

REQUEST FOR TECHNICAL CHANGE

AGENCY: Real Estate Commission

RULE CITATION: 21 NCAC 58A .0104

DEADLINE FOR RECEIPT: Friday, April 10, 2015

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), lines 10 and 19, replace "which" with "that"

In (b), line 22, insert a comma after "agreement"

On line 24, insert a comma after "handicap"

In (b), line 25, replace "which" with "that"

On Page 2, line 1, I suggest replacing "can" with "may"

In (d), I recommend replacing "must" with "shall" on lines 4 and 6.

In (e), line 13, what do you mean by "immediately"? Does your regulated public know?

Also on line 13, state "he or she"

In (j), line 34, I recommend replacing "must" with "shall"

On Page 3, (n)(1), insert a comma after "terms" on line 28.

In (o), on line 36, please delete the extra period after "ownership interest"

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: March 30, 2015

21 NCAC 58A .0104 is adopted with changes as published in 29:12 NCR 1490 as follows:

21 NCAC 58A .0104 AGENCY AGREEMENTS AND DISCLOSURE

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

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

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

broker personal or confidential information. The "Working with Real Estate Agents" publication can be obtained on the Commission's website at www.ncrec.gov or upon request to the Commission.

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

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

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

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

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

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

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

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

4 (k) When a firm acting as a dual agent designates an individual broker to represent the seller, the broker so designated
 5 shall represent only the interest of the seller and shall not, without the seller's permission, disclose to the buyer or a
 6 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 the
 8 seller;
- 9 (2) the seller's motivation for engaging in the transaction unless disclosure is otherwise required by statute
 10 or rule; and
- 11 (3) any information about the seller that the seller has identified as confidential unless disclosure of the
 12 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 designated
 14 shall represent only the interest of the buyer and shall not, without the buyer's permission, disclose to the seller or a
 15 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 the
 17 seller;
- 18 (2) the buyer's motivation for engaging in the transaction unless disclosure is otherwise required by statute
 19 or rule; and
- 20 (3) any information about the buyer that the buyer has identified as confidential unless disclosure of the
 21 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 the
 23 identity of all of the brokers so designated to both the buyer and the seller. The disclosure shall take place no later than
 24 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 to a
 26 written agreement authorizing dual agency, the parties may provide in the written agreement that the broker shall not
 27 disclose the following information about one party to the other without permission from the party about whom the
 28 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 that the 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 except that a broker who is selling [property] commercial real estate as defined in Rule .1802 of
 36 this Subchapter in which the broker has less than [10%] 25% ownership interest may represent a buyer of that property if
 37 the buyer consents to the representation after full written disclosure of the broker's ownership interest.. A firm listing a

1 property owned by a broker affiliated with the firm may represent a buyer of that property so long as any individual
 2 broker representing the buyer on behalf of the firm does not have an ownership interest in the property and the buyer
 3 consents to the representation after full written disclosure of the broker's ownership interest.

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

12
 13 *History Note:* Authority G.S. 41A-3(1b); 41A-4(a); 93A-3(c); 93A-6(a);

14 *Eff. February 1, 1976;*

15 *Readopted Eff. September 30, 1977;*

16 *Amended Eff. July 1, 2015; July 1, 2014; July 1, 2009; July 1, 2008; April 1, 2006; July 1, 2005; July*
 17 *1, 2004; April 1, 2004; September 1, 2002; July 1, 2001; October 1, 2000; August 1, 1998; July 1,*
 18 *1997; August 1, 1996; July 1, 1995.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Real Estate Commission

RULE CITATION: 21 NCAC 58A .0105

DEADLINE FOR RECEIPT: Friday, April 10, 2015

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)(1), line 6, please insert a comma after "rent"

In (b), line 11, please insert a comma after "rent"

In the History Note, do you still need the citation to 93A-2(a2), since the rule now applies to all brokers?

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: March 30, 2015

21 NCAC 58A .0105 is adopted as published in 29:12 NCR 1492 as follows:

21 NCAC 58A .0105 ADVERTISING

(a) Authority to Advertise.

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

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

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

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

History Note: Authority G.S. 93A-2(a1); 93A-2(a2); 93A-3(c); 93A-9;

Eff. February 1, 1976;

Readopted Eff. September 30, 1977;

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

REQUEST FOR TECHNICAL CHANGE

AGENCY: Real Estate Commission

RULE CITATION: 21 NCAC 58A .0116

DEADLINE FOR RECEIPT: Friday, April 10, 2015

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 Page 1, this is just a suggestion, but I do not think you need to use "such" rather than "the" (or omit an article altogether) on lines 14, 15, 23, and 27.

In (g), on Page 2, line 7, replace "which" with "that"

On line 8, I believe "law" and "rules" should be lowercase.

On line 9, I'd state "purpose other than that it was intended for," At least add a "that" before "for which"

On line 10, insert a comma after "intended"

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: March 30, 2015

21 NCAC 58A .0116 is adopted as published in 29:12 NCR 1492 as follows:

21 NCAC 58A .0116 HANDLING OF TRUST MONEY

(a) Except as provided in Paragraph (b) of this Rule, all monies received by a broker acting in his or her fiduciary capacity (hereinafter "trust money") shall be deposited in a trust or escrow account as defined in Rule .0117(b) of this Section no later than three banking days following the broker's receipt of such monies.

(b) Exceptions to the requirements of Paragraph (a):

(1) All monies received by a provisional broker shall be delivered upon receipt to the broker with whom he or she is affiliated.

(2) All monies received by a non-resident commercial broker shall be delivered as required by Rule .1808 of this Subchapter.

(3) Earnest money or tenant security deposits paid by means other than currency and received by a broker in connection with a pending offer to purchase or lease shall be deposited in a trust or escrow account no later than three days following acceptance of such offer to purchase or lease; the date of such acceptance of such offer or lease shall be set forth in the purchase or lease agreement.

(4) A broker may accept custody of a check or other negotiable instrument made payable to the seller of real property as payment for an option or due diligence fee, or to the designated escrow agent in a sales transaction, but only for the purpose of delivering the instrument to the ~~seller~~, seller or designated escrow agent. While the instrument is in the custody of the broker, the broker shall, according to the instructions of the buyer, either deliver it to the ~~seller~~ named payee or return it to the buyer. The broker shall safeguard the instrument and be responsible to the parties on the instrument for its safe delivery as required by this Rule. A broker shall not retain such an instrument for more than three business days after the acceptance of the option or other sales contract.

(c) Prior to depositing trust money into a trust or escrow account that bears interest, the broker having custody over such money shall first secure written authorization from all parties having an interest in the money. Such authorization shall specify and set forth in a conspicuous manner how and to whom the interest shall be disbursed.

(d) In the event of a dispute between buyer and seller or landlord and tenant over the return or forfeiture of any deposit other than a residential tenant security deposit held by the broker, the broker shall retain the deposit in a trust or escrow account until the broker has obtained a written release from the parties consenting to its disposition or until disbursement is ordered by a court of competent jurisdiction. Alternatively, the broker may deposit the disputed monies with the appropriate Clerk of Superior Court in accordance with the provisions of G.S. 93A-12. If it appears that one of the parties has abandoned his or her claim to the funds, the broker may disburse the money to the other claimant according to the written agreement. Before doing so, however, the broker must first make a reasonable effort to notify the absent party and provide that party with an opportunity to renew his or her claim to the funds. Tenant security deposits shall be disposed of in accordance with G.S. 42-50 through 56 and G.S. 42A-18.

1 (e) A broker may transfer an earnest money deposit from his or her trust or escrow account to the closing attorney
2 or other settlement agent no more than 10 days prior to the anticipated settlement date. A broker shall not disburse
3 prior to settlement any earnest money in his or her possession for any other purpose without the written consent of
4 the parties.

5 (f) A broker shall not disburse trust money to or on behalf of a client in an amount exceeding the balance of trust
6 money belonging to the client and held in the trust account.

7 (g) Every broker shall safeguard any money or property of others which comes into the broker's possession in a
8 manner consistent with the Real Estate License Law and Commission Rules. A broker shall not convert the money
9 or property of others to his or her own use, apply such money or property to a purpose other than for which it was
10 intended or permit or assist any other person in the conversion or misapplication of such money or property.

11
12 *History Note: Authority G.S. 93A-3(c); 93A-6;*

13 *Eff. ~~April 1, 2013~~. April 1, 2013;*

14 *Amended Eff. July 1, 2015.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Real Estate Commission

RULE CITATION: 21 NCAC 58A .0119

DEADLINE FOR RECEIPT: Friday, April 10, 2015

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)(1), line 10, replace "in which" with "when"

Do you still need Paragraph (e)? The rule is now effective and has been (through the temporary process) for several months.

Please underline the effective date 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: March 30, 2015

21 NCAC 58A .0119 is adopted as published in 29:12 NCR 1493 as follows:

21 NCAC 58A .0119 MINERAL AND OIL AND GAS RIGHTS MANDATORY DISCLOSURE STATEMENT

(a) Every owner of real property subject to a transfer of the type governed by G.S. 47E-1 and 47E-2(b) shall complete a disclosure statement form prescribed by the Commission and designated "Mineral and Oil and Gas Rights Mandatory Disclosure Statement," and shall furnish a copy of the completed form to a purchaser as required by G.S. 47E-4.1. The form shall bear the seal of the North Carolina Real Estate Commission and shall include the following:

- (1) instructions to property owners regarding transactions in which the disclosure statement is required;
- (2) the text and format of the disclosure statement form as required by G.S. 47E-4.1(a);
- (3) a note to purchasers regarding their rights under G.S. 47E-5 in the event they are not provided with a disclosure statement as required by G.S. 47E-4.1;
- (4) the identification of the subject property and the parties to the transaction;
- (5) an acknowledgment by the owner(s) that the disclosure statement is true and correct as of the date signed; and
- (6) an acknowledgment by the buyer(s) of the receipt of a copy of the disclosure statement.

(b) The disclosure statement form described in Paragraph (a) of this Rule shall be available on the Commission's website at www.ncrec.gov or upon request to the Commission.

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

(d) Every broker representing a party in a real estate transaction governed by G.S. 47E-1 and 47E-2(b) shall inform each client of the client's rights and obligations under G.S. Chapter 47E.

(e) The disclosure statement form described in Paragraph (a) of this Rule applies to all contracts executed on or after January 1, 2015.

*History Note: Authority G.S. 47E-4.1; 47E-4.1(b); 47E-5; 47E-8; 93A-3(c); 93A-6;
Temporary Adoption Eff. January 1, 2015;
Eff. July 1, 2015.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Real Estate Commission

RULE CITATION: 21 NCAC 58A .0402

DEADLINE FOR RECEIPT: Friday, April 10, 2015

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)(7), what are "related subject areas"? Does your regulated public know?

In (b), line 14, insert a comma after "principles" both places.

On line 16, replace "must" with "shall"

In (c), line 22, is this a generally recognized standard that should be incorporated pursuant to G.S. 150B-21.6?

In (d), lines 26 through 28, is this 180-day eligibility period set forth elsewhere? It reads as if this is known, so I assume this is located elsewhere?

In (e), this needs to be more than one sentence. Perhaps end the first sentence after "passed" on line 31 and then state "During this time, the applicant..." and then end that sentence after "examination" on line 32.

On line 33, replace "contemplated" with "set forth"

On line 35, insert a comma after "denied" on line 35.

In the History Note, state, "93A-4(b); 93A-4(d)"

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: March 30, 2015

21 NCAC 58A .0402 is adopted as published in 29:12 NCR 1493 as follows:

21 NCAC 58A .0402 EXAMINATION SUBJECT MATTER, FORMAT, AND PASSING SCORES

(a) The real estate licensing examination shall test applicants on the following general subject areas:

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

(b) The real estate licensing examination shall consist of two sections, a "national" section on general real estate law, principles and practices and a "state" section on North Carolina real estate law, principles and practices. Unless the "national" section is waived by the Commission for an applicant based on its authority under G.S. 93A-9, an applicant must pass both sections of the examination in order to pass the examination.

(c) In order to pass the real estate licensing examination, an applicant ~~must~~ shall attain a score for each required section of the examination that is at least equal to the passing score established by the Commission for each section of the examination in compliance with psychometric standards for establishing passing scores for occupational licensing examinations as set forth in the "Standards for Educational and Psychological Testing" jointly promulgated by the American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education.

(d) An applicant who passes one or both sections of the examination will receive only a score of "pass" for the section(s) passed; however, an applicant who fails one or both sections of the examination shall be informed of their actual score for the section(s) failed. An applicant who is required to pass both sections of the examination ~~must~~ shall do so within his or her 180-day examination eligibility period, and if the applicant passes only one section during his or her 180-day examination eligibility period, then that passing score shall not be recognized if the applicant subsequently re-applies to the Commission for a license.

(e) A passing examination score obtained by a license applicant for both sections of the examination, or for the "state" section if that is the only section an applicant is required to pass, shall be recognized as valid for a period of one year from the date the examination was passed, during which time the applicant ~~must~~ shall satisfy any remaining requirements for licensure that were pending at the time of examination; provided that the running of the one-year period shall be tolled upon mailing the applicant the letter contemplated in 21 NCAC 58A ~~.0616(b)~~ .0616(c) informing the applicant that his or her moral character is in question, and shall resume running when the applicant's application is either approved for license issuance, denied or withdrawn. The application of an applicant with a passing examination score who fails to satisfy all remaining requirements for licensure within one year shall be

1 canceled and the applicant shall be required to reapply and satisfy all requirements for licensure, including retaking
2 and passing the license examination, in order to be eligible for licensure.

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

5 *Eff. February 1, 1976;*

6 *Readopted Eff. September 30, 1977;*

7 *Amended Eff. July 1, 2015; January 1, 2012; April 1, 2006; July 1, 2000; July 1, 1996; July 1,*
8 *1989; December 1, 1985; May 1, 1982; April 11, 1980.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Real Estate Commission

RULE CITATION: 21 NCAC 58A .0502

DEADLINE FOR RECEIPT: Friday, April 10, 2015

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 "which" with "that"

On line 12, please insert a comma after "associations"

In (a)(6), line 21, insert a comma after "number"

In (a)(9), line 28, insert a comma after "suspension"

In (a)(10), I recommend creating two sentences, ending the first after "partner" on line 32. Then state, "If a partner..." (Note the same suggestion for (a)(11).)

In (a)(11), line 34, delete or define "full"

In (a)(12), Page 2, line 1, please insert a comma after "company"

On line 10, please insert a comma after "persons"

On line 12, please insert a comma after "partner"

In (b), line 14, should it read "active status and is in good standing..."?

On lines 17 and 18, please replace "must" with "shall" in all three places.

In (d)(3), can anyone request it, or is this if the Board asks?

In (d)(7) on Page 3, line 8, delete the "and"

At the end of (d)(8), line 11, replace the period following "Subchapter" with a semicolon and insert an "and"

In (d)(9), revenue suspension by whom?

Amanda J. Reeder
Commission Counsel
Date submitted to agency: March 30, 2015

Also, I take it your regulated public knows what a Certificate of Authority is?

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: March 30, 2015

21 NCAC 58A .0502 is adopted as published in 29:12 NCR 1494 as follows:

21 NCAC 58A .0502 BUSINESS ENTITIES

(a) Every business entity other than a sole proprietorship shall apply for and obtain from the Commission a firm license prior to engaging in business as a real estate broker. An entity that changes its business form other than by conversion shall submit a new license application upon making the change and obtain a new firm license. An entity which converts to a different business entity in conformity with and pursuant to applicable North Carolina General Statutes is not required to apply for a new license. However, such converted entity shall provide the information required by this Paragraph in writing to the Commission within 10 days of the conversion and shall include the duplicate license fee prescribed in Rule .0509 of this Section to have the firm license reissued in the legal name of the converted entity. Incomplete applications shall not be acted upon by the Commission. Application forms for partnerships, corporations, limited liability companies, associations and other business entities required to be licensed as brokers shall be available on the Commission's website at www.ncrec.gov or upon request to the Commission and shall require the applicant to set forth:

- (1) the name of the entity;
- (2) the name under which the entity will do business;
- (3) the type of business entity;
- (4) the address of its principal office;
- (5) the entity's NC Secretary of State Identification Number if it is required to be registered with the Office of the NC Secretary of State;
- (6) the name, real estate license number and signature of the proposed qualifying broker for the proposed firm;
- (7) the address of and name of the proposed broker-in-charge for each office as defined in Rule .0110(a) of this Subchapter, along with a completed broker-in-charge declaration form for each proposed broker-in-charge;
- (8) any past criminal conviction of and any pending criminal charge against any principal in the company or any proposed broker-in-charge;
- (9) any past revocation, suspension or denial of a business or professional license of any principal in the company or any proposed broker-in-charge;
- (10) if a general partnership, a full description of the applicant entity, including a copy of its written partnership agreement or if no written agreement exists, a written description of the rights and duties of the ~~several partners;~~ partners, and the name of each partner; if a partner is an entity rather than a natural person, the name of each officer, partner, or manager of that entity, or any entity therein;
- (11) if a limited liability company (LLC), a full description of the applicant entity, including a copy of its written operating agreement or if no written agreement exists, a written description of the rights and duties of the managers, and the name of each manager; if a manager is an entity rather than a natural person, the name of each officer, partner, or manager of that entity, or any entity therein;

~~(11)~~ (12) if a business entity other than a corporation, limited liability company or partnership, a description of the organization of the applicant entity, including a copy of its organizational documents evidencing its authority to engage in real estate brokerage;

~~(12)~~ (13) if a foreign business entity, a certificate of authority to transact business in North Carolina and an executed consent to service of process and pleadings; and

~~(13)~~ (14) any other information required by this Rule.

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

(b) After filing a written application with the Commission and upon a showing to the Commission that one principal of the business entity holds a broker license on active status and in good standing who will serve as qualifying broker of the entity, the entity shall be licensed provided it appears to the Commission that the applicant entity employs and is directed by personnel possessed of the requisite character and fitness required of applicants for a broker license by G.S. 93A-4(b). The qualifying broker of a partnership of any kind must be a general partner of the partnership; the qualifying broker of a limited liability company must be a manager of the company; and the qualifying broker of a corporation must be an officer of the corporation. A licensed business entity may serve as the qualifying broker of another licensed business entity if the qualifying broker-entity has as its qualifying broker a natural person who is licensed as a broker. The natural person who is qualifying broker shall assure to the Commission the performance of the qualifying broker's duties with regard to both entities. A provisional broker may not serve as a qualifying broker.

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

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

- (1) designating and assuring that there is at all times a broker-in-charge for each office and branch office of the entity as "office" and "branch office" are defined in Rule .0110(a) of this Subchapter;
- (2) renewing the real estate broker license of the entity;
- (3) retaining the firm's renewal pocket card at the firm and producing it as proof of firm licensure upon request and maintaining a photocopy of the firm license certificate and pocket card at each branch office thereof;
- (4) notifying the Commission of any change of business address or trade name of the entity and the registration of any assumed business name adopted by the entity for its use;
- (5) notifying the Commission in writing of any change of his or her status as qualifying broker within ~~ten~~ 10 days following the change;

- (6) securing and preserving the transaction and trust account records of the firm whenever there is a change of broker-in-charge at the firm or any office thereof and notifying the Commission if the trust account records are out of balance or have not been reconciled as required by Rule .0117 of this Subchapter;
- (7) retaining and preserving the transaction and trust account records of the firm upon termination of 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 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 .0117 of this Subchapter.
- (9) notifying the Commission regarding any revenue suspension, revocation of Certificate of Authority, or administrative dissolution of the entity by the NC Secretary of State within 10 days of the suspension, revocation, or dissolution.

(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 shall be 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); 93A-4(b); 93A-4(d);

Eff. February 1, 1976;

Readopted Eff. September 30, 1977;

Amended Eff. July 1, 2015; 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 .1711

DEADLINE FOR RECEIPT: Friday, April 10, 2015

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, insert a comma after "address"

On Page 2, please reset the line numbers to 1.

On Page 2, in (d), line 42, provide the evidence of what? And to the Board?

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: March 30, 2015

21 NCAC 58A .1711 is adopted as published in 29:12 NCR 1495 as follows:

**21 NCAC 58A .1711 CONTINUING EDUCATION REQUIRED OF NONRESIDENT LICENSEES
BROKERS**

(a) To be considered a nonresident for continuing education purposes, a real estate broker licensed in North Carolina shall not have a North Carolina business address, mailing address or residence address at the time he or she applies for license renewal if he or she seeks to renew his or her license on active status. A nonresident North Carolina broker who wishes to renew his or her license on active status may fully satisfy the continuing education requirement by any one of the following means:

- (1) A nonresident ~~licensee~~ broker may, at the time of license renewal, hold a real estate license on active status in another state and certify on a form prescribed by the Commission that the ~~licensee holds such license.~~ broker holds such license. If at any time after renewal there is a change in the status of the out-of-state license, the nonresident broker shall notify the Commission within 10 days and request that his or her North Carolina license be placed on inactive status, or provide evidence to the Commission that he or she has satisfied either Subparagraph (a)(2) or (a)(3) of this Rule or the requirements of Rule .1702 of this Section.
- (2) A nonresident ~~licensee~~ broker may, within one year preceding license expiration, complete the Commission-prescribed Update course plus one Commission-approved continuing education elective course, or complete two Commission-approved continuing education elective courses.
- (3) A nonresident ~~licensee~~ broker may, within one year preceding license expiration, complete eight classroom hours in courses approved for continuing education credit by the real estate licensing agency in the ~~licensee's~~ broker's state of residence or in the state where the course was taken. To obtain credit for a continuing education course completed in another state and not approved by the Commission, the ~~licensee~~ broker must submit a written request for continuing education credit accompanied by a nonrefundable processing fee of twenty dollars (\$20.00) per request and evidence satisfactory to the Commission that the course was completed and that the course was approved for continuing education credit by the real estate licensing agency in the ~~licensee's~~ broker's state of residence or in the state where the course was taken.
- (4) A nonresident ~~licensee~~ broker may obtain eight hours equivalent credit for a course or courses not approved by the Commission or for related educational activities as provided in Rule .1708 of this Section. The maximum amount of continuing education credit the Commission will award a nonresident ~~licensee~~ broker for an unapproved course or educational activity is eight hours.

(b) When requesting to change an inactive license to active status, or when applying for reinstatement of a license expired for not more than six months, a nonresident broker may fully satisfy the continuing education requirements described in Rules .0505 and .1703 of this Subchapter by complying with any of the options described in Paragraph (a) of this Rule, except that the requirements in Subparagraphs (a)(2) and (a)(3) of this Rule restricting the taking of courses to one year preceding license expiration shall not be applicable.

(c) No carry-over credit to a subsequent license period shall be awarded for a course taken in another state that has not been approved by the North Carolina Real Estate Commission as an elective course.

(d) A nonresident broker who has renewed his or her license on active status pursuant to Paragraph (a) of this Rule shall notify the Commission within 10 days if he or she subsequently affiliates with an office with a North Carolina business or mailing address, or becomes a resident of this State, and within 30 days provide evidence that he or she has satisfied the requirements of either Subparagraphs (a)(2) or (a)(3) of this Rule or the requirements of Rule .1702 of this Section.

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

Eff. July 1, 1994;

Amended Eff. July 1, 2015; January 1, 2008; April 1, 2006; October 1, 2000; March 1, 1996; July 1, 1995.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Real Estate Commission

RULE CITATION: 21 NCAC 58C .0605

DEADLINE FOR RECEIPT: Friday, April 10, 2015

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 (b), line 7, replace "which" with "that"

On lines 7 and 8, how are these specified?

Also on line 8, I suggest simply deleting "which"

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

In (c)(2), line 16, insert a comma after "drive"

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: March 30, 2015

21 NCAC 58C .0605 is adopted as published in 29:12 NCR 1496 as follows:

21 NCAC 58C .0605 REQUEST FOR EXAMINATIONS AND VIDEO RECORDINGS

(a) Upon request of the Commission, an instructor shall submit to the Commission copies of final course examinations, with answer keys, used in prelicensing courses taught by the instructor.

(b) Upon request of the Commission, an instructor ~~must~~ shall submit to the Commission a digital video recording which depicts the instructor teaching portions of a prelicensing or postlicensing course specified by the ~~Commission~~ Commission, and which demonstrates that the instructor possesses the basic teaching skills described in Rule .0604 of this Section.

(c) Any video recording submitted to the Commission in connection with an instructor application ~~must~~ shall be approximately one hour in length and ~~must~~ depict the instructor teaching one continuous block of instruction on a single topic. Any video recording submitted in connection with an instructor application or in response to a request from the Commission ~~must~~ must:

(1) have been made within 12 months of the date of ~~submission,~~ submission;

(2) ~~must~~ be recorded either on a digital video disc (DVD) ~~or on a VHS formatted videocassette,~~ USB drive or similar medium;

(3) ~~must be unedited,~~ unedited;

(4) ~~must~~ include a label identifying the instructor and dates of the ~~video recorded instruction,~~ video instruction; and

(5) ~~must~~ have visual and sound quality sufficient to allow ~~viewers~~ reviewers to clearly see and hear the instructor.

History Note: Authority G.S. 93A-4(a),(d); 93A-33; 93A-34;

Eff. October 1, 2000;

Amended Eff. July 1, 2015; April 1, 2006; April 1, 2004; September 1, 2002.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Real Estate Commission

RULE CITATION: 21 NCAC 58E .0203

DEADLINE FOR RECEIPT: Friday, April 10, 2015

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 am just checking - in (a), lines 16 and 17 where you refer to "all required information" you mean that information required by the Rule, correct?

In (b), line 18, I suggest inserting a comma after "honest"

Please begin (c)(1) and (c)(2) with lowercase letters to be consistent with (a)(1) through (7).

In (c)(1), line 24, I suggest putting "substantial experience" in quotation marks.

Also on line 24, replace "which" with "that"

In (d), line 30, you may want to replace "must" with "shall" and delete the "shall" on line 31, so the sentence reads, "The video recording shall be 45-60 minutes in length and depict..."

Also on line 30, please insert a comma after "USB drive"

On line 34, I think the "shall" is duplicative and suggest deleting.

In (f), Page 2, line 9, how does one get this designation? I take it your regulated public knows?

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: March 30, 2015

21 NCAC 58E .0203 is adopted as published in 29:12 NCR 1497 as follows:

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

(a) A person seeking initial approval as an update course instructor ~~must make~~ shall submit an application for original approval on a form provided by the Commission. The application form shall be available on the Commission's website at www.ncrec.gov or upon request to the Commission and shall require the applicant to set forth:

- (1) the applicant's legal name, occupation, address, and telephone number;
- (2) the applicant's professional and occupational licensing history and status;
- (3) the applicant's criminal history and history of professional license disciplinary actions;
- (4) the applicant's educational background, including special real estate education;
- (5) the applicant's experience in the real estate business;
- (6) the applicant's real estate teaching experience; and
- (7) the applicant's signature.

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 shall be submitted.

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

(c) The applicant shall 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 full-time experience on active status 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; or
- (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 shall possess good teaching skills as demonstrated on a video recording portraying the instructor teaching a live audience. The applicant shall submit the video recording for Commission review on a digital video ~~disc (DVD)~~ disc (DVD), USB drive or similar medium. The video recording must be 45-60 minutes in length and shall depict a continuous block of instruction on a single real estate or directly related topic. The video recording shall be unedited, show a portion of the audience, and have visual and sound quality sufficient to enable reviewers to see and hear the instructor. The video recording shall have been recorded within the previous calendar year and shall include a label identifying the instructor and date of the video instruction. The video recording shall demonstrate that the instructor possesses the teaching skills described in Rule .0509 of this Subchapter.

(e) The applicant shall 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

1 months after filing the application for approval, the application shall be deemed cancelled. The Update Instructor
2 Seminar shall be a seven hour course offered by the Commission multiple times each year to demonstrate the
3 General Update Course and Broker-in-Charge Update Course materials described in Rule .0102(b) of this
4 Subchapter to approved instructors to prepare them to teach those courses. Registration and available dates for the
5 Update Instructor Seminar are available online at the Commission's website, www.ncrec.gov.

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

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

13 *Eff. July 1, 1994;*

14 *Amended Eff. July 1, 2015; July 1, 2014; January 1, 2008; April 1, 2004; July 1, 2003; September*
15 *1, 2002; July 1, 1996; July 1, 1995.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Real Estate Commission

RULE CITATION: 21 NCAC 58E .0204

DEADLINE FOR RECEIPT: Friday, April 10, 2015

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 (c), line 32, replace "must" with "shall"

In (d), Page 2, line 4, I take it you need to retain "at least" in both places?

In (d), line 6, 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: March 30, 2015

21 NCAC 58E .0204 is adopted as published in 29:12 NCR 1497 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, described in Rule .0203(e) of this Section, 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 complete the Update Instructor Seminar by September 1, 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 shall not teach any version of the update course while his or her approval is on inactive status.

(b) If an instructor whose approval is on active status is unable to take the Update Instructor Seminar on any of the scheduled seminar dates as shown on the Commission's website at www.ncrec.gov 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 seminar date following the September 1 deadline. The instructor shall not complete the course later than December 1 of that year. If an extension of time is granted, the instructor's approval shall remain on active status during the extension period.

(c) Commission approval of update course instructors expires on the third December 31 following issuance of approval. Approved instructors shall file applications for renewal of approval on a form provided by the Commission ~~on its website at www.ncrec.gov~~ on or before the December 1 immediately preceding expiration of approval. ~~The form shall request information pertaining to the applicant's qualifications under Rule .0203(e) of this Section.~~ The renewal application form shall be available on the Commission's website at www.ncrec.gov or upon request to the Commission and shall require the applicant to set forth:

- (1) the applicant's legal name, occupation, address, and telephone number;
- (2) the applicant's Update Course Instructor Number;
- (3) the applicant's professional and occupational licensing history and status;
- (4) the applicant's criminal history and history of professional license disciplinary actions;
- (5) information regarding the applicant's experience as a real estate instructor;
- (6) information regarding real estate education and instructor training received by the applicant;
- (7) the applicant's real estate related employment; and
- (8) the applicant's signature.

In order to renew their approval, applicants must satisfy the criteria for original approval, with the exception of the requirement in Rule .0203(d) of this Section, and their approval shall be on active status as described in Paragraph (a) of this Rule. Applicants for renewal of approval whose approval is on inactive status shall 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.

(d) In order to reinstate an expired instructor approval, the former instructor ~~must~~ shall file an application for original approval on a form provided by the ~~Commission and~~ Commission and described in Rule .0203(a) of this ~~Section.~~ Section, and demonstrate that he or she has attended at least three separate real estate instructor educational programs of at least six hours each during the previous three years. 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~~ shall 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, 2015; 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 .0303

DEADLINE FOR RECEIPT: Friday, April 10, 2015

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)(4), will the applicant always have a sponsor code? What if they are a new entity? Or, practically speaking, does that not occur?

In (a)(8), what is this? I take it your regulated public knows, but I do not, so I wanted to inquire.

In (b), line 18, do you mean "may" or "shall" regarding the form of payment? Do you not accept credit card payments?

On line 20, please insert a comma after "college"

On line 21, please insert a comma after "state"

In (c), what is a "course plan"? I take it your regulated public knows?

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: March 30, 2015

21 NCAC 58E .0303 is adopted as published in 29:12 NCR 1498 as follows:

21 NCAC 58E .0303 APPLICATION FOR ORIGINAL APPROVAL

(a) ~~An~~ A person or entity seeking original approval of a proposed elective course ~~must make~~ shall complete an application on a form prescribed by the Commission. The form shall be available on the Commission's website at www.ncrec.gov or upon request to the Commission and shall require the applicant to set forth:

- (1) the title of the proposed elective course;
- (2) the applicant's legal name, address, and telephone number;
- (3) the identification of the continuing education course coordinator;
- (4) the applicant's sponsor code;
- (5) the amount of the application fee enclosed;
- (6) the credit/classroom hours awarded for completing the course;
- (7) the subject matter of the course;
- (8) the identification of the course owner;
- (9) the information regarding the instructor guide and student manual;
- (10) the identification of prospective instructors; and
- (11) the applicant's signature.

(b) The applicant ~~must~~ shall submit a nonrefundable fee of one hundred dollars (\$100.00) per course which may be in the form of a check payable to the North Carolina Real Estate Commission; provided, however, that no fee is required if the ~~entity making application~~ applicant is a community college, junior college, college or university located in this State and accredited by the Southern Association of Colleges and Schools, or is an agency of federal, state or local government.

(c) The application shall be accompanied by a copy of the course plan or instructor's guide for the course and a copy of materials that will be provided to students.

(d) ~~An applying entity that~~ applicant who is not a resident of North Carolina shall also file with the application a consent to service of process and pleadings.

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

Eff. July 1, 1994;

Amended Eff. July 1, 2015; March 1, 1996; July 1, 1995.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Real Estate Commission

RULE CITATION: 21 NCAC 58E .0308

DEADLINE FOR RECEIPT: Friday, April 10, 2015

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 6, I believe "shall" is new and should be underlined.

On line 8, insert a comma after "drive"

Also on line 8, replace "which" with "that"

I suggest breaking the language beginning on line 6 into a list. Thus, the Rule will become two Paragraphs – (a) would be lines 4-6 and (b) would be lines 6 through 10. I'd state:

(b) The instructor's course presentation shall:

- (1) have been recorded...;*
- (2) be submitted on a digital..;*
- (3) include a label...; and*
- (4) conform to..."*

On line 9, just to be clear – when you speak of the "technical specifications" you mean the requirements that it be unedited, show a portion of the audience, etc.? I ask because the only difference between this Rule and .0203(d) is that .0203(d) requires recording within the last calendar year and this is within the last 12 months. Would you prefer to just refer to .0203(d) instead of listing everything here?

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: March 30, 2015

21 NCAC 58E .0308 is adopted as published in 29:12 NCR 1498 as follows:

21 NCAC 58E .0308 REQUEST FOR A VIDEO RECORDING

Upon the written request of the Commission, the sponsor of an approved elective course ~~must~~ shall submit to the Commission a digital video recording depicting the course being taught by a particular instructor designated by the Commission. The ~~video~~ instructor's course presentation ~~must~~ shall have been recorded within 12 months of the date of submission, ~~must shall~~ be recorded either on a digital video disc (DVD) or on a ~~VHS formatted videocassette~~, submitted on a digital video disc (DVD), USB drive or similar medium, ~~must shall~~ include a label which clearly identifies the instructor and the date of the ~~video-recorded~~ video presentation, and ~~must shall~~ conform to technical specifications set forth in Rule .0203(d) of this Subchapter.

History Note: Authority G.S. 93A-3(c); ~~93A-4A~~; 93A-4.1;
Eff. July 1, 1994;
Amended Eff. July 1, 2015; ~~April 1, 2004~~.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Real Estate Commission

RULE CITATION: 21 NCAC 58E .0408

DEADLINE FOR RECEIPT: Friday, April 10, 2015

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 13, please insert a comma after "courses"

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: March 30, 2015

21 NCAC 58E .0408 is adopted as published in 29:12 NCR 1499 as follows:

21 NCAC 58E .0408 CHANGE IN SPONSOR OWNERSHIP

If, at any time after the original approval of a course sponsor, an aggregate of fifty-percent (50%) or more of the ownership interest is transferred to natural persons or entities other than those having an ownership interest at the time of the original application, the course sponsor approval shall terminate. Termination shall be effective on the date of the transaction resulting in the aggregate transfer of fifty (50%) or more of the original ownership. ~~When ownership of an approved course sponsor is transferred to a different legal entity, the sponsor approval is not transferable and terminates on the effective date of the transfer. The sponsor owner transferring ownership~~ The course sponsor, the transferring owners, and the new owners shall not conduct any course after the effective date of the transfer. ~~termination of sponsor approval. The entity natural persons or entities acquiring holding an sponsor ownership interest after the transfer shall~~ obtain an original course sponsor approval as required by G.S. 93A-4.1 and Rules ~~-.0103, .0104, .0303 and .0402~~ of this Subchapter prior to advertising courses, registering students, accepting tuition, conducting courses or otherwise engaging in any sponsor activity.

History Note: Authority G.S. 93A-3(c); 93A-4.1;
Eff. July 1, 1994;
Amended Eff. July 1, 2015; July 1, 2014.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Real Estate Commission

RULE CITATION: 21 NCAC 58E .0409

DEADLINE FOR RECEIPT: Friday, April 10, 2015

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 5, please insert a comma after "address"

In (b), this is a long sentence. I suggest breaking it into two. End the first sentence after "courses" on line 7 and begin the next sentence, "However, changes in course content..."

On line 7, replace "which" with "that"

And I assume that the determination of determining the change is to ensure current and accurate information is within the discretion of the sponsor?

On line 9, your regulated public knows how to send these written requests?

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: March 30, 2015

21 NCAC 58E .0409 is adopted as published in 29:12 NCR 1499 as follows:

21 NCAC 58E .0409 CHANGES DURING APPROVAL PERIOD

(a) Course sponsors ~~must~~ shall notify the Commission in writing prior to any change in business name, ownership interest, continuing education coordinator, address or business telephone number.

(b) Course sponsors ~~must~~ shall obtain advance approval from the Commission for any changes to be made in the content or number of hours for elective courses; provided that changes in course content which are solely for the purpose of assuring that information provided in a course is current and accurate do not require approval during the approval period, but shall be reported at the time the sponsor requests renewal of course approval. Requests for approval of changes shall be in writing.

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

Eff. ~~July 1, 1994~~; July 1, 1994;

Amended Eff. July 1, 2015.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Real Estate Commission

RULE CITATION: 21 NCAC 58E .0412

DEADLINE FOR RECEIPT: Friday, April 10, 2015

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, since the Commission "may" deny or withdraw, when will it not do this? Is this in another Rule?

I suggest deleting "has" on lines 5, 8, 10, 13, 14, 18, 27, and 30.

In (a)(4), define "consistently" on line 13.

In (a)(5), line 14, replace "which" with "that"

What are you saying in (a)(7)? That if the sponsor, instructor, or official was sued and the court found they violated the ADA, then action may be taken? This is a very long and wordy sentence and likely needs to be further broken down into a list or smaller sentences.

Also in (a)(7), I recommend deleting "to have" on line 19.

In (b), Page 2, line 2, please insert a comma after "fraudulent"

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: March 30, 2015

21 NCAC 58E .0412 is adopted as published in 29:12 NCR 1499 as follows:

21 NCAC 58E .0412 DENIAL OR WITHDRAWAL OF APPROVAL

(a) The Commission may deny or withdraw approval of any course or course sponsor upon finding that:

- (1) the course sponsor has made any false statements or presented any false, incomplete, or incorrect information in connection with an application for course or sponsor approval or renewal of such approval;
- (2) the course sponsor or any official or instructor in the employ of the course sponsor has refused or failed to comply with any of the provisions of this Subchapter;
- (3) the course sponsor or any official or instructor in the employ of the course sponsor has provided false, incomplete, or incorrect information in connection with any reports the course sponsor is required to submit to the Commission;
- (4) the course sponsor has engaged in a pattern of consistently canceling scheduled courses;
- (5) the course sponsor has provided to the Commission in payment for required fees a check which was dishonored by a bank;
- (6) an instructor in the employ of the course sponsor fails to conduct approved courses in a manner that demonstrates possession of the teaching skills described in Rule .0509 of this Subchapter;
- (7) any court of competent jurisdiction has found the course sponsor or any official or instructor in the employ of the course sponsor to have violated, in connection with the offering of continuing education courses, any applicable federal or state law or regulation prohibiting discrimination on the basis of disability, requiring places of public accommodation to be in compliance with prescribed accessibility standards, or requiring that courses related to licensing or certification for professional or trade purposes be offered in a place and manner accessible to persons with disabilities;
- (8) the course sponsor or any official or instructor in the employ of the course sponsor has been disciplined by the Commission or any other occupational licensing agency in North Carolina or another jurisdiction;
- (9) the course sponsor or any official or instructor in the employ of the course sponsor has collected money from ~~licensees~~ brokers for a continuing education course, but refuses or fails to provide the promised instruction; ~~or~~
- (10) the course sponsor or any person associated with the sponsor has provided to a ~~licensee~~ broker any false, incomplete, or misleading information relating to real estate licensing or education matters or the ~~licensee's~~ broker's education needs or license ~~status~~ status;
- (11) the course sponsor fails to submit to the Commission class rosters as required by Rule .0406 of this Section; or
- (12) the course sponsor fails to submit the per-student-fee as required by G.S. 93A-4.1(d) and Rule .0406 of this Section.

(b) If a ~~licensee broker~~ who is an approved course sponsor or an instructor in the employ of an approved course sponsor engages in any dishonest, fraudulent or improper conduct in connection with the ~~licensee's broker's~~ activities as a course sponsor or instructor, the ~~licensee broker~~ shall be subject to disciplinary action pursuant to G.S. 93A-6.

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

Eff. July 1, 1994;

Amended Eff. July 1, 2015; July 1, 2010; April 1, 2004; July 1, 2000.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Real Estate Commission

RULE CITATION: 21 NCAC 58E .0505

DEADLINE FOR RECEIPT: Friday, April 10, 2015

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), what is meant by "any respect" on line 4? Does your regulated public know?

On line 6, replace "which" with "that"

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

In (b), line 9, please insert a comma after "brochures"

Also on line 9, define "clearly"

On line 10, replace "must" with "shall"

In (d), line 17, I recommend replacing "such" with "the"

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: March 30, 2015

21 NCAC 58E .0505 is adopted as published in 29:12 NCR 1500 as follows:

21 NCAC 58E .0505 ADVERTISING; PROVIDING COURSE INFORMATION

(a) Course sponsors shall not utilize advertising of any type that is false or misleading in any respect. If the number of continuing education credit hours awarded by the Commission for an approved elective course is less than the number of scheduled hours for the course, any course advertisement or promotional materials which indicate that the course is approved for real estate continuing education credit in North Carolina must specify the number of continuing education credit hours awarded by the Commission for the course.

(b) Any flyers, brochures or similar materials utilized to promote a continuing education course shall clearly describe the fee to be charged and the sponsor's cancellation and fee refund policies. Course sponsors must provide prospective students with a full description of the sponsor's cancellation and fee refund policies prior to accepting payment for any course(s).

(c) Course sponsors of any elective course shall, upon request, provide any prospective student a description of the course content sufficient to give the prospective student a general understanding of the instruction to be provided in the course.

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

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

Eff. July 1, 1994;

Amended Eff. July 1, 2015; July 1, 2001.