

REQUEST FOR TECHNICAL CHANGE

AGENCY: Real Estate Commission

RULE CITATION: 21 NCAC 58A .0104

DEADLINE FOR RECEIPT: Friday, June 13, 2014

NOTE WELL: *This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.*

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

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a), Page 1, line 7, replace "must" with "shall" and "from" with "at"

On line 8, what do you mean by "express"? The legal definition? And on that line, why not change "reduced to" to "in"

On line 10, as I understand the sentence, you're saying that if the buyer is making certain agreements, they have to have the written agreement with express terms signed from the formation of the agreement. If that's the case, you could rely upon the earlier sentence and just state that "every agreement... shall be signed by the parties at the formation." It just seems redundant as written, but perhaps you have concerns that if you don't require it in writing, this won't happen? If that's the case, then why not have a reference to express terms in this sentence?

In (a), line 14, "provide for its existence for a definite period of time" – why not just state that it will include the dates it will be effective?

On line 16, when you refer to "that period" are you referring to the definite period of time on line 14?

On line 19, "Rule" is capitalized.

In (b), lines 23 through 25, I think the statement should be in quotation marks.

Also in (b), line 25, what do you mean by "clear and conspicuous"? Is this what is contemplated by distinguishing it from other provisions?

On line 26, put "familial status" in quotation marks.

In (c), line 28, I understand you are trying to use the defined term "first substantial contact" but it reads so oddly to state "first substantial contact directly" State "first direct substantial contact" here, if you feel you need the term "direct" at all.

Amanda J. Reeder
Commission Counsel

Date submitted to agency: May 30, 2014

In (c), line 29, where can one find the “Working With Real Estate Agents” publication? I know the Commission has the authority to write educational materials per G.S. 93A-3(f), but how do people find it?

In Paragraph (d) on Page 2, line 4, why is it “written authority” and not “written consent”?

In (e), line 13, when you state “similar” I take it you mean similar to the means used in the contact? So, if the first contact is telephone, telling them on the telephone?

In (f), line 20, state “he or she”

In (h), line 27, “he or she”

In (i), line 29, replace “which” with “that”

So that I understand, in (j), the prior approval is not required to be in writing – it is only in writing when the requirements of Paragraph (d) kick in?

In (k)(3), Page 3, line 11, replace “which” with “that” Note the same change for (l)(3), line 20.

In (l)(1), line 17, I’m a bit confused. The buyer’s agent cannot disclose that the buyer is interested in changing the seller’s terms without permission? I don’t know real estate, but isn’t it presumed to be the case?

In (m), you state that the designated broker will give notice of the other designated brokers. To whom? The client, the other brokers?

In (n), I assume that since the agreement “may” include the information, the decision of whether it may or may not is entirely up to the parties, and therefore this is not a waiver provision in the Rule that would be governed by G.S. 150B-19(6). Is this correct?

In (n)(3), line 32, replace “which” with “that”

In (o), line 37, what is contemplated by “full disclosure”?

In (p), Page 4, line 9, what is “principal” for purposes of this Paragraph? Is it the seller here? This appears to be the first time it’s used in this Rule and it’s not defined in the Code.

In (p), line 11, how does the listing broker or firm transfer the listing to another broker? Who makes the decision that this will happen – the firm or the principal? I ask because on line 12, as I understand it, the firm is not required to terminate the listing if it is buying the property unless the principal requests it.

Why is G.S. 93A-9 in the History Note?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 30, 2014

1 **21 NCAC 58A .0104** is amended with changes as published in 28:15 NCR 1729 as follows:

2
3 **21 NCAC 58A .0104 AGENCY AGREEMENTS AND DISCLOSURE**

4 (a) Every agreement for brokerage services in a real estate transaction and every agreement for services connected
5 with the management of a property owners association shall be in writing and signed by the parties thereto. Every
6 agreement for brokerage services between a broker and an owner of the property to be the subject of a transaction
7 must be in writing and signed by the parties from the time of its formation. Every agreement for brokerage services
8 between a broker and a buyer or tenant shall be express and shall be reduced to writing and signed by the parties
9 thereto not later than the time one of the parties makes an offer to purchase, sell, rent, lease, or exchange real estate
10 to another. However, every agreement between a broker and a buyer or tenant which seeks to bind the buyer or
11 tenant for a period of time or to restrict the buyer's or tenant's right to work with other agents or without an agent
12 shall be in writing and signed by the parties thereto from its formation. A broker shall not continue to represent a
13 buyer or tenant without a written, signed agreement when such agreement is required by this Rule. Every written
14 agreement for brokerage services of any kind in a real estate transaction shall provide for its existence for a definite
15 period of time, shall include the ~~licensee's~~ broker's license number, and shall provide for its termination without
16 prior notice at the expiration of that period, except that an agency agreement between a landlord and broker to
17 procure tenants or receive rents for the landlord's property may allow for automatic renewal so long as the landlord
18 may terminate with notice at the end of any contract period and any subsequent renewals. For the purposes of this
19 rule, an agreement between ~~licensees~~ brokers to cooperate or share compensation shall not be considered an
20 agreement for brokerage services and, except as required by Rule .1807 of this Subchapter, need not be
21 memorialized in writing.

22 (b) Every listing agreement, written buyer agency agreement or other written agreement for brokerage services in a
23 real estate transaction shall contain the following provision: The broker shall conduct all brokerage activities in
24 regard to this agreement without respect to the race, color, religion, sex, national origin, handicap or familial status
25 of any party or prospective party. The provision shall be set forth in a clear and conspicuous manner which shall
26 distinguish it from other provisions of the agreement. For the purposes of this Rule, the term, familial status, shall
27 be defined as it is in G.S. 41A-3(1b).

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

1 contacts between a broker and a consumer where the consumer or broker begins to act as though an agency
2 relationship exists and the consumer begins to disclose to the broker personal or confidential information.

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

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

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

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

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

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

31 (j) When a firm represents both the buyer and seller in the same real estate transaction, the firm may, with the prior
32 express approval of its buyer and seller clients, designate one or more individual brokers associated with the firm to
33 represent only the interests of the seller and one or more other individual brokers associated with the firm to
34 represent only the interests of the buyer in the transaction. The authority for designated agency must be reduced to
35 writing not later than the time that the parties are required to reduce their dual agency agreement to writing in
36 accordance with Paragraph (d) of this Rule. An individual broker shall not be so designated and shall not undertake
37 to represent only the interests of one party if the broker has actually received confidential information concerning

1 the other party in connection with the transaction. A broker-in-charge shall not act as a designated broker for a party
2 in a real estate sales transaction when a provisional broker under his or her supervision will act as a designated
3 broker for another party with a competing interest.

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

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

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

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

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

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

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

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

1 ownership interest. [A broker who has an existing listing agreement for a property shall not enter into a contract to
2 purchase that property unless, prior to entering into the contract, the listing broker first discloses to the broker's
3 principal that the broker may have a conflict of interest in the transaction and that the principal may want to seek
4 independent counsel of an attorney or another licensed broker. The broker shall, at any time prior to the closing of
5 the broker's purchase of the principal's property, terminate the listing agreement if requested to do so by the
6 principal.]

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

15
16 *History Note:* Authority G.S. 41A-3(1b); 41A-4(a); 93A-3(c); 93A-6(a); 93A-9;

17 *Eff. February 1, 1976;*

18 *Readopted Eff. September 30, 1977;*

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

REQUEST FOR TECHNICAL CHANGE

AGENCY: Real Estate Commission

RULE CITATION: 21 NCAC 58A .0110

DEADLINE FOR RECEIPT: Friday, June 13, 2014

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

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (f), Page 1, line 36, what is in the form?

In (g), Page 2, line 9, when would the Commission make this request?

In (g)(2), line 4, I realize you are reciting G.S. 93A-4.2, but how will this equivalency be determined by the Commission?

In (i)(2), (3), (4), (5), (6) and (7), delete or define "proper."

In Paragraph (k), Page 3, is there a rule besides this one that gives any guidance on what is in the course? If so, reference it.

On line 17, replace "must" with "shall"

On line 18, delete "must be taken"

On lines 24 – 25, you state that only certain brokers can get credit for taking the course. But on line 22, you said that those brokers are the only ones who can even enroll. Do you need the sentence on lines 24-25?

In (m), Page 4, lines 7 and 8, you are simply reciting Paragraph (g). Unless you have a compelling reason to do that, just end the sentence on line 7 after "Rule"

In (o), when you speak of a "nonresident broker" I assume this is a broker who is not licensed in NC? Otherwise, how can you not exempt these individuals from the course of study mandated by G.S. 93-4.2?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 30, 2014

RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: Real Estate Commission

RULE CITATION: 21 NCAC 58A .0110

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☒ Lack of statutory authority
 - ☒ Unclear or ambiguous
 - ☐ Unnecessary
 - ☐ Failure to comply with the APA
- ☐ Extend the period of review

COMMENT:

It is clear from statute that the Real Estate Commission has authority to require this training. However, in Paragraph (k), the Rule only states that the course is required, but does not address what topics will be addressed. G.S. 93A-4.1(a1) expressly states that the Commission shall prescribe the subjects that will be addressed. Given the statutory language, staff does not believe that the Real Estate Commission has the authority to set the topics outside of rulemaking. Further, not including the topics or subject matter makes the Rule unclear.

Staff notes that from a review of the existing NC Administrative Code, this appears to be the only rule that governs the training required for a broker-in-charge. If there is another rule that establishes the topics, then that Rule should be cited to in this text.

Amanda J. Reeder
Commission Counsel

§ 93A-4.1. Continuing education.

(a) The Commission shall establish a program of continuing education for real estate brokers. An individual licensed as a real estate broker is required to complete continuing education requirements in an amount not to exceed eight classroom hours of instruction a year during any license renewal period in subjects and at times the Commission deems appropriate. Any licensee who fails to complete continuing education requirements pursuant to this section shall not actively engage in the business of real estate broker.

(a1) The Commission may, as part of the broker continuing education requirements, require real estate brokers-in-charge to complete during each annual license period a special continuing education course consisting of not more than four classroom hours of instruction in subjects prescribed by the Commission.

(b) The Commission shall establish procedures allowing for a deferral of continuing education for brokers while they are not actively engaged in real estate brokerage.

(c) The Commission may adopt rules not inconsistent with this Chapter to give purpose and effect to the continuing education requirement, including rules that govern:

- (1) The content and subject matter of continuing education courses.
- (2) The curriculum of courses required.
- (3) The criteria, standards, and procedures for the approval of courses, course sponsors, and course instructors.
- (4) The methods of instruction.
- (5) The computation of course credit.
- (6) The ability to carry forward course credit from one year to another.
- (7) The deferral of continuing education for brokers not engaged in brokerage.
- (8) The waiver of or variance from the continuing education requirement for hardship or other reasons.
- (9) The procedures for compliance and sanctions for noncompliance.

(d) The Commission may establish a nonrefundable course application fee to be charged to a course sponsor for the review and approval of a proposed continuing education course. The fee shall not exceed one hundred twenty-five dollars (\$125.00) per course. The Commission may charge the sponsor of an approved course a nonrefundable fee not to exceed seventy-five dollars (\$75.00) for the annual renewal of course approval.

An approved course sponsor shall pay a fee of ten dollars (\$10.00) per licensee to the Commission for each licensee completing an approved continuing education course conducted by the sponsor.

The Commission shall not charge a course application fee, a course renewal fee, or any other fee for a continuing education course sponsored by a community college, junior college, college, or university located in this State and accredited by the Southern Association of Colleges and Schools.

(e) The Commission may award continuing education credit for an unapproved course or related educational activity. The Commission may prescribe procedures for a licensee to submit information on an unapproved course or related educational activity for continuing education credit. The Commission may charge a fee to the licensee for each course or activity submitted. The fee shall not exceed fifty dollars (\$50.00). (1993, c. 492, s. 1; 1999-229, s. 5; 2003-361, s. 2; 2005-395, s. 6; 2011-217, s. 4.)

1 **21 NCAC 58A .0110** is amended as published in 28:15 NCR 1730 as follows:

2
3 **21 NCAC 58A .0110 BROKER-IN-CHARGE**

4 (a) When used in this Rule, the term:

5 (1) "Office" means any place of business where acts are performed for which a real estate license is
6 required or where monies received by a broker acting in a fiduciary capacity are handled or
7 records for such trust monies are maintained;

8 (2) "Principal Office" means the office so designated in the Commission's records by the qualifying
9 broker of a licensed firm or the broker-in-charge of a sole proprietorship; and

10 (3) "Branch Office" means any office in addition to the principal office of a broker which is operated
11 in connection with the broker's real estate business.

12 (b) Except as provided in Paragraphs (d) and (e) of this Rule, every real estate firm, including a sole proprietorship,
13 shall have a broker designated by the Commission as provided in Paragraph (f) of this Rule to serve as the broker-in-
14 charge at its principal office and a broker to serve as broker-in-charge at any branch office. No broker shall be
15 broker-in-charge of more than one office at a time. No office of a firm shall have more than one designated broker-
16 in-charge.

17 (c) If a firm shares office space with one or more other firms, the same broker may serve as broker-in-charge of
18 multiple firms at that location. All firms at that location having the same designated broker-in-charge shall maintain
19 with the Commission as a delivery address the same delivery address as that of the single designated broker-in-
20 charge.

21 (d) A licensed real estate firm is not required to have a broker-in-charge if it:

22 (1) has been organized for the sole purpose of receiving compensation for brokerage services
23 furnished by its qualifying broker through another firm or broker;

24 (2) is treated for tax purposes as a Subchapter S corporation by the United States Internal Revenue
25 Service;

26 (3) has no principal or branch office; and

27 (4) has no licensed or unlicensed person associated with it other than its qualifying broker.

28 (e) A broker who is a sole proprietor shall obtain the Commission's designation of himself or herself as a broker-in-
29 charge if the broker engages in any transaction where the broker is required to deposit and maintain monies
30 belonging to others in a trust account, engages in advertising or promoting his or her services as a broker in any
31 manner, or has one or more other brokers affiliated with him or her in the real estate business. Maintenance of a trust
32 or escrow account by a broker solely for holding residential tenant security deposits received by the broker on
33 properties owned by the broker in compliance with G.S. 42-50 shall not, standing alone, subject the broker to the
34 requirement to designate himself or herself as a broker-in-charge.

35 (f) A broker desiring to be a broker-in-charge shall request in writing his or her designation as broker-in-charge by
36 the Commission on a form provided by the Commission. Upon receipt of notice from the Commission that the
37 broker has been designated as broker-in-charge, the broker shall assume the duties of broker-in-charge.

1 (g) To qualify to become a broker-in-charge, a broker shall:

- 2 (1) have a license on active status but not on provisional status;
- 3 (2) possess at least two years of full-time real estate brokerage experience or equivalent part-time real
4 estate brokerage experience within the previous five years or real estate education or experience in
5 real estate transactions that the Commission finds equivalent to such experience; and
- 6 (3) complete the Commission's 12 classroom hour broker-in-charge course either within three years
7 prior to designation as a broker-in-charge or within 120 days following designation as a broker-in-
8 charge.

9 Upon the request of the Commission, a broker shall provide to the Commission evidence that he or she possesses the
10 requisite experience. A broker-in-charge designation shall be immediately terminated if a broker-in-charge fails to
11 complete the broker-in-charge course during the required time period or if the Commission finds the broker-in-
12 charge does not possess the required experience. A broker who is removed as broker-in-charge for failure to timely
13 complete the Commission's 12 hour broker-in-charge course must first complete the 12 hour broker-in-charge course
14 before he or she may again be designated as broker-in-charge.

15 (h) By submission of a broker-in-charge designation request to the Commission, a broker certifies that he or she
16 possesses the experience required to become a broker-in-charge and upon designation by the Commission, the
17 broker shall be authorized to act as a broker-in-charge. Upon his or her designation as broker-in-charge and
18 completion of the broker-in-charge course within the time period prescribed in Subparagraph (g)(3) of this Rule, the
19 designated broker-in-charge acquires the eligibility to be re-designated as a broker-in-charge at any time in the
20 future after a period of not actively serving as a broker-in-charge without having to again satisfy the qualification
21 requirements for initial designation stated in this Paragraph so long as the broker continuously satisfies the
22 requirements to retain such eligibility described in Paragraph (k) of this Rule.

23 (i) The broker-in-charge shall, in accordance with the requirements of G.S. 93A and the rules adopted by the
24 Commission, assume the responsibility at his or her office for:

- 25 (1) the retention of current license renewal pocket cards by all brokers employed at the office for
26 which he or she is broker-in-charge; the proper display of licenses at such office in accordance
27 with Rule .0101 of this Section; and assuring that each broker employed at the office has complied
28 with Rules .0503, .0504, and .0506 of this Subchapter;
- 29 (2) the proper notification to the Commission of any change of business address or trade name of the
30 firm and the registration of any assumed business name adopted by the firm for its use;
- 31 (3) the proper conduct of advertising by or in the name of the firm at such office;
- 32 (4) the proper maintenance at such office of the trust or escrow account of the firm and the records
33 pertaining thereto;
- 34 (5) the proper retention and maintenance of records relating to transactions conducted by or on behalf
35 of the firm at such office, including those required to be retained pursuant to Rule .0108 of this
36 Section;

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

(7) the proper supervision of all brokers employed at the office for which he or she is broker-in-charge with respect to adherence to agency agreement and disclosure requirements.

(j) A broker who was the broker-in-charge of a real estate office on April 1, 2006, whose broker-in-charge declaration was received by the Commission prior to that date, and who completed the Commission's broker-in-charge course prior to April 1, 2006 or within 120 days following designation as a broker-in-charge, may continue to serve as a broker-in-charge thereafter until his or her eligibility to serve as a broker-in-charge is terminated as provided in Paragraph (l) of this Rule.

(k) Once a broker has been designated as a broker-in-charge and completed the 12 hour broker-in-charge course as prescribed by Paragraph (g) of this Rule, the broker may maintain broker-in-charge eligibility by timely annual renewal of his or her broker ~~license, license and~~ completion each license year of the four hour mandatory continuing education update course ~~prescribed for all brokers and for brokers-in-charge~~ known as the "Real Estate Update Course," "Broker-In-Charge Update Course," and ~~completion each license year of the any~~ Commission-approved four hour ~~special~~ continuing education elective course ~~prescribed by the Commission only for brokers in-charge and known as the "Broker In Charge Annual Review Course."~~ described in Rule 58E .0305. The Broker-In-Charge ~~Annual Review~~ Update Course must be taken initially by a broker-in-charge during the first full license year following the license year in which the broker was designated as a broker-in-charge and must be taken each license year thereafter in order for the broker to maintain broker-in-charge eligibility. ~~The Broker In Charge Annual Review Course shall satisfy the broker's general continuing education elective course requirement, but the broker must also take the mandatory continuing education Real Estate Update Course each license year. The Enrollment in the~~ Broker-In-Charge ~~Annual Review~~ Update Course ~~is reserved~~ shall be limited exclusively ~~for~~ to current brokers-in-charge, and brokers who are not currently acting as a broker-in-charge but who desire to retain their broker-in-charge eligibility. Only these brokers shall receive continuing education ~~elective~~ credit for taking the ~~course~~ Broker-In-Charge Update Course. A broker-in-charge or broker who is broker-in-charge eligible who takes the General Update Course described in Rule .1702 of this Subchapter rather than the Broker-In-Charge Update Course shall receive continuing education update course credit for taking such course only for the purpose of retaining his or her license on active status and shall not be considered to have satisfied the requirement to take the Broker-In-Charge Update Course in order to retain his or her broker-in-charge status or eligibility.

(l) A broker's broker-in-charge eligibility and, if currently designated as a broker-in-charge, his or her broker-in-charge designation shall be terminated upon the occurrence of any of the following events:

(1) the broker's license expires or the broker's license is suspended, revoked or surrendered;

(2) the broker's license is made inactive for any ~~reason, reason; including failure to satisfy the continuing education requirements described in Rule .1702 of this Subchapter;~~

(3) the broker fails to complete the Broker-In-Charge ~~Annual Review~~ Update Course described in Paragraph (k) of this Rule; or

(4) the broker is found by the Commission to have not possessed the experience required in Paragraph (g) of this Rule at the time of either initial designation as a broker-in-charge or re-designation as a broker-in-charge.

(m) When a broker who is a former broker-in-charge desires to be re-designated as a broker-in-charge following termination of his or her broker-in-charge designation or eligibility, he or she must first have a license on active status. The broker then must satisfy the experience requirements for initial designation set forth in Paragraph (g) of this Rule, and the broker must complete the 12 hour broker-in-charge course prior to re-designation as broker-in-charge.

(n) A broker-in-charge shall notify the Commission in writing that he or she no longer is serving as broker-in-charge of a particular office within 10 days following any such change.

(o) A non-resident broker who has been designated by the Commission as the broker-in-charge of an office not located in North Carolina is not required to complete the broker-in-charge course or the Broker-In-Charge ~~Annual Review~~ Update Course prescribed for brokers-in-charge under Paragraph (k) of this Rule. However, if such broker-in-charge either becomes a resident of North Carolina or becomes broker-in-charge of an office located within North Carolina, then he or she must take the 12 hour broker-in-charge course within 120 days of such change, unless he or she has taken the 12 hour course within the preceding three years. Such broker-in-charge shall take the Broker-In-Charge ~~Annual Review~~ Update Course prescribed in Paragraph (k) of this Rule during the first full license year following the change and each license year thereafter so long as the broker-in-charge remains a resident of North Carolina or continues to manage an office located in North Carolina.

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

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

Eff. September 1, 1983;

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

REQUEST FOR TECHNICAL CHANGE

AGENCY: Real Estate Commission

RULE CITATION: 21 NCAC 58A .0112

DEADLINE FOR RECEIPT: Friday, June 13, 2014

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

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a)(5), Page 1, line 12, replace "is to" with "will" Also on that line, what is "material terms" and who will determine that?

In (a)(6), line 16, do you mean "shall" rather than "must"?

In (a)(7), I assume this entire Subparagraph is for earnest money?

In (a)(14), "ad valorem" should be italicized.

Should this Rule include the requirement for the oil and gas disclosure in G.S.. 47E-4(b2)? I know it is not required on the disclosure form, but in every contract.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 30, 2014

1 **21 NCAC 58A .0112** is amended as published in 28:15 NCR 1732 as follows:

2
3 **21 NCAC 58A .0112 OFFERS AND SALES CONTRACTS**

4 (a) A broker acting as an agent in a real estate transaction shall not use a preprinted offer or sales contract form
5 unless the form describes or specifically requires the entry of the following information:

- 6 (1) the names of the buyer and seller;
- 7 (2) a legal description of the real property sufficient to identify and distinguish it from all other
8 property;
- 9 (3) an itemization of any personal property to be included in the transaction;
- 10 (4) the purchase price and manner of payment;
- 11 (5) any portion of the purchase price that is to be paid by a promissory note, including the amount,
12 interest rate, payment terms, whether or not the note is to be secured, and other material terms;
- 13 (6) any portion of the purchase price that is to be paid by the assumption of an existing loan, including
14 the amount of such loan, costs to be paid by the buyer or seller, the interest rate and number of
15 discount points and a condition that the buyer must be able to qualify for the assumption of the
16 loan and must make every reasonable effort to qualify for the assumption of the loan;
- 17 (7) the amount of earnest money, if any, the method of payment, the name of the broker or firm that
18 will serve as escrow agent, an acknowledgment of earnest money receipt by the escrow agent, and
19 the criteria for determining disposition of the earnest money, including disputed earnest money,
20 consistent with Commission ~~Rule .0107~~ Rule .0116 of this Subchapter;
- 21 (8) any loan that must be obtained by the buyer as a condition of the contract, including the amount
22 and type of loan, interest rate and number of discount points, loan term, and who shall pay loan
23 closing costs, and a condition that the buyer shall make every reasonable effort to obtain the loan;
- 24 (9) a general statement of the buyer's intended use of the property and a condition that such use must
25 not be prohibited by private restriction or governmental regulation;
- 26 (10) the amount and purpose of any special assessment to which the property is subject and the
27 responsibility of the parties for any unpaid charges;
- 28 (11) the date for closing and transfer of possession;
- 29 (12) the signatures of the buyer and seller;
- 30 (13) the date of offer and acceptance;
- 31 (14) a provision that title to the property must be delivered at closing by general warranty deed and
32 must be fee simple marketable title, free of all encumbrances except ad valorem taxes for the
33 current year, utility easements, and any other encumbrances specifically approved by the buyer or
34 a provision otherwise describing the estate to be conveyed with encumbrances, and the form of
35 conveyance;
- 36 (15) the items to be prorated or adjusted at closing;
- 37 (16) who shall pay closing expenses;

- 1 (17) the buyer's right to inspect the property prior to closing and who shall pay for repairs and
2 improvements, if any;
- 3 (18) a provision that the property shall at closing be in substantially the same condition as on the date
4 of the offer (reasonable wear and tear excepted), or a description of the required property
5 condition at closing; and
- 6 (19) a provision setting forth the identity of each real estate agent and firm involved in the transaction
7 and disclosing the party each agent and firm represents.
- 8 (b) A broker acting as an agent in a real estate transaction shall not use a preprinted offer or sales contract form
9 containing:
- 10 (1) any provision concerning the payment of a commission or compensation, including the forfeiture
11 of earnest money, to any broker or firm; or
- 12 (2) any provision that attempts to disclaim the liability of a broker for his or her representations in
13 connection with the transaction.
- 14 A broker or anyone acting for or at the direction of the broker shall not insert or cause such provisions or terms to be
15 inserted into any such preprinted form, even at the direction of the parties or their attorneys.
- 16 (c) The provisions of this Rule shall apply only to preprinted offer and sales contract forms which a broker acting as
17 an agent in a real estate transaction proposes for use by the buyer and seller. Nothing contained in this Rule shall be
18 construed to prohibit the buyer and seller in a real estate transaction from altering, amending or deleting any
19 provision in a form offer to purchase or contract nor shall this Rule be construed to limit the rights of the buyer and
20 seller to draft their own offers or contracts or to have the same drafted by an attorney at law.
- 21
- 22 *History Note: Authority G.S. 93A-3(c);*
23 *Eff. July 1, 1988;*
24 *Amended Eff. July 1, 2014; July 1, 2010; July 1, 2009; April 1, 2006; October 1, 2000; July 1,*
25 *1995; July 1, 1989; February 1, 1989.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Real Estate Commission

RULE CITATION: 21 NCAC 58A .0114

DEADLINE FOR RECEIPT: Friday, June 13, 2014

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

In reviewing these rules, the staff determined that the following technical changes need to be made:

In this Rule, there appears to be odd spacing. I am guessing this is because it is a form and that's how it prints out. Is that correct?

In (a), Page 1, line 5, I'd replace "contemplated" with "governed by"

In (a)(1), line 23, should there be a comma after "option"?

In (a)(1), line 30, is there a reason the check mark is not in parenthesis, like so "(✓)"

In (a)(3), Page 2, line 12, I would state, "to the purchasers. Your broker must..."

I recognize this Rule is not written in the style usually required for agencies; for instance, there is a lot of "must" instead of "shall." Given that this Rule is intended to create a form for the general public to use, I have no problems with that. However, in (a)(4), line 18, I really hate seeing "should" in rule. Why not just state, "Give the purchaser..."

In the Note to Purchasers on Page 2, this may just be me, but when reading it, I thought the second sentence came directly from the first sentence. In reality, it doesn't. Have you thought about separating the sentences by bullets or lines?

In (a)(5) on Page 3, to be consistent, should it read "Owner(s) acknowledges having examined..."

In (a)(10) and (11), Page 4, "age of the system" is the date of installation, correct?

In (b), Page 9, should you state, "may be reproduced, but the text of the form shall not be..."?

In this History Note and all notes where there are multiple citations to the same law, state "47E-4(b); 47E-4(b1)"

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 30, 2014

21 NCAC 58A .0114 is amended as published in 28:15 NCR 1733 as follows:

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

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

[N.C. REAL ESTATE COMMISSION SEAL]

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

Instructions to Property Owners

1. The Residential Property Disclosure Act (G.S. 47E) ("Disclosure Act") requires owners of residential real estate (single-family homes, individual condominiums, townhouses, and the like, and buildings with up to four dwelling units) to furnish purchasers a Residential Property and Owners' Association Disclosure Statement ("Disclosure Statement"). This form is the only one approved for this purpose. A disclosure statement must be furnished in connection with the sale, exchange, option and sale under a lease with option to purchase where the tenant does not occupy or intend to occupy the dwelling. A disclosure statement is not required for some transactions, including the first sale of a dwelling which has never been inhabited and transactions of residential property made pursuant to a lease with option to purchase where the lessee occupies or intends to occupy the dwelling. For a complete list of exemptions, see G.S. 47E-2.
2. You must respond to each of the questions on the following pages of this form by filling in the requested information or by placing a check ☒ in the appropriate box. In responding to questions, you are only obligated to disclose information about which you have actual knowledge.
 - a. If you check "Yes" for any question, you must explain your answer and either describe any problem or attach a report from an attorney, engineer, contractor, pest control operator or other expert or public agency describing it. If you attach a report, you will not be liable for any inaccurate or incomplete information contained in it so long as you were not grossly negligent in obtaining or transmitting the information.

- 1 b. If you check "No," you are stating that you have no actual knowledge of any problem. If you check "No"
2 and you know there is a problem, you may be liable for making an intentional misstatement.
3
- 4 c. If you check "No Representation," you are choosing not to disclose the conditions or characteristics of the
5 property, even if you have actual knowledge of them or should have known of them.
6
- 7 d. If you check "Yes" or "No" and something happens to the property to make your Disclosure Statement
8 incorrect or inaccurate (for example, the roof begins to leak), you must promptly give the purchaser a
9 corrected Disclosure Statement or correct the problem.
10
- 11 3. If you are assisted in the sale of your property by a licensed real estate broker, you are still responsible for
12 completing and delivering the Disclosure Statement to the purchasers; and the broker must disclose any
13 material facts about your property which he or she knows or reasonably should know, regardless of your
14 responses on the Statement.
15
- 16 4. You must give the completed Disclosure Statement to the purchaser no later than the time the purchaser
17 makes an offer to purchase your property. If you do not, the purchaser can, under certain conditions, cancel
18 any resulting contract (See "**Note to Purchasers**" below). You should give the purchaser a copy of the
19 Disclosure Statement containing your signature and keep a copy signed by the purchaser for your records.
20
21
22
23

Note to Purchasers

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

- 24
- 25 5. In the space below, type or print in ink the address of the property (sufficient to identify it) and your name.
26 Then sign and date.
27

Property Address: _____

Owner's Name(s): _____

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

Owner Signature: _____ Date _____, ____

Owner Signature: _____ Date _____, ____

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

Purchaser Signature: _____ Date _____, ____

Purchaser Signature: _____ Date _____, ____

Property Address/Description: _____

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

- | | Yes | No | Repre-
sentation |
|---|--------------------------|--------------------------|--------------------------|
| 1. In what year was the dwelling constructed? _____
Explain if necessary: _____ | | | <input type="checkbox"/> |
| 2. Is there any problem, malfunction or defect with the dwelling's foundation, slab, fireplaces/chimneys, floors, windows (including storm windows and screens), doors, ceilings, interior and exterior walls, attached garage, patio, deck or other structural components including any modifications to them? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. The dwelling's exterior walls are made of what type of material? <input type="checkbox"/> Brick Veneer <input type="checkbox"/> | | | <input type="checkbox"/> |

Wood ☐ Stone ☐ Vinyl ☐ Synthetic Stucco ☐ Composition/Hardboard ☐ Concrete ☐
 Fiber Cement ☐ Aluminum ☐ Asbestos ☐ Other _____
 (Check all that apply)

4. In what year was the dwelling's roof covering installed? _____ ☐
 (Approximate if no records are available.) Explain if necessary:

5. Is there any leakage or other problem with the dwelling's roof? ☐ ☐ ☐
6. Is there any water seepage, leakage, dampness or standing water in the dwelling's basement, crawl space, or slab? ☐ ☐ ☐
7. Is there any problem, malfunction or defect with the dwelling's electrical system (outlets, wiring, panel, switches, fixtures, generator, etc.)? ☐ ☐ ☐
8. Is there any problem, malfunction or defect with the dwelling's plumbing system (pipes, fixtures, water heater, etc.)? ☐ ☐ ☐
9. Is there any problem, malfunction or defect with the dwelling's heating and/or air conditioning? ☐ ☐ ☐
10. What is the dwelling's heat source? ☐ Furnace ☐ Heat Pump ☐ Baseboard ☐
☐ Other _____ (Check all that apply)
 Age of system: _____
11. What is the dwelling's cooling source? ☐ Central Forced Air ☐ Wall/Window Unit(s) ☐
☐ Other _____ (Check all that apply)
 Age of system: _____
12. What is the dwelling's fuel sources? ☐ Electricity ☐ Natural Gas ☐ Propane ☐ Oil ☐
☐ Other _____ (Check all that apply)
 If the fuel source is stored in a tank, identify whether the tank is ☐ above ground or ☐ below ground, and whether the tank is ☐ leased by seller or ☐ owned by seller.
 (Check all that apply)
13. What is the dwelling's water supply source? ☐ City/County ☐ Community System ☐

☐ Private Well ☐ Shared Well ☐ Other_____

(Check all that apply)

14. The dwelling's water pipes are made of what type of material? ☐ Copper ☐ Galvanized ☐

☐ Plastic ☐ Polybutylene ☐ Other_____

(Check all that apply)

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

16. What is the dwelling's sewage disposal system? ☐ Septic Tank ☐ Septic Tank with Pump ☐

☐ Community System ☐ Connected to City/County System ☐ City/County System available

☐ Straight pipe (wastewater does not go into a septic or other sewer system [note: use of this type of system violates State law]) ☐ Other_____

(Check all that apply)

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

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

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

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

21. Is there any problem with present infestation of the dwelling, or damage from past infestation of wood destroying insects or organisms which has not been repaired? ☐ ☐ ☐

22. Is there any problem, malfunction or defect with the drainage, grading or soil stability of the property? ☐ ☐ ☐

23. Are there any structural additions or other structural or mechanical changes to the dwelling(s) to be conveyed with the property? ☐ ☐ ☐
24. ~~Have you been notified by a governmental agency that~~ Is the property to be conveyed the ~~property is~~ in violation of any local zoning ordinances, restrictive covenants, or other land-use restrictions, or building codes (including the failure to obtain proper permits for room additions or other changes/improvements)? ☐ ☐ ☐
25. Are there any hazardous or toxic substances, materials, or products (such as asbestos, formaldehyde, radon gas, methane gas, lead-based paint) which exceed government safety standards, any debris (whether buried or covered) or underground storage tanks, or any environmentally hazardous conditions (such as contaminated soil or water, or other environmental contamination) which affect the property? ☐ ☐ ☐
26. Is there any noise, odor, smoke, etc. from commercial, industrial or military sources which affects the property? ☐ ☐ ☐
27. Is the property subject to any utility or other easements, shared driveways, party walls or encroachments from or on adjacent property? ☐ ☐ ☐
28. Is the property subject to any lawsuits, foreclosures, bankruptcy, leases or rental agreements, judgments, tax liens, proposed assessments, mechanics' liens, materialmen's liens, or notices from any governmental agency that could affect title to the property? ☐ ☐ ☐
29. Is the property subject to a flood hazard or is the property located in a federally-designated flood hazard area? ☐ ☐ ☐
30. Does the property abut or adjoin any private road(s) or street(s)? ☐ ☐ ☐
31. If there is a private road or street adjoining the property, is there in existence any owners' association or maintenance agreements dealing with the maintenance of the road or street? ☐ ☐ ☐

1
2 **If you answered "yes" to any of the questions listed above (1-31) please explain (attach additional sheets if**
3 **necessary):**
4 _____
5 _____

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

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

		Yes	No	No Representation
32. To your knowledge, is the property subject to regulation by one or more owners' association(s) or governing documents which impose various mandatory covenants, conditions, and restrictions upon the lot, including, but not limited to obligations to pay regular assessment or dues and special assessments? If your answer is "yes," please provide the information requested below as to each owners' association to which the property is subject [insert N/A into any blank that does not apply]:		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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

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

*** If you answered "Yes" to question 32 above, you must complete the remainder of this Disclosure Statement. If you answered "No" or "No Representation" to question 32 above, you do not need to answer the remaining questions on this Disclosure Statement. Skip to the bottom of the last page and initial and date the page.**

1
2

3
4
5

	Yes	No	No Representation
33. Are any fees charged by the association or by the association's management company in connection with the conveyance or transfer of the lot or property to a new owner? If your answer is "yes," please state the amount of the fees:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<hr/> <hr/>			
34. As of the date this Disclosure Statement is signed, are there any dues, fees or special assessment which have been duly approved as required by the applicable declaration or by-laws, and that are payable to an association to which the lot is subject? If your answer is "yes," please state the nature and amount of the dues, fees or special assessments to which the property is subject:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<hr/> <hr/> <hr/>			
35. As of the date this Disclosure Statement is signed, are there any unsatisfied judgments against or pending lawsuits <i>involving the property or lot to be conveyed</i> ? If your answer is "yes," please state the nature of each pending lawsuit and the amount of each unsatisfied judgment:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<hr/> <hr/> <hr/>			
36. As of the date this Disclosure Statement is signed, are there any unsatisfied judgments against or pending lawsuits <i>involving the planned community or the association to which the property and lot are subject</i> , with the exception of any action filed by the association for the collection of delinquent assessments on lots other than the property and lot to be conveyed? If your answer is "yes," please state the nature of each pending lawsuit and the amount of each unsatisfied judgment:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<hr/> <hr/> <hr/>			

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

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

Owner Initials and Date _____ Owner Initials and Date _____

Purchaser Initials and Date _____ Purchaser Initials and Date _____

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

(c) The form described in Paragraph (a) of this Rule as amended effective ~~January 1, 2013~~, July 1, 2014 applies to all properties placed on the market on or after ~~January 1, 2013~~, July 1, 2014. The form described in Paragraph (a) of this Rule as amended effective January 1, ~~2012~~, 2013, applies to all properties placed on the market prior to ~~January 1, 2013~~, July 1, 2014. If a corrected disclosure statement required by G.S. 47E-7 is prepared on or

1 after ~~January 1, 2013~~, July 1, 2014, for a property placed on the market prior to ~~January 1, 2013~~, July 1, 2014, the
2 form described in Paragraph (a) of this Rule as amended effective ~~January 1, 2013~~, July 1, 2014, shall be used.

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

5 *Eff. October 1, 1998;*

6 *Amended Eff. July 1, 2014; January 1, 2013; January 1, 2012; July 1, 2010; July 1, 2009;*

7 *January 1, 2008; July 1, 2006; September 1, 2002; July 1, 2000.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Real Estate Commission

RULE CITATION: 21 NCAC 58A .0117

DEADLINE FOR RECEIPT: Friday, June 13, 2014

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

In reviewing these rules, the staff determined that the following technical changes need to be made:

In Paragraph (c), how long will the broker retain the records?

In (c)(2), Page 1, lines 14 and 24, replace "which" with "that"

In (c)(2), line 29, I think you mean to incorporate this CFR by reference. Use G.S. 150B-21.6 for guidance.

Also in (c)(2), line 31, when will the Commission make this request?

In (c)(3)(D) on Page 2, line 9, it appears you mean "may" instead of "shall," given the language on line 11.

Also in (c)(3)(D), change "which" to "that"

In (c)(4)(B), line 24, I take it the decision of whether the money may be accounted for on a separate ledger is in the discretion of the broker?

Also in (c)(4)(B), line 26, insert a comma after "For each security deposit"

In (c)(11), Page 3, line 21, insert "that are" after "Rule" and who will deem sufficiency?

In Paragraph (e), the cutoff date is a date in the month?

In (e)(1), what is a "trial balance"? I take it this is a term known by your regulated public?

In (e), Page 4, line 1, how long will the broker maintain these worksheets? Are you relying upon Rule .0108 of the Section?

In Paragraph (f), line 5, it again appears (since there are options on line 8) you mean "may" instead of "shall" for reconciliation.

In Paragraph (g), delete or define "promptly"

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 30, 2014

In (g) and (h), lines 15 and 18, the correct citation is "Rule .0108 of this Section."

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 30, 2014

1 **21 NCAC 58A .0117** is amended as published in 28:15 NCR 1739 as follows:

2
3 **21 NCAC 58A .0117 ACCOUNTING FOR TRUST MONEY**

4 (a) A broker shall create, maintain and retain records sufficient to identify the ownership of all funds belonging to
5 others. Such records shall be sufficient to show proper deposit and disbursement of such funds into and from a trust
6 or escrow account and to verify the accuracy and proper use of the trust or escrow account.

7 (b) A trust or escrow account shall satisfy the requirements of G.S. 93A-6(g) and shall be designated as a "Trust
8 Account" or "Escrow Account." All bank statements, deposit tickets and checks drawn on said account shall bear
9 the words "Trust Account" or "Escrow Account." A trust account shall provide for the full withdrawal of funds on
10 demand without prior notice and without penalty or deduction to the funds.

11 (c) A broker shall create, maintain or retain the following records:

12 (1) bank statements;

13 (2) canceled checks and other evidence or memoranda of payments from the trust or escrow account,
14 whether by transfer between accounts, wire payments, or payments by electronic means, which
15 shall be referenced to the corresponding journal entry or check stub entries and to the
16 corresponding sales transaction ledgers or for rental transactions, the corresponding property or
17 owner ledgers. Checks and other evidence or memoranda of payments from the account shall
18 identify the payee by name and shall bear a notation identifying the purpose of the disbursement.
19 When a payment is used to disburse funds for more than one sales transaction, owner, or property,
20 the check or other evidence or memoranda of payment shall bear a notation identifying each sales
21 transaction, owner, or property for which disbursement is made, including the amount disbursed
22 for each, and the corresponding sales transaction, property, or owner ledger entries. When
23 necessary, the check notation may refer to the required information recorded on a supplemental
24 disbursement worksheet which shall be cross-referenced to the corresponding check or payment.
25 In lieu of retaining canceled checks, a broker may retain digitally imaged copies of the canceled
26 checks or substitute checks provided that such images are legible reproductions of the front and
27 back of such instruments with no smaller images than 1.1875 x 3.0 inches and provided that the
28 broker's bank retains for a period of at least five years the original checks, "substitute checks" as
29 described in 12 C.F.R. 229.51 or the capacity to provide substitute checks as described in 12
30 C.F.R. 229.51 and makes the original or substitute checks available to the broker and the
31 Commission upon request;

32 (3) deposit tickets or other evidence or memoranda of deposits or payments into the account, whether
33 by transfer between accounts, wire payments, or payments by electronic means:

34 (A) for a sales transaction, the deposit ticket or other evidence or memoranda of deposits or
35 payments into the account shall identify the purpose and remitter of the funds deposited,
36 the property, the parties involved, and a reference to the corresponding sales transaction
37 ledger;

- 1 (B) for a rental transaction, the deposit ticket or other evidence or memoranda of deposits or
2 payments into the account shall identify the purpose and remitter of the funds deposited,
3 the tenant, and the corresponding property or owner ledger;
- 4 (C) for deposits of funds belonging to or collected on behalf of a property owner association,
5 the deposit ticket or other evidence or memoranda of deposits or payments into the
6 account shall identify the property or property interest for which the payment is made, the
7 property or interest owner, the remitter, and the purpose of the payment;
- 8 (D) when a single deposit ticket or payment is used to deposit funds collected for more than
9 one sales transaction, property owner, or property, the required information shall be
10 recorded on the ticket or other evidence or memoranda of deposits or payments into the
11 account for each sales transaction, owner, or property, or it may refer to the same
12 information recorded on a supplemental deposit worksheet which shall be cross-
13 referenced to the corresponding deposit ticket;
- 14 (4) a separate ledger for each sales transaction, for each property or owner of property managed by the
15 broker and for company funds held in the trust account:
- 16 (A) the ledger for a sales transaction shall identify the property, the parties to the transaction,
17 the amount, date, and purpose of the deposits and from whom received, the amount, date,
18 check number, and purpose of disbursements and to whom paid, and the running balance
19 of funds on deposit for each deposit and disbursement entry;
- 20 (B) the ledger for a rental transaction shall identify the particular property or owner of
21 property, the tenant, the amount, date, and purpose of the deposits and from whom
22 received, the amount, date, check number, and purpose of disbursements and to whom
23 paid, and the running balance of funds on deposit for each deposit and disbursement
24 entry. Monies held as tenant security deposits in connection with rental transactions may
25 be accounted for on a separate tenant security deposit ledger for each property or owner
26 of property managed by the broker. For each security deposit the tenant security deposit
27 ledger shall identify the remitter, the date the deposit was paid, the amount, the tenant,
28 landlord, and subject property as well as the check number, amount, date, payee, purpose
29 and a running balance for each disbursement. When tenant security deposit monies are
30 accounted for on a separate ledger as provided in this Rule, deposit tickets, canceled
31 checks and supplemental worksheets shall reference the corresponding tenant security
32 deposit ledger entries;
- 33 (C) a broker may maintain a maximum of one hundred dollars (\$100.00) in company funds in
34 a trust account for the purpose of paying service charges incurred by the account. In the
35 event that the services charges exceed one hundred dollars (\$100.00) monthly, the broker
36 may deposit an amount each month sufficient to cover the service charges. A broker

- 1 shall maintain a separate ledger for company funds held in the trust account identifying
2 the date, amount and running balance for each deposit and disbursement;
- 3 (5) a general journal, check register or check stubs identifying in chronological order each bank
4 deposit and disbursement of monies to and from the trust or escrow account, including the amount
5 and date of each deposit and a reference to the corresponding deposit ticket and any supplemental
6 deposit worksheet, and the amount, date, check number, and purpose of disbursements and to
7 whom paid. The journal or check stubs shall also show a running balance for each entry into the
8 account;
- 9 (6) a payment record for each property or interest for which funds are collected and deposited into a
10 property owner association trust account as required by Rule .0118 of this Section. Payment
11 record(s) shall identify the amount, date, remitter, and purpose of payments received, the amount
12 and nature of the obligation for which payments are made, and the amount of any balance due or
13 delinquency;
- 14 (7) copies of earnest money checks, due diligence fee checks, receipts for cash payments, contracts,
15 and closing statements in sales transactions;
- 16 (8) copies of leases, security deposit checks, property management agreements, property management
17 statements, and receipts for cash payments in leasing transactions;
- 18 (9) copies of covenants, bylaws, minutes, management agreements and periodic statements relating to
19 the management of property owner associations;
- 20 (10) copies of invoices, bills, and contracts paid from the trust account; and
- 21 (11) copies of any documents not otherwise described in this Rule necessary and sufficient to verify
22 and explain record entries.
- 23 (d) Records of all receipts and disbursements of trust or escrow monies shall be maintained in such a manner as to
24 create an audit trail from deposit tickets and canceled checks to check stubs or journals and to the ledger sheets.
- 25 (e) Brokers shall reconcile their trust or escrow accounts monthly. The trust account reconciliation shall be
26 performed in the following manner as of a specific cutoff date selected by the broker:
- 27 (1) a trial balance shall be prepared showing a list of the property or owner ledgers, their balances,
28 and the total of all of the property or owner ledger balances as of the cutoff date;
- 29 (2) a bank statement shall be reconciled by deducting from the statement's ending balance the amount
30 of any outstanding checks and then adding to the balance the amount of any deposits-in-transit as
31 of the cutoff date; and
- 32 (3) the trial balance, reconciled bank statement balance, and the journal balance shall be compared as
33 of the cutoff date. If the amounts on the trial balance, journal balance and reconciled bank balance
34 do not agree, the broker shall investigate the reason for any variation between the balances and
35 make the necessary corrections to bring the balances into agreement.

1 A broker shall maintain and retain a worksheet for each monthly trust account reconciliation showing the balance of
2 the journal or check stubs, the trial balance and the reconciled bank statement balance to be in agreement as of the
3 cutoff date.

4 (f) In addition to the records required by ~~Paragraph (d)~~ Paragraph (c) of this Rule, a broker acting as agent for the
5 landlord of a residential property used for vacation rentals shall create and maintain a subsidiary ledger sheet for
6 each property or owner of such properties on which all funds collected and disbursed are identified in categories by
7 purpose. On a monthly basis, the broker shall reconcile the subsidiary ledgers to the corresponding property or
8 property owner ledger. In lieu of maintaining a subsidiary ledger, the broker may maintain an accounts payable
9 ledger for each owner or property and each vendor to whom trust monies are due for monies collected on behalf of
10 the owner or property identifying the date of receipt of the trust monies, from whom the monies were received,
11 rental dates, and the corresponding property or owner ledger entry including the amount to be disbursed for each and
12 the purpose of the disbursement. The broker may also maintain an accounts payable ledger in the format described
13 above for vacation rental tenant security deposit monies and vacation rental advance payments.

14 (g) Upon the written request of a client, a broker shall promptly, but in no event later than ten days after receipt of
15 the request, furnish the client with copies of any records retained as required by Rule 21 NCAC 58A .0108 that
16 pertain to the transaction to which the client was a party.

17 (h) All trust or escrow account records shall be made available for inspection by the Commission or its authorized
18 representatives in accordance with Rule 21 NCAC 58A .0108.

19
20 *History Note:* Authority G.S. 93A-3(c); 93A-6;
21 *Eff. July 1, 2014; April 1, 2013.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Real Estate Commission

RULE CITATION: 21 NCAC 58A .0118

DEADLINE FOR RECEIPT: Friday, June 13, 2014

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

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a), line 6, replace "must" with "shall"

On line 7, replace "may" with "shall" assuming that is what you mean.

On lines 10 and 11, replace "which" with "that"

On line 17, end the sentence after "Section." Begin the next sentence, "However, the broker..."

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 30, 2014

1 **21 NCAC 58A .0118** is amended as published in 28:15 NCR 1741 as follows:

2
3 **21 NCAC 58A .0118 TRUST MONEY BELONGING TO PROPERTY OWNERS' ASSOCIATIONS**

4 (a) The funds of a property owners' association, when collected, maintained, disbursed or otherwise controlled by a
5 broker, are trust money and shall be treated as such in the manner required by ~~this Rule~~ Rules .0116 and .0117 of
6 this Section. Such trust money must be deposited into and maintained in a trust or escrow account dedicated
7 exclusively for trust money belonging to a single property owners' association and may not be commingled with
8 funds belonging to other property owners' associations or other persons or parties. A broker who undertakes to act
9 as manager of a property owners' association or as the custodian of trust money belonging to a property owners'
10 association shall provide the association with periodic statements which report the balance of association trust
11 money in the broker's possession or control and which account for the trust money the broker has received and
12 disbursed on behalf of the association. Such statements must be made in accordance with the broker's agreement
13 with the association, but not less frequently than every 90 days.

14 (b) A broker who receives trust money belonging to a property owners' association in his or her capacity as an
15 officer of the association in a residential development in which the broker is a property owner and for which the
16 broker receives no compensation is exempt from the requirements of ~~Rule .0116~~ Rules .0116 and .0117 of this
17 Section except that said broker shall not convert trust money belonging to the association to his or her own use,
18 apply such money or property to a purpose other than that for which it was intended or permit or assist any other
19 person in the conversion or misapplication of such money or property.

20
21 *History Note: Authority G.S. 93A-3(c); 93A-6;*
22 *Eff. July 1, 2014; April 1, 2013.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Real Estate Commission

RULE CITATION: 21 NCAC 58A .0404

DEADLINE FOR RECEIPT: Friday, June 13, 2014

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

In reviewing these rules, the staff determined that the following technical changes need to be made:

This appears to be a two paragraph rule. The first paragraph is lines 9 – 25 and the second is lines 26-28.

I'd end the sentence on line 9 with "not:" and leave off the rest.

In Item (2), I think it read better to state "communicate with any person other than an examination supervisor for any purpose in any manner." Also, wow. Does that mean if someone is having a medical issue, they must communicate only with the supervisor?

In Item (3), I really think this would benefit from being a list. I think you should state "have in his ... that may be used to:

- (A) communicate with others;*
- (B) access information; or*
- (C) record or store...*

I think Item (4) would also benefit from being a list.

I assume Item (6) would occur in response to a request from the examination supervisor?

I think Item (8) should be two Items. The first would be failure to comply with instructions and the second would be disrupting the administration of the examination.

I take it in (8) your regulated public knows what the "quiet and orderly administration of the examination" is?

On line 26, when you say "shall be grounds" do you mean that this shall occur or that it may upon the discretion of someone? If you mean shall occur, then I'd state "shall result in..." If you mean it might, how will the determination of whether this occurs or not happen?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 30, 2014

21 NCAC 58A .0404 is amended as published in 28:15 NCR 1741 as follows:

**21 NCAC 58A .0404 ~~CHEATING AND RELATED MISCONDUCT~~ EXAMINATION RELATED
CONDUCT**

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

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

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

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

History Note: Authority G. S. 93A-4(d);

Eff. December 1, 1985;

Amended Eff. July 1, 2014; April 1, 2006; July 1, 2000.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Real Estate Commission

RULE CITATION: 21 NCAC 58A .0502

DEADLINE FOR RECEIPT: Friday, June 13, 2014

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

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a), Page 1, line 5 – 6, I take it the “conversion” you are referring to is what is covered in the next sentence?

On line 6, delete or define “immediately”

On line 9, replace “said” with “the”

On line 10, what is the applicable fee? Do you want to cite a rule or statute here?

On line 13, someone has to ask the Commission? It’s not on the website?

In (a)(5), line 18, insert “it is” before “required”

In (a)(11), what do you mean by “full” on line 32?

In (a), on Page 2, line 4, “principal” should be in quotation marks.

In (b), line 7, I take it this is a showing to the Commission? Note the same question for “appears” on line 9.

Also on line 7, do you need to retain “at least”?

On line 8, is it “on” or “in active status”? Also, replace “and” after “good standing” with “who”

On line 10, the “requisite” traits are some of those listed in G.S. 93A-4(b). Why not just refer to the statute?

On line 15, the natural person serving as the qualify broker shall assure whom?

In (d)(1), “office” is a broad definition. Is the use of “branch office” necessary?

In (d)(7), Page 3, line 1, delete “for which said”

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 30, 2014

In (d)(8), there appears to be an extra space between “been” and “reconciled” on line 5..

In (e), line 9, replace “is” with “shall be”

On lines 10 and 11, since “state” is to refer to NC, make it uppercase.

Do you all routinely receive these notices from State entities or agencies?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 30, 2014

1 **21 NCAC 58A .0502** is amended as published in 28:15 NCR 1742 as follows:

2
3 **21 NCAC 58A .0502 BUSINESS ENTITIES**

4 (a) Every business entity other than a sole proprietorship shall apply for and obtain from the Commission a firm
5 license prior to engaging in business as a real estate broker. An entity that changes its business form other than by
6 conversion shall submit a new license application immediately upon making the change and obtain a new firm
7 license. An entity which converts to a different business entity in conformity with and pursuant to applicable North
8 Carolina General Statutes is not required to apply for a new license. However, such converted entity shall provide
9 the information required by this Paragraph in writing to the Commission within 10 days of said conversion and shall
10 include the applicable fee to have the firm license reissued in the legal name of the converted entity. Incomplete
11 applications shall not be acted upon by the Commission. Application forms for partnerships, corporations, limited
12 liability companies, associations and other business entities required to be licensed as brokers shall be available
13 upon request to the Commission and shall require the applicant to set forth:

- 14 (1) the name of the entity;
- 15 (2) the name under which the entity will do business;
- 16 (3) the type of business entity;
- 17 (4) the address of its principal office;
- 18 (5) the entity's NC Secretary of State Identification Number if required to be registered with the
19 Office of the NC Secretary of State;
- 20 (6) the name, real estate license number and signature of the proposed qualifying broker for the
21 proposed firm;
- 22 (7) the address of and name of the proposed broker-in-charge for each office as defined in ~~Rule~~
23 ~~.0110(b)~~ Rule .0110(a) of this Subchapter, along with a completed broker-in-charge declaration
24 form for each proposed broker-in-charge;
- 25 (8) any past criminal conviction of and any pending criminal charge against any principal in the
26 company or any proposed broker-in-charge;
- 27 (9) any past revocation, suspension or denial of a business or professional license of any principal in
28 the company or any proposed broker-in-charge;
- 29 (10) if a general partnership, a full description of the applicant entity, including a copy of its written
30 partnership agreement or if no written agreement exists, a written description of the rights and
31 duties of the several partners;
- 32 (11) if a business entity other than a corporation, limited liability company or partnership, a full
33 description of the organization of the applicant entity, including a copy of its organizational
34 documents evidencing its authority to engage in real estate brokerage;
- 35 (12) if a foreign business entity, a certificate of authority to transact business in North Carolina and an
36 executed consent to service of process and pleadings; and
- 37 (13) any other information required by this Rule.

1 When the authority of a business entity to engage in the real estate business is unclear in the application or in law,
2 the Commission shall require the applicant to declare in the license application that the applicant's organizational
3 documents authorize the firm to engage in the real estate business and to submit organizational documents,
4 addresses of affiliated persons and similar information. For purposes of this Rule, the term principal, when it refers
5 to a person or entity, means any person or entity owning 10 percent or more of the business entity, or who is an
6 officer, director, manager, member, partner or who holds any other comparable position.

7 (b) After filing a written application with the Commission and upon a showing that at least one principal of the
8 business entity holds a broker license on active status and in good standing and will serve as qualifying broker of the
9 entity, the entity shall be licensed provided it appears that the applicant entity employs and is directed by personnel
10 possessed of the requisite truthfulness, honesty, and integrity. The qualifying broker of a partnership of any kind
11 must be a general partner of the partnership; the qualifying broker of a limited liability company must be a manager
12 of the company; and the qualifying broker of a corporation must be an officer of the corporation. A licensed
13 business entity may serve as the qualifying broker of another licensed business entity if the qualifying broker-entity
14 has as its qualifying broker a natural person who is licensed as a broker. The natural person who is qualifying
15 broker shall assure the performance of the qualifying broker's duties with regard to both entities. A provisional
16 broker may not serve as a qualifying broker.

17 (c) The licensing of a business entity shall not be construed to extend to the licensing of its partners, managers,
18 members, directors, officers, employees or other persons acting for the entity in their individual capacities regardless
19 of whether they are engaged in furthering the business of the licensed entity.

20 (d) The qualifying broker of a business entity shall assume responsibility for:

- 21 (1) designating and assuring that there is at all times a broker-in-charge for each office and branch
22 office of the entity as ~~office~~ "office" and ~~branch office~~ "branch office" are defined in ~~Rule~~
23 ~~.0110(b)~~ Rule .0110(a) of this Subchapter;
- 24 (2) renewing the real estate broker license of the entity;
- 25 (3) retaining the firm's renewal pocket card at the firm and producing it as proof of firm licensure
26 upon request and maintaining a photocopy of the firm license certificate and pocket card at each
27 branch office thereof;
- 28 (4) notifying the Commission of any change of business address or trade name of the entity and the
29 registration of any assumed business name adopted by the entity for its use;
- 30 (5) notifying the Commission in writing of any change of his or her status as qualifying broker within
31 ten days following the change;
- 32 (6) securing and preserving the transaction and trust account records of the firm whenever there is a
33 change of broker-in-charge at the firm or any office thereof and notifying the Commission if the
34 trust account records are out of balance or have not been reconciled as required by ~~Rule~~
35 ~~.0107~~ Rule .0117 of this Subchapter;
- 36 (7) retaining and preserving the transaction and trust account records of the firm upon termination of
37 his or her status as qualifying broker until a new qualifying broker has been designated with the

Commission or, if no new qualifying broker is designated, for the period of time for which said records are required to be retained by Rule .0108 of this Subchapter; and

- (8) notifying the Commission if, upon the termination of his or her status as qualifying broker, the firm's transaction and trust account records cannot be retained or preserved or if the trust account records are out of balance or have not been reconciled as required by ~~Rule .0107(e)~~ Rule .0117 of this Subchapter.

(e) Every licensed business entity and every entity applying for licensure shall conform to all the requirements imposed upon it by the North Carolina General Statutes for its continued existence and authority to do business in North Carolina. Failure to conform to such requirements is grounds for disciplinary action or denial of the entity's application for licensure. Upon receipt of notice from an entity or agency of this state that a licensed entity has ceased to exist or that its authority to engage in business in this state has been terminated by operation of law, the Commission shall cancel the license of the entity.

History Note: Authority G.S. 55-11A-04; 93A-3(c); 93A-4(a),(b),(d);

Eff. February 1, 1976;

Readopted Eff. September 30, 1977;

Amended Eff. July 1, 2014; July 1, 2009; January 1, 2008; April 1, 2006; July 1, 2005; April 1, 2004; July 1, 2003; October 1, 2000; August 1, 1998; January 1, 1997; July 1, 1994; May 1, 1990.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Real Estate Commission

RULE CITATION: 21 NCAC 58A .0503

DEADLINE FOR RECEIPT: Friday, June 13, 2014

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

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a), line 6, you may want to replace "a license" with "his or her license"

Also on line 6, what do you mean by "within" 45 days prior to license expiration? G.S. 93A-4(c) states:

(c) All licenses issued by the Commission under the provisions of this Chapter shall expire on the 30th day of June following issuance or on any other date that the Commission may determine and shall become invalid after that date unless reinstated. A license may be renewed 45 days prior to the expiration date by filing an application with and paying to the Executive Director of the Commission the license renewal fee.

Do you mean "before" rather than "within"?

On line 8, do you have a rule with the Commission's website that you can refer to? If not, give the web address here.

On line 9, what happens when someone calls? Do you take the application over the phone or do they request a hard copy that is mailed to them? And do you really mean "does not have the ability to renew online" or do you mean someone who does not wish to do this online?

What are "normal business hours" on line 10? Do you have a rule that sets that out somewhere?

There is an extra space before "Every" on line 10 and "A" on line 12.

On line 10, if you want them to provide an email address if they have one, state that. On line 11, begin the sentence, "The email address may be designated... private in order to be exempt..." The citation is G.S. 93A-4(b2). On line 13, "A broker ... address shall so state on this renewal application. A broker is not required to obtain an email address to comply with this Rule."

In Paragraph (b), so that I understand – someone does not have to complete continuing education until the second renewal? So someone could go almost two years without taking continuing education? What is the authority to do that?

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 30, 2014

In Paragraph (c), line 19, delete “subsequently”

In (d), line 22, replace “is” with “shall be”

Add G.S. 93A-4(b2) to the History Note.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 30, 2014

21 NCAC 58A .0503 is amended as published in 28:15 NCR 1743 as follows:

**21 NCAC 58A .0503 LICENSE RENEWAL; PENALTY FOR OPERATING WHILE LICENSE
EXPIRED**

(a) All real estate licenses issued by the Commission under G.S. 93A, Article 1 shall expire on the 30th day of June following issuance. Any broker desiring renewal of a license shall apply for renewal within 45 days prior to license expiration by submitting a an electronic renewal application on a form prescribed by the Commission the Commission's website and submitting with the electronic application the required renewal fee of forty-five dollars (\$45.00). A broker who does not have the ability to renew online may renew by calling the Commission's office during normal business hours. Every individual broker shall provide on his or her renewal application an email address to be used by the Commission to communicate with the broker. Such email address may be designated by the broker as private and shall then be exempt from public records disclosures pursuant to N.C.G.S. 93A-4(b2). A broker who does not have an email address may indicate so on the renewal application and shall not be required to obtain an email address.

(b) Any person desiring to renew his or her license on active status shall, upon the second renewal of such license following initial licensure, and upon each subsequent renewal, have obtained all continuing education required by G.S. 93A-4.1 and Rule .1702 of this Subchapter.

(c) A person renewing a license on inactive status shall not be required to have obtained any continuing education in order to renew such license; however, in order to subsequently change his or her license from inactive status to active status, the broker must satisfy the continuing education requirement prescribed in Rule .1703 or .1711 of this Subchapter.

(d) Any person or firm that engages in the business of a real estate broker while his, her, or its license is expired is subject to the penalties prescribed in G.S. 93A-6.

History Note: Authority G.S. 93A-3(c); 93A-4(c), (d); 93A-4.1; 93A-6;

Eff. February 1, 1976;

Readopted Eff. September 30, 1977;

Amended Eff. July 1, 1994; February 1, 1991; February 1, 1989;

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

Amended Eff. July 1, 2014; April 1, 2013; April 1, 2006; January 1, 2006; July 1, 2004;

December 4, 2002; April 1, 1997; July 1, 1996; August 1, 1995.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Real Estate Commission

RULE CITATION: 21 NCAC 58A .1702

DEADLINE FOR RECEIPT: Friday, June 13, 2014

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

In reviewing these rules, the staff determined that the following technical changes need to be made:

In Paragraph (a), line 4, the citation is "Rules .1708 and .1711 of this Section."

In (a), line 9, do you have a Rule that will set forth the curriculum of the course? G.S. 93A-4(c) states, in part:

(c) The Commission may adopt rules not inconsistent with this Chapter to give purpose and effect to the continuing education requirement, including rules that govern:

- (1) The content and subject matter of continuing education courses.
- (2) The curriculum of courses required.

This information needs to be in a Rule somewhere.

In (a), line 11, replace "prescribed by" with "set forth in"

On line 12, replace "must" with "shall"

Does your regulated public know on 13 when the Commission will request this information and what is "satisfactory to the Commission"?

In (b), end the sentence on line 15 after "status" and begin the next sentence, "In order to..."

What is your authority for Paragraph (c)? G.S. 93A-4.1(a) states:

(a) The Commission shall establish a program of continuing education for real estate brokers. **An individual licensed as a real estate broker is required to complete continuing education requirements** in an amount not to exceed eight classroom hours of instruction a year during any license renewal period in subjects and at times the Commission deems appropriate. Any licensee who fails to complete continuing education requirements pursuant to this section shall not actively engage in the business of real estate broker.

Where is your authority to set the requirement at zero hours for these individuals?

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 30, 2014

Do you need the last sentence in (d) on lines 23 – 25?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 30, 2014

1 21 NCAC 58A .1702 is amended as published in 28:15 NCR 1743 as follows:

2
3 **21 NCAC 58A .1702 CONTINUING EDUCATION REQUIREMENT**

4 (a) Except as provided in 21 NCAC 58A .1708 and .1711, in order to renew a broker license on active status, the
5 person requesting renewal of a license shall, upon the second renewal of such license following initial licensure, and
6 upon each subsequent annual renewal, have completed, within one year preceding license expiration, eight
7 classroom hours of real estate continuing education in courses approved by the Commission as provided in
8 Subchapter 58E. Four of the required eight classroom hours must be obtained each license period by completing a
9 mandatory update course developed annually by the Commission and known as the "General Update Course,"
10 except that a broker-in-charge or broker who is broker-in-charge eligible shall complete the "Broker-In-Charge
11 Update Course" in lieu of the "General Update Course" as prescribed by Rule .0110 of this Subchapter. The
12 remaining four hours must be obtained by completing one or more Commission-approved elective courses described
13 in Rule .0305 of Subchapter 58E. The ~~licensee~~ broker shall provide upon request of the Commission, evidence of
14 continuing education course completion satisfactory to the Commission.

15 (b) No continuing education shall be required to renew a broker license on inactive status; however, to change a
16 license from inactive status to active status, the ~~licensee~~ broker must satisfy the continuing education requirement
17 described in Rule .1703 of this Section.

18 (c) No continuing education shall be required for a ~~licensee~~ broker who is a member of the U.S. Congress or the
19 North Carolina General Assembly in order to renew his or her license on active status.

20 (d) The terms "active status" and "inactive status" are defined in Rule .0504 of this Subchapter. For continuing
21 education purposes, the term "initial licensure" shall include the first time that a license of a particular type is issued
22 to a person, the reinstatement of a canceled, revoked or surrendered license, and any license expired for more than
23 six months. The issuance, pursuant to G.S. 93A-4.3, of a broker license on provisional status on April 1, 2006
24 to ~~licensees~~ brokers who held a salesperson license as of that date shall not be considered to constitute initial
25 licensure for continuing education purposes.

26
27 *History Note: Authority G.S. 93A-3(c); 93A-4.1;*

28 *Eff. July 1, 1994;*

29 *Amended Eff. July 1, 2014, April 1, 2006; July 1, 2005; April 1, 2004; October 1, 2000; August 1,*
30 *1998; July 1, 1996.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Real Estate Commission

RULE CITATION: 21 NCAC 58A .1709

DEADLINE FOR RECEIPT: Friday, June 13, 2014

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

In reviewing these rules, the staff determined that the following technical changes need to be made:

This Rule needs Paragraphs. I recommend:

- (a) is lines 4 through 8;
- (b) is lines 8 through 10;
- (c) is lines 10 through 12;
- (d) is lines 12 through 15;
- (e) is lines 15 through 17;
- (f) is lines 17 through 20.
- (g) is the rest of the text.

Give the usage of "on active status" in this Rule, I am assuming that is correct and not "in"?

On line 5, does your regulated public know what is satisfactory to the Commission?

On lines 6 and 7, replace "which" with "that"

On line 7, how is this verified?

On lines 7 and 8 replace "to comply" with "compliance"

On line 8, delete or define "unreasonably"

On line 9, I'd say "The Commission shall not grant..."

On line 10, delete "also" after "Commission" And how will this opinion be formed? At a hearing or meeting?

On line 17, replace "which" with "that"

On line 20, what is in the form? Where can someone get it?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 30, 2014

RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: Real Estate Commission

RULE CITATION: 21 NCAC 58A .1709

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☒ Lack of statutory authority
 - ☒ Unclear or ambiguous
 - ☐ Unnecessary
 - ☐ Failure to comply with the APA
- ☐ Extend the period of review

COMMENT:

In the language on lines 17 through 20 of the Rule, the Real Estate Commission states that the length of any extension granted and the requirements for education are "wholly discretionary." It gives no guidance regarding the possible lengths of time or requirements. This makes the Rule unclear.

The Commission does not cite to any authority to determine these entirely outside of rulemaking. Attached are the two statutes cited in the History Note for the Rule; they do not contain any exemption from setting forth the information or giving guidance about how these determinations will be made in rule. Staff notes that one of the cited authorities, G.S. 93A-3(c) specifically requires rulemaking.

Staff is not aware of any authority that will allow the Commission to do this outside of rule.

Amanda J. Reeder
Commission Counsel

§ 93A-3. Commission created; compensation; organization.

(a) There is hereby created the North Carolina Real Estate Commission, hereinafter called the Commission. The Commission shall consist of nine members, seven members to be appointed by the Governor, one member to be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121, and one member to be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121. At least three members of the Commission shall be licensed real estate brokers. At least two members of the Commission shall be persons who are not involved directly or indirectly in the real estate or real estate appraisal business. Members of the Commission shall serve three-year terms, so staggered that the terms of three members expire in one year, the terms of three members expire in the next year, and the terms of three members expire in the third year of each three-year period. The members of the Commission shall elect one of their members to serve as chairman of the Commission for a term of one year. The Governor may remove any member of the Commission for misconduct, incompetency, or willful neglect of duty. The Governor shall have the power to fill all vacancies occurring on the Commission, except vacancies in legislative appointments shall be filled under G.S. 120-122.

(b) The provisions of G.S. 93B-5 notwithstanding, members of the Commission shall receive as compensation for each day spent on work for the Commission a per diem in an amount established by the Commission by rule, and mileage reimbursement for transportation by privately owned automobile at the business standard mileage rate set by the Internal Revenue Service per mile of travel along with actual cost of tolls paid. The total expense of the administration of this Chapter shall not exceed the total income therefrom; and none of the expenses of said Commission or the compensation or expenses of any office thereof or any employee shall ever be paid or payable out of the treasury of the State of North Carolina; and neither the Commission nor any officer or employee thereof shall have any power or authority to make or incur any expense, debt or other financial obligation binding upon the State of North Carolina. After all expenses of operation, the Commission may set aside an expense reserve each year. The Commission may deposit moneys in accounts, certificates of deposit, or time deposits as the Commission may approve, in any bank, savings and loan association, or trust company. Moneys also may be invested in the same classes of securities referenced in G.S. 159-30(c).

(c) The Commission shall have power to make reasonable bylaws, rules and regulations that are not inconsistent with the provisions of this Chapter and the General Statutes; provided, however, the Commission shall not make rules or regulations regulating commissions, salaries, or fees to be charged by licensees under this Chapter.

(c1) The provisions of G.S. 93A-1 and G.S. 93A-2 notwithstanding, the Commission may adopt rules to permit a real estate broker to pay a fee or other valuable consideration to a travel agent for the introduction or procurement of tenants or potential tenants in vacation rentals as defined in G.S. 42A-4. Rules adopted pursuant to this subsection may include a definition of the term "travel agent", may regulate the conduct of permitted transactions, and may limit the amount of the fee or the value of the consideration that may be paid to the travel agent. However, the Commission may not authorize a person or entity not licensed as a broker to negotiate any real estate transaction on behalf of another.

(c2) The Commission shall adopt a seal for its use, which shall bear thereon the words "North Carolina Real Estate Commission." Copies of all records and papers in the office of the Commission

duly certified and authenticated by the seal of the Commission shall be received in evidence in all courts and with like effect as the originals.

(d) The Commission may employ an Executive Director and professional and clerical staff as may be necessary to carry out the provisions of this Chapter and to put into effect the rules and regulations that the Commission may promulgate. The Commission shall fix salaries and shall require employees to make good and sufficient surety bond for the faithful performance of their duties. The Commission shall reimburse its employees for travel on official business. Mileage expenses for transportation by privately owned automobile shall be reimbursed at the business standard mileage set by the Internal Revenue Service per mile of travel along with the actual tolls paid. Other travel expenses shall be reimbursed in accordance with G.S. 138-6. The Commission may, when it deems it necessary or convenient, delegate to the Executive Director, legal counsel for the Commission, or other Commission staff, professional or clerical, the Commission's authority and duties under this Chapter, but the Commission may not delegate its authority to make rules or its duty to act as a hearing panel in accordance with the provisions of G.S. 150B-40(b).

(e) The Commission shall be entitled to the services of the Attorney General of North Carolina, in connection with the affairs of the Commission, and may, with the approval of the Attorney General, employ attorneys to represent the Commission or assist it in the enforcement of this Chapter. The Commission may prefer a complaint for violation of this Chapter before any court of competent jurisdiction, and it may take the necessary legal steps through the proper legal offices of the State to enforce the provisions of this Chapter and collect the penalties provided therein.

(f) The Commission is authorized to acquire, hold, convey, rent, encumber, alienate, and otherwise deal with real property in the same manner as a private person or corporation, subject only to the approval of the Governor and Council of State. The rents, proceeds, and other revenues and benefits of the ownership of real property shall inure to the Commission. Collateral pledged by the Commission for any encumbrance of real property shall be limited to the assets, income, and revenues of the Commission. Leases, deeds, and other instruments relating to the Commission's interest in real property shall be valid when executed by the executive director of the Commission. The Commission may create and conduct education and information programs relating to the real estate business for the information, education, guidance and protection of the general public, licensees, and applicants for license. The education and information programs may include preparation, printing and distribution of publications and articles and the conduct of conferences, seminars, and lectures. The Commission may claim the copyright to written materials it creates and may charge fees for publications and programs. (1957, c. 744, s. 3; 1967, c. 281, s. 2; c. 853, s. 1; 1971, c. 86, s. 1; 1979, c. 616, ss. 1, 2; 1983, c. 81, ss. 1, 2, 6-8; 1989, c. 563, s. 1; 1993, c. 419, s. 9; 1999-229, s. 4; 1999-405, s. 2; 1999-431, s. 3.4(a); 2000-140, s. 19(a); 2001-293, ss. 1, 2; 2002-168, s. 3; 2005-374, s. 1; 2005-395, s. 4; 2007-366, s. 1; 2011-217, s. 2.)

§ 93A-4.1. Continuing education.

(a) The Commission shall establish a program of continuing education for real estate brokers. An individual licensed as a real estate broker is required to complete continuing education requirements in an amount not to exceed eight classroom hours of instruction a year during any license renewal period in subjects and at times the Commission deems appropriate. Any licensee who fails to complete continuing education requirements pursuant to this section shall not actively engage in the business of real estate broker.

(a1) The Commission may, as part of the broker continuing education requirements, require real estate brokers-in-charge to complete during each annual license period a special continuing education course consisting of not more than four classroom hours of instruction in subjects prescribed by the Commission.

(b) The Commission shall establish procedures allowing for a deferral of continuing education for brokers while they are not actively engaged in real estate brokerage.

(c) The Commission may adopt rules not inconsistent with this Chapter to give purpose and effect to the continuing education requirement, including rules that govern:

- (1) The content and subject matter of continuing education courses.
- (2) The curriculum of courses required.
- (3) The criteria, standards, and procedures for the approval of courses, course sponsors, and course instructors.
- (4) The methods of instruction.
- (5) The computation of course credit.
- (6) The ability to carry forward course credit from one year to another.
- (7) The deferral of continuing education for brokers not engaged in brokerage.
- (8) The waiver of or variance from the continuing education requirement for hardship or other reasons.
- (9) The procedures for compliance and sanctions for noncompliance.

(d) The Commission may establish a nonrefundable course application fee to be charged to a course sponsor for the review and approval of a proposed continuing education course. The fee shall not exceed one hundred twenty-five dollars (\$125.00) per course. The Commission may charge the sponsor of an approved course a nonrefundable fee not to exceed seventy-five dollars (\$75.00) for the annual renewal of course approval.

An approved course sponsor shall pay a fee of ten dollars (\$10.00) per licensee to the Commission for each licensee completing an approved continuing education course conducted by the sponsor.

The Commission shall not charge a course application fee, a course renewal fee, or any other fee for a continuing education course sponsored by a community college, junior college, college, or university located in this State and accredited by the Southern Association of Colleges and Schools.

(e) The Commission may award continuing education credit for an unapproved course or related educational activity. The Commission may prescribe procedures for a licensee to submit information on an unapproved course or related educational activity for continuing education credit. The Commission may charge a fee to the licensee for each course or activity submitted. The fee shall not exceed fifty dollars (\$50.00). (1993, c. 492, s. 1; 1999-229, s. 5; 2003-361, s. 2; 2005-395, s. 6; 2011-217, s. 4.)

1 **21 NCAC 58A .1709** is amended as published in 28:15 NCR 1744 as follows:

2
3 **21 NCAC 58A .1709 EXTENSIONS OF TIME TO COMPLETE CONTINUING EDUCATION**

4 A licensee broker on active status may request and be granted an extension of time to satisfy the continuing education
5 requirement for a particular license period if the licensee broker provides evidence satisfactory to the Commission that
6 he or she was unable to obtain the necessary education due to an incapacitating illness or other circumstance which
7 existed for a substantial portion of the license period and which constituted a severe and verifiable hardship such that to
8 comply with the continuing education requirement would have been impossible or unreasonably burdensome. The
9 Commission shall in no case grant an extension of time to satisfy the continuing education requirement for reasons of
10 business or personal conflicts. The Commission also shall not grant such an extension of time when, in the opinion of
11 the Commission, the principal reason for the licensee's broker's inability to obtain the required education in a timely
12 manner was unreasonable delay on the part of the licensee broker in obtaining such education. If an extension of time is
13 granted, the licensee broker shall be permitted to renew his or her license on active status but the license shall be
14 automatically changed to inactive status at the end of the extension period unless the licensee broker satisfies the
15 continuing education requirement prior to that time. If an extension of time is not granted, the licensee broker may either
16 satisfy the continuing education requirement prior to expiration of the license period or renew his or her license on
17 inactive status. The length of any extension of time granted and the determination of the specific courses which shall be
18 accepted by the Commission as equivalent to the continuing education the licensee broker would have been required to
19 have completed had the licensee broker not been granted the extension is wholly discretionary on the part of the
20 Commission. The licensee's broker's request for an extension of time ~~must~~ shall be submitted on a form prescribed by
21 the ~~Commission.~~ Commission and must be received by the Commission on or before June 10 of the license year for
22 which the extension is sought.

23
24 *History Note:* *Authority G.S. 93A-3(c); 93A-4.1;*
25 *Eff. July 1, 1994;*
26 *Amended Eff. July 1, 2014; October 1, 2000.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Real Estate Commission

RULE CITATION: 21 NCAC 58A .1808

DEADLINE FOR RECEIPT: Friday, June 13, 2014

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

In reviewing these rules, the staff determined that the following technical changes need to be made:

On line 4, define or delete "immediately"

On line 6, what is the difference between "broker's acts" and "services as a broker"?

I would replace "said money" on lines 6 and 7 with "the funds," but that is entirely up to you.

In the History Note, is G.S 93A-6, which deals with requirements for trust accounts in Paragraphs (d) and (g), not applicable as well?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 30, 2014

1 **21 NCAC 58A .1808** is amended as published in 28:15 NCR 1744 as follows:

2
3 **21 NCAC 58A .1808 TRUST MONIES**

4 A nonresident commercial ~~licensee~~ broker acting as real estate broker in North Carolina shall immediately deliver to
5 the North Carolina resident broker with whom he or she is affiliated all money belonging to others received in
6 connection with the nonresident commercial ~~licensee's~~ broker's acts or services as a broker. Upon receipt of said
7 money, the resident North Carolina broker shall cause said money to be deposited in a trust account in accordance
8 with the provisions of ~~Rule .0107~~ Rule .0116 of this Subchapter.

9
10 *History Note: Authority G.S. 93A-4; 93A-9;*

11 *Eff. July 1, 2004;*

12 *Amended Eff. July 1, 2014; April 1, 2006.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Real Estate Commission

RULE CITATION: 21 NCAC 58C .0209

DEADLINE FOR RECEIPT: Friday, June 13, 2014

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

In reviewing these rules, the staff determined that the following technical changes need to be made:

Throughout this Rule, where you refer to "bulletin," I take it you mean the bulletin defined in Rule 58C .0208, correct?

Please explain what you mean in Paragraph (b), in the sentence starting on line 9.

This is a personal preference, but I think Paragraph (c) would read better broken down into Subparagraphs.

A school's enrollment contract shall include:

- (1) the student's name;*
- (2) the contract date;*

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 30, 2014

1 **21 NCAC 58C .0209** is amended as published in 28:15 NCR 1744 as follows:

2
3 **21 NCAC 58C .0209 ENROLLMENT PROCEDURES AND CONTRACTS**

4 (a) A school shall provide to a prospective student a copy of the school's bulletin prior to the time that a student
5 becomes committed to payment of any portion of tuition or registration deposit without the right to a full refund.

6 (b) A school shall execute a written enrollment contract with each student after the school's bulletin has been
7 provided to the student but prior to the beginning of the course for which the student is enrolling. The student shall
8 be provided a copy of the enrollment contract at the time of signing. The enrollment contract shall be a separate
9 document and shall not be combined with the school's bulletin into a single document. A school may utilize the
10 school's copy of the enrollment contract to note a record of student tuition payments.

11 (c) A school's student enrollment contract shall include the student's name, the contract date, the title of the
12 course(s) for which the student is enrolling, the course schedule (beginning date, end date and meeting days and
13 times), the amount of tuition and other required fees, a provision incorporating by reference the school's policies as
14 described in the school's bulletin, a provision whereby the school certifies that the school's bulletin has been
15 provided to the student and that the student acknowledges receipt of the bulletin, any provisions needed to address
16 special accommodations or arrangements applicable to a particular student, and the signatures of both the student
17 and a school official. The contract shall also include the following prescribed text: "NOTICE: Pursuant to North
18 Carolina Real Estate Commission Rule 21 NCAC 58A.1904, the Commission may deny or withdraw credit for a
19 postlicensing course that a provisional broker begins taking while already enrolled in another postlicensing course at
20 the same school or a different school if participating in the two courses concurrently results in the provisional broker
21 attending postlicensing course sessions that total more than 21 classroom hours in any given seven-day period."

22 Other than the amount of tuition and fees, an enrollment contract shall not address other school policies that are
23 addressed in the school's bulletin. ~~The enrollment contract shall be a separate document and shall not be combined~~
24 ~~with the school's bulletin into a single document. A school may utilize the school's copy of the enrollment contract~~
25 ~~to note a record of student tuition payments.~~

26
27 *History Note: Authority G.S. 93A-4; 93A-33;*

28 *Eff. October 1, 1980;*

29 *Transferred and Recodified from 21 NCAC 58A .1309 Eff. November 27, 1989;*

30 *Amended Eff. July 1, 2014; January 1, 2008; April 1, 2006.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Real Estate Commission

RULE CITATION: 21 NCAC 58C .0221

DEADLINE FOR RECEIPT: Friday, June 13, 2014

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

In reviewing these rules, the staff determined that the following technical changes need to be made:

This Rule would read better as three Paragraphs. Paragraph (a) would be the first sentence; (b) would be the second sentence; and (c) is the rest.

Adjust the margin on line 4.

On line 5, state "shall terminate"

In the second sentence, you are saying that since the license cannot transfer, the credit for courses must be awarded before the end of the license?

The second language is a bit wordy. Do you need "commenced by the school owner transferring ownership" on lines 5 and 6? Could you say, "All courses shall be completed by the effective date of the ownership transfer. The transferring owner shall report course completion..."?

On line 7, replace "must" with "shall"

In the History Note, wouldn't G.S. 93A-35 apply here, as well?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 30, 2014

1 **21 NCAC 58C .0221** is adopted as published in 28:15 NCR 1745 as follows:

2
3 **21 NCAC 58C .0221 TRANSFER OF SCHOOL OWNERSHIP**

4 When ownership of a licensed school is transferred to a different legal entity, the school license is not
5 transferable and terminates on the effective date of the transfer. All courses commenced by the school owner
6 transferring ownership shall be completed by the effective date of the ownership transfer, and that owner shall report
7 course completion to the Commission. The entity acquiring ownership must obtain an original school license for
8 each location where the school will conduct courses as required by G.S. 93A-34 and Rule .0202 of this Subchapter
9 prior to advertising courses, registering students, accepting tuition, conducting courses, or otherwise engaging in any
10 school operations.

11
12 History Note: Authority G.S. 93A-33; 93A-34

13 Eff. July 1, 2014.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Real Estate Commission

RULE CITATION: 21 NCAC 58C .0309

DEADLINE FOR RECEIPT: Friday, June 13, 2014

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

In reviewing these rules, the staff determined that the following technical changes need to be made:

Paragraph (a) is oddly worded to me. Why not say something like, "Schools shall provide a course completion certificate to each student who completes a prelicensing or postlicensing course in compliance with Commission rules and the school course completion standards. Each course completion certificate shall be on official school letterhead and identify the course, student and instructor. The certificate shall be signed by the director, dean or other school official responsible for supervising the conduct of the course."

In (b), line 9, what do you mean by "accurate"?

Again, this is personal preference, but I think the language on lines 11 through 15 would benefit from being broken into a list.

On lines 14 and 15, where is this prescribed?

End the sentence on line 15 after "Commission." Then begin "The report shall be..."

On line 15, do you want to replace "via the Internet" and instead state they can do so via the Commission's website and give that address?

On lines 16 and 17, are you saying you will only accept this payment electronically?

Add G.S. 93A-4(a2) to the History Note.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 30, 2014

1 **21 NCAC 58C .0309** is amended as published in 28:15 NCR 1745 as follows:

2
3 **21 NCAC 58C .0309 COURSE COMPLETION REPORTING**

4 (a) Schools shall provide each student who completes a prelicensing or postlicensing course in compliance with
5 Commission rules and school course completion standards a course completion certificate in a format prescribed by
6 this Rule. In addition to information identifying the course, student and instructor, the certificate must include the
7 official letterhead of the school and must have the ~~original signature or a signature stamp in a color other than black~~
8 of the director, dean or other school official responsible for supervising the conduct of the course.

9 (b) Schools shall prepare and submit to the Commission accurate reports verifying completion of a prelicensing or
10 postlicensing course for each student who completes a prelicensing or postlicensing course in compliance with
11 Commission rules and school course completion standards. Such reports shall include students' names (full legal
12 name for prelicensing course students), students' license numbers (for postlicensing course students), students'
13 unique identification number (for prelicensing course students), course dates, school and course code numbers,
14 instructor's name and code number (for prelicensing courses), and course information presented in the format
15 prescribed by the Commission, and shall be transmitted electronically via the Internet to the Commission within
16 seven calendar days following the course. Schools shall electronically submit with postlicensing course completion
17 reports the per student fee prescribed by G.S 93A-4(a2).

18
19 *History Note: Authority G.S. 93A-4(a),(d); 93A-33;*

20 *Eff. September 1, 1979;*

21 *Amended Eff. February 1, 1989; September 1, 1984; January 1, 1981;*

22 *Transferred and Recodified from 21 NCAC 58A .1111 Eff. November 27, 1989;*

23 *Amended Eff. July 1, 2014; July 1, 2009; January 1, 2008; April 1, 2006; July 1, 1994; May 1,*
24 *1990.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Real Estate Commission

RULE CITATION: 21 NCAC 58C .0310

DEADLINE FOR RECEIPT: Friday, June 13, 2014

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

In reviewing these rules, the staff determined that the following technical changes need to be made:

On lines 4 and 6, replace "must" with "shall"

On line 6, replace "examination, and such file copy" with "examination that"

Remove G.S. 93A-75(a) from the History Note; the statute was repealed in 1993.

Also in the History Note, use a semicolon after "July 1, 2014" not a comma.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 30, 2014

1 **21 NCAC 58C .0310** is amended as published in 28:15 NCR 1746 as follows:

2
3 **21 NCAC 58C .0310 COURSE RECORDS**

4 (a) Schools must retain on file for three years copies of all enrollment, grade and attendance records and must make
5 such records available to the Commission upon request.

6 (b) Schools must retain on file for two years a master copy of each final course examination, and such file copy
7 shall indicate the answer key, course title, course dates and name of instructor. Examination file copies shall be
8 made available to the Commission upon request.

9
10 *History Note: Authority G.S. 93A-4(a),(d); 93A-33; 93A-75(a);*

11 *Eff. September 1, 1984;*

12 *Recodified from Rule 58A .1105 (d) and (e) Eff. January 6, 1989;*

13 *Transferred and Recodified from 21 NCAC 58A .1113 Eff. November 27, 1989;*

14 *Amended Eff. July 1, 2014, October 1, 2000; May 1, 1990.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Real Estate Commission

RULE CITATION: 21 NCAC 58E .0102

DEADLINE FOR RECEIPT: Friday, June 13, 2014

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

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a), line 4, replace "must" with "shall"

On line 5, replace "Section" with "Rule"

On line 6, you deleted the period after "instruction" that is currently in the Code without showing it. Properly show that change.

I'd rewrite the first sentence, "a Commission-developed "General Update Course" consisting of four classroom hours of instruction."

On line 8, replace "must" with "shall"

On line 9, delete "update course to be known as the"

In (b), lines 12, and 13 replace "which" with "that"

On line 15, replace "must" with "shall"

On line 16, replace "such" with "the"

On line 17, replace "must" with "shall" and what do you mean by "exactly"? Do you need that?

On line 18, delete "that are"

On line 20, replace "must" with "shall"

On line 25, delete "as is"

In (c), I think the first sentence can be simplified. "Approved sponsors shall conduct update courses using an instructor who has been..."

On line 30, I'd insert a semicolon after "period" and state "however, no courses..."

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 30, 2014

And I take it the prohibition on the dates here is to ensure the Board can properly process the continuing education for the licensure cycle?

In the History Note, use a semicolon after "July 1, 2014" not a comma.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 30, 2014

RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: Real Estate Commission

RULE CITATION: 21 NCAC 58E .0102

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☒ Lack of statutory authority
 - ☒ Unclear or ambiguous
 - ☐ Unnecessary
 - ☐ Failure to comply with the APA
- ☐ Extend the period of review

COMMENT:

In Paragraph (b), the Real Estate Commission states it will develop the subject matter of its curriculum outside of rulemaking, and states that entirely new courses will be required every year. Staff does not believe the agency has the authority to do this. G.S. 93A-4.1(c) states:

- (c) The Commission may adopt rules not inconsistent with this Chapter to give purpose and effect to the continuing education requirement, including rules that govern:
 - (1) The content and subject matter of continuing education courses.
 - (2) The curriculum of courses required.

Staff does not read the "may" to state that this means that rules can simply state that the content will be done outside of rulemaking. Staff believes the content and subject matter must be set forth in the Rule.

Staff further believes that simply stating that entirely new topics will be established annually without giving the regulated public at least some idea of what will be addressed makes the Rule unclear.

1 **21 NCAC 58E .0102** is amended as published in 28:15 NCR 1746 as follows:

3 **21 NCAC 58E .0102 UPDATE COURSE COMPONENT**

4 (a) To renew a license on active status, a real estate broker must complete, within one year preceding license
 5 expiration and in addition to satisfying the continuing education elective requirement described in Section .0302 of
 6 this Subchapter, a Commission-developed update course consisting of four classroom hours of instruction to be
 7 known as the "General Update Course." A broker-in-charge or broker who is broker-in-charge eligible who desires
 8 to retain his or her broker-in-charge status or eligibility must complete in lieu of the "General Update Course" a
 9 Commission-developed update course to be known as the "Broker-In-Charge Update Course" as prescribed in Rule
 10 58A .0110.

11 (b) The Commission shall develop annually ~~an update course~~ a General Update Course and a Broker-In-Charge
 12 Update Course which shall be conducted by sponsors approved by the Commission under this Subchapter. The
 13 subject matter of ~~this course~~ these courses shall be determined by the Commission, which shall produce instructor
 14 and student materials for use by course sponsors. The Commission shall prepare ~~a completely new course~~ courses
 15 for each one-year period beginning July 1 and ending the next June 30. Sponsors must acquire the Commission-
 16 developed course materials and utilize such materials to conduct the update ~~course~~ courses. The ~~course~~ courses
 17 must be conducted exactly as prescribed by the rules in this Subchapter and the course materials developed by the
 18 Commission. All course materials that are developed by the Commission for use in an update course and that are
 19 subject to the protection of federal copyright laws are the property of the Commission. Violation of the
 20 Commission's copyright with regard to these materials shall be grounds for disciplinary action. Sponsors must
 21 provide ~~licensees~~ brokers participating in their classes a copy of the student materials developed by the Commission.
 22 With advance approval from the Commission, course sponsors and instructors may make modifications to the
 23 update course when the update course is being promoted to and conducted for a group of ~~licensees~~ brokers that
 24 specialize in a particular area of real estate brokerage, provided that the modifications relate to the same general
 25 subject matter as is addressed in the prescribed update course and the course as modified achieves the same
 26 educational objectives as the unmodified course.

27 (c) Approval of a sponsor to conduct an update course authorizes the sponsor to conduct the update course using an
 28 instructor who has been approved by the Commission as an update course instructor under Section .0200 of this
 29 Subchapter. The sponsor may conduct the update course at any location as frequently as is desired during the
 30 approval period, provided that no courses may be conducted between June 11 and June 30 of any approval period.

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

33 *Eff. July 1, 1994;*

34 *Amended Eff. July 1, 2014, April 1, 2006; July 1, 2000.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Real Estate Commission

RULE CITATION: 21 NCAC 58E .0202

DEADLINE FOR RECEIPT: Friday, June 13, 2014

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

In reviewing these rules, the staff determined that the following technical changes need to be made:

I realize this is an older Rule, and think the language can be clarified. Why not state on line 4, "Update course instructors shall be approved by the Commission in a separate process from approval for course update sponsors. Approved updated course instructors may teach the ..."

If the intent is to make it clear that approval stays in effect so long as the individual is on active status, I don't think you've got that here. I'd state this more clearly in the Rule text, perhaps by replacing "so long as" on line 6 with "for as long as"

On line 7, end the sentence after "status." Begin, "An approved ..."

So that I understand, the instructor must be approved as both an instructor and a sponsor?

On line 8, replace "must" with "shall"

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 30, 2014

1 **21 NCAC 58E .0202** is amended as published in 28:15 NCR 1747 as follows:

2
3 **21 NCAC 58E .0202 NATURE AND SCOPE OF APPROVAL**

4 Approval of update course instructors shall be accomplished separate from the approval of update course sponsors.

5 Approval of an update course instructor authorizes the instructor to teach the ~~update course~~ General Update Course
6 or Broker-In-Charge Update Course for any approved update course ~~sponsor~~; sponsor so long as his or her approval
7 is on active status; however, an approved update course instructor may not independently conduct an update course
8 unless the instructor has also obtained approval as an update course sponsor. An instructor must obtain written
9 approval from the Commission prior to teaching an update course and prior to representing to any sponsor or other
10 party that he or she is approved or may be approved as an update course instructor.

11
12 *History Note:* *Authority G.S. 93A-3(c); ~~93A-4A~~; 93A-4.1*

13 *Eff. July 1, 1994;*

14 *Amended Eff. July 1, 2014; July 1, 2000.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Real Estate Commission

RULE CITATION: 21 NCAC 58E .0203

DEADLINE FOR RECEIPT: Friday, June 13, 2014

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

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a), line 4, what is an "original" approval?

Throughout this Rule, replace "must" with "shall." See lines 7, 8, 9, 18, 19, 20, 21, 22, 23 and 26.

In (c)(1), line 11, what do you mean by "active"?

End (c)(1) on line 15 with a semicolon and an "or"

On line 20, are you really still accepting VHS tapes? Do you not allow electronic submissions that can be emailed?

On line 22, state "The video recording shall be unedited, show at a portion of the audience, and have visual and sound quality..."

On line 22, the use of "at least" is generally discouraged in rule, but if you need to keep it, you may.

On line 23, delete or define "clearly"

On line 24, delete "one." If you need to put in some descriptor, what about "calendar"?

Where does one find the seminar information in Paragraph (e)? Is this in Rule somewhere? What is in the seminar, how long does it last, who conducts it, where is it offered?

Also in (e), do you mean on line 28 it shall be "deemed" cancelled by the Commission?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 30, 2014

21 NCAC 58E .0203 is amended as published in 28:15 NCR 1747 as follows:

21 NCAC 58E .0203 APPLICATION AND CRITERIA FOR ORIGINAL APPROVAL

(a) A person seeking original approval as an update course instructor must make application on a form provided by the Commission. An applicant who is not a resident of North Carolina shall also file with the application a consent to service of process and pleadings. No application fee is required. All required information regarding the applicant's qualifications must be submitted.

(b) The applicant must be truthful, honest and of high integrity.

(c) The applicant must be qualified under one of the following standards:

(1) Possession of a current North Carolina real estate broker license that is not on provisional status, a current continuing education record, and three years active full-time experience in general real estate brokerage, including substantial experience in real estate sales and at least one year of general brokerage experience in North Carolina, within the previous seven years. For purposes of this Rule, substantial experience is experience which is material, valuable, and worthwhile and not nominal, occasional, or intermittent.

(2) Possession of qualifications found by the Commission to be equivalent to the standard stated in Subparagraph (c)(1) of this Rule.

(d) The applicant must possess good teaching skills as demonstrated on a video recording portraying the instructor teaching a live audience. The applicant must submit the video recording for Commission review on either a digital video disc (DVD) or a VHS formatted videocassette. The video recording must be 45-60 minutes in length and must depict a continuous block of instruction on a single real estate or directly related topic. The video recording must be unedited, must show at least a portion of the audience, and must have visual and sound quality sufficient to enable reviewers to clearly see and hear the instructor. The video recording must have been recorded within the previous one year. The video recording must demonstrate that the instructor possesses the teaching skills described in Rule .0509 of this Subchapter.

(e) The applicant must take the Commission's Update Instructor Seminar for the real estate license year in which the applicant's approval would be effective prior to approval being issued. If this seminar is not taken within six months after filing the application for approval, the application shall be cancelled.

~~(e)~~ (f) An applicant shall be exempt from qualifying under Paragraphs (c) and (d) of this Rule if he or she is a Commission-approved real estate prelicensing instructor who has satisfied all requirements for an unconditional approval or possesses a current North Carolina real estate broker license, a current continuing education record, and a current designation as a Distinguished Real Estate Instructor (DREI) granted by the Real Estate Educators Association.

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

Eff. July 1, 1994;

1 *Amended Eff. July 1, 2014; January 1, 2008; April 1, 2004; July 1, 2003; September 1, 2002; July*
2 *1, 1996; July 1, 1995.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Real Estate Commission

RULE CITATION: 21 NCAC 58E .0204

DEADLINE FOR RECEIPT: Friday, June 13, 2014

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

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a), I take it "initial" on line 4 refers to the first application, since there are renewals?

Throughout this Rule where you refer to the Update Instructor Seminar, is this in another Rule? What is covered by the seminar, how long does it last, who conducts it, where is it offered?

On line 7, do you want to replace "take" with "complete"?

Also on line 7, do you mean to say "by September 1" rather than "in a timely manner"

On line 9, replace "may" with "shall"

Make the language on lines 10 through 16 a separate paragraph.

On line 11, what are the dates? How does one find those?

On line 14, delete "subsequently scheduled" End the sentence after "deadline." The next sentence can read, "The instructor shall not take the course later than December 1 of that year."

In current (b), line 18, delete "In order to assure continuous approval" and just begin the sentence, "Approved instructors" and replace "must" with "shall"

On line 19, what is on this form? Also, insert a "the" before "December" and delete "their"

On line 20, replace "must" with "shall"

On line 22, "Paragraph" is capitalized.

On line 23, replace "must" with "shall"

In (c), lines 25 and 28, replace "must" with "shall"

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 30, 2014

It seems to me that you require less from instructors who have expired approval in (c) than you require of those with current approval in (b). Is that intentional?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 30, 2014

21 NCAC 58E .0204 is amended with changes as published in 28:15 NCR 1747 as follows:

21 NCAC 58E .0204 ACTIVE AND INACTIVE STATUS; RENEWAL OF APPROVAL

(a) An instructor's initial approval shall be issued on active status and shall remain on active status during the approval period so long as the instructor takes the Commission's annual Update Instructor Seminar ~~by~~ before September 1 of each year. An instructor may teach the General Update Course or Broker-In-Charge Update Course while his or her license is on active status. When an instructor fails to take the Update Instructor Seminar in a timely manner, the instructor's approval shall be placed on inactive status and shall remain on inactive status until the seminar is taken or until the expiration of the instructor's approval, whichever occurs first. An instructor may not teach any version of the update course while his or her approval is on inactive status. If an instructor whose approval is on active status is unable to take the Update Instructor Seminar on any of the scheduled seminar dates ~~between July 1 and August 31~~ before September 1 of any year due to a personal hardship such as a personal or family illness or a business conflict, the instructor may request and obtain from the Commission an extension of time to take the seminar on a subsequently scheduled seminar date following the September 1 deadline, provided that the course must be taken not later than the following December 1. If an extension of time is granted, the instructor's approval shall remain on active status during the extension period.

~~(a)(b)~~ Commission approval of update course instructors expires on the third December 31 following issuance of approval. In order to assure continuous approval, approved instructors must file applications for renewal of approval on a form provided by the Commission on or before December 1 immediately preceding expiration of their approval. In order to renew their approval, Applicants applicants must satisfy the criteria for original approval, with the exception of the requirement in Rule .0203(d) of this Section, in order to renew their approval. and their approval must be on active status as described in paragraph (a) of this Rule. Applicants for renewal of approval whose approval is on inactive status must also take the Commission's annual Update Instructor Seminar for the real estate license year in which the applicant's renewal of approval would be effective.

~~(b)(c)~~ In order to reinstate an expired instructor approval, the former instructor must file an application on a form provided by the Commission and must satisfy the criteria for original approval set forth in Rule .0203(b) and (c) of this Section. If the applicant's prior instructor approval was on inactive status at the time the approval expired, the applicant must additionally take the Commission's annual Update Instructor Seminar for the real estate license year in which the applicant's reinstated approval would be effective. If the applicant's prior instructor approval has been expired for more than one year, the applicant must also satisfy the criteria for original approval set forth in Rule .0203(d) of this Section.

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

Eff. July 1, 1994;

Amended Eff. July 1, 2014; January 1, 2012; July 1, 2000; July 1, 1996; July 1, 1995.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Real Estate Commission

RULE CITATION: 21 NCAC 58E .0304

DEADLINE FOR RECEIPT: Friday, June 13, 2014

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

In reviewing these rules, the staff determined that the following technical changes need to be made:

Throughout this Rule, replace "must" with "shall." On Page 1, see lines 4, 5, 8, 10, 11, 13, 16, 19, 24, and 31. On Page 2, see lines 4, 7, 9, 13, 18 and 28.

In (a)(1), "all information required by the Commission" – is this in the application in Rule .0303? If not, what other information are you seeking?

In (a)(4), what is "acceptable subject matter"?

In (a)(5), line 16, I think you mean to state "To do this, the Commission may..."

In (a)(8)(A), an evaluation by whom? The Commission?

In (a)(9), how is the satisfaction of the Commission met?

I see that you define "appropriate" methods and aids, but what is an "appropriate variety" on line 34?

On Page 2, (a)(9), line 2, my understanding is that "Internet" is a proper noun and must be capitalized.

In (a)(1), delete or define "current" and "accurate" "logically organized" (logical to whom?), "easy-to-read" (again, to whom?) and "substantial coverage"

In (a)(10), lines 9 – 12, you are really requiring the materials to be presented at a higher cognitive level than most entry-level brokers? Beyond the question of why, how would people know that?

I think (a)(13) should be Paragraph (b). As such, insert an "and" at the end of (a)(11) and end (a)(12) with a period.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 30, 2014

1 **21 NCAC 58E .0304** is amended as published in 28:15 NCR 1748 as follows:

2
3 **21 NCAC 58E .0304 CRITERIA FOR ELECTIVE COURSE APPROVAL**

4 (a) The following requirements must be satisfied in order to obtain approval of a proposed elective course:

- 5 (1) The applicant must submit all information required by the Commission and pay the
6 application ~~fee~~, fee set forth in Rule .0303 of this Section, including any additional application fee
7 set forth in Subparagraph (a)(12) herein if applicable;
- 8 (2) The applicant must satisfy the requirements of Section .0400 of this Subchapter relating to the
9 qualifications or eligibility of course sponsors;
- 10 (3) The subject matter of the course must satisfy the elective course subject matter requirements set
11 forth in Rule .0305 of this Section and all information to be presented in the course must be
12 current and accurate;
- 13 (4) The course must involve a minimum of four classroom hours of instruction on acceptable subject
14 matter. A classroom hour consists of 50 minutes of instruction and 10 minutes of break time;
- 15 (5) The applicant and the continuing education coordinator required by Rule .0405 of this Subchapter
16 must be truthful, honest and of high integrity. In this regard, the Commission may consider the
17 reputation and character of any owner, officer and director of any corporation, association or
18 organization applying for sponsor approval;
- 19 (6) The proposed instructor(s) for the course must possess the qualifications described in Rule .0306
20 of this Section;
- 21 (7) The instructional delivery methods to be utilized in the course must either involve live instruction
22 in a traditional classroom setting or comply with the requirements described in Rule .0310 of this
23 Section;
- 24 (8) The applicant must submit an instructor guide that includes:
 - 25 (A) a course outline describing the subject matter and topics to be taught in sufficient detail to
26 permit an evaluation of the depth and accuracy of the subject matter and topics to be
27 covered;
 - 28 (B) the amount of time to be devoted to each major topic and to breaks;
 - 29 (C) the learning objective(s) for each major topic; and
 - 30 (D) the instructional methods and instructional aids that will be utilized in the course.
- 31 (9) The proposed time allotments shown in the instructor guide must be appropriate for the proposed
32 subject matter to be taught. Unless the applicant can demonstrate to the satisfaction of the
33 Commission that straight lecture is the most effective instructional method for the course, the
34 instructor guide must provide for the use of an appropriate variety of instructional methods and
35 instructional aids intended to enhance student participation, attentiveness, and learning. Examples
36 of instructional methods that may be appropriate include, but are not limited to, instructor-led
37 class discussion, role-playing, and in-class individual or group work assignments. Examples of

1 instructional aids that may be appropriate include, but are not limited to, PowerPoint slides,
2 overhead transparencies, video recordings, and information from the internet displayed on a large
3 screen;

- 4 (10) The course must include handout materials for students that provide, in narrative or text form, all
5 the information to be presented in the course. This requirement shall not be satisfied by using
6 only copies of PowerPoint slides or a detailed course outline. All information included in the
7 student materials must be current, accurate, explanatory of topics covered, consistent with course
8 learning objectives, grammatically correct, logically organized, and presented in an easy-to-read
9 format. The scope and depth of information presented must be appropriate in view of course
10 learning objectives and subject matter time allotments, and the information presented must, except
11 for instruction on changes in laws, rules, or practices, include substantial coverage of subject
12 matter at a cognitive level higher than that expected of entry-level real estate ~~licensees~~ brokers.
13 The quality of reproduced student materials must be generally comparable to that commonly seen
14 in education materials produced by professional publishers. These standards for student materials
15 also apply, to the extent they are relevant, to student materials other than paper materials such as
16 material to be viewed by computer that are provided for use by students in distance education
17 courses; ~~and~~

- 18 (11) If an applicant proposes to use copyrighted materials in the course, such materials must be used in
19 a form approved by the copyright holder. If any copyrighted material is to be duplicated by the
20 applicant for use in the course, the sponsor must have the specific permission of the
21 copyright ~~holder~~ holder;

- 22 (12) When an applicant resubmits an elective course approval application after a previous application
23 for the same course has been twice reviewed and found unsatisfactory by the Commission, the
24 resubmitted application shall be treated as an original application for approval and shall be subject
25 to the application fee prescribed in Rule .0303 of this Section; and

- 26 (13) An application for elective course approval shall be found unsatisfactory if the applicant fails to
27 fulfill one or more of the requirements set forth in this Rule.

28 (b) Applicants requesting approval of distance education courses must also comply with the requirements described
29 in Rule .0310 of this Section.

30
31 *History Note: Authority G.S. 93A-3(c); 93A-4.1;*

32 *Eff. July 1, 1994;*

33 *Amended Eff. July 1, 2014; July 1, 2010; April 1, 2004; July 1, 2000; July 1, 1996; July 1, 1995.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Real Estate Commission

RULE CITATION: 21 NCAC 58E .0408

DEADLINE FOR RECEIPT: Friday, June 13, 2014

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

In reviewing these rules, the staff determined that the following technical changes need to be made:

Correct the margin on line 11.

On line 13, replace "must" with "shall"

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 30, 2014

1 **21 NCAC 58E .0408** is amended as published in 28:15 NCR 1749 as follows:

2
3 **21 NCAC 58E .0408 CHANGE IN SPONSOR OWNERSHIP**

4 ~~The approval granted to a course sponsor may be transferred to a new or different legal entity only with the advance~~
5 ~~approval of the Commission. In the event the ownership of an entity approved as a course sponsor is to be sold or~~
6 ~~otherwise changed, the approved sponsor must request Commission approval of the ownership change. The Commission~~
7 ~~will then advise the sponsor if the change is acceptable or if the proposed new sponsor must apply for original approval.~~
8 ~~If the ownership change will result in no additional person being added as owner, officer or director, then the approval~~
9 ~~granted to the sponsor may be transferred to the new legal entity. However, if any additional person is to be added as~~
10 ~~owner, officer or director, then the approval granted to the sponsor may not be transferred.~~

11 When ownership of an approved course sponsor is transferred to a different legal entity, the sponsor approval is
12 not transferable and terminates on the effective date of the transfer. The sponsor owner transferring ownership shall not
13 conduct any course after the effective date of the transfer. The entity acquiring sponsor ownership must obtain an
14 original course sponsor approval as required by G.S. 93A-4.1 and Rules .0103, .0303 and .0402 of this Subchapter prior
15 to advertising courses, registering students, accepting tuition, conducting courses or otherwise engaging in any sponsor
16 activity.

17
18 *History Note: Authority G.S. 93A-3(c); ~~93A-4A~~; 93A-4.1*
19 *Eff. July 1, 2014; July 1, 1994.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Real Estate Commission

RULE CITATION: 21 NCAC 58E .0601 - .0604

DEADLINE FOR RECEIPT: Friday, June 13, 2014

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

In reviewing these rules, the staff determined that the following technical changes need to be made:

Please combine all of the repeals on the same page, like so:

SECTION .0600 – BROKER-IN-CHARGE ANNUAL REVIEW

21 NCAC 58E .0601 PURPOSE AND APPLICABILITY

21 NCAC 58E .0602 COURSE DESCRIPTION

21 NCAC 58E .0603 AUTHORITY TO CONDUCT COURSE

21 NCAC 58E .0604 COURSE OPERATIONAL REQUIREMENTS

*History Note: Authority G.S. 93A-2; 93A-3(c); 93A-4.1; 93A-4.2;
Eff. July 1, 2010;
Repealed Eff. July 1, 2014.*

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 30, 2014

1 **21 NCAC 58E .0601** is repealed as published in 28:15 NCR 1749 as follows:

2
3 **SECTION .0600 – BROKER-IN-CHARGE ANNUAL REVIEW**

4
5 **21 NCAC 58E .0601 PURPOSE AND APPLICABILITY**

6
7 *History Note:* *Authority G.S. 93A-2; 93A-3(c); 93A-4.1; 93A-4.2;*

8 *Eff. July 1, 2010.*

9 *Repeal Eff. July 1, 2014.*

1 **21 NCAC 58E .0602** is repealed as published in 28:15 NCR 1749 as follows:

2

3 **21 NCAC 58E .0602 COURSE DESCRIPTION**

4

5 *History Note:* *Authority G.S. 93A-2; 93A-3(c); 93A-4.1; 93A-4.2;*

6 *Eff. July 1, 2010.*

7 *Repeal Eff. July 1, 2014.*

8

1 **21 NCAC 58E .0603** is repealed as published in 28:15 NCR 1750 as follows:

2

3 **21 NCAC 58E .0603 AUTHORITY TO CONDUCT COURSE**

4

5 *History Note:* *Authority G.S. 93A-3; 93A-3(c); 93A-4.1; 93A-4.2;*

6 *Eff. July 1, 2010.*

7 *Repeal Eff. July 1, 2014.*

1 **21 NCAC 58 E .0604** is repealed as published in 28:15 NCR 1750 as follows:

2

3 **21 NCAC 58E .0604 COURSE OPERATIONAL REQUIREMENTS**

4

5 *History Note:* *Authority G.S. 93A-2; 93A-3(c); 93A-4.1; 93A-4.2;*

6 *Eff. July 1, 2010.*

7 *Repealed Eff. July 1, 2014*