

- (1) official was found by a court or government agency of competent jurisdiction to have violated any state or federal law;
- (2) made any false statements or presented any false, incomplete, or incorrect information in connection with an application;
- (3) failed to provide or provided false, incomplete, or incorrect information in connection with any report the education provider is required to submit to the Commission;
- (4) presented to its students or prospective students false or misleading information relating to its instructional program, to the instructional programs of other institutions, or related to employment opportunities;
- (5) collected money from students but refused or failed to provide the promised instruction;
- (6) failed to submit the per student fee as required by G.S. 93A-4(a2) or 93A-38.5(d);
- (7) refused at any time to permit authorized representatives of the Commission to inspect the education provider's facilities or audit its courses;
- (8) or education director violated the rules of this Subchapter or was disciplined by the Commission under G.S. 93A-6;
- (9) obtained or used, or attempted to obtain or use, in any manner or form, North Carolina real estate license examination questions;
- (10) failed to provide to the Commission a written plan describing the changes the education provider made or intends to make in its instructional program including instructors, course materials, methods of student evaluation, and completion standards to improve the performance of the education provider's students on the license examination within 30 days of the Commission's request during an investigation or application process;
- (11) provided the Commission a fee that was dishonored by a bank or returned for insufficient funds;
- (12) Certificate of Authority was revoked, subject to a revenue suspension, or subject to administrative dissolution by the NC Secretary of State;
- (13) failed to utilize course materials pursuant to Rule .0205 of this Section;
- (14) failed to submit reports pursuant to Rule .0207 of this Section;
- (15) provided false, incomplete, or misleading information relating to real estate licensing, education matters, or the broker's education needs or license status; ~~or~~
- (16) discriminated in its admissions policy or practice against any person on the basis of age, sex, race, color, national origin, familial status, handicap status, or religion; or

1           ~~(16)~~(17) refused or failed to comply with the provisions of this Subchapter.

2       (b) A broker shall be subject to discipline pursuant to G.S. 93A-6 if the broker engages in dishonest, fraudulent, or

3       improper conduct in connection with the operations of an education provider if that broker:

4           (1)       has an ownership interest in the education provider;

5           (2)       is the education director; or

6           (3)       is an instructor for an education provider.

7       (c) The Commission shall withdraw an education provider's certification when its annual License Examination

8       Performance Record fails to exceed 40 percent in each of the previous two license years. Following withdrawal, the

9       education provider shall be ineligible to apply for certification for a period of one year.

10      (d) When ownership of a certified education provider is transferred and the education provider ceases to operate as

11      the certified entity, the certification is not transferable and shall terminate on the effective date of the transfer. All

12      courses shall be completed by the effective date of the transfer. The transferring owner shall report course

13      completion(s) to the Commission. The new entity shall obtain an original certification for each location where the

14      education provider will conduct courses as required by G.S. 93A-34 and Rule .0202 of this Section prior to advertising

15      courses, registering students, accepting tuition, conducting courses, or otherwise engaging in any education provider

16      operations.

17

18      *History Note:     Authority G.S. 93A-4(d); 93A-34(c); 93A-35(c); 93A-38;*

19                      *Eff. July 1, 2017;*

20                      *Amended Eff. July 1, 2021; July 1, 2020.*

21 NCAC 58H .0303 is amended as published in 35:12 NCR 1399 as follows:

**21 NCAC 58H .0303      DENIAL OR WITHDRAWAL OF INSTRUCTOR APPROVAL**

(a) The Commission may deny or withdraw approval of any instructor applicant or approved instructor upon finding that the instructor or instructor applicant:

- (1) has failed to meet the criteria for approval described in Rule .0302 of this Section or the criteria for renewal of approval described in Rule .0306 of this Section at the time of application or at any time during an approval period;
- (2) made any false statements or presented any false, incomplete, or incorrect information in connection with an application for approval or renewal of approval or any report that is required to be submitted to the Commission;
- (3) has failed to submit to the Commission any report, course examination, or video recording required by these Rules;
- (4) has failed to demonstrate the ability to teach a Prelicensing, Postlicensing, or Update course in a manner consistent with the course materials;
- (5) taught a Prelicensing course and failed to provide to the Commission a written plan describing the changes the instructor has made or intends to make in his or her instructional program to improve the performance of the instructor's students on the license examination within 30 days of the Commission's request during an investigation or application process;
- (6) has been convicted of, pleaded guilty to, or pleaded no contest to, a misdemeanor or felony violation of state or federal law by a court of competent jurisdiction;
- (7) has been found by a court or government agency of competent jurisdiction to have violated any state or federal regulation prohibiting discrimination;
- (8) has obtained, used, or attempted to obtain or use, in any manner or form, North Carolina real estate license examination questions;
- (9) has failed to take steps to protect the security of end-of-course examinations;
- (10) failed to take any corrective action set out in the plan described in Subparagraph (a)(5) of this Rule or as otherwise requested by the Commission;
- (11) engaged in any other improper, fraudulent, or dishonest conduct;
- (12) failed to utilize course materials pursuant to Rule .0205 of this Subchapter;
- (13) has taught or conducted a course in any manner that discriminated against any person on the basis of age, sex, race, color, national origin, familial status, handicap status, or religion; or
- ~~(13)~~(14) failed to comply with any other provisions of this Subchapter.

(b) The Commission shall withdraw an instructor's approval when their annual License Examination Performance Record fails to exceed 40 percent in each of the previous two license years. Following withdrawal, the instructor shall be ineligible to apply for approval for a period of one year.

- 1     *History Note:*     *Authority G.S. 93A-4; 93A-33; 93A-34;*
- 2                             *Eff. July 1, 2017;*
- 3                             *Amended Eff. July 1, 2021; July 1, 2020.*