

REQUEST FOR TECHNICAL CHANGE

AGENCY: N.C. Real Estate Commission

RULE CITATION: 21 NCAC 58A .0103

DEADLINE FOR RECEIPT: April 7, 2016

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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 4 – delete “and at all time thereafter”

Line 4 – replace “ensure that” with “notify”

Line 4-5 – replace “has on record” with “of”

Lines 10 and 13 – why do you seek to replace “broker” with “business entity”? The statutory definition of “broker” includes “business entity (see G.S. 93A-2(a)). Is the intent to exclude “persons” from those that must comply with Paragraph (b)?

Line 14 – insert “or sole proprietorship” after “broker” if that is what is meant.

Line 15 – insert “shall” before “notify”

Line 16 – replace “In no event shall an” with “An”

Line 16 – insert “shall not” after “broker”

Line 19 – insert a comma after “partnership”

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

Jason S. Thomas
Commission Counsel
Date submitted to agency: March 23, 2016

21 NCAC 58A .0103 is amended as published in 30:12 NCR 1293 as follows:

21 NCAC 58A .0103 BROKER NAME AND ADDRESS

(a) Upon initial licensure and at all times thereafter, every broker shall ~~assure~~ ensure that the Commission has on record the broker's current personal name, firm name, trade name, residence ~~address~~ address, ~~and firm address.~~ address, telephone number, and email address. Every broker shall notify the Commission in writing of each change of personal name, firm name, trade name, residence ~~address~~ address, ~~and firm address.~~ address, telephone number, and email address within 10 days of said change. All addresses shall be sufficiently descriptive to enable the Commission to correspond with and locate the broker.

(b) Registration of Assumed Name. In the event that any ~~broker~~ business entity shall ~~advertise~~ operate in any manner using a firm name different from the name under which the firm is licensed or a sole proprietorship operating under an assumed name ~~which that~~ does not set forth the surname of the ~~broker~~, owner of the sole proprietorship, the ~~broker~~ business entity or sole proprietorship shall first file the appropriate certificate with the office of the county register of deeds in each county in which the broker intends to engage in brokerage activities in compliance with G.S. 66-68 and notify the Commission in writing of the use of such a firm name or assumed name. In no event shall an individual broker operate in any manner that would mislead a consumer as to the broker's actual identity or as to the identity of the firm with which he or she is affiliated.

(c) Business names. A broker shall not include the name of a provisional broker or an unlicensed person in the name of a sole proprietorship, partnership or business entity other than a corporation or limited liability company. No broker shall use a business name that includes the name of any active, inactive, or cancelled broker without the permission of that broker or that broker's authorized representative.

History Note: Authority G.S. 55B-5; 66-68; 93A-3(c); 93A-6(a)(1);

Eff. February 1, 1976;

Readopted Eff. September 30, 1977;

Amended Eff. July 1, 2016; April 1, 2013; August 1, 1998; February 1, 1989; May 1, 1984.

REQUEST FOR TECHNICAL CHANGE

AGENCY: N.C. Real Estate Commission

RULE CITATION: 21 NCAC 58A .0108

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In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Page 1, line 8 – what does “agency agreement” mean – is it a term of art well-recognized by your regulated public?

Page 1, line 32 – please explain the citation to G.S. 93A-9.

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

Jason S. Thomas
Commission Counsel
Date submitted to agency: March 23, 2016

21 NCAC 58A .0108 is amended as published in 30:12 NCR 1293 as follows:

21 NCAC 58A .0108 RETENTION OF RECORDS

(a) Brokers shall retain records of all sales, rental, and other transactions conducted in such capacity, whether the transaction is pending, ~~completed~~ completed, or terminated prior to its successful conclusion. The broker shall retain ~~such~~ records for three years after all funds held by the broker in connection with the transaction have been disbursed to the proper party or parties or the successful or unsuccessful conclusion of the transaction, whichever occurs later. However, if the broker's agency agreement is terminated prior to the conclusion of the transaction, the broker shall retain such records for three years after the termination of the agency agreement or the disbursement of all funds held by or paid to the broker in connection with the transaction, whichever occurs later.

(b) ~~Such records~~ Records shall include copies of the following:

- (1) contracts of ~~sale,~~ sale;
- (2) written ~~leases,~~ leases;
- (3) agency ~~contracts,~~ contracts;
- (4) ~~options,~~ options;
- (5) offers to ~~purchase,~~ purchase;
- (6) trust or escrow ~~records,~~ records;
- (7) earnest money ~~receipts,~~ receipts;
- (8) disclosure ~~documents,~~ documents;
- (9) closing ~~statements,~~ statements;
- (10) brokerage cooperation ~~agreements,~~ agreements;
- (11) declarations of ~~affiliation,~~ affiliation;
- (12) broker price opinions and comparative market analyses prepared pursuant to G.S. 93A, Article 6, including any notes and supporting ~~documentation,~~ and documentation;
- (13) sketches, calculations, photos, and other documentation used or relied upon to determine square footage;
- (14) advertising used to market a property; and
- ~~(13)~~ (15) any other records pertaining to real estate transactions.

(c) All ~~such~~ records shall be made available for inspection and reproduction by the Commission or its authorized representatives without prior notice.

History Note: Authority G.S. 93A-3(c); 93A-9;
Eff. February 1, 1976;
Readopted Eff. September 30, 1977;
Amended Eff. July 1, 2004; September 1, 2002; August 1, 1998; February 1, 1989; February 1, 1998;
Temporary Amendment Eff. October 1, 2012;

REQUEST FOR TECHNICAL CHANGE

AGENCY: N.C. Real Estate Commission

RULE CITATION: 21 NCAC 58A .0113

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Line 8 – is the intent to inform the public where a form may be obtained or to impose a regulatory requirement on the Commission? If it's informational, revert to "is" instead of "shall be"

Lines 7-9 – consider revising as follows:

A form for this report is available on the Commission's website at www.ncrec.gov or upon request to the Commission. In the written report, the broker to set forth the broker's:

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Jason S. Thomas
Commission Counsel
Date submitted to agency: March 23, 2016

21 NCAC 58A .0113 is amended as published in 30:12 NCR 1294 as follows:

21 NCAC 58A .0113 REPORTING CRIMINAL CONVICTIONS AND DISCIPLINARY ACTIONS

Any broker who is convicted of any felony or misdemeanor, or who is disciplined by or enters into a conciliation agreement or consent order with any governmental agency in connection with any ~~other~~ occupational license, or whose notarial commission is restricted, suspended, or revoked, shall file with the Commission a written report of such conviction or action within 60 days of the final judgment, order, or disposition in the case. A form for this report ~~is shall be~~ available from the Commission. on the Commission's website at www.ncrec.gov or upon request to the Commission and shall require the broker to set forth the broker's:

- (1) full legal name;
- (2) physical and mailing address;
- (3) real estate license number;
- (4) telephone number;
- (5) email address;
- (6) social security number;
- (7) date of birth; and
- (8) description of the criminal conviction and disciplinary action, including the jurisdiction and file number.

History Note: *Authority G.S. 93A-3(c); 93A-6(a); 93A-6(a)(10); 93A-6(b)(2);*
Eff. August 1, 1996;
Amended Eff. July 1, 2016; July 1, 2009; January 1, 2008; April 1, 2006; July 1, 2003; July 1,
2000.

1 21 NCAC 58A .2104 is amended as published in 30:12 NCR 1295 as follows:

2
3 **21 NCAC 58A .2104 POSTPONEMENT OF POSTLICENSING EDUCATION**

4 A broker described by ~~21 NCAC 58A Rule .2101 of this Section~~ who is a provisional broker shall not be required to
5 complete any ~~post licensing~~ postlicensing education ~~required to be completed~~ during the period to be disregarded
6 under 26 U.S.C. ~~5708~~ 7508 until the 180th day following the ending of such period. The broker's license shall not
7 be placed on inactive status or cancelled for his or her failure to complete the required ~~post licensing~~ postlicensing
8 education prior to the deadline established in this Rule.

9
10 *History Note:* Authority G.S. 93A-3(c); 93B-15(b);

11 *Eff. ~~July 1, 2010~~ July 1, 2010;*

12 *Amended Eff. July 1, 2016.*

1 21 NCAC 58A .2105 is amended as published in 30:12 NCR 1295 as follows:

2
3 **21 NCAC 58A .2105 PROOF OF ELIGIBILITY**

4 It shall be the responsibility of every broker eligible for the postponement of fees and education requirements
5 established by this ~~section~~ Section to demonstrate his or her eligibility and the beginning and ending of the time to
6 be disregarded as described in 26 U.S.C. ~~5708~~ 7508.

7
8 *History Note:* *Authority G.S. 93A-3(c); 93B-15(b);*

9 *Eff. ~~July 1, 2010~~ July 1, 2010;*

10 *Amended Eff. July 1, 2016.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: N.C. Real Estate Commission

RULE CITATION: 21 NCAC 58B .0102

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In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Lines 6, 8, and 10 – replace “is” with “shall be”

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

Jason S. Thomas
Commission Counsel
Date submitted to agency: March 23, 2016

21 NCAC 58B .0102 is amended as published in 30:12 NCR 1295 as follows:

21 NCAC 58B .0102 REGISTRATION FEE

(a) ~~Every application for time share project registration must be accompanied by a certified check made payable to the North Carolina Real Estate Commission.~~ For the initial registration or subsequent registration of a time share project by a developer proposing to sell or develop 16 or more time shares, the fee is one thousand dollars (\$1,000). For an initial or subsequent registration of a time share project in which the developer proposes to sell 15 or fewer time shares, the fee is seven hundred dollars (\$700.00). For any time share registration by a homeowner association for the purpose of re-selling time shares in its own project which it has acquired in satisfaction of unpaid assessments by prior owners, the fee is four hundred fifty dollars (\$450.00).

(b) Payment of application fees for time share registration shall be made to the Commission by certified check, money order, debit card, or credit card. Applications for registration not accompanied by the appropriate fee shall not be considered by the Commission.

(c) In the event a properly completed application filed with the Commission is denied for any reason, or if an incomplete application is denied by the Commission or abandoned by the developer prior to a final decision by the Commission, the amount of two hundred fifty dollars (\$250.00) shall be retained by the Commission from the application fee and the balance refunded to the applicant developer.

History Note: Authority G.S. 93A-51; 93A-52;

Eff. March 1, 1984;

Amended Eff. July 1, 2016; April 1, 2013; July 1, 2000.

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In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Page 1, lines 5-7 – consider revising as follows:

A developer seeking a renewal of a time share project registration shall submit a complete renewal application during the month of June. A renewal application form is available on the Commission's website at www.ncrec.gov. In the renewal application, the developer shall set forth:

Page 1, lines 16-20 – begin each line with "the"

Page 1, lines 18-20 – insert a comma before "pursuant"

Page 1, line 21 – is the certification included in the renewal application that is available on the website? If not, where can a certification form be found?

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Jason S. Thomas
Commission Counsel
Date submitted to agency: March 23, 2016

21 NCAC 58B .0103 is amended as published in 30:12 NCR 1295 as follows:

21 NCAC 58B .0103 RENEWAL OF TIME SHARE PROJECT REGISTRATION

~~(a) Every developer desiring the renewal of a time share project registration shall apply for the same in writing upon a form provided by the Commission during the month of June. A developer seeking a renewal of a time share project registration shall submit a complete renewal application during the month of June on a form available on the Commission's website at www.ncrec.gov that requires the developer to set forth:~~

- ~~(1) the time share's project name, registration number, and mailing address;~~
- ~~(2) the developer's name, telephone number, and email address;~~
- ~~(3) the full legal name of brokers that are associated with the time share project and their real estate license numbers;~~
- ~~(4) the name of all exchange programs associated with the time share project along with a current copy of the Exchange Disclosure Report pursuant to G.S. 93A-48;~~
- ~~(5) the name, address, email address, telephone number, real estate broker license number if applicable, and the assignment date for each of the following:~~
 - ~~(A) managing entity;~~
 - ~~(B) marketing entity;~~
 - ~~(C) registrar pursuant to G.S. 93A-58(a);~~
 - ~~(D) independent escrow agent pursuant to G.S. 93A-42(a); and~~
 - ~~(E) project broker pursuant to 93A-58(c);~~
- ~~(6) a certification that the information contained in the registration filed with the Commission is accurate and current on the date of the renewal application; and~~
- ~~(7) notarized signature(s) by either:~~
 - ~~(A) two executive officers of the corporation developer;~~
 - ~~(B) two managers of the limited liability company developer;~~
 - ~~(C) the sole proprietor of the sole proprietor developer;~~
 - ~~(D) the general partner of the partnership developer; or~~
 - ~~(E) the developer's attorney.~~

~~(b) Every such renewal application shall be accompanied by a certified check made payable to the North Carolina Real Estate Commission in the amount of eight hundred dollars (\$800.00). The developer shall submit a nonrefundable fee of eight hundred dollars (\$800.00) payable to the North Carolina Real Estate Commission by certified check, money order, debit card, or credit card.~~

~~(c) To renew the time share project registration, the properly completed~~ A complete renewal application shall be accompanied by the prescribed fee must and shall be received at the Commission's office prior to the expiration of the certificate of registration. registration as described in G.S. 93A-52(d).

~~(b) Applications for the renewal of a time share project registration shall be signed by the developer, by two executive officers of the developer, or by the developer's attorney at law and shall certify that the information~~

~~contained in the registration filed with the Commission is accurate and current on the date of the renewal application.~~

(d) Making a false certification on a time share project registration renewal application shall be grounds for disciplinary action by the Commission.

History Note: Authority G.S. 93A-51; 93A-52(d);

Eff. March 1, 1984;

Temporary Amendment Eff. May 23, 1985;

Amended Eff. July 1, 2016; April 1, 2013; February 1, 1989; September 1, 1985.