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# *The* **NORTH CAROLINA REGISTER**

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## **CORRECTION**

**Labor**

## **PROPOSED RULES**

**Crime Control and Public Safety**

**Electrical Contractors**

**Human Resources**

**Real Estate Commission**

**Speech and Language Pathologists  
and Audiologists**

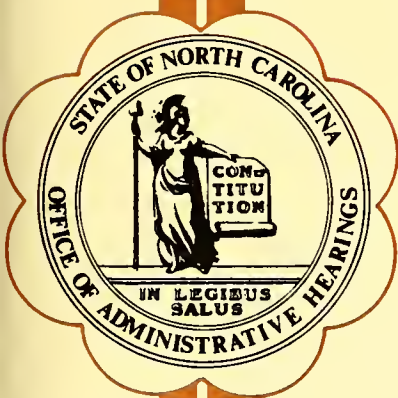
**State Personnel**

**Wildlife Resources**

## **LIST OF RULES AFFECTED**

**ISSUE DATE: MARCH 15, 1989**

**Volume 3 • Issue 24 • Pages 1054-1091**



# INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE

## NORTH CAROLINA REGISTER

The *North Carolina Register* is published bi-monthly and contains information relating to agency, executive, legislative and judicial actions required by or affecting Chapter 150B of the General Statutes. All proposed, administrative rules and amendments filed under Chapter 150B must be published in the Register. The Register will typically comprise approximately fifty pages per issue of legal text.

State law requires that a copy of each issue be provided free of charge to each county in the state and to various state officials and institutions. The *North Carolina Register* is available by yearly subscription at a cost of one hundred and five dollars (\$105.00) for 24 issues.

Requests for subscriptions to the *North Carolina Register* should be directed to the Office of Administrative Hearings, P. O. Drawer 11666, Raleigh, N. C. 27604, Attn: *Subscriptions*.

## ADOPTION, AMENDMENT, AND REPEAL OF RULES

An agency intending to adopt, amend, or repeal a rule must first publish notice of the proposed action in the *North Carolina Register*. The notice must include the time and place of the public hearing; a statement of how public comments may be submitted to the agency either at the hearing or otherwise; the text of the proposed rule or amendment; a reference to the Statutory Authority for the action and the proposed effective date.

The Director of the Office of Administrative Hearings has authority to publish a summary, rather than the full text, of any **amendment** which is considered to be too lengthy. In such case, the full text of the rule containing the proposed amendment will be available for public inspection at the Rules Division of the Office of Administrative Hearings and at the office of the promulgating agency.

Unless a specific statute provides otherwise, at least 30 days must elapse following publication of the proposal in the *North Carolina Register* before the agency may conduct the required public hearing and take action on the proposed adoption, amendment or repeal.

When final action is taken, the promulgating agency must file any adopted or amended rule for approval by the Administrative Rules Review Commission. Upon approval of ARRC, the adopted or amended rule must be filed with the Office of Administrative Hearings. If it differs substantially from the proposed form published as part of the public notice, upon request by the agency, the adopted version will again be published in the *North Carolina Register*.

A rule, or amended rule cannot become effective earlier than the first day of the second calendar month after the adoption is filed with the Office of Administrative Hearings for publication in the NCAC.

Proposed action on rules may be withdrawn by the promulgating agency at any time before final action is taken by the agency.

## TEMPORARY RULES

Under certain conditions of an emergency nature, some agencies may issue temporary rules. A temporary rule becomes effective when adopted and remains in

effect for the period specified in the rule or 180 days, whichever is less. An agency adopting a temporary rule must begin normal rule-making procedures on the permanent rule at the same time the temporary rule is adopted.

## NORTH CAROLINA ADMINISTRATIVE CODE

The North Carolina Administrative Code (NCAC) is a compilation and index of the administrative rules of 25 state agencies and 38 occupational licensing boards. The NCAC comprises approximately 15,000 letter size, single spaced pages of material of which approximately 35% is changed annually. Compilation and publication of the NCAC is mandated by G.S. 150B-63(b).

The Code is divided into Titles and Chapters. Each state agency is assigned a separate title which is further broken down by chapters. Title 21 is designated for occupational licensing boards.

The NCAC is available in two formats.

- (1) Single pages may be obtained at a minimum cost of two dollars and 50 cents (\$2.50) for 10 pages or less, plus fifteen cents (\$0.15) per each additional page.
- (2) The full publication consists of 52 volumes, totaling in excess of 15,000 pages. It is supplemented monthly with replacement pages. A one year subscription to the full publication including supplements can be purchased for seven hundred and fifty dollars (\$750.00). Individual volumes may also be purchased with supplement service. Renewal subscriptions for supplements to the initial publication available.

Requests for pages of rules or volumes of the NCAC should be directed to the Office of Administrative Hearings.

## NOTE

The foregoing is a generalized statement of the procedures to be followed. For specific statutory language, it is suggested that Articles 2 and 5 of Chapter 150B of the General Statutes be examined carefully.

## CITATION TO THE NORTH CAROLINA REGISTER

The *North Carolina Register* is cited by volume, issue, page number and date. **1:1 NCR 101-201, April 1, 1986** refers to Volume 1, Issue 1, pages 101 through 201 of the *North Carolina Register* issued on April 1, 1986.

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# ***NORTH CAROLINA REGISTER***



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**NORTH CAROLINA REGISTER**  
**Publication Deadlines and Schedules**  
*(January 1989 - May 1990)*

Issue Date	Last Day for Filing	Last Day for Electronic Filing	Earliest Date for Public Hearing & Adoption by Agency	* Earliest Effective Date
*****	*****	*****	*****	*****
01/02/89	12/08/88	12/15/88	02/01/89	05/01/89
01/16/89	12/27/88	01/03/89	02/15/89	05/01/89
02/01/89	01/10/89	01/17/89	03/03/89	06/01/89
02/15/89	01/26/89	02/02/89	03/17/89	06/01/89
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04/16/90	03/23/90	03/30/90	05/16/90	08/01/90
05/01/90	04/09/90	04/17/90	05/31/90	09/01/90
05/15/90	04/24/90	05/01/90	06/14/90	09/01/90

\* The "Earliest Effective Date" is computed assuming that the public hearing and adoption occur in the calendar month immediately following the "Issue Date", that the agency files the rule with The Administrative Rules Review Commission by the 20th of the same calendar month and that ARRC approves the rule at the next calendar month meeting.



**CORRECTION TO NOTICE AS PUBLISHED IN THE NORTH CAROLINA REGISTER,  
VOLUME 3, ISSUE 23 ON PAGE 1028.**

**TITLE 13 - DEPARTMENT OF LABOR**

*Notice is hereby given in accordance with G.S. 150B-12 that the Department of Labor intends to adopt rule cited as 13 NCAC 7C .0105.*

*The proposed effective date of this action is July 1, 1989.*

*The public hearing will be conducted at 2:00 p.m. on April 12, 1989 at Conference Room, Room 249, Labor Building, 4 West Edenton Street, Raleigh, NC 27601.*

*Comment Procedures: People wanting to present oral testimony at the hearing or who want to have written testimony read at the hearing should provide a written summary of the proposed testimony to the department by April 7, 1989. Oral presentations will be limited to 15 minutes each. Written statements not presented at the hearing will be accepted by the department until April 12, 1989. All correspondence should be directed to Bobby Bryan, N.C. Department of Labor, 4 West Edenton Street, Raleigh, NC 27601. Interpreters for the hearing impaired will be made available if requested 24 hours in advance.*

*Notice is hereby given in accordance with G.S. 150B-12 that the Department of Labor intends to adopt rule cited as 13 NCAC 7C .0106.*

*The proposed effective date of this action is July 1, 1989.*

*The public hearing will be conducted at 2:00 p.m. on April 13, 1989 at Conference Room, Room 249, Labor Building, 4 West Edenton Street, Raleigh, NC 27601.*

*Comment Procedures: People wanting to present oral testimony at the hearing or who want to have written testimony read at the hearing should provide a written summary of the proposed testimony to the department by April 8, 1989. Oral presentations will be limited to 15 minutes each. Written statements not presented at the hearing will be accepted by the department until April 13, 1989. All correspondence should be directed to Bobby Bryan, N.C. Department of Labor, 4 West Edenton Street, Raleigh, NC 27601. Interpreters for the hearing impaired will be made available if requested 24 hours in advance.*

**TITLE 10 - DEPARTMENT OF HUMAN RESOURCES**

*Notice is hereby given in accordance with G.S. 150B-12 that the Division of Health Services intends to amend rules cited as 10 NCAC 8C .0602, .0802, .0805 - .0806, .0808 - .0809, .0901 - .0902, .1103 - .1104, .1106.*

*The proposed effective date of this action is July 1, 1989.*

*The public hearing will be conducted at 1:30 p.m. on April 14, 1989 at Cooper Memorial Health Building, Sixth Floor Board Room, 225 North McDowell Street, Raleigh, North Carolina.*

*Comment Procedures: Any person may request information or copies of the proposed rules by writing or calling John P. Barkley, Agency Legal Specialist, Division of Health Services, P.O. Box 2091, Raleigh, North Carolina 27602-2091, (919) 733-3134. Written comments on these rule changes may be sent to Mr. Barkley at the above address. Written and oral comments (no more than ten minutes for oral comments) on these rule changes may be presented at the public hearing. Notice should be given to Mr. Barkley at least three days prior to the public hearing if you desire to speak.*

**CHAPTER 8 - HEALTH: PERSONAL HEALTH**

**SUBCHAPTER 8C - NUTRITION AND DIETARY SERVICES**

**SECTION .0600 - WIC PROGRAM GENERAL INFORMATION**

**.0602 DEFINITIONS**

For the purposes of this Subchapter, all definitions set forth in 7 C.F.R. Part 246.2 (1979) ~~shall be incorporated~~ are adopted by reference in accordance with G.S. 150B-14(c) with the following additions and modifications:

- (9) The "state agency" is the nutrition and dietary services branch, maternal and child care section, division of health services, North Carolina Department of Human Resources, located in Room ~~319, Bath Building, 306 North Wilmington Street, 309, 1330 St. Mary's Street,~~ Raleigh, North Carolina 27602.

*Statutory Authority G.S. 130A-361.*

**SECTION .0800 - ELIGIBILITY FOR WIC PROGRAM PARTICIPATION**

**.0802 APPLICATION**

(a) An individual shall be considered an applicant for the WIC program when ~~he/she~~ the individual first visits the local WIC agency and specifically requests to participate in the program. At this time the local WIC agency shall fill out DHS Form ~~2767, "Application for Special Supplemental Food Program for Women, Infants and Children,"~~ 3367, WIC Certification Form. This form is available from the nutrition and dietary services branch, division of health services, P.O. Box 2091, Raleigh, North Carolina 27602.

(b) Applications shall be accepted by a local WIC agency whenever the agency is open to the public.

(c) The decision and notification of eligibility or ineligibility shall be made in accordance with 7 C.F.R. 246.7 ~~(f) (1979),~~ (e), which is adopted by reference in accordance with G.S. 150B-14(c).

*Statutory Authority G.S. 130A-361.*

**.0805 SCHEDULE OF CERTIFICATION**

The period of certification of an individual shall follow the schedule contained in 7 C.F.R. 246.7 ~~(g) (1979) (f),~~ which is adopted by reference in accordance with G.S. 150B-14(c), as interpreted in the North Carolina WIC Program Manual.

*Statutory Authority G.S. 130A-361.*

**.0806 DOCUMENTATION OF CERTIFICATION**

(a) 7 C.F.R. 246.7 ~~(1979)~~ which is adopted by reference in accordance with G.S. 150B-14(c), requires that specific information be recorded on the same or separate forms, that the forms be signed by the individual making the determination and that certain statements be read and signed by the participant. DHS Form ~~2767, Application for the Special Supplemental Food Program for Women, Infants and Children, and DHR Form 2722, WIC Program Data Entry Form,~~ 3367, WIC Certification Form, shall be completed in order to meet these requirements.

*Statutory Authority G.S. 130A-361.*

**.0808 WAITING LIST**

(c) Local WIC agencies shall enroll individuals in a manner which ensures that applicants in a higher priority group are first given an opportunity to receive food instruments in accordance with 7 C.F.R. 246.7(d)(3) ~~(1979),~~ which is adopted by reference in accordance with G.S. 150B-14(c).

Statutory Authority G.S. 130A-361.

**.0809 REQUIRED NOTIFICATIONS**

7 C.F.R. 246.7 (~~1979~~) which is adopted by reference in accordance with G.S. 150B-14(c), mandates that individuals who apply for or participate in the WIC program shall be notified in certain specified situations. The time frames and contents of these notices shall be reproduced in the North Carolina WIC Program Manual. The notices shall include but not be limited to, a statement of a right to a fair hearing as described in Rule .1304 of this Subchapter.

Statutory Authority G.S. 130A-361.

**SECTION .0900 - WIC PROGRAM FOOD PACKAGE**

**.0901 ALLOWABLE FOODS**

(a) The foods which may be provided to WIC program participants are specified in 7 C.F.R. 246.8 (~~1977~~) and 7 C.F.R. 246.8 (~~1980~~), and 7 C.F.R. 246.10, which are adopted by reference in accordance with G.S. 150B-14(c).

(b) The following exclusions from the food package have been adopted by the North Carolina WIC program and approved by the United States Department of Agriculture, Food and Nutrition service:

- (~~5~~) ~~peanut butter~~;
- (~~6~~) ~~(5)~~ cheese in excess of four pounds per month, unless a physician documents the presence of lactose intolerance;
- (~~7~~) ~~(6)~~ incomplete formulas, i.e., those requiring the addition of any ingredient other than water prior to being served in a liquid state;
- (~~8~~) ~~(7)~~ all formulas other than standard milk-based iron fortified infant formulas, unless a physician prescribes a formula and documents the presence of a medical condition, the reason for the specific formula prescribed, and the duration of its use;
- (~~9~~) ~~(8)~~ if the WIC program executes a sole source contract for an infant formula, that formula shall be specified in the vendor contract and on the food instrument, and all other formulas shall be excluded from the food package, unless a physician prescribes a different formula and documents the presence of a medical condition, the reason for the specific formula prescribed, and the duration of its use;
- (~~10~~) ~~(9)~~ other foods determined by the state agency to be inappropriate for provision as supplemental foods through the WIC program as a result of their composition,

packaging or promotion in a manner which is contrary to the purpose of the program as contained in .0601(a) of this Subchapter.

Statutory Authority G.S. 130A-361.

**.0902 QUANTITY OF FOODS**

The amount of supplemental foods provided shall not exceed the maximum quantities specified in 7 C.F.R. ~~246.8 (1980)~~, 246.10, which is adopted by reference in accordance with G.S. 150B-14(c).

Statutory Authority G.S. 130A-361.

**SECTION .1100 - WIC PROGRAM FOOD DISTRIBUTION SYSTEM**

**.1103 USE OF FOOD INSTRUMENTS**

(a) Participants may redeem food instruments on any day on or between the "date of issue" and ~~"void if not used by"~~ "participant must use by" dates assigned to the food instrument.

Statutory Authority G.S. 130A-361.

**.1104 VALIDITY OF WIC FOOD INSTRUMENTS**

(a) North Carolina WIC food instruments shall not be valid if:

- (7) the "pay exactly" amount exceeds the "void if exceeds amount" or exceeds the total amount of the shelf prices on the date redeemed ~~plus the appropriate sales taxes~~ for the eligible food items called for on and provided in consideration of the instrument;

Statutory Authority G.S. 130A-361.

**.1106 AUTHORIZED WIC VENDORS**

(b) In order to participate in the WIC program, the vendor shall:

- (16) Maintain a minimum inventory of eligible food items in the store for purchase by WIC Program participants. All such foods shall be within the manufacturer's expiration date. The following items and sizes constitute the minimum inventory of eligible food items for stores classified 1 - 4:

Food Item	Type of Inventory
Milk	Whole fluid: gallon and half gallon -and- Skim/lowfat fluid: gallon or half gallon

## PROPOSED RULES

	Nonfat dry: quart package	
	-or-	
	Evaporated: 12 oz. can	
Cheese	2 types	
Cereals	4 types (minimum box size 7 oz.)	3 one pound bags
Eggs	Grade A, large or extra-large: white or brown	<u>3 jars</u>
Juices	Orange juice must be available in 2 types. A second flavor must be available in 1 type. The types are: 12 oz. frozen, 46 oz. can, 64 oz. container	30 jars  6 boxes  62 cans
Dried Peas and Beans	2 types	<p>For store classification 5, the following applies: Supply within 48 hours of verbal request by local WIC agency staff any of the following products: Nutramigen, Portagen, Pregestimil, Similac Special Care 24, Similac 60/40, Similac (Low-Iron), Enfamil (Low-Iron), SMA Low Iron, Ensure, Ensure Plus, Osmolite, Sustacal HC, Sustacal, Isocal, Enrich, <del>and</del> Enfamil Premature, <del>Formula</del> <u>PediaSure, Polycose and MCT Oil</u>. All vendors (classifications 1 through 5) shall supply milk or soy based, 32 oz. ready-to-feed or powdered infant formula upon request.</p> <p>(21) Allow reasonable monitoring and inspection of the store premises and procedures to ensure compliance with this agreement and state and federal WIC Program rules, regulations and policies; This includes, but shall not be limited to, allowance of access to WIC food instruments negotiated the day of the monitoring and vendor records pertinent to the purchase of WIC food items; <u>vendor records of all deductions and exemptions allowed by law or claimed in filing sales and use tax returns, and vendor records of all WIC food items purchased, including invoices and copies of purchase orders;</u></p> <p>(c) An authorized WIC vendor may be disqualified from the WIC program for violation of 10 NCAC 8C .1106(b) or violation of any other state and federal WIC program rules for a period not to exceed 3 years in accordance with the following:</p> <p>(4) Notwithstanding disqualification pursuant to accumulated points, an authorized WIC vendor shall also be disqualified from the WIC program upon disqualification or <u>imposition of a civil money penalty</u> from another USDA, FNS Pro-</p>
<u>Peanut Butter</u>	<u>18 oz. jars</u>	
Infant	2 juices; 4.2 oz.	
Fruit Juice	jars	
Infant	2 cereal grains;	
Cereal	8-oz. boxes (one must be rice)	
Infant	2 types; or 1 type	
Formula	contracted for by the WIC program and designated on the food instrument; 13 oz. concentrate	
Quantities Required		
Total of 6 gallons fluid milk		
Total of 5 quarts when reconstituted		
Total of 6 pounds Total of 12 boxes		
6 dozen		
6 of each type in stock		



gram for a period not to exceed that of the other disqualification, or for a period not to exceed that of the original disqualification period determined by the USDA, FNS Program before imposition of the civil money penalty.

Statutory Authority G.S. 130A-361.

## TITLE 14A - DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY

*Notice is hereby given in accordance with G.S. 150B-12 that the N.C. Department of Crime Control and Public Safety/Governor's Crime Commission intends to amend rule cited as 14A NCAC 7 .0311.*

*The proposed effective date of this action is July 1, 1989.*

*The public hearing will be conducted at 1:00 p.m. on April 14, 1989 at Library, Second Floor, Archdale Building, 512 N. Salisbury St., Raleigh, NC 27611.*

*Comment Procedures: Any interested person may present comments relevant to the action proposed at the public hearing either in writing or oral form. Written statements not presented at the public hearing may be directed prior to the hearing to Annie Thompson, Administrative Procedures Coordinator, Second Floor, Archdale Building, 512 N. Salisbury Street, Raleigh, or P.O. Box 27687, Raleigh, NC 27611-7687.*

### CHAPTER 7 - DIVISION OF GOVERNOR'S CRIME COMMISSION

#### SECTION .0300 - GRANT APPLICATION PROCESS AND ADMINISTRATION

##### .0311 GRANT APPLICATION PROCESS

(b) Applications are reviewed by the executive director or his designee. Applications must adhere to the guidelines for the appropriate state or federal grant program and include the following elements, as described in the application instructions:

- (1) general administrative information;
- (2) problems addressed by proposed project;
- (3) a goal statement, measurable objectives of the project and project activities;
- (4) project operation;
- (5) monitoring and evaluation criteria for the project;

- (6) detailed budget description including a budget narrative, budget summary, and matching funds information;
- (7) a list of grant conditions which must be agreed to by an authorizing official of the applicant;
- (8) a certification of non-supplanting;
- (9) a plan for assumption of project costs on a continuing basis by the applicant;
- (10) a statement of consent authorizing certain services or outlays made by other agencies to be charged against funds which could be used by local units of government if appropriate, (and if applicable);
- (11) a certification of filing of an equal employment opportunity program;
- (12) a certification that the grantee will comply with all drug-free workplace requirements set forth in the federal Anti-Drug Abuse Act of 1988;
- (13) a certification that neither the grantee nor its officers or consultants are presently debarred, proposed for debarment, suspended, declared ineligible, or voluntarily excluded from receiving federal funds. (If this certification cannot be provided, the applicant will not necessarily be denied participation in this program. The applicant must submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the determination by the Division and Crime Commission as to whether to approve the application. However, if neither the certification nor an explanation is provided, then the application will be rejected.)
- (14) ~~(42)~~ a certification of filing of an environmental evaluation (if applicable);
- (15) ~~(43)~~ a certification of submission of application to the state budget officer (state agencies only);
- (16) ~~(44)~~ memorandum of agreement or contract with local governmental unit (private, non-profit programs only);
- (17) ~~(45)~~ original signatures of authorizing official, implementing project director, and applicant's chief financial officer; and
- (18) ~~(46)~~ agreement to submit annual audit of program.

Statutory Authority G.S. 143B-477; 143B-479.

## TITLE 15 - DEPARTMENT OF NATURAL RESOURCES AND COMMUNITY DEVELOPMENT

Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina Wildlife Resources Commission intends to amend rules cited as 15 NCAC 101 .0002 - .0004; adopt 15 NCAC 101 .0005.

The proposed effective date of this action is July 1, 1989.

The public hearing will be conducted at 10:00 a.m. on April 14, 1989 at Room 386, Archdale Building, 512 N. Salisbury Street, Raleigh, North Carolina.

**Comment Procedures:** Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments from March 30, 1989 to April 28, 1989. Such written comments must be delivered or mailed to the N.C. Wildlife Commission, 512 N. Salisbury St., Raleigh, NC 27611.

## CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

### SUBCHAPTER 10I - ENDANGERED AND THREATENED SPECIES

#### .0002 PROTECTION OF ENDANGERED; THREATENED AND SPECIAL CONCERN SPECIES

(a) No Open Season. There shall be no open season for taking any of the species listed as endangered in Rule .0003, ~~or as~~ threatened in Rule .0004 or, unless otherwise provided, as special concern in Rule .0005 of this Subchapter. Except as provided in Paragraphs (b), (c) and (e) of this Rule, it is unlawful to take or possess any of such species at any time.

(b) Permits. The executive director may issue permits to take an endangered, ~~or~~ threatened, or special concern species for the purpose of scientific investigation relevant to perpetuation or restoration of said species or as a part of a commission-approved study or restoration effort.

(c) Taking Without a Permit

- (1) An individual may take an endangered, ~~or~~ threatened, or special concern species in defense of his own life or the lives of others without a permit.
- (2) A state or federal conservation officer or employee who is designated by his agency to do so may, when acting in the course of his official duties, take, possess, and transport endangered, ~~or~~ threatened, or special concern species without a permit if the action is necessary to:

- (A) aid a sick, injured, diseased or orphaned specimen;
- (B) dispose of a dead specimen;
- (C) salvage a dead specimen which may be useful for scientific study; or
- (D) remove specimens which constitute a demonstrable but nonimmediate threat to human safety, provided the taking is done in a humane and noninjurious manner; The taking may involve injuring or killing endangered, ~~or~~ threatened, or special concern species only if it is not reasonably possible to eliminate the threat by live-capturing and releasing the specimen unharmed, in a suitable habitat.

(d) Reporting. Any taking or possession of an endangered, ~~or~~ threatened, or special concern species under Subsections (b) and (c) of this Rule is subject to applicable reporting requirements of federal law and regulations and the reporting requirements of ~~the commission or the permit issued by the executive director or of 15 NCAC 10D .0106(e).~~

(e) Exception. Notwithstanding any other provisions of this Rule, processed meat and other parts of American alligators, which have been lawfully taken in a state in which there is an open season for harvesting alligators, may be possessed, bought and sold when such products are marketed in packages or containers which are distinctly labeled to indicate the state in which they were taken and the identity, location, and lawful authority of the processor or distributor.

Statutory Authority G.S. 113-134; 113-291.2; 113-291.3; 113-292; 113-333.

#### .0003 ENDANGERED SPECIES LISTED

(a) The following species of resident wildlife are designated as federally-listed endangered species:

- (1) American alligator (~~Alligator mississippiensis~~); Cape fear shiner (Notropis mekistocholas);
- (2) American peregrine falcon (Falco peregrinus anatum);
- (3) Arctic peregrine falcon (~~Falco peregrinus tundrius~~); Carolina northern flying squirrel (Glaucomys sabrinus coloratus);
- (4) Bachman's warbler (Verimivora bachmanii);
- (5) Bald eagle (Haliaeetus leucocephalus);
- (6) Brown pelican (~~Pelecanus occidentalis~~); Roseate tern (Sterna dougallii dougallii);
- (7) Eastern cougar (Felis concolor cougar);
- (8) Gray bat (Myotis grisescens);
- (9) Indiana bat (Myotis sodalis);
- (10) Ivory-billed woodpecker (Campephilus principalis);

- (11) Kirtland's warbler (*Dendroica kirtlandi*);
- (12) Leatherback turtle (*Dermochelys coriacea*);
- (13) Manatee (*Trichechus manatus*), when found in inland fishing waters;
- (14) Red-cockaded woodpecker (*Picoides borealis*);
- (15) Shortnose sturgeon (*Acipenser brevirostrum*), when found in inland fishing waters;
- (16) Atlantic ridley turtle (*Lepidochelys kempii*);
- (17) Hawksbill turtle (*Eretmochelys imbricata*);
- (18) Tar river spiny mussel (*Elliptio canthyria steinstansana*);
- (19) Virginia big-eared bat (*Plecotus townsendii townsendii*);
- (20) Wood stork (*Mycteria americana*).

(b) The following species of resident wildlife are designated as state-listed endangered species:

#### NONE LISTED AT THIS TIME

*Statutory Authority G.S. 113-134; 113-291.2; 113-292; 113-333.*

#### **.0004 THREATENED SPECIES LISTED**

(a) The following species of resident wildlife are designated as federally-listed threatened species:

- (1) Spotfin chub (*Ilybopsis monacha*);
- (2) Noonday land snail (*Mesodon clarki nantahala*);
- (3) Green turtle (*Chelonia mydas*);
- (4) Loggerhead turtle (*Caretta caretta*);
- (5) American alligator (*Alligator mississippiensis*);
- (6) Artic peregrine falcon (*Falco peregrinus tundrius*);
- (7) Dismal swamp southern shrew (*Sorex longirostris fisheri*);
- (8) Piping plover (*Charadrius melodus*);
- (9) Waccamaw silverside (*Menidia extensa*).

(b) The following species of resident wildlife are designated as state-listed threatened species:

- (1) Eastern wood rat (*Neotoma floridana floridana*).

*Statutory Authority G.S. 113-134; 113-291.2; 113-292; 113-333.*

#### **.0005 SPECIAL CONCERN SPECIES LISTED**

The following species of resident wildlife are designated as state-listed special concern species:

- (1) Water shrew (*Sorex palustris punctulatus*);
- (2) Long-tailed shrew (*Sorex dispar blitchi*);
- (3) Pygmy shrew (*Sorex hoyi winnemana*);

- (4) Star-nosed mole (*Condylura cristata parva*);
- (5) Southeastern bat (*Myotis austroriparius*);
- (6) Keen's bat (*Myotis keenii septentrionalis*);
- (7) Small-footed bat (*Myotis liebi liebi*);
- (8) Rafinesque's big-eared bat (*Plecotus rafinesquii rafinesquii* and *P.r. macrotis*);
- (9) Brazilian free-tailed bat (*Tadarida brasiliensis cynocephala*);
- (10) Eastern wood rat (*Neotoma floridana haemitoria* and *N.f. magister*);
- (11) Rock vole (*Microtus chrotorrhinus carolinensis*);
- (12) Bog turtle (*Clemmys muhlenbergii*);
- (13) Green salamander (*Aneides aeneus*).

*Statutory Authority G.S. 113-134; 113-291.2; 113-292; 113-333.*

### **TITLE 21 - OCCUPATIONAL LICENSING BOARDS**

*Notice is hereby given in accordance with G.S. 150B-12 that the N.C. State Board of Examiners of Electrical Contractors intends to amend rule(s) cited as 21 NCAC 18B .0209, .0404, .0704.*

*The proposed effective date of this action is July 1, 1989.*

*The public hearing will be conducted at 11:00 a.m. on April 14, 1989 at North Carolina State Board of Examiners of Electrical Contractors, 1200 Front Street, Suite 105, Raleigh, NC 27609.*

*Comment Procedures: Any person interested in these Rules may present oral comments relevant to the actions proposed at the public hearing or deliver written comments to the North Carolina State Board of Examiners of Electrical Contractors, 1200 Front Street, Suite 105, Raleigh, NC 27609, not later than 10:30 a.m. on April 14, 1989.*

#### **CHAPTER 18 - BOARD OF EXAMINERS OF ELECTRICAL CONTRACTORS**

#### **SUBCHAPTER 18B - BOARD'S RULES FOR THE IMPLEMENTATION OF THE ELECTRICAL CONTRACTING LICENSING ACT**

#### **SECTION .0200 - EXAMINATIONS**

##### **.0209 FEES**

(a) The combined application and examination fees for the regular qualifying examinations in the various license classifications are as follows:



APPLICATION AND EXAMINATION  
FEE SCHEDULE: REGULAR

CLASSIFICATION	APPLICATION FEE	
Limited	\$15.00	
Intermediate	<del>\$25.00</del> \$30.00	
Unlimited	<del>\$50.00</del> <u>\$65.00</u>	
SP-SFD	\$15.00	
Special Restricted	\$15.00	
	TOTAL	
EXAMINATION FEE	COMBINED FEE	
<del>\$10.00</del> \$15.00	<del>\$ 25.00</del> \$ 30.00	
<del>\$25.00</del> <u>\$30.00</u>	<del>\$ 50.00</del> <u>\$ 60.00</u>	
\$50.00	<del>\$100.00</del> <u>\$115.00</u>	
<del>\$10.00</del> \$15.00	<del>\$ 25.00</del> <u>\$ 30.00</u>	
<del>\$10.00</del> <u>\$15.00</u>	<del>\$ 25.00</del> <u>\$ 30.00</u>	

(b) The combined application and examination fees for a specially-arranged qualifying examination in the various license classifications are as follows:

APPLICATION AND EXAMINATION  
FEE SCHEDULE: SPECIALLY  
ARRANGED

CLASSIFICATION	APPLICATION FEE	
<u>All Classifications</u>	\$100.00	
<u>Limited</u>	<del>\$ 30.00</del>	
<u>Intermediate</u>	<del>\$ 40.00</del>	
<u>Unlimited</u>	<del>\$ 50.00</del>	
<u>SP-SFD</u>	<del>\$ 30.00</del>	
<u>Special Restricted</u>	<del>\$ 30.00</del>	
	TOTAL	
EXAMINATION FEE	COMBINED FEE	
\$100.00	\$200.00	
<del>\$ 70.00</del>	<del>\$100.00</del>	
<del>\$ 85.00</del>	<del>\$125.00</del>	
<del>\$100.00</del>	<del>\$150.00</del>	
<del>\$ 70.00</del>	<del>\$100.00</del>	
<del>\$ 70.00</del>	<del>\$100.00</del>	

(c) The fee for a supervised review of a failed examination with the Board or staff assistance is ten dollars (\$10.00) for all classifications.

(d) Pursuant to G.S. Chapter 150B, Article 2, the Board may vary the application and examination fees from year to year according to essential financial needs for the next ensuing fiscal year as determined and established by the Board

not later than the regular third quarter board meeting of the current fiscal year.

(e) The total combined application and examination fees for regular or specially-arranged examinations in all classifications and the fees for examination reviews must be in the form of a check or money order made payable to the Board and must accompany the respective applications when filed with the Board.

(f) Application and examination fees received with applications filed for qualifying examinations shall be retained by the Board unless: ~~or refunded to the applicant as follows:~~

(1) ~~The application fee portion of the total combined application and examination fee shall be retained by the Board unless:~~

(A) ~~the applicant does not take the examination for which he has applied and files with the Board a written request for refund, setting out the extenuating circumstances for such request; and~~

(B) ~~the applicant's written request for a refund is specifically approved by the Board.~~

(2) ~~The examination fee portion of the total combined application and examination fee shall be refunded to any applicant who does not take the examination during the examination period for which he has applied.~~

(3) ~~The total combined application and examination fee shall be returned to each applicant whose application has not been duly filed as prescribed in Rule .0210 of this Section.~~

(1) an application is not duly filed as prescribed in Rule .0210 of this Section, in which case the combined application and examination fee shall be returned; or

(2) the applicant does not take the examination during the examination period for which he has applied, the applicant files with the Board a written request for a refund, setting out the extenuating circumstances, and the Board approves the refund. The Board may refund the application fee, the examination fee, or both, as justified by the extenuating circumstances.

(g) Examination review fees are non-refundable unless the applicant's written request for a refund is specifically approved by the Board.

(h) Any fee retained by the Board shall not be creditable toward the payment of any future application of examination fee or the fee for an examination review.

Statutory Authority G.S. 87-42; 87-43.3; 87-43.4; 87-44.



## PROPOSED RULES

### SECTION .0400 - LICENSING REQUIREMENTS

#### .0404 ANNUAL LICENSE FEES

(a) The annual license fees and license renewal fees for the various license classifications are as follows:

#### LICENSE FEE SCHEDULE

#### CLASSIFICATION LICENSE FEE

Limited	\$ <del>25.00</del> \$ 30.00
Intermediate	\$ <del>50.00</del> \$ 60.00
Unlimited	\$ <del>100.00</del> \$ 115.00
SP-SFD	\$ <del>25.00</del> \$ 30.00
Special Restricted	\$ <del>25.00</del> \$ 30.00

(b) License fees must be in the form of a check or any money order made payable to the Board and must accompany the applicant's license application or license renewal application when either is filed with the Board.

(c) The Board may, after a hearing pursuant to G.S. Chapter 150B, Article 2, vary the annual license fees from year to year according to the essential financial needs for the next ensuing fiscal year as determined and established by the board not later than the regular third quarter board meeting of the current fiscal year.

Statutory Authority G.S. 87-42; 87-44.

### SECTION .0700 - LICENSING RECIPROCITY

#### .0704 RECIPROCITY: ALABAMA

Pursuant to the provisions of Rule .0701 of this Section and the formal resolution agreement between the Board and the ~~Florida~~ Alabama Electrical Contractors Licensing Board, licensees of the ~~Florida~~ Alabama Board, who are non-residents of North Carolina, are eligible to apply for and obtain a North Carolina electrical contracting license and North Carolina licensees, who are non-residents of ~~Florida~~ Alabama, are eligible to apply to the ~~Florida~~ Alabama Board and obtain a ~~Florida~~ Alabama electrical contracting license in classifications as prescribed in the following table:

<del>FLORIDA</del> ALABAMA LICENSEE	ELIGIBLE FOR NORTH CAROLINA LICENSE
<del>Unlimited</del> <u>Unrestricted</u>	Unlimited
NORTH CAROLINA	ELIGIBLE FOR <del>FLORIDA</del>

#### LICENSEE

Unlimited

#### ALABAMA

#### LICENSE

~~Unlimited~~ Unrestricted

Statutory Authority G.S. 87-42; 87-50.

\* \* \* \* \*

*Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina Real Estate Commission intends to adopt rule(s) cited as 21 NCAC 58A .1601; amend rule(s) cited as 21 NCAC 58A .0101, .0104 - .0112, .0301, .0401 - .0402, .0406, .0501, .0506, .0601, .0805, .1003, .1005 - .1006, .1104 - .1105, .1301, .1305, .1307, .1314, .1317, .1402 - .1404; 21 NCAC 58B .0101, .0104, .0201 - .0202, .0501, .0602; and repeal rule(s) cited as 21 NCAC 58A .0611, .1202 - .1203, .1205 - .1206.*

*The proposed effective date of this action is July 1, 1989.*

*The public hearing will be conducted at 9:00 a.m. on April 19, 1989 at North Carolina Real Estate Commission, 1313 Navaho Drive, Raleigh, North Carolina 27609.*

*Comment Procedures: Comments regarding the rules may be made orally or submitted in writing at the public hearing. Written comments not submitted at the hearing may be delivered to the North Carolina Real Estate Commission, Post Office Box 17100, Raleigh, NC 27619, so as to be received by the hearing date.*

### CHAPTER 58 - REAL ESTATE COMMISSION

#### SUBCHAPTER 58A - REAL ESTATE BROKERS AND SALESMEN

#### ATTACHMENT II SUBMISSION FOR NOTICE FOR AMENDMENT OF RULES

*The cited rules were amended February 1, 1989, but the Office of Administrative Hearings has questioned whether the Administrative Rules Review Commission, which allowed the Real Estate Commission to amend them, in fact had the authority to do so under the G.S. 150-59(c) review procedure. Therefore, to avoid any challenge, OAH suggested we amend the rules through the formal rule making procedures required by Article 2 of Chapter 150B.*

*The rules are:*

21 NCAC 58A .0101, .0108, .0110 - .0111, .0301, .0506, .0601, .0805, .1003, .1005 - .1006, .1104 - .1105, .1301, .1305, .1307, .1314, .1317, .1402 - .1404.

21 NCAC 58B .0101, .0104, .0201 - .0202, .0501, .0602.

#### SECTION .0100 - GENERAL BROKERAGE

##### .0101 DISPLAY OF LICENSE

(a) The license of a broker-in-charge and the license of each broker and salesman engaged in real estate activities at the office of the broker-in-charge shall be prominently displayed at such office.

(b) The annual license renewal pocket card issued by the commission to each salesman or broker, including corporate brokers shall be retained by the licensee as evidence of licensure.

*Statutory Authority G.S. 93A-3(c).*

##### .0108 RETENTION OF RECORDS

Brokers shall retain records of all transactions conducted in such capacity for a period of three years. Such records shall include contracts of sale, written leases, listing contracts, options, offers to purchase, trust or escrow records, earnest money receipts, closing statements and any other records pertaining to real estate transactions. All such records shall be made available for inspection by the commission or its authorized representatives without prior notice.

*Statutory Authority G.S. 93A-3(c).*

##### .0110 BROKER-IN-CHARGE

(a) There shall be designated for each firm and branch office thereof one broker who shall assume responsibility at such office for:

- (1) the proper display of license certificates of the brokers and salesmen associated with or engaged on behalf of the firm at such office, and ascertaining whether each licensee employed at the office has complied with Rules .0503 and .0506 of this Subchapter;
- (2) the proper notification to the commission of any change of business address or trade name of the firm and the registration of any assumed business name adopted by the firm for its use;
- (3) the proper conduct of advertising by or in the name of the firm at such office;
- (4) the proper maintenance at such office of the trust or escrow account of the firm and the records pertaining thereto;

(5) the proper retention and maintenance of records relating to transactions conducted by or on behalf of the firm at such office; and

(6) the proper supervision of salesmen associated with or engaged on behalf of the firm at such office in accordance with the requirements of Rule .0506 of this Subchapter.

No broker shall be broker-in-charge of more than one office or branch office.

(b) When used in this Rule, the term:

(1) "Branch Office" means any office in addition to the principal office of a broker which is operated in connection with the broker's real estate business; and

(2) "Office" means any place of business where acts are performed for which a real estate license is required.

(c) Each broker-in-charge shall notify the commission in writing of any change in his status as broker-in-charge within ten days following the change.

*Statutory Authority G.S. 93A-3(c).*

##### .0111 DRAFTING LEGAL INSTRUMENTS

(a) A broker or salesman acting as an agent in a real estate transaction shall not draft offers, sales contracts, options, leases, promissory notes, deeds, deeds of trust or other legal instruments by which the rights of others are secured; however, a broker or salesman may complete preprinted offer, option contract, sales contract and lease forms in real estate transactions when authorized or directed to do so by the parties.

(b) A broker or salesman may use electronic, computer, or word processing equipment to store preprinted offer and sales contract forms which comply with Rule .0112, as well as preprinted option and lease forms, and may use such equipment to complete and print offer, contract and lease documents. Provided, however, a broker or salesman may not alter the form before it is presented to the parties. If the parties propose to delete or change any word or provision in the form, the form must be marked to indicate the change or deletion made. The language of the form shall not be modified, rewritten, or changed by the broker or salesman or their clerical employees unless directed to do so by the parties.

(c) Nothing contained in this rule shall be construed to prohibit a broker or salesman from making written notes, memoranda or correspondence recording the negotiations of the parties to a real estate transaction when such notes, memoranda or correspondence do not them-

selves constitute binding agreements or other legal instruments.

*Statutory Authority G.S. 93A-3(c).*

#### **SECTION .0300 - APPLICATION FOR LICENSE**

##### **.0301 FORM**

Persons who wish to file applications for a broker or salesman license can obtain the required form upon request to the commission. In general, the form calls for information such as the applicant's name and address, a recent passport size photograph of the applicant, places of residence, education, prior real estate licenses, and such other information necessary to identify the applicant and determine his qualifications and fitness for licensure.

*Statutory Authority G.S. 93A-3(c); 93A-4(a),(b),(d); 150B-11.*

#### **SECTION .0500 - LICENSING**

##### **.0506 SALESMAN TO BE SUPERVISED BY BROKER**

(a) A salesman's license is valid only while he is supervised by the broker-in-charge of the firm or office where the salesman is engaged in the business of a salesman. A salesman shall not act as or hold himself out to be a broker, nor shall he act as a salesman outside the supervision of the broker-in-charge of the firm or office where the salesman is employed.

(b) Upon a salesman's association with a real estate broker or brokerage firm, the broker-in-charge of the office where the salesman will be engaged in the business of a real estate salesman shall immediately file with the commission a form prescribed by the commission containing the salesman's name and residence address, the name of the broker-in-charge, the name of the firm and the address of the office with which the broker-in-charge is associated, a statement from the broker-in-charge certifying that he will supervise the salesman in the performance of all acts for which a license is required, the date that the broker-in-charge assumes responsibility for such supervision, and the signatures of the salesman and broker-in-charge. Upon mailing or delivering the properly completed form to the commission by the broker-in-charge, the salesman named in the form may engage in the business of a salesman under the supervision of the broker-in-charge pending acknowledgement from the commission of receipt of such form; however, in the event such written acknowledgement from the commission is not received by the broker-in-charge within thirty calendar days following the

date shown in the form, the broker-in-charge shall cause the salesman to immediately cease any further activity for which a real estate license is required pending receipt of the written acknowledgement from the commission.

(c) A broker-in-charge who certifies to the commission that he will supervise a licensed salesman shall actively and personally supervise the salesman in a manner which would reasonably assure that the salesman performs all acts for which a real estate license is required in accordance with the real estate license law and commission rules. A supervising broker who fails to supervise a salesman as prescribed in this Rule may be subject to disciplinary action by the commission.

(d) A broker-in-charge shall, upon termination of his supervision of a salesman, immediately notify the commission in writing setting forth the date of termination.

*Statutory Authority G.S. 93A-2(b).*

#### **SECTION .0600 - ADMINISTRATIVE HEARINGS**

##### **.0601 FORM/PREP//COMPLAINTS/MOTIONS /OTHER PLEADINGS/CONTESTED CASES**

(a) There shall be no specific form required for complaints. To be sufficient, a complaint shall be in writing, identify the respondent licensee and shall reasonably apprise the commission of the facts which form the basis of the complaint.

(b) When investigating a complaint, the scope of the commission's investigation shall not be limited only to matters alleged in the complaint. In addition, a person making a complaint to the commission may change his complaint by submitting the changes to the commission in writing.

(c) When a complaint is not verified by the person making the complaint, the commission, in its discretion, may consider the complaint on its own motion.

(d) There shall be no specific forms required for motions or other pleadings relating to contested cases before the commission, except they shall be in writing. To be sufficient, the document must reasonably apprise the commission of the matters it alleges or answers. To be considered by the commission, every answer, motion, request or other pleading must be submitted to the commission in writing or made during the hearing as a matter of record.

(e) Hearings in contested cases before the commission shall be conducted according to the provisions of Chapter 150B of the General Statutes of North Carolina.



*Statutory Authority G.S. 93A-6(a); 150B-38(h).*

## SECTION .0800 - RULE MAKING

### .0805 RECORD OF PROCEEDINGS

A record of rule making proceedings will be available for public inspection during regular office hours at the commission's office. This record will contain the original petition, if any, the notice, all written memoranda and information submitted, and a record or summary of oral presentations, if any, and, in any case where a proposal was rejected, the reason therefor.

*Statutory Authority G.S. 93A-3(c); 150B-12.*

## SECTION .1000 - SCHOOLS

### .1003 CRITERIA FOR APPROVAL

(a) After due investigation and consideration, approval shall be granted to a school when it is shown to the satisfaction of the commission that:

- (1) The school has submitted all information required by the commission;
- (2) The school is a North Carolina post-secondary institution licensed or approved by the State Board of Community Colleges or the Board of Governors of the University of North Carolina; and
- (3) The courses to be conducted comply with the standards described in Section .1100 of this Subchapter.

(b) A North Carolina college or university which grants a baccalaureate or higher degree with a major or minor in the field of real estate or a closely related field may request that appropriate real estate and related courses in its curriculum be approved by the commission as equivalent to the real estate pre-licensing education program prescribed by G.S. 93A-4(a). The commission may, in its discretion, grant such approval and may exempt such school from compliance with the course standards set forth in Section .1100 of this Subchapter.

*Statutory Authority G.S. 93A-4(a),(d).*

### .1005 WITHDRAWAL OR DENIAL OF APPROVAL

(a) The commission may deny or withdraw approval of any school upon finding that such school has:

- (1) refused or failed to comply with any of the provisions of Sections .1000 or .1100 of this Subchapter;
- (2) obtained or used, or attempted to obtain or use, in any manner or form, North Carolina real estate licensing examination questions; or

- (3) compiled a salesman or broker licensing examination performance record for any annual reporting period which is substantially below the performance record of all first-time examination candidates.

(b) In all proceedings to withdraw or deny approval, the provisions of Chapter 150B of the General Statutes shall be applicable.

*Statutory Authority G.S. 93A-4(a),(d).*

### .1006 PROGRAM CHANGES

Approved schools must obtain advance approval from the commission for any changes to be made with respect to program structuring, course content, course completion standards, instructors, textbooks or locations where courses are to be conducted. Requests for approval of such changes must be in writing.

*Statutory Authority G.S. 93A-4(a),(d).*

## SECTION .1100 - REAL ESTATE PRE-LICENSING COURSES

### .1104 COURSE CONTENT

(a) All courses shall consist of instruction in the subject areas and at the competency and instructional levels prescribed in the commission's course syllabi.

(b) Courses may also include coverage of additional related subject areas not prescribed by the commission; however, any such course must provide additional class time above the minimum requirement of 30 classroom hours for the coverage of such additional subject areas.

(c) Classroom time and instructional materials may be utilized for instructional purposes only and not for promoting the interests of or recruiting employees for any particular real estate broker, brokerage firm or franchise.

*Statutory Authority G.S. 93A-4(a),(d).*

### .1105 COURSE COMPLETION STANDARDS

(a) Academic standards for course completion must reasonably assure that students receiving a passing grade possess adequate knowledge and understanding of the subject areas prescribed for the course. A student's grade must be based solely on his or her performance on examinations and on graded homework and classwork assignments. In any course for which college credit or continuing education units (CEUs) may be awarded, the passing grade for the purpose of certifying course completion to the commission must be the same as that grade which is considered passing for the purpose of awarding college or CEU credit.



(b) Course completion requirements must include a comprehensive final course examination which covers all prescribed subject areas and which accounts for at least 50 percent of a student's grade for the course. Final course examinations are subject to review and approval by the commission. Take-home or open-book final course examinations are prohibited. Schools may, within 90 days of the course ending date, allow a student one opportunity to make up any missed course examination or to retake any failed course examination without repeating the course.

(c) The minimum attendance required for satisfactory course completion is 80 percent of all scheduled classroom hours for the course.

*Statutory Authority G.S. 93A-4(a),(d).*

#### **SECTION .1300 - PRIVATE REAL ESTATE SCHOOLS**

##### **.1301 APPLICABILITY**

This Section applies to all private real estate schools, as defined in G.S. 93A-32.

*Statutory Authority G.S. 93A-4(a),(d); 93A-33.*

##### **.1305 ADDITIONAL COURSE OFFERINGS**

Schools may offer real estate courses in addition to those described in Section .1100 of this Subchapter provided that references to such courses are not made or published in a manner which implies that such courses are sanctioned by the commission.

*Statutory Authority G.S. 93A-4(a),(d); 93A-33.*

##### **.1307 FACILITIES AND EQUIPMENT**

(a) The applicant for a license to operate a private real estate school shall either own the school facilities or possess a lease or other agreement for the use of facilities for school purposes which will assure the availability of adequate facilities until the next June 30 following license issuance or renewal. If facilities are to be leased or rented, the applicant need not execute such lease or other agreement until notification is received that the school application has been approved; however, such lease or agreement must be executed and a copy provided to the commission prior to issuance of a license.

(b) All school facilities and equipment shall have been found by appropriate local building, health and fire inspectors to be in compliance with all applicable local, state and federal laws and regulations regarding safety and sanitation.

(c) Classrooms shall be of sufficient size to accommodate comfortably all students enrolled in

a course, shall have adequate light, heat, cooling and ventilation and shall be free of distractions which would disrupt class sessions.

(d) Classrooms shall contain, at a minimum, a chalkboard and student desks or worktables sufficient to accommodate all students enrolled in a course.

(e) The applicant must either utilize school facilities that are designed and equipped in such a manner as will assure full and free access to and use of the facilities by handicapped persons as required by G.S. 168-2 or must certify to the commission that school personnel will be available before, during and after scheduled classes to assist any handicapped person as may be necessary.

*Statutory Authority G.S. 93A-4(a),(d); 93A-33.*

#### **.1314 ADVERTISING AND RECRUITMENT ACTIVITIES**

(a) A school may utilize for advertising or promotional purposes licensing examination performance data provided to the school by the commission, provided that any disclosure of such data by the school must be accurate and must:

- (1) be limited to the annual examination performance data for the particular school and for all examination candidates in the state;
- (2) include the type of examination, the time period covered, the number of first-time candidates examined, and either the number or percentage of first-time candidates passing the examination; and
- (3) be presented in a manner that is not misleading.

(b) Schools shall not make or publish, by way of advertising or otherwise, any false or misleading statement regarding employment opportunities which may be available as a result of successful completion of a course offered by that school or acquisition of a real estate broker or salesman license.

(c) Schools shall not use endorsements or recommendations of any person or organization, by way of advertising or otherwise, unless such person or organization has consented in writing to the use of the endorsement or recommendation and is not compensated for such use.

*Statutory Authority G.S. 93A-4(a),(d); 93A-33.*

#### **.1317 RENEWAL OF LICENSES**

Private real estate school licenses expire on the next June 30 following the date of issuance. In order to assure continuous licensure, applications for license renewal, accompanied by the pre-

scribed renewal fee, should be filed with the commission annually on or before June 1.

*Statutory Authority G.S. 93A-4(a),(d); 93A-33.*

**SECTION .1400 - REAL ESTATE RECOVERY FUND**

**.1402 MULTIPLE CLAIMS**

(a) If at any time the commission has notice of more than one application or potential claim for payment from the Real Estate Recovery Fund arising out of the conduct of a single licensee, the commission may, in its discretion, direct that all applications filed before a date determined by the commission be consolidated for hearing and payment.

(b) When consolidation is appropriate, the commission shall issue to the licensee and the applicants and potential claimants an Order of Consolidation setting forth the deadline for filing all applications to be consolidated. Upon the passing of the deadline, the commission may, in its discretion, either extend the deadline or issue to the licensee and all applicants a notice of the time, date and place set for the hearing on the consolidated applications.

(c) Claims for which the commission has received no notice under G.S. 93A-17(a)(2) or for which no application has been filed prior to the deadline set forth in the Order of Consolidation shall not be considered by the commission until after the completion of all proceedings relating to the consolidated applications and payment thereon.

*Statutory Authority G.S. 93A-16(d); 93A-17; 93A-20.*

**.1403 NOTICE OF HEARING: ORDER/PAYT FROM/REAL ESTATE RECOVERY FUND**

(a) The commission shall give notice of the time, place and date of a hearing on a claim for payment from the Real Estate Recovery Fund to any applicant and the licensee.

(b) After conducting a hearing, the commission shall issue an order either authorizing payment or denying the claim, in whole or in part. This order shall be served upon the licensee and any applicant.

(c) The existence of subsequent notices of potential claims or subsequent applications shall not be considered by the commission in the issuance of an Order for Payment in those cases where the award is allowable but must be reduced pursuant to the provisions of G.S. 93A-21.

*Statutory Authority G.S. 93A-16(d); 93A-20.*

**.1404 EXHAUSTED LIABILITY LIMITS**

Applications for payment from the Real Estate Recovery Fund received or considered by the commission after the liability of the Recovery Fund as described in G.S. 93A-21 has been exhausted shall be dismissed.

*Statutory Authority G.S. 93A-3(c); 93A-21.*

**SUBCHAPTER 58B - TIME SHARES**

**SECTION .0100 - TIME SHARE PROJECT REGISTRATION**

**.0101 APPLICATION FOR REGISTRATION**

(a) Every application for time share project registration shall be filed at the commission's offices upon a form prescribed by the commission. Every such application shall contain or have appended thereto:

- (1) information concerning the developer's title or right to use the real property on which the project is located, including a title opinion provided by an independent attorney performed within 30 days preceding the date of application;
- (2) information concerning owners of time shares at the project other than the developer;
- (3) a description of the improvements and amenities located at the project, including a description of the number and type of time share units;
- (4) a description of the time share estate to be sold or conveyed to purchasers;
- (5) information concerning the developer and his financial ability to develop the project, and information concerning the marketing and managing entities and their relationship to the developer;
- (6) the developer's name and address, past real estate development experience and such other information necessary to determine the moral character of those selling and managing the project;
- (7) copies of all documents to be distributed to time share purchasers at the point of sale or immediately thereafter; and
- (8) such information as may be required by G.S. 93A-52.

The form shall also describe the standards for its proper completion and submission.

(b) In accordance with G.S. 93A-52, an application for time share registration shall be considered to be properly completed when it is wholly and accurately filled out and when all required documents are appended to it and appear to be in compliance with the provisions of the Time Share Act, and, where the project is a condo-

minium, the Condominium Act or Unit Ownership Act.

*Statutory Authority G.S. 47A; 47C; 93A-51; 93A-52(a).*

**.0104 AMENDMENTS TO TIME SHARE PROJECT REGISTRATION**

(a) A developer shall notify the commission immediately, but in no event later than 15 days, after any material change in the information contained in the time share project registration.

(b) A material change shall be any change which reflects a difference in:

- (1) the nature, quality or availability of the purchaser's ownership or right to use his time share;
- (2) the nature, quality or availability of any amenity at the project;
- (3) the developer's title, control or right to use the real property on which the project is located;
- (4) the information concerning the developer, the managing or marketing entities, or persons connected therewith, previously filed with the commission;
- (5) the purchaser's right to exchange his unit; however, a change in the information required to be disclosed to a purchaser by G.S. 93A-48 shall not be a material change; or
- (6) the project or time share as originally registered which would be significant to a reasonable purchaser.

(c) Amendments to time share project registrations shall be submitted in the form of substitute pages for material previously filed with the commission. New or changed information shall be conspicuously indicated by underlining in red ink. Every amendment submitted shall be accompanied by a cover letter signed by the developer or his attorney containing a summary of the amendment and a statement of reasons for which the amendment has been made. The cover letter shall state:

- (1) the name and address of the project and its registration number;
- (2) the name and address of the developer;
- (3) the document or documents to which the amendment applies;
- (4) whether or not the changes represented by the amendment required the assent of the time share owners and, if so, how the assent of the time share owners was properly obtained; and
- (5) the recording reference in the office of the register of deeds for the changes, if applicable.

Developers of multiple projects must submit separate amendments and cover letters for each project for which amendments are submitted.

(d) The commission may, in its discretion, require the developer to file a new time share project registration application in the place of an amendment form. Such refiling shall be without fee.

*Statutory Authority G.S. 93A-51.*

**SECTION .0200 - PUBLIC OFFERING STATEMENT**

**.0201 GENERAL PROVISIONS**

(a) Information contained in a public offering statement shall be accurate on the day it is supplied to a purchaser. Before any public offering statement is supplied to a purchaser, the developer shall file a copy of the statement with the commission.

(b) In addition to the information required to be contained in a public offering statement by G.S. 93A-44, every public offering statement shall disclose to the purchaser of a time share complete and accurate information concerning:

- (1) the real property type of the time share program, whether tenancy-in-common, condominium or other, and a description of the estate the purchaser will own, the term of that estate and the remainder interest, if any, once the term has expired;
- (2) the document creating the time share program, a statement that it is the document which governs the program and a reference to the location where the purchaser may obtain or examine a copy of the document;
- (3) whether or not the property is being converted to a time share from some other use and, if so, a statement to that effect and disclosure of the prior use of the property;
- (4) the maximum number of time shares in the project, each recreational and other commonly used facility offered, and who or what will own each facility, if the project is to be completed in one development or construction phase;
- (5) if the project is planned in phased construction or development, the complete plan of phased offerings, including the maximum number of time shares which may be in the project, each recreational and other commonly used facility, who or what will own each facility, and the developer's representations regarding his commitment to build out the project;



- (6) the association of owners or other entity which will ultimately be responsible for managing the time share program, the first date or event when the entity will convene or commence to conduct business, each owner's voting right, if any, and whether and for how long the developer, as time share owner, will control the entity;
  - (7) the location where owners may inspect the articles and bylaws of the owners association, or other organizational documents of the entity and the books and records it produces;
  - (8) whether the entity has lien rights against time share owners for failure to pay assessments;
  - (9) whether or not the developer has entered into a management contract on behalf of the managing entity, the extent to which the managing entity's powers are delegated to the manager and the location where a copy of the management contract may be examined;
  - (10) whether or not the developer will pay assessments for time shares which it owns and a statement that the amount of assessments due the managing entity from owners will change over time, as circumstances may change; and
  - (11) whether or not the developer sponsors or will sponsor a rental or resale program and, if so, a summary of the program or programs.
- (c) The inclusion of false or misleading statements in a public offering statement shall be grounds for disciplinary action by the commission.

*Statutory Authority G.S. 93A-44(8); 93A-51.*

#### **.0202 PUBLIC OFFERING STATEMENT SUMMARY**

Every public offering statement shall contain a one page cover prescribed by the commission and completed by the developer entitled Public Offering Statement Summary. The Public Offering Statement Summary shall read as follows:

#### **PUBLIC OFFERING STATEMENT SUMMARY**

NAME OF PROJECT:.....

NAME AND REAL ESTATE LICENSE  
NUMBER OF SALESMAN:.....

This Public Offering Statement contains information which deserves your careful study, as you decide whether or not to purchase a time share.

The Public Offering Statement includes general information about the real estate type, the term, and the size of this time share project. It also includes a general description of the recreational and other facilities existing now, or to be provided in the future. The Public Offering Statement will tell you how maintenance and management of the project will be provided and how the costs of these services will be charged to purchasers. From the Public Offering Statement, you will also learn how the project will be governed and whether purchasers will have a voice in that government. You will also learn that a time share instrument will be recorded to protect your real estate interest in your time share.

The Public Offering Statement contains important information, but is not a substitute for the detailed information contained in the contract of purchase and the legal documents which create and affect the time share program at this project.

Please study this Public Offering Statement carefully. Satisfy yourself that any questions you may have are answered before you decide to purchase. If a salesman or other representative of the developer has made a representation which concerns you, and you cannot find that representation in writing, ask that it be pointed out to you.

#### **NOTICE**

UNDER NORTH CAROLINA LAW, YOU MAY CANCEL YOUR TIME SHARE PURCHASE WITHOUT PENALTY WITHIN FIVE DAYS AFTER SIGNING YOUR CONTRACT. TO CANCEL YOUR TIME SHARE PURCHASE, YOU MUST MAIL OR HAND DELIVER WRITTEN NOTICE OF YOUR DESIRE TO CANCEL YOUR PURCHASE TO (name and address of project). IF YOU CHOOSE TO MAIL YOUR CANCELLATION NOTICE, THE NORTH CAROLINA REAL ESTATE COMMISSION RECOMMENDS THAT YOU USE REGISTERED OR CERTIFIED MAIL AND THAT YOU RETAIN YOUR POSTAL RECEIPT AS PROOF OF THE DATE YOUR NOTICE WAS MAILED. UPON CANCELLATION, ALL PAYMENTS WILL BE REFUNDED TO YOU.

*Statutory Authority G.S. 93A-44; 93A-51.*



**SECTION .0500 - HANDLING AND  
ACCOUNTING OF FUNDS**

**.0501 TIME SHARE TRUST FUNDS**

(a) Except as otherwise permitted by G.S. 93A-45(c), all monies received by a time share developer or a time share salesman in connection with a time share sales transaction shall be deposited into a trust or escrow account not later than three banking days following receipt and shall remain in such account for ten days from the date of sale or until cancellation by the purchaser, whichever first occurs.

(b) All monies received by a person licensed as a salesman in connection with a time share transaction shall be delivered immediately to his project broker.

(c) When a time share purchaser timely cancels his time share purchase, the developer shall refund to the purchaser all monies paid by the purchaser in connection with the purchase. The refund shall be made no later than 30 days following the date of execution of the contract. Amounts paid by the purchaser with a bank card or a credit card shall be refunded by a cash payment or by issuing a credit voucher to the purchaser within the 30-day period.

(d) Every project broker shall obtain and keep a written representation from the developer as to whether or not lien-free or lien-subordinated time share instruments can be recorded within 45 days of the purchaser's execution of the time share purchase agreement. When a lien-free or lien-subordinated instrument cannot be recorded within said time period, on the business day following the expiration of the ten day time share payment escrow period, a project broker shall transfer from his trust account all purchase deposit funds or other payments received from a purchaser who has not cancelled his purchase agreement, to the independent escrow agent in a check made payable to the independent escrow agent. Alternatively, the check may be made payable to the developer with a restrictive endorsement placed on the back of the check providing "For deposit to the account of the independent escrow agent for the (name of time share project) only."

*Statutory Authority G.S. 93A-42(c); 93A-51.*

**SECTION .0600 - PROJECT BROKER**

**.0602 DUTIES OF THE PROJECT BROKER**

(a) The broker designated by the developer of a time share project to be project broker shall assume responsibility for:

- (1) The display of the time share project certificate registration and the license certifi-

icates of the real estate salesmen and brokers associated with or engaged on behalf of the developer at the project;

- (2) The determination of whether each licensee employed has complied with Rules .0503 and .0506 of Subchapter 58A;
- (3) The notification to the commission of any change in the identity or address of the project or in the identity or address of the developer or marketing or managing entities at the project;
- (4) The deposit and maintenance of time share purchase or rental monies in a trust or escrow account until proper disbursement is made; and
- (5) The proper maintenance of accurate records at the project including all records relating to the handling of trust monies at the project, records relating to time share sales and rental transactions and the project registration and renewal.

(b) The project broker shall review all contracts, public offering statements and other documents distributed to the purchasers of time shares at the project to ensure that the documents comport with the requirements of the Time Share Act and the rules adopted by the commission, and to ensure that true and accurate documents have been given to the purchasers.

(c) The project broker shall not permit time share sales to be conducted by any person not licensed as a broker or salesman, and shall not delegate or assign his supervisory responsibilities to any other person, nor accept control of his supervisory responsibilities by any other person.

(d) The project broker shall notify the commission in writing of any change in his status as project broker within ten days following the change.

*Statutory Authority G.S. 93A-51; 93A-58(c).*

**SUBCHAPTER 58A - REAL ESTATE BROKERS  
AND SALESMEN**

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**ATTACHMENT II TO SUBMISSION FOR  
NOTICE FOR AMENDMENT OF RULES**

*The cited rules were amended February 1, 1989, but the Office of Administrative Hearings has questioned whether the Administrative Rules Review Commission, which allowed the Real Estate Commission to amend them, in fact had the authority to do so under the G.S. 150-59(c) review procedure. Therefore, to avoid any challenge, OAH suggested we amend the rules through the*

*formal rule making procedures required by Article 2 of Chapter 150B.*

*We additionally wish to make additional amendments.*

*The rules are:*

*21 NCAC 58A .0107, .0112.*

## SECTION .0100 - GENERAL BROKERAGE

### .0107 HANDLING AND ACCOUNTING OF FUNDS

(a) All monies received by a broker acting in his fiduciary capacity shall be deposited in a trust or escrow account not later than three banking days following receipt of such monies except that earnest money deposits received on offers to purchase real estate and tenant security deposits received in connection with real estate leases shall be deposited in a trust or escrow account not later than three banking days following acceptance of such offer to purchase or lease; the date of acceptance of such offer to purchase or lease shall be set forth in the purchase or lease agreement. All monies received by a salesman shall be delivered immediately to the broker by whom he is employed.

(b) In the event monies received by a broker while acting in a fiduciary capacity are deposited in a trust or escrow account which bears interest, such broker shall first secure from all parties having an interest in the monies written authorization for the deposit of such monies in an interest-bearing account. Such authorization shall specify how and to whom the interest will be disbursed, and, if contained in an offer, contract, lease, or other transaction instrument, such authorization shall be set forth in a clear and conspicuous manner which shall distinguish it from other provisions of the instrument.

(c) Closing statements shall be furnished to the buyer and the seller in the transaction at the closing or not more than five days after closing.

(d) Trust or escrow accounts shall be so designated by the bank or savings and loan association in which the account is located, and all deposit tickets and checks drawn on said account shall bear the words "Trust Account" or "Escrow Account".

(e) A broker shall maintain and retain records sufficient to verify the accuracy and proper use of his trust or escrow accounts, including, but not limited to:

- (1) bank statements;
- (2) cancelled checks which shall be referenced to the corresponding transaction or owner ledger sheet;
- (3) deposit tickets and, if necessary, a supplemental worksheet for each deposit ticket

identifying the property and the parties to each transaction for which funds are deposited;

- (4) a separate ledger sheet for each sales transaction and for each owner of property managed by the broker identifying the property, the parties to the transaction, the amount, date, and purpose of the deposits and from whom received, the amount, date, check number, and purpose of disbursements and to whom paid, and the running balance of funds on deposit for the particular transaction or owner of property;
- (5) a journal or check stubs identifying each transaction and showing a running balance for all funds in the account;
- (6) copies of contracts, leases and management agreements;
- (7) closing statements and property management statements; and
- (8) any other documents necessary and sufficient to verify and explain record entries.

A broker shall maintain records of all receipts and disbursements of trust or escrow monies in such a manner as to create a clear audit trail from deposit tickets and cancelled checks to check stubs or journals and to the ledger sheets. A broker must reconcile ledger sheets and his journals or check stubs to the trust or escrow account bank statements on a monthly basis. A broker shall create a worksheet for each such monthly reconciliation and retain it as part of his records.

(f) All trust or escrow account records shall be made available for inspection by the commission or its authorized representatives in accordance with Rule 58A .0108.

(g) In the event of a dispute between the seller and buyer or landlord and tenant over the return or forfeiture of any deposit other than a residential tenant security deposit held by a broker, the broker shall retain said deposit in his trust or escrow account until he has obtained a written release from the parties consenting to its disposition or until disbursement is ordered by a court of competent jurisdiction.

(h) A broker or salesman shall not disburse prior to closing any earnest money in his possession for any services performed in connection with a real estate transaction without the written consent of the parties.

*Statutory Authority G.S. 93A-3(c).*

### .0112 OFFERS AND SALES CONTRACTS

(a) A broker or salesman acting as an agent in a real estate transaction shall not use a preprinted offer or sales contract form unless the form ade-

quately describes or specifically requires the entry of the following information:

- (1) the names of the buyer and seller;
- (2) a legal description of the real property sufficient to identify and distinguish it from all other property;
- (3) an itemization of any personal property to be included in the transaction;
- (4) the purchase price and manner of payment;
- (5) any portion of the purchase price that is to be paid by a promissory note, including the amount, interest rate, payment terms, whether or not the note is to be secured, and other material terms;
- (6) any portion of the purchase price that is to be paid by the assumption of an existing loan, including the amount of such loan, costs to be paid by the buyer or seller, the interest rate and number of discount points and a condition that the buyer must be able to qualify for the assumption of the loan and must make every reasonable effort to qualify for the assumption of the loan;
- (7) the amount of earnest money, if any, the method of payment, the name of the broker or firm that will serve as escrow agent, an acknowledgment of earnest money receipt by the escrow agent, and the criteria for determining disposition of the earnest money, including disputed earnest money, consistent with commission Rule .0107 of this Subchapter;
- (8) any loan that must be obtained by the buyer as a condition of the contract, including the amount and type of loan, interest rate and number of discount points, loan term, loan commitment date, and who shall pay loan closing costs; and a condition that the buyer shall make every reasonable effort to obtain the loan;
- (9) a general statement of the buyer's intended use of the property and a condition that such use must not be prohibited by private restriction or governmental regulation;
- (10) the amount and purpose of any special assessment to which the property is subject and the responsibility of the parties for any unpaid charges;
- (11) the date for closing and transfer of possession;
- (12) the signatures of the buyer and seller;
- (13) the date of offer and acceptance;
- (14) a provision that title to the property must be delivered at closing by general warranty deed and must be fee simple marketable

title, free of all encumbrances except ad valorem taxes for the current year, utility easements, and any other encumbrances specifically approved by the buyer, or a provision otherwise describing the estate to be conveyed, and encumbrances, and the form of conveyance;

- (15) the items to be prorated or adjusted at closing;
- (16) who shall pay closing expenses;
- (17) the buyer's right to inspect the property prior to closing and who shall pay for repairs and improvements, if any; and
- (18) a provision that the property shall at closing be in substantially the same condition as on the date of the offer (reasonable wear and tear excepted), or a description of the required property condition at closing.

The provisions of this Rule shall apply only to preprinted offer and sales contract forms which a broker or salesman acting as an agent in a real estate transaction proposes for use by the buyer and seller. Nothing contained in this Rule shall be construed to prohibit the buyer and seller in a real estate transaction from altering, amending or deleting any provision in a form offer to purchase or contract; nor shall this Rule be construed to limit the rights of the buyer and seller to draft their own offers or contracts or to have the same drafted by an attorney at law.

(b) A broker or salesman acting as an agent in a real estate transaction shall not use a preprinted offer or sales contract form containing the provisions or terms listed below. and A broker, salesman or anyone acting for or at the direction of the broker or salesman shall not insert or cause such provisions or terms to be inserted into any such preprinted form, at the time of completion, even at the direction of the parties or their attorneys.

- (1) any provision concerning the payment of a commission or compensation, including the forfeiture of earnest money, to any broker, salesman or firm; or
- (2) any provision that attempts to disclaim the liability of a broker or salesman for his representations in connection with the transaction.

*Statutory Authority G.S. 93A-3(c).*

**ATTACHMENT II TO SUBMISSION FOR  
NOTICE FOR REPEAL OF RULES**

*The cited rules were repealed February 1, 1989, but the Office of Administrative Hearings has*



questioned whether the Administrative Rules Review Commission, which allowed the Real Estate Commission to repeal them, in fact had the authority to do so under the G.S. 150-59(c) review procedure. Therefore, to avoid any challenge, OAH suggested we repeal the rules through the formal rule making procedures required by Article 2 of Chapter 150B.

The rules are:

21 NCAC 58A .0611, .1202 - .1203, .1205 - .1206.

#### SECTION .0600 - ADMINISTRATIVE HEARINGS

##### .0611 ANSWERS AND OTHER PLEADINGS (REPEALED)

Statutory Authority G.S. 93A-3(c); 150B-11.

#### SECTION .1200 - CERTIFICATION OF REAL ESTATE INSTRUCTORS

##### .1202 APPLICATION FOR INSTRUCTOR CERTIFICATION (REPEALED)

##### .1203 CRITERIA FOR CERTIFICATION (REPEALED)

##### .1205 DENIAL: REVOCATION: SUSPENSION OF INSTRUCTOR CERTIFICATION (REPEALED)

Statutory Authority G.S. 93A-4(a),(d).

##### .1206 CHANGES IN SCHOOL AFFILIATION OR ADDRESS (REPEALED)

Statutory Authority G.S. 93A-4(a),(d).

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#### SUBCHAPTER 58A - REAL ESTATE BROKERS AND SALESMEN

#### SECTION .0100 - GENERAL BROKERAGE

##### .0104 LISTING CONTRACTS

(a) Every written listing contract shall provide for its existence for a definite period of time and for its termination without prior notice at the expiration of that period. It shall not require an owner to notify a broker of his intention to terminate the listing.

(b) Every written listing contract shall contain a provision requiring that the listed property be offered to all buyers, without respect to their race, color, religion, sex, national origin, handicap or familial status. Such provision shall be set forth in a clear and conspicuous manner which shall distinguish it from other provisions of the contract.

Statutory Authority G.S. 93A-3(c).

##### .0105 ADVERTISING

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

(b) **Registration of Assumed Name.** In the event that any licensee shall advertise in any manner using a firm name, corporate name, or an assumed name which does not set forth the surname of the licensee, he shall first notify the commission in writing of such name and furnish the commission with a copy of each certificate filed with the office of the county register of deeds in compliance with Section 66-68, North Carolina General Statutes.

(c) **Authority to Advertise.**

(1) A salesman shall not advertise the sale, purchase, exchange, rent or lease of real estate for another or others without his broker's consent and without including in the advertisement the name of the broker or firm with whom he is associated.

(2) A broker shall not display a "for sale" or "for rent" sign on any real estate without the consent of the owner or his authorized agent.

(d) Business names. A broker or a salesman shall not include the name of a salesman or an unlicensed person in the name of a sole proprietorship, partnership or non-corporate business formed for the purpose of real estate brokerage.

Statutory Authority G.S. 55B-5; 66-68; 93A-3(c).

##### .0106 DELIVERY OF INSTRUMENTS

(a) Except as provided in Paragraph (b) of this Rule, every broker or salesman shall immediately, but in no event later than five days from the date of execution, deliver to the parties thereto copies of any contract, offer, lease, or option affecting real property.

(b) A broker or salesman who has the express written authority to enter into leases or rental agreements on behalf of a property owner shall deliver to the owner within 30 days from the date of execution, copies of leases or rental agreements when the tenancy is less than 30 days.

Statutory Authority G.S. 93A-3(c).



**.0109 BROKERAGE FEES AND COMPENSATION**

The commission is not a board of arbitration and has no jurisdiction to settle disputes between parties concerning such matters of contract as the rate of commissions, the division of commissions, pay of salesmen, and similar matters. The commission recommends, to avoid differences between parties, that all agreements concerning real estate transfers be reduced to writing at the earliest practical time.

(a) A broker or salesman shall not receive, either directly or indirectly, any commission, rebate or other valuable consideration from a vendor or a supplier of goods and services for an expenditure made on behalf of his principal in a real estate transaction without the written consent of the broker's or salesman's principal.

(b) A broker or salesman shall not receive, either directly or indirectly, any commission, rebate or other valuable consideration for services which he recommends, procures, or arranges relating to a real estate transaction for any party, without full disclosure to such party; provided, however, that nothing in this Rule shall be construed to permit a broker or salesman to accept any fee, kickback or other valuable consideration that is prohibited by the Real Estate Settlement Procedures Act of 1974 (12 USC 2601 et. seq.) or any rules and regulations promulgated by the United States Department of Housing and Urban Development pursuant to such Act.

(c) The Commission is not a Board of Arbitration and has no jurisdiction to settle disputes between parties concerning such matters of contract as the rate of commissions, the division of commissions, pay of salesmen, and similar matters.

*Statutory Authority G.S. 93A-3(c).*

**SECTION .0400 - EXAMINATIONS**

**.0401 TIME AND PLACE**

(a) Examinations for broker's and salesman's licenses will be scheduled at such times and places as determined by the executive director. Applicants will be scheduled for examination based on the date of application filing in accordance with the Commission's published schedule of examination dates and application filing dates. Applicants will be given written notice of when and where to appear for examination.

(b) Except as provided in Paragraph (d) of this Rule, an applicant who has been scheduled for a particular examination date will not be rescheduled for a later examination date unless a request to be rescheduled is made at least 15 days in ad-

vance of the scheduled examination date. A scheduled examination date may only be postponed until the next following scheduled examination date.

(c) An applicant who has been scheduled for examination at a particular location will not be rescheduled for examination at a different location unless a request to be rescheduled is made at least 15 days in advance of the scheduled examination date.

(d) An applicant may be granted an excused absence from a scheduled examination if his absence was the direct result of an emergency situation or condition which was beyond the applicant's control and which could not have been reasonably foreseen by the applicant; however, business conflicts, vacation conflicts or conflicts of a similar nature are not acceptable under any circumstances as grounds for granting an excused absence. A request for an excused absence must be made in writing within 15 days following the examination date and must be supported by appropriate documentation verifying the reason for the absence.

*Statutory Authority G.S. 93A-4(b),(d).*

**.0402 SUBJECT MATTER AND PASSING SCORES**

(a) The salesman and broker examination shall test applicants on the following general subject areas:

- (1) real estate law;
- (2) real estate brokerage law and practices;
- (3) the real estate license law, rules and regulations of the Commission and the Commission's trust account guidelines;
- (4) real estate finance;
- (5) real estate valuation (appraisal);
- (6) real estate mathematics; and
- (7) related subject areas.

(b) In order to pass the salesman or broker examination, an applicant must correctly answer 75 percent of attain a score equal to at least 75 percent of the total point value for the questions on the examination. Passing applicants will receive only a score of "pass"; however, failing applicants will be informed of their actual score.

*Statutory Authority G.S. 93A-4(b),(d).*

**.0406 EXAMINATION REVIEW**

(a) An applicant who fails an examination may review his examination at such times and places as are scheduled by the executive director. A request to review an examination must be made not later than the request deadline date established by the executive director for a scheduled

examination review date. Failure to request an appointment to review an examination by the request deadline date or failure to appear for a scheduled appointment on the designated examination review date shall constitute a waiver of the right to review such examination. Applicants who pass an examination may not review their examination. Applicants who review their examination may not be accompanied by any other person at a review session, nor may any other person review an examination on behalf of an applicant.

(b) An applicant may be granted an excused absence from a scheduled examination review if his absence was the direct result of an emergency situation or condition which was beyond the applicant's control and which could not have been reasonably foreseen by the applicant; however, business conflicts, vacation conflicts or conflicts of a similar nature are not acceptable under any circumstances as grounds for granting an excused absence. A request for an excused absence must be made in writing within 15 days following the examination review date and must be supported by appropriate documentation verifying the reason for the absence. An applicant who fails to appear for a scheduled examination review or to obtain an excused absence in accordance with this Rule shall be deemed to have waived his right to review his examination.

Statutory Authority G.S. 93A-4(d).

## SECTION .0500 - LICENSING

### .0501 CHARACTER

(a) At a meeting of the commission following each licensing examination, the applicants who have passed the examination shall be considered for licensing. When the moral character of an applicant is in question, action by the commission will be deferred until the applicant has affirmatively demonstrated that he possesses the requisite truthfulness, honesty and integrity.

(b) When the moral character of an applicant is in question, the commission shall notify the applicant and the applicant shall be entitled to demonstrate his character and fitness for licensure at a hearing before the commission according to the provisions of G.S. 150B.

(c) Notice to the applicant that his moral character is in question shall be in writing, sent by certified mail, return receipt requested, to the address shown upon the application. The applicant shall have 60 days from the date of receipt of this notice to request a hearing before the Commission. Failure to request a hearing within this time shall constitute a waiver of the appli-

cant's right to a hearing on his application for licensing, and the application shall be deemed denied. Nothing in this Rule shall be interpreted to prevent an applicant from re-applying for licensure.

Statutory Authority G.S. 93A-4(b),(d).

## SECTION .1600 - DISCRIMINATORY PRACTICES PROHIBITED

### .1601 FAIR HOUSING

Conduct by brokers and salesmen which violates the provisions of the State Fair Housing Act constitutes improper conduct in violation of G.S. 93A-6(a)(10).

Statutory Authority G.S. 41A; 93A-3(c).

\* \* \* \* \*

*Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina Board of Examiners for Speech and Language Pathologists and Audiologists intends to adopt rule(s) cited as 21 NCAC 64 .0205 - .0207, .0305 - .0306; and amend rule(s) cited as 21 NCAC 64 .0301 - .0304.*

*The proposed effective date of this action is July 1, 1989.*

*The public hearing will be conducted at 11:00 a.m. on April 21, 1989 at Omni/Civic Center, Chapel Hill Street, Durham, N.C.*

*Comment Procedures: Persons seeking further information about this filing may contact John C. Randall, P.O. Box 1010, 400 W. Main St., Durham, NC 27702, telephone (919) 688-5571, by telephone or mail and may make written submissions for consideration at the above address or to P.O. Box 5545, Greensboro, NC 27435-0545.*

## CHAPTER 64 - BOARD OF EXAMINERS OF SPEECH AND LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS

### SECTION .0200 - INTERPRETATIVE RULES

#### .0205 INCLUSIVE DATES OF SUPERVISED PROFESSIONAL EXPERIENCE

The Board shall interpret Section 90-298(c) to mean that the supervised experience referred to in this Section and necessary to meet the requirements of Section 90-295(4) will begin on the date the temporary license fee is received by the Board.



*Statutory Authority G.S. 90-304(a)(3).*

**.0206 SUPERVISION OF PROFESSIONAL EXPERIENCE**

(a) The Board shall interpret Section 90-298(c) to mean the supervision which will be satisfactory to the Board will include, at least a minimum of four hours per month of direct, on-site observation of the applicant's work with patients, in addition to other methods of supervision, e.g. tape recording review, records review, staff meetings, etc.

(b) A temporary license issued pursuant to Section 90-298 shall be suspended upon the termination of approved supervision, and any period of practice without approved supervision shall not be deemed to comply with the practical experience requirements of Section 90-295(4).

*Statutory Authority G.S. 90-304(a)(3).*

**.0207 PAYMENT OF FEES AND COMPLETION OF APPLICATIONS**

The Board shall interpret Section 90-297(a) to mean that the failure to pay appropriate fees or to supply additional information or documentation necessary to complete an application within 180 days following the date of written notice by regular mail to the applicant's address as submitted to the Board, shall result in the application being considered abandoned without further notice to the applicant.

*Statutory Authority G.S. 90-304(a)(3).*

**SECTION .0300 - CODE OF ETHICS**

**.0301 PREAMBLE**

The Board adopts Section A of the 1974 Code of Ethics of the American Speech and Hearing Association. Copies may be obtained from the American Speech and Hearing Association, 9030 Old Georgetown Road, Washington, D.C., at no charge.

Five principles serve as a basis for the ethical evaluation of professional conduct and form the underlying moral basis for the Code of Ethics. Licensees subscribing to this Code shall observe these principles as affirmative obligations under all conditions of professional activity.

*Statutory Authority G.S. 90-304(a)(3).*

**.0302 PRINCIPLE OF ETHICS I**

The Board adopts Section B of the 1974 Code of Ethics of the American Speech and Hearing Association. Copies may be obtained from the American Speech and Hearing Association, 9030

Old Georgetown Road, Washington, D.C., at no charge.

Licensees shall hold paramount the welfare of individuals served professionally, and shall:

- (1) use every resource available, including referral to other specialists as needed, to provide the best service possible.
- (2) fully inform individuals served of the nature and possible effects of the services.
- (3) fully inform subjects participating in research or teaching activities of the nature and possible effects of these activities.
- (4) charge fees commensurate with services rendered.
- (5) provide appropriate access to records of individuals served professionally.
- (6) take all reasonable precautions to avoid injuring individuals in the delivery of professional services.
- (7) evaluate services rendered to determine effectiveness.
- (8) not exploit individuals in the delivery of professional services, including accepting individuals for treatment when benefit cannot reasonably be expected or continuing treatment unnecessarily.
- (9) not guarantee the results of any therapeutic procedures, directly or by implication. A reasonable statement of prognosis may be made, but caution must be exercised not to mislead individuals served professionally to expect results that cannot be predicted from sound evidence.
- (10) not use individuals for teaching or research in a manner that constitutes invasion of privacy or fails to afford informed free choice to participate.
- (11) not evaluate or treat speech, language or hearing disorders except in a professional relationship, including at least examination of the individual. They must not evaluate or treat solely by correspondence. This does not preclude follow-up correspondence with individuals previously seen, nor providing them with general information of an educational nature.
- (12) not reveal to unauthorized individuals any professional or individual information obtained from the individual served professionally, unless required by law or unless necessary to protect the welfare of the individual or the community.
- (13) not discriminate in the delivery of professional services or on any basis that is unjustifiable or irrelevant to the need for and potential benefit from such services, such as race, sex or religion.



Statutory Authority G.S. 90-304(a)(3).

.0303 PRINCIPLE OF ETHICS II

The licensee must guard against conflicts of professional interest, and particularly:

- (1) ~~He must~~ shall not accept compensation in any form from a manufacturer or a dealer in prosthetic or other devices for recommending any particular product.
- (2) ~~The licensee in private practice must not advertise. It is permissible only to employ a business card or similar announcement, and to list one's name, highest academic degree, type of services, and location in the classified section of the telephone directory in the manner customarily followed by physicians and attorneys. He may state that he holds a valid North Carolina license, if that be true, and in what area the license is held. He may state that he holds the certificate of clinical competence in the appropriate area (speech pathology and/or audiology) issued by the American Speech and Hearing Association, if that be true. shall only issue statements and announcements of services which provide accurate and adequate information to the public about the profession and the services rendered by its practitioners. The announcement may include: identification by name, appropriate professional title and qualifications, services offered, fees, location, hours and telephone number, and other material and information which is not false or misleading.~~
- (3) ~~He must~~ shall not engage in commercial activities that conflict with his the responsibilities to the persons he serves individuals served professionally or to colleagues, Individual licensees, and their employers, if any, who elect to provide products, are expected and shall require employees to follow these principles:
  - (a) Products associated with the licensee's professional practice must be provided to the person individual served as a part of a program of comprehensive habilitative care.
  - (b) Insuring objectivity in professional decisions concerning providing of products necessitates that fees for professional services be independent of whether a product is provided. cost of the product to the individual served not exceed that charged by the supplier, and additional charges related to providing products allow only for recovery of costs directly attributable to the providing process.

(c) Other principles of ethical professional practice which must be adhered to in the providing of products include:

- (i) ~~providing to persons for~~ individuals served a freedom of choice for the source of services and products,
- (ii) ~~providing to persons individuals~~ served a complete schedule of fees and charges in advance of rendering services,
- (iv) ~~(iii)~~ (iii) evaluating the effectiveness of services rendered and products provided to the individual served, and
- (iii) ~~(iv)~~ (iv) presenting to persons individuals served a statement which clearly differentiates between fees-for-services rendered and costs of products provided. and
- (4) ~~All licensees must observe the principle that public statements and announcements of services should serve to provide accurate and adequate information to the public about the profession and the services rendered by the licensee. The licensee should announce services in a manner consonant with highest professional standards in the community. The announcement may include: identification by name, appropriate professional title and qualifications, services offered, fees, location, hours and telephone number. shall maintain adequate records of professional services rendered.~~
- (5) ~~shall neither provide services nor supervision of services for which they have not been properly prepared, nor permit services to be provided by any of their staff who are not properly prepared to perform such services.~~
- (6) ~~shall not delegate any service requiring the professional competence of licensed individuals to unlicensed individuals.~~
- (7) ~~shall not require anyone under their supervision to engage in any practice that is a violation of this Code of Ethics or of the licensing act.~~

Statutory Authority G.S. 90-304(a)(3).

.0304 PRINCIPLE OF ETHICS III

The licensee ~~must~~ shall assume these additional special responsibilities:

- (1) ~~He should help in the education of the public regarding speech and hearing problems and other matters lying within his professional competence;~~
- (2) ~~He should seek to provide and expand services to persons with speech and hearing handicaps, and to assist in establishing high professional standards for such programs;~~

- (3) He must not discriminate on the basis of race, religion, or sex in his professional relationships with his colleagues or clients.

Licensees' statements to individuals served professionally and to the public shall provide accurate information about the nature and management of communicative disorders, and about the profession and services rendered by its practitioners, and particularly:

- (1) shall not misrepresent their training or competence.
- (2) shall not make public statements providing information about professional services and products which are false, deceptive or misleading.
- (3) shall not use professional or commercial affiliations in any way that would mislead or limit services to individuals served professionally.

*Statutory Authority G.S. 90-304(a)(3).*

#### .0305 PRINCIPLE OF ETHICS IV

Licensees shall maintain objectivity in all matters concerning the welfare of individuals served professionally, and particularly:

- (1) shall dispense products to the individual served as a part of a program of comprehensive habilitative care.
- (2) shall establish fees for professional services independent of whether a product is dispensed.
- (3) shall provide freedom of choice for the source of services and products to persons served.
- (4) shall disclose price information about professional services rendered and products dispensed by providing to or posting for individuals served a complete schedule of fees and charges in advance of rendering services, which schedule differentiates between fees for professional services and charges for products dispensed.
- (5) shall evaluate products dispensed to the individuals served to determine effectiveness for that individual.
- (6) shall not participate in activities that constitute a conflict of professional interest.

*Statutory Authority G.S. 90-304(a)(3).*

#### .0306 PRINCIPLE OF ETHICS V

(a) Licensees shall report the violations of this Code of Ethics of which they have knowledge or information.

(b) Licensees shall cooperate fully with Board inquiries into matters of professional conduct related to this Code of Ethics.

*Statutory Authority G.S. 90-304(a)(3).*

## TITLE 25 - OFFICE OF STATE PERSONNEL

*Notice is hereby given in accordance with G.S. 150B-12 that the Office of State Personnel/State Personnel Commission intends to adopt rule cited as 25 NCAC 1A .0004; amend rules cited as 25 NCAC 1B .0402, .0414; 1D .0301 - .0302; 1J .0408, .0605, .0608, .0701 - .0703.*

*The proposed effective date of this action is July 1, 1989.*

*The public hearing will be conducted at 9:00 a.m. on April 19, 1989 at Personnel Development Training Center, 101 West Peace Street, Raleigh, North Carolina 27611.*

*Comment Procedures: Interested persons may present statements orally or in writing to the hearing or in writing prior to the hearing by mail addressed to: Drake Maynard, Office of State Personnel, 116 West Jones Street, Raleigh, North Carolina 27611.*

## CHAPTER 1 - OFFICE OF STATE PERSONNEL

### SUBCHAPTER 1A - GENERAL PROVISIONS

#### .0004 WAIVER OF RULES BY STATE PERSONNEL DIRECTOR: EXCEPTIONS TO RULES

The State Personnel Commission has the responsibility and authority to waive or make exceptions to its own rules, policies and procedures in the event of cases or situations in which the purpose of the existing rules, policies and procedures would be better addressed and when the overall statutory purpose of a fair, equitable and modern system of personnel administration would be better served by such a waiver. This Commission authorizes the State Personnel Director, in his role as day to day administrator of this Commission's rules, policies and procedures, to exercise the power of waiver or the power to declare a situation to be an exception to existing rules and policies on behalf of this Commission. When such waivers or exceptions become too numerous or create difficulties of administration in other manners, the Director shall set forth the situation to the Commission and propose a resolution for it.

*Statutory Authority G.S. 126-4(10).*



SUBCHAPTER 1B - STATE PERSONNEL  
COMMISSION

SECTION .0400 - APPEAL TO COMMISSION

.0402 WHEN APPEAL ALLOWED

A party which wishes to file written exceptions, to file a brief or to make an oral presentation (limited to material contained in the official record of the contested case) present argument to the full commission must submit in writing his intention to do so within five days of receipt of the proposal for decision: the exceptions or brief on a schedule established by the Office of State Personnel (OSP) for such filings. In the event that a party or parties wishes to make an oral presentation to the full Commission (with or without filing written exceptions or a brief), such notification to the OSP and the other party must be made in writing no later than ten calendar days after that party's receipt of notification from the OSP of the scheduling of the recommended decision for review and decision by the Commission. Failure to notify the OSP and or the opposing party in a timely fashion in writing will be cause for delay of the Commission's consideration of the recommended decision.

- (1) If the appealing party does not request a transcript or recording of the hearing or of the testimony, the appealing party shall submit in writing specific exceptions and proposed findings of fact within 15 days from receipt of the proposal for decision.
- (2) If the appealing party does request a transcript or recording of the hearing or of the testimony, the appealing party shall submit in writing specific exceptions and proposed findings of fact within 10 days from receipt of the transcript or recording.
- (3) When written intentions to file exceptions and proposed findings of fact and written exceptions and proposed findings of fact have been submitted in a timely manner, the commission shall notify the parties of the time and place for presentation of their arguments.
- (4) If any party wishes to submit a written brief, such brief shall be submitted at least five days prior to the date set for oral argument before the commission.
- (5) All briefs, exceptions and proposed findings of fact shall be submitted to the hearing officer who conducted the hearing as follows:
  - (a) one copy to the opposing party or his attorney;
  - (b) eight copies to the hearing officer who shall distribute them to the members of the commission.

- (6) ~~The parties may agree to waive oral arguments and present the matter on briefs.~~
- (7) The maximum time allotted for oral presentation shall be 15 minutes per side unless the commission chooses to grant a request for additional time. At the close of all oral ~~arguments~~ presentations the commission shall convene in executive session to consider the proposal for decision recommended decision and shall modify, alter, set aside or affirm the ~~proposal~~ recommendation.
- (8) ~~The time limits set forth in this Rule, particularly in (1) of this Rule, will be strictly enforced. Failure to observe these time limits in submitting documents may be construed as a waiver of the right to appeal before the State Personnel Commission.~~

Statutory Authority G.S. 126-4; 150B, Article 3.

.0414 SITUATIONS IN WHICH ATTORNEYS  
FEES MAY BE AWARDED

Attorney's fees may be awarded by the commission only in the following situations:

- (1) the grievant is reinstated to the same or similar position from either a demotion or a dismissal;
  - (2) the grievant is awarded back pay from either a demotion or a dismissal, without regard to whether the grievant has been reinstated;
  - (3) the grievant is determined, by the commission or by the agency's internal grievance procedure, to have been discriminated against in violation of G.S. 126-16;
  - (4) the grievant is awarded back pay as the result of a successful grievance alleging a violation of G.S. 126-7.1;
  - (4) (5) any combination of the above situations.
- Attorney's fees may be awarded when any of the above situations occur, either within the agency internal grievance procedure or in an appeal to the State Personnel Commission.

Statutory Authority G.S. 126-4(11); 126-7.1.

SUBCHAPTER 1D - COMPENSATION

SECTION .0300 - PROMOTION

.0301 DEFINITION AND POLICY

Promotion is a change in status upward, documented according to customary professional procedure and approved by the State Personnel Director, resulting from assignment to a position of higher level. When it is practical and feasible, a vacancy should be filled from among the eligible ~~permanent~~ employees; a vacancy must be filled by an applying employee if required by 25 NCAC, Subchapter III, Recruitment and Se-



lection, Section .0600, General Provisions, Rule .0625, Promotion Priority Consideration for Current Employees. Selection should be based upon demonstrated capacity, quality and length of service.

Statutory Authority G.S. 126-4; 126-7.1.

#### .0302 SALARY RATE

The purpose of a promotional pay increase is to reward the employee for the assumption of duties more responsible and more difficult than those in the current position. The primary factor determining the amount of increase is the relative difference in difficulty and responsibility between the present and new positions. Since promotional increases result in permanent change to basic salary, a promotional increase of more than two steps cannot be justified as an offset to temporary costs of promotion, such as relocation expenses. Subject to the availability of funds, the following will apply:

##### (1) Permanent Promotion

(a) The salary shall be increased to step one or by one step whichever is larger, but not to exceed the maximum of the new, higher range. Class shall not be exceeded. Exceptions: When an employee is demoted with no change in salary and subsequently promoted back to the same level within one year, the salary shall remain unchanged and treated as if the demotion had not occurred; if the employee's salary is above the maximum as a result of a reallocation down, no increase may be given but the salary may remain above the maximum.

(i) When internal salary equity or budget considerations in the receiving work unit or agency are necessary, and a specific salary rate is published in advance of a promotional offer;

(ii) When an employee is demoted with no change in salary and subsequently promoted back to the same level within one year, the salary shall remain unchanged and treated as if the demotion had not occurred;

(iii) If the employee's salary is above the maximum as a result of a reallocation down, no increase can be given but the salary may remain above the maximum.

(b) If a probationary employee is promoted and the salary is at the hiring rate, the salary must be increased to the hiring rate of the grade to which promoted until the employee is eligible for permanent appointment.

(c) If the employee is to receive a performance salary increase on the same date as the promotion, the increase may be given before the promotional increase.

(d) The salary may be increased by more than one and one-half steps or two steps, step, not to exceed the number of salary grades provided by the promotion. The nature and magnitude of the change in jobs, the need to maintain equity of salaries within the work unit, and other management needs must be given consideration when making such requests. Only in extreme, well-documented circumstances will salary increases be considered which equate to more steps than the number of grades provided by the promotion. Personnel forms must include the justification.

(e) If the agency finds it necessary and equitable to consider a larger increase for a promotion involving a three or more grade level change, a salary increase of more than two steps may be requested. Some factors to be considered are: nature and magnitude of the change in jobs; available applicants; special or technical expertise required; and previous training and experience. Such requests may be made provided:

(i) The agency head accepts accountability for the decision of the amount to grant and will provide written documentation giving reasons and justification for the requests.

(ii) Salary inequities are not created within the work unit or program.

(c) Since promotional increases result in permanent change to basic salary, a larger promotional increase cannot be justified as an offset to temporary costs of promotion, such as relocation expenses.

Statutory Authority G.S. 126-4.

### SUBCHAPTER 1J - EMPLOYEE RELATIONS

#### SECTION .0400 - SERVICE AWARDS PROGRAM

##### .0408 OTHER PROVISIONS

Credit for the aggregate service requirement shall be given for permanent part-time service (one-half time or more) on a prorated basis. Credit for the aggregate total State service requirement shall not be given for temporary part-time employment and periods of break in service or leave without pay in excess of one-half the workdays and holidays in a pay period. The ex-

~~ceptions are~~ (Exception: military leave and ~~worker's compensation.~~ workers' compensation). Service in one or more state agencies counts toward total number of ~~years.~~ years service for this program.

*Statutory Authority G.S. 126-4(10).*

#### SECTION .0600 - DISCIPLINARY ACTION: SUSPENSION AND DISMISSAL

##### .0605 DISMISSAL: CAUSES RELATING TO THE PERFORMANCE OF DUTIES

(a) This category covers all types of performance-related inadequacies. This policy does not require that progressive warnings all concern the same type of unsatisfactory performance. this policy only requires that the progressive warnings all relate to job performance. Warnings related to personal conduct may be included in the progressive system for performance-related dismissal provided that the employee receives at least the number of warnings, regardless of the basis of the warnings, required for dismissal on the basis of inadequate performance. Warnings administered under this policy are intended to bring about a permanent improvement in job performance; should the required improvement later deteriorate, or other inadequacies occur, the supervisor may deal with this new unsatisfactory performance at the next level of discipline.

*Statutory Authority G.S. 125-4; 126-35.*

##### .0608 DISMISSAL: CAUSES RELATING TO PERSONAL CONDUCT

(a) Employees may be dismissed, demoted, suspended or warned or otherwise disciplined on the basis of unacceptable personal conduct. Discipline may be imposed, as a result of unacceptable conduct, up to and including dismissal without any prior warning to the employee. Oral or written warnings given for unacceptable personal conduct according to this Rule cannot be used to shorten the progressive warning process required to dismiss an employee on the basis of unsatisfactory job performance.

*Statutory Authority G.S. 126-4; 126-35.*

#### SECTION .0700 - WELLNESS IMPROVEMENT FOR STATE EMPLOYEES POLICY

##### .0701 PURPOSE

(a) The purpose of the Wellness Improvement for State Employees Program is to develop and coordinate a program for active and retired state government employees which provides an atmosphere at the workplace promotes optimal

health and enhances overall quality of life conducive to optimal health. The program is to be known as the "WISE" program (Wellness Improvement for State Employees). Employees can increase their awareness of health and wellbeing through educational efforts directed towards self-improvement, thereby achieving a healthier lifestyle. The WISE program recognizes that healthy employees, and programs that promote their health can help reduce increasing health benefits costs, absenteeism and decreased productivity.

(b) Another purpose of this program is to facilitate a combination of educational, organizational and environmental activities designed to support behavior conducive to the positive health of employees.

*Statutory Authority G.S. 126-4(10).*

##### .0702 POLICY

The "WISE" program shall address improved health efforts including, but not limited to, self responsibility, stress management, nutritional awareness, physical fitness and environment sensitivity, environmental sensibility. Employees through self education and self improvement will increase their awareness of health and well-being, thereby achieving a more healthy lifestyle. Each agency agency /university head has the responsibility, in cooperation with the Office of State Personnel, to implement the WISE program within their department /university, to develop a health promotion program within their department. It is the agency's responsibility to assure that the program is geared to the employee's needs and to take positive steps toward promoting lifestyles and conditions which are known to have a positive impact on the health and well-being of employees. follows all guidelines and procedures established by the WISE Office.

*Statutory Authority G.S. 126-4(10).*

##### .0703 ADMINISTRATION

Each agency head shall designate at least one employee as the WISE program coordinator to be responsible for implementation of the program within the agency and development of additional healthful practices necessary to meet special situations and needs that are unique to a particular agency and its employees. the operation of the program within the agency. Larger agencies may find it helpful to designate an assistant to the WISE Coordinator. This assistant would be known as the Alternate WISE Coordinator. The WISE Coordinator should develop a network of contacts within their agency in or-

der to assure than every State employee has an equal opportunity to participate in the WISE program. These contacts are to be called WISE Liaisons. Agencies are encouraged to establish a wellness committee head by their WISE Coordinator and comprised of their WISE Liaisons to develop additional healthful practices necessary to meet special situations and needs that are unique to their particular agency and its employees. In addition, an advisory committee Board made up of WISE Coordinators and appointed ex-officio members these representatives shall be established in the Office of State Personnel. This committee advisory Board will guide and assist in the development of a statewide comprehensive Wellness Improvement Program for State Employees. Ex-officio membership should include state employees with expertise in

the medical, health insurance, nutrition, physical fitness and health /safety profession.

The State WISE Program Director ~~The state personnel director and his designated staff~~ shall be responsible for establishing working relationships and lines of communication with the advisory ~~committee~~ Board and other resource personnel. The Director shall also be responsible for coordinating needed training and technical assistance to enhance the success of the program. It is the policy of the program to ~~Whenever possible, efforts should~~ utilize available resources from within state government and from gratis services from the private sector as much as possible. The Office of State Personnel shall seek additional funds and resources to further the development of this program.

*Statutory Authority G.S. 126-4(10).*



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**LIST OF RULES AFFECTED**

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**NORTH CAROLINA ADMINISTRATIVE CODE**

**EFFECTIVE: March 1, 1989**

AGENCY			ACTION TAKEN
<u>DEPARTMENT OF ADMINISTRATION</u>			
1	NCAC 11	.2102 .2111	Amended Amended
<u>DEPARTMENT OF AGRICULTURE</u>			
2	NCAC 42	.0201 .0504	Amended Amended
<u>DEPARTMENT OF COMMERCE</u>			
4	NCAC 11E	.0303	Adopted
	13A	.0101 .0201 .0203	Amended Repealed Amended
	13B	.0002 - .0004	Amended
	13E	.0302 .0303 - .0306 .0501 .0603 .0701 .0703 .0802 .0803 .0901 - .0902	Amended Repealed Amended Amended Repealed Repealed Repealed Adopted Amended
	13F	.0101 - .0112 .0115 - .0122 .0201 - .0202 .0301 - .0302	Repealed Repealed Repealed Amended
<u>DEPARTMENT OF CORRECTIONS</u>			
5	NCAC 2G	.0306	Temp. Amended Expires April 1, 1989
<u>GOVERNOR'S OFFICE</u>			
9	NCAC 2B	Executive Order Number 82 Eff. January 29, 1989 Executive Order Number 83 Eff. February 8, 1989 Executive Order Number 84 Eff. February 10, 1989	
<u>DEPARTMENT OF HUMAN RESOURCES</u>			
10	NCAC 3M	.0101 .0104 .0107 .0202 - .0205 .0207 .0501	Amended Amended Adopted Amended Adopted Amended

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**LIST OF RULES AFFECTED**

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3R	.2204 - .2208	Repealed
	.2213 - .2216	Adopted
4C	.0203	Amended
	.0303	Amended
	.0306	Adopted
	.0406	Repealed
7B	.0335	Amended
	.0344 - .0345	Repealed
	.0350 - .0351	Amended
	.0352 - .0353	Repealed
7C	.0601 - .0603	Adopted
8A	.0901 - .0907	Repealed
8B	.0901 - .0906	Adopted
9D	.0303	Amended
	.0309	Amended
	.0327 - .0330	Amended
10A	.0487	Adopted
10D	.0702	Amended
	.0901	Amended
	.1622	Amended
	.1625	Amended
	.1627	Amended
10G	.0103	Amended
	.0901 - .0914	Adopted
14C	.1146	Amended

**DEPARTMENT OF JUSTICE**

12	NCAC	7D	.0204	Amended
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**DEPARTMENT OF LABOR**

13	NCAC	7C	.0101 - .0103	Amended
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**DEPARTMENT OF NATURAL RESOURCES AND COMMUNITY DEVELOPMENT**

15	NCAC	2B	.0216	Amended
			.0302 - .0304	Amended
			.0308 - .0309	Amended
		2J	.0002	Amended
		2M	.0101 - .0103	Adopted
			.0201 - .0202	Adopted
			.0301 - .0303	Adopted
			.0401 - .0403	Adopted
			.0501	Adopted
			.0601 - .0605	Adopted
			.0701 - .0702	Adopted
			.0801 - .0802	Adopted
		7H	.1901 - .1905	Adopted
		10D	.0002 - .0004	Amended
		16C	.0104	Amended
			.0106	Amended
			.0108	Amended

**DEPARTMENT OF TRANSPORTATION**

19A	NCAC	2B	.0162	Adopted
		3D	.0216	Temp. Amended
				Expires 08-08-89

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**LIST OF RULES AFFECTED**

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**BOARD OF NURSING**

21	NCAC 36	.0401 - .0405	Adopted
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**BOARD OF EXAMINERS OF PRACTICING PSYCHOLOGISTS**

21	NCAC 54	.1601	Repealed
		.1602	Amended
		.1603	Repealed
		.1701 - .1704	Amended
		.1801	Amended
		.1803	Amended
		.1901	Amended
		.1903 - .1904	Amended
		.2001 - .2004	Amended
		.2103	Amended
		.2201 - .2202	Amended
		.2204	Amended
		.2301 - .2302	Amended
		.2304	Amended
		.2306	Repealed
		.2308 - .2311	Amended
		.2401	Amended
		.2501	Amended
		.2602	Amended

**OFFICE OF STATE PERSONNEL**

25	NCAC 1D	.0105	Amended
		.0202	Amended
		.0205	Amended
		.0206	Repealed
		.0210	Amended
		.1003	Amended
		.1005	Amended
		.1202 - 1204	Amended
		.2101 - .2104	Adopted
	1E	.0210	Amended
		.0301	Amended
	1J	.0406 - .0408	Amended



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1	Administration, Department of
2	Agriculture, Department of
3	Auditor, Department of State
4	Commerce, Department of
5	Corrections, Department of
6	Council of State
7	Cultural Resources, Department of
8	Elections, State Board of
9	Governor, Office of the
10	Human Resources, Department of
11	Insurance, Department of
12	Justice, Department of
13	Labor, Department of
14A	Crime Control and Public Safety, Department of
15	Natural Resources and Community Development, Department of
16	Public Education, Department of
17	Revenue, Department of
18	Secretary of State, Department of
19A	Transportation, Department of
20	Treasurer, Department of State
*21	Occupational Licensing Boards
22	Administrative Procedures
23	Community Colleges, Department of
24	Independent Agencies
25	State Personnel, Office of
26	Administrative Hearings, Office of

NOTE: Title 21 contains the chapters of the various occupational licensing boards.

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4	Auctioneers, Commission for
6	Barber Examiners, Board of
8	Certified Public Accountant Examiners, Board of
10	Chiropractic Examiners, Board of
12	General Contractors, Licensing Board for
14	Cosmetic Art Examiners, Board of
16	Dental Examiners, Board of
18	Electrical Contractors, Board of Examiners of
20	Foresters, Board of Registration for
21	Geologists, Board of
22	Hearing Aid Dealers and Fitters Board
26	Landscape Architects, Licensing Board of
28	Landscape Contractors, Registration Board of
31	Marital & Family Therapy Certification Board
32	Medical Examiners, Board of
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34	Mortuary Science, Board of
36	Nursing, Board of
37	Nursing Home Administrators, Board of
38	Occupational Therapists, Board of
40	Opticians, Board of
42	Optometry, Board of Examiners in

44	Osteopathic Examination and Registration, Board of
46	Pharmacy, Board of
48	Physical Therapy, Examining Committee of
50	Plumbing and Heating Contractors, Board of
52	Podiatry Examiners, Board of
53	Practicing Counselors, Board of
54	Practicing Psychologists, Board of
56	Professional Engineers and Land Surveyors, Board of
58	Real Estate Commission
60	Refrigeration Examiners, Board of
62	Sanitarian Examiners, Board of
63	Social Work, Certification Board for
64	Speech and Language Pathologists and Audiologists, Board of Examiners of
66	Veterinary Medical Board

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- AO - Administrative Order
- AG - Attorney General's Opinions
- C - Correction
- E - Errata
- EO - Executive Order
- FDL - Final Decision Letters
- FR - Final Rule
- GS - General Statute
- JO - Judicial Orders or Decision
- LRA - List of Rules Affected
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