

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.

