

NORTH CAROLINA REAL ESTATE COMMISSION RULES

CHAPTER 93A

Statutory Authority: Sections 93A-3(c), 93A-4(d), 93A-33, and 93A-51 of the North Carolina Real Estate License Law; and the North Carolina Administrative Procedures Act.

NORTH CAROLINA ADMINISTRATIVE CODE

TITLE 21

OCCUPATIONAL LICENSING BOARDS

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CHAPTER 58 REAL ESTATE COMMISSION

Subchapter 58A Real Estate Brokers and Salespersons

SECTION A.0100 GENERAL BROKERAGE

A.0101 Proof of Licensure

(a) The annual license renewal pocket card issued by the Commission to each licensee shall be retained by the licensee as evidence of licensure. Each licensee shall carry his or her pocket card on his or her person at all times while engaging in real estate brokerage and shall produce the card as proof of licensure whenever requested.

(b) The qualifying broker of a firm shall retain the firm's renewal pocket card at the firm and shall produce it upon request as proof of firm licensure as required by Rule .0502.

(c) Every licensed real estate business entity or firm shall prominently display its license certificate or facsimile thereof in each office maintained by the entity or firm. A broker-in-charge shall also prominently display his or her license certificate in the office where he or she is broker-in-charge.

(d) Every licensee shall include his or her license number in agency contracts and disclosures as provided in Rule .0104 of this subchapter.

A.0102 Branch Office (Repealed)

A.0103 Licensee Name and Address

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

A.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. Every agreement for brokerage services between a broker and an owner of the property to be the subject of a transaction must be in writing from the time of its formation. Every agreement for brokerage services between a broker and a buyer or tenant shall be express and shall be reduced to writing 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 from its formation. A broker or salesperson shall not continue to represent a buyer or tenant without a written agreement when such agreement is required by this rule. Every written agreement for brokerage services of any kind in a real estate transaction shall provide for its existence for a definite period of time, shall include the licensee'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. For the purposes of this rule, an agreement between licensees 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 his 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 to the agreement. 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 or salesperson shall, at first substantial contact directly 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 or salesperson'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 or salesperson 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 or salesperson and a consumer where

the consumer or broker or salesperson begins to act as though an agency relationship exists and the consumer begins to disclose to the broker or salesperson personal or confidential information.

(d) A real estate broker or salesperson representing one party in a transaction shall not undertake to represent another party in the transaction without the written authority of each party. Such 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 or salesperson makes an offer to purchase, sell, rent, lease, or exchange real estate to another party.

(e) In every real estate sales transaction, a broker or salesperson 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 or salesperson represents the interests of the seller. The written disclosure shall include the broker or salesperson'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 or salesperson 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 or salesperson 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 or salesperson 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 or salesperson represents the buyer's interests. In addition, in every real estate sales transaction other than auctions, the broker or salesperson 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 represents the interests of the buyer. The written confirmation may be made in the buyer's offer to purchase and shall include the broker or salesperson's license number.

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

(h) A broker or salesperson 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 represents the interests of the buyer. The written confirmation may be made in the written agreement.

(i) A firm which represents more than one party in the same real estate transaction is a dual agent and, through the

brokers and salespersons 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 sales transaction, the firm may, with the prior express approval of its buyer and seller clients, designate one or more individual brokers or salespersons associated with the firm to represent only the interests of the seller and one or more other individual brokers and salespersons 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 subsection (d) of this rule. An individual broker or salesperson shall not be so designated and shall not undertake to represent only the interests of one party if the broker or salesperson has actually received confidential information concerning the other party in connection with the transaction. A broker-in-charge shall not act as a designated agent for a party in a real estate sales transaction when a salesperson under his or her supervision will act as a designated agent for another party with a competing interest.

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

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

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

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

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

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

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

A.0105 Advertising

(a) Blind Ads. A licensee shall not advertise the sale, purchase, exchange, rent or lease of real estate, for another or others, in a manner indicating the offer to sell, purchase, exchange, rent, or lease is being made by the licensee'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, or street address.

(b) Registration of Assumed Name. In the event that any licensee shall advertise in any manner using a firm name or an assumed name which does not set forth the surname of the licensee, the licensee shall first file the appropriate certificate with the office of the county register of deeds in compliance with G.S. 66-68 and notify the Commission in writing of the use of such a firm name or assumed name.

(c) Authority to Advertise.

- (1) A salesperson shall not advertise the sale, purchase, exchange, rent or lease of real estate for another or others without his or her broker's consent and without including in the advertisement the name of the broker or firm with whom the salesperson is associated.
- (2) A licensee shall not advertise or display a "for sale" or "for rent" sign on any real estate without the consent of the owner or his or her authorized agent.

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

(e) A person licensed as a limited nonresident commercial broker or salesperson 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 licensee.

A.0106 Delivery of Instruments

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

(b) A broker or salesperson may be relieved of his or her duty under Paragraph (a) of this Rule to deliver copies of leases or rental agreements to the property owner, if the broker:

- (1) obtains the express written authority of the property owner to enter into and retain copies of leases or rental agreements on behalf of the property owner;
- (2) executes the lease or rental agreement on a pre-printed form, the material terms of which may not be changed by the broker without prior approval by the property owner except as may be required by law;
- (3) promptly provides a copy of the lease or rental agreement to the property owner upon reasonable request; and
- (4) delivers to the property owner within 45 days following the date of execution of the lease or rental agreement, an accounting which identifies the leased property and which sets forth the names of the tenants, the rental rates and rents collected.

A.0107 Handling and Accounting of Funds

(a) Except as provided herein, all monies received by a licensee acting in his or her fiduciary capacity shall be deposited in a trust or escrow account maintained by a broker not later than three banking days following receipt of such monies except that earnest money deposits paid by means other than currency which are received on offers to purchase real estate and tenant security deposits paid by means other than currency which are received in connection with real estate leases shall be deposited in a trust or escrow account not later than three banking days following acceptance of such offer to purchase or lease; the date of acceptance of such offer to purchase or lease shall be set forth in the purchase or lease agreement. All monies received by a salesperson shall be delivered immediately to the broker by whom he or she is employed, except that all monies received by nonresident commercial licensees shall be delivered as required by Rule .1808 of this Subchapter. A licensee may accept custody of a check or other negotiable instrument made payable to the seller of real property as option money only for the purpose of delivering the instrument to the optionor-seller. While the instrument is in the custody of the licensee, the licensee shall, according to the instructions of the buyer-optionee, either deliver it to the seller-optionor or return it to the buyer-optionee. The licensee shall safeguard the instrument and shall be responsible to the parties on the instrument for its prompt and safe delivery. In no event shall a licensee retain such an instrument for more than three business days after the acceptance of the option contract.

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

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

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

(e) A licensee shall maintain and retain records sufficient to identify the ownership of all funds belonging to others. Such records shall be sufficient to show proper deposit of such funds in a trust or escrow account and to verify the accuracy and proper use of the trust or escrow account. The required records shall include:

(1) bank statements.

(2) canceled checks which shall be referenced to the corresponding journal entry or check stub entries and to the corresponding sales transaction ledger sheets or for rental transactions, the corresponding property or owner ledger sheets. Checks shall conspicuously identify the payee and shall bear a notation identifying the purpose of the disbursement. When a check is used to disburse funds for more than one sales transaction, owner, or property, the check shall bear a notation identifying each sales transaction, owner, or property for which disbursement is made, including the amount disbursed for each, and the corresponding sales transaction, property, or owner ledger entries. When necessary, the check notation may refer to the required information recorded on a supplemental disbursement worksheet which shall be cross-referenced to the corresponding check. In lieu of retaining canceled checks, a licensee may retain digitally imaged copies of the canceled checks or substitute checks provided that such images are legible reproductions of the front and back of such instruments with no smaller images than 1.1875 x 3.0 inches and provided that the licensee's bank retains for a period of at least six years the original checks, "substitute checks" as described in 12 C.F.R. 229.51 or the capacity to provide substitute checks as described in 12 C.F.R. 229.51 and makes the original or substitute checks available to the licensee and the Commission upon request.

(3) deposit tickets. For a sales transaction, the deposit ticket shall identify the purpose and remitter of the funds deposited, the property, the parties involved, and a reference to the corresponding sales transaction ledger entry. For a rental transaction, the deposit ticket shall identify the purpose and remitter of the funds deposited, the tenant, and the corresponding property or owner ledger entry. For deposits of funds belonging to or collected on behalf of a property owner association, the deposit ticket shall identify the property or property interest for which the payment is made, the property or interest owner, the remitter, and the purpose of the payment. When a single deposit ticket is used to deposit funds collected for more than one sales transaction, property owner, or property, the required information shall be recorded on the ticket for each sales transaction, owner, or property, or the ticket may refer to the same information recorded on a supplemental deposit worksheet which shall be cross-referenced to the corresponding deposit ticket.

(4) a payment record sheet for each property or interest for which funds are collected and deposited into a property owner association trust account as required by Subsection (i) of this Rule. Payment record sheets shall identify the amount, date, remitter, and purpose of payments received, the amount and nature of the obligation for which payments are made, and the amount of any balance due or delinquency.

(5) a separate ledger sheet for each sales transaction and for each property or owner of property managed by the broker identifying the property, the parties to the transaction, the amount, date, and purpose of the deposits and from whom received, the amount, date, check number, and purpose of disbursements and to whom paid, and the running balance of funds on deposit for the particular sales transaction or, in a rental transaction, the particular property or owner of property. Monies held as tenant security deposits in connection with rental transactions may be accounted for on a separate tenant security deposit ledger for each property or owner of property managed by the broker. For each security deposit the tenant security deposit ledger shall identify the remitter, the date the deposit was paid, the amount, the tenant, landlord, and subject property. For each disbursement of tenant security deposit monies, the ledger shall identify the check number, amount, payee, date, and purpose of the disbursement. The ledger shall also show a running balance. When tenant security deposit monies are accounted for on a separate ledger as provided herein, deposit tickets, canceled checks and supplemental worksheets shall reference the corresponding tenant security deposit ledger entries when appropriate.

(6) a journal or check stubs identifying in chronological sequence each bank deposit and disbursement of monies to and from the trust or escrow account, including the

amount and date of each deposit and a reference to the corresponding deposit ticket and any supplemental deposit worksheet, and the amount, date, check number, and purpose of disbursements and to whom paid. The journal or check stubs shall also show a running balance for all funds in the account.

- (7) copies of contracts, leases and management agreements.
- (8) closing statements and property management statements.
- (9) covenants, bylaws, minutes, management agreements and periodic statements relating to the management of a property owner association.
- (10) invoices, bills, and contracts paid from the trust account, and any documents not otherwise described herein necessary and sufficient to verify and explain record entries.

Records of all receipts and disbursements of trust or escrow monies shall be maintained in such a manner as to create an audit trail from deposit tickets and canceled checks to check stubs or journals and to the ledger sheets. Ledger sheets and journals or check stubs must be reconciled to the trust or escrow account bank statements on a monthly basis. To be sufficient, records of trust or escrow monies must include a worksheet for each such monthly reconciliation showing the ledger sheets, journals or check stubs, and bank statements to be in agreement and balance.

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

(g) In the event of a dispute between the seller and buyer or landlord and tenant over the return or forfeiture of any deposit other than a residential tenant security deposit held by a licensee, the licensee shall retain said deposit in a trust or escrow account until the licensee has obtained a written release from the parties consenting to its disposition or until disbursement is ordered by a court of competent jurisdiction. If it appears to a broker holding a disputed deposit that a party has abandoned his or her claim, the broker may disburse the money to the other claiming parties according to their written agreement provided that the broker first makes a reasonable effort to notify the party who has apparently abandoned his or her claim and provides that party with an opportunity to renew his or her claim to the disputed funds. Tenant security deposit monies shall be disposed of in accordance with the requirements of N.C.G.S. 42-50 through 56 and N.C.G.S. 42A-18.

(h) A broker may transfer earnest money deposits in his or her possession collected in connection with a sales transaction from his or her trust account to the closing attorney or other settlement agent not more than ten days prior to the anticipated settlement date. A licensee shall not disburse prior to settle-

ment any earnest money in his or her possession for any other purpose without the written consent of the parties.

(i) The funds of a property owner association, when collected, maintained, disbursed or otherwise controlled by a licensee, are trust monies and shall be treated as such in the manner required by this Rule. Such funds must be deposited into and maintained in a trust or escrow account or accounts dedicated exclusively for funds belonging to a single property owners association and may not be commingled with funds belonging to other property owner associations or other persons or parties. A licensee who undertakes to act as manager of a property owner association or as the custodian of funds belonging to a property owner association shall provide the association with periodic statements which report the balance of association funds in the licensee's possession or control and which account for the funds the licensee has received and disbursed on behalf of the association. Such statements must be made in accordance with the licensee's agreement with the association, but in no event shall the statements be made less frequently than every 90 days.

(j) Every licensee shall safeguard the money or property of others coming into his or her possession in a manner consistent with the requirements of the Real Estate License Law and the rules adopted by the Commission. A licensee shall not convert the money or property of others to his or her own use, apply such money or property to a purpose other than that for which it was paid or entrusted to him or her, or permit or assist any other person in the conversion or misapplication of such money or property.

(k) In addition to the records required by paragraph (e) of this rule, a licensee acting as agent for the landlord of a residential property used for vacation rentals shall create and maintain a subsidiary ledger sheet for each property or owner of such properties onto which all funds collected and disbursed are identified in categories by purpose. On a monthly basis, the licensee shall reconcile the subsidiary ledger sheets to the corresponding property or property owner ledger sheet.

(l) In lieu of maintaining a subsidiary ledger sheet, the licensee may maintain an accounts payable ledger sheet for each owner or property and each vendor to whom trust monies are due for monies collected on behalf of the owner or property identifying the date of receipt of the trust monies, from whom the monies were received, rental dates, and the corresponding property or owner ledger sheet entry including the amount to be disbursed for each and the purpose of the disbursement. The licensee may also maintain an accounts payable ledger sheet in the format described in paragraph (k) above for vacation rental tenant security deposit monies and vacation rental advance payments.

A.0108 Retention of Records

Licensees shall retain records of all sales, rental, and other transactions conducted in such capacity, whether the transac-

tion is pending, completed or terminated prior to its successful conclusion. The licensee shall retain such records for three years after all funds held by the licensee in connection with the transaction have been disbursed to the proper party or parties or until the successful or unsuccessful conclusion of the transaction, whichever occurs later. Such records shall include contracts of sale, written leases, agency contracts, options, offers to purchase, trust or escrow records, earnest money receipts, disclosure documents, closing statements, brokerage cooperation agreements, declarations of affiliation, and any other records pertaining to real estate transactions. All such records shall be made available for inspection and reproduction by the Commission or its authorized representatives without prior notice.

A.0109 Brokerage Fees and Compensation

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

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

(c) The Commission shall not act as a board of arbitration and shall not compel parties to settle disputes concerning such matters as the rate of commissions, the division of commissions, pay of salespersons, and similar matters.

(d) Except as provided in (e) of this rule, a licensee shall not undertake in any manner, any arrangement, contract, plan or other course of conduct, to compensate or share compensation with unlicensed persons or entities for any acts performed in North Carolina for which licensure by the Commission is required.

(e) A broker may pay or promise to pay consideration to a travel agent in return for procuring a tenant for a vacation rental as defined by the Vacation Rental Act if:

- (1) the travel agent only introduces the tenant to the broker, but does not otherwise engage in any activity which would require a real estate license;
- (2) the introduction by the travel agent is made in the regular course of the travel agent's business; and

- (3) the travel agent has not solicited, handled or received any monies in connection with the vacation rental.

For the purpose of this rule, a travel agent is any person or entity who is primarily engaged in the business of acting as an intermediary between persons who purchase air, land, and ocean travel services and the providers of such services. A travel agent is also any other person or entity who is permitted to handle and sell tickets for air travel by the Airlines Reporting Corporation (ARC). Payments authorized hereunder shall be made only after the conclusion of the vacation rental tenancy. Prior to the creation of a binding vacation rental agreement, the broker shall provide a tenant introduced by a travel agent a written statement advising him or her to rely only upon the agreement and the broker's representations about the transaction. The broker shall keep for a period of three years records of a payment made to a travel agent including records identifying the tenant, the travel agent and their addresses, the property and dates of the tenancy, and the amount paid.

A.0110 Broker-in-Charge

(a) Every real estate firm shall designate a broker to serve as the broker-in-charge at its principal office and a broker to serve as broker-in-charge at any branch office. No broker shall be broker-in-charge of more than one office at a time. If a firm shares office space with one or more other firms, one broker may serve as broker-in-charge of each firm at that location. No office or branch office of a firm shall have more than one designated broker-in-charge. A broker who is a sole proprietor shall designate himself or herself as a broker-in-charge if the broker engages in any transaction where the broker is required to deposit and maintain monies belonging to others in a trust account, engages in advertising or promoting his or her services as a broker in any manner, or has one or more brokers or salespersons affiliated with him or her in the real estate business. Each broker-in-charge shall make written notification of his or her status as broker-in-charge to the Commission on a form prescribed by the Commission within 10 days following the broker's designation as broker-in-charge. The broker-in-charge shall assume the responsibility at his or her office for:

- (1) the retention and display of current license renewal pocket cards by all brokers and salespersons employed at the office for which he or she is broker-in-charge; the proper display of licenses at such office in accordance with Rule .0101 of this Section; and assuring that each licensee employed at the office has complied with Rules .0503, .0504 and .0506 of this Subchapter;
- (2) the proper notification to the Commission of any change of business address or trade name of the firm and the registration of any assumed business name adopted by the firm for its use;
- (3) the proper conduct of advertising by or in the name of the firm at such office;

(4) the proper maintenance at such office of the trust or escrow account of the firm and the records pertaining thereto;

(5) the proper retention and maintenance of records relating to transactions conducted by or on behalf of the firm at such office, including those required to be retained pursuant to Rule .0108 of this Section;

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

(7) the verification to the Commission of the experience of any salesperson at such office who may be applying for licensure as a broker; and

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

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

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

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

(c) A broker-in-charge must continuously maintain his or her license on active status.

(d) Each broker-in-charge shall notify the Commission in writing of any change in his or her status as broker-in-charge within 10 days following the change. Upon written request of a salesperson within five years after termination of his or her association with a broker-in-charge, the broker-in-charge shall provide the salesperson, on a form prescribed by the Commission, an accurate written statement regarding the number and type of properties listed, sold, bought, leased, or rented for others by the salesperson while under the supervision of the broker-in-charge.

(e) A licensed real estate firm shall not be required to designate a broker-in-charge if it:

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

(2) is designated a Subchapter S corporation by the United States Internal Revenue Service;

(3) has no branch office; and

(4) has no person associated with it other than its qualifying broker.

(f) Except as provided herein every broker-in-charge designated before October 1, 2000 shall complete the Commission's broker-in-charge course not later than October 1, 2005 in order to remain broker-in-charge on that date and thereafter. Ex-

cept as provided herein, every broker-in-charge designated after October 1, 2000 shall complete the broker-in-charge course within 120 days following designation in order to remain broker-in-charge thereafter. Every broker who has completed the broker-in-charge course shall take the course on a recurring basis at intervals not to exceed five years between courses in order to remain eligible to be designated broker-in-charge of the principal or branch office of any real estate firm. If a broker who is designated broker-in-charge fails to complete the broker-in-charge course within the prescribed time period, the broker-in-charge status of that broker shall be immediately terminated, and the broker must complete the broker-in-charge course before he or she may again be designated as broker-in-charge. A broker-in-charge residing outside of North Carolina who is the broker-in-charge of a principal or branch office not located in North Carolina shall not be required to complete the broker-in-charge course.

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

A.0111 Drafting Legal Instruments

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

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

(c) Nothing contained in this rule shall be construed to prohibit a broker or salesperson from making written notes, memoranda or correspondence recording the negotiations of the parties to a real estate transaction when such notes, memoranda or correspondence do not themselves constitute binding agreements or other legal instruments.

A.0112 Offers and Sales Contracts

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

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

(17) the buyer's right to inspect the property prior to closing and who shall pay for repairs and improvements, if any;

(18) a provision that the property shall at closing be in substantially the same condition as on the date of the offer (reasonable wear and tear excepted), or a description of the required property condition at closing; and

(19) a provision setting forth the identity of each real estate agent and firm involved in the transaction and disclosing the party each agent and firm represents.

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

(b) A broker or salesperson acting as an agent in a real estate transaction shall not use a preprinted offer or sales contract form containing the provisions or terms listed in Subparagraphs (b)(1) and (2) of this Rule. A broker, salesperson or anyone acting for or at the direction of the broker or salesperson shall not insert or cause such provisions or terms to be inserted into any such preprinted form, even at the direction of the parties or their attorneys:

(1) any provision concerning the payment of a commission or compensation, including the forfeiture of earnest money, to any broker, salesperson or firm; or

(2) any provision that attempts to disclaim the liability of a broker or salesperson for his or her representations in connection with the transaction.

A.0113 Reporting Criminal Convictions and Disciplinary Actions

Any broker or salesperson who is convicted of any felony or misdemeanor or who has disciplinary action taken against him or her by any governmental agency in connection with any other occupational license shall file with the Commission a written report of such conviction or disciplinary action within 60 days of the final judgment or final order in the case. A form for this report is available from the Commission.

A.0114 Residential Property Disclosure Statement

(a) Every owner of real property subject to a transfer of the type contemplated by G.S. 47E-1, 47E-2, and 47E-3, shall complete the following residential property disclosure statement and furnish a copy of the complete statement to a purchaser in accordance with the requirements of G.S. 47E-4. The form shall bear the seal of the North Carolina Real Estate Commission and shall read as follows:



STATE OF NORTH CAROLINA
RESIDENTIAL PROPERTY DISCLOSURE STATEMENT

INSTRUCTIONS TO PROPERTY OWNERS

- 1. G.S. 47E requires owners of residential real estate (single-family homes and buildings with up to four dwelling units) to furnish purchasers a property disclosure statement. This form is the only one approved for this purpose. A disclosure statement must be furnished in connection with the sale, exchange, option and sale under a lease with option to purchase (unless the tenant is already occupying or intends to occupy the dwelling). A disclosure statement is not required for some transactions, including the first sale of a dwelling which has never been inhabited and transactions of residential property made pursuant to a lease with option to purchase where the lessee occupies or intends to occupy the dwelling. For a complete list of exemptions, see G.S. 47E-2.
- 2. You must check one of the boxes for each of the 20 questions on the reverse side of this form.
 - a. If you check "Yes" for any question, you must describe the problem or attach a report from an engineer, contractor, pest control operator or other expert or public agency describing it. If you attach a report, you will not be liable for any inaccurate or incomplete information contained in it so long as you were not grossly negligent in obtaining or transmitting the information.
 - b. If you check "No", you are stating that you have no actual knowledge of any problem. If you check "No" and you know there is a problem, you may be liable for making an intentional misstatement.
 - c. If you check "No Representation", you have no duty to disclose the conditions or characteristics of the property, even if you should have known of them.
 - * If you check "Yes" or "No" and something happens to the property to make your Statement incorrect or inaccurate (for example, the roof begins to leak), you must promptly give the purchaser a corrected Statement or correct the problem.
- 3. If you are assisted in the sale of your property by a licensed real estate broker or salesperson, you are still responsible for completing and delivering the Statement to the purchasers; and the broker or salesperson must disclose any material facts about your property which they know or reasonably should know, regardless of your responses on the Statement.
- 4. You must give the completed Statement to the purchaser no later than the time the purchaser makes an offer to purchase your property. If you do not, the purchaser can, under certain conditions, cancel any resulting contract (See "Note to Purchasers" below). You should give the purchaser a copy of the Statement containing your signature and keep a copy signed by the purchaser for your records.

Note to Purchasers: If the owner does not give you a Residential Property Disclosure Statement by the time you make your offer to purchase the property, you may under certain conditions cancel any resulting contract and be entitled to a refund of any deposit monies you may have paid. To cancel the contract, you must personally deliver or mail written notice of your decision to cancel to the owner or the owner's agent within three calendar days following your receipt of the Statement, or three calendar days following the date of the contract, whichever occurs first. However, in no event does the Disclosure Act permit you to cancel a contract after settlement of the transaction or (in the case of a sale or exchange) after you have occupied the property, whichever occurs first.

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

Property Address: _____

Owner's Name(s): _____

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

Owner Signature: _____ Date _____

Owner Signature: _____ Date _____

Purchaser(s) acknowledge receipt of a copy of this disclosure statement; that they have examined it before signing; that they understand that this is not a warranty by owner or owner's agent; that it is not a substitute for any inspections they may wish to obtain; and that the representations are made by the owner and not the owner's agent(s) or subagent(s). Purchaser(s) are encouraged to obtain their own inspection from a licensed home inspector or other professional.

Purchaser Signature: _____ Date _____

Purchaser Signature: _____ Date _____

(OVER)

Property Address/Description: _____

[Note: In this form, "property" refers only to dwelling unit(s) and not sheds, detached garages or other buildings.]

Regarding the property identified above, do you know of any problem (malfunction or defect) with any of the following:

- | | Yes* | No | Representation |
|---|--------------------------|--------------------------|--------------------------|
| 1. FOUNDATION, SLAB, FIREPLACES/CHIMNEYS, FLOORS, WINDOWS (INCLUDING STORM WINDOWS AND SCREENS), DOORS, CEILINGS, INTERIOR AND EXTERIOR WALLS, ATTACHED GARAGE, PATIO, DECK OR OTHER STRUCTURAL COMPONENTS including any modifications to them?..... | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| a. Siding is <input type="checkbox"/> Masonry <input type="checkbox"/> Wood <input type="checkbox"/> Composition/Hardboard <input type="checkbox"/> Vinyl <input type="checkbox"/> Synthetic Stucco <input type="checkbox"/> Other _____ | | | <input type="checkbox"/> |
| b. Approximate age of structure? _____ | | | <input type="checkbox"/> |
| 2. ROOF (leakage or other problem)?..... | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| a. Approximate age of roof covering? _____ | | | <input type="checkbox"/> |
| 3. WATER SEEPAGE, LEAKAGE, DAMPNES OR STANDING WATER in the basement, crawl space or slab?..... | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. ELECTRICAL SYSTEM (outlets, wiring, panel, switches, fixtures etc.)?..... | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 5. PLUMBING SYSTEM (pipes, fixtures, water heater, etc.)?..... | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 6. HEATING AND/OR AIR CONDITIONING?..... | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| a. Heat Source is: <input type="checkbox"/> Furnace <input type="checkbox"/> Heat Pump <input type="checkbox"/> Baseboard <input type="checkbox"/> Other _____ | | | <input type="checkbox"/> |
| b. Cooling Source is: <input type="checkbox"/> Central Forced Air <input type="checkbox"/> Wall/Window Unit(s) <input type="checkbox"/> Other _____ | | | <input type="checkbox"/> |
| c. Fuel Source is: <input type="checkbox"/> Electricity <input type="checkbox"/> Natural Gas <input type="checkbox"/> Propane <input type="checkbox"/> Oil <input type="checkbox"/> Other _____ | | | <input type="checkbox"/> |
| 7. WATER SUPPLY (including water quality, quantity and water pressure)?..... | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| a. Water supply is: <input type="checkbox"/> City/County <input type="checkbox"/> Community System <input type="checkbox"/> Private Well <input type="checkbox"/> Other _____ | | | <input type="checkbox"/> |
| b. Water pipes are: <input type="checkbox"/> Copper <input type="checkbox"/> Galvanized <input type="checkbox"/> Plastic <input type="checkbox"/> Other _____ <input type="checkbox"/> Unknown | | | <input type="checkbox"/> |
| 8. SEWER AND/OR SEPTIC SYSTEM?..... | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| a. Sewage disposal system is: <input type="checkbox"/> Septic Tank <input type="checkbox"/> Septic Tank with Pump <input type="checkbox"/> Community System <input type="checkbox"/> Connected to City/County System <input type="checkbox"/> City/County System available <input type="checkbox"/> Straight pipe (wastewater does not go into a septic or other sewer system [note: use of this type of system violates state law]) <input type="checkbox"/> Other _____ | | | <input type="checkbox"/> |
| 9. BUILT-IN APPLIANCES (RANGE/OVEN, ATTACHED MICROWAVE, HOOD/FAN, DISHWASHER, DISPOSAL, etc.)?..... | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Also regarding the property identified above, including the lot, other improvements, and fixtures located thereon, do you know of any:

- | | | | |
|---|--------------------------|--------------------------|--------------------------|
| 10. PROBLEMS WITH PRESENT INFESTATION, OR DAMAGE FROM PAST INFESTATION OF WOOD DESTROYING INSECTS OR ORGANISMS which has not been repaired?..... | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 11. PROBLEMS WITH DRAINAGE, GRADING OR SOIL STABILITY OF LOT?..... | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 12. PROBLEMS WITH OTHER SYSTEMS AND FIXTURES: CENTRAL VACUUM, POOL, HOT TUB, SPA, ATTIC FAN, EXHAUST FAN, CEILING FAN, SUMP PUMP, IRRIGATION SYSTEM, TV CABLE WIRING OR SATELLITE DISH, OR OTHER SYSTEMS?..... | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 13. ROOM ADDITIONS OR OTHER STRUCTURAL CHANGES ?..... | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 14. ENVIRONMENTAL HAZARDS (substances, materials or products) including asbestos, formaldehyde, radon gas, methane gas, lead-based paint, underground storage tank, or other hazardous or toxic material (whether buried or covered), contaminated soil or water, or other environmental contamination)?..... | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 15. COMMERCIAL OR INDUSTRIAL NUISANCES (noise, odor, smoke, etc.) affecting the property?..... | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 16. VIOLATIONS OF BUILDING CODES, ZONING ORDINANCES, RESTRICTIVE COVENANTS OR OTHER LAND-USE RESTRICTIONS?..... | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 17. UTILITY OR OTHER EASEMENTS, SHARED DRIVEWAYS, PARTY WALLS OR ENCROACHMENTS FROM OR ON ADJACENT PROPERTY?..... | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 18. LAWSUITS, FORECLOSURES, BANKRUPTCY, TENANCIES, JUDGMENTS, TAX LIENS, PROPOSED ASSESSMENTS, MECHANICS' LIENS, MATERIALMENS' LIENS, OR NOTICE FROM ANY GOVERNMENTAL AGENCY that could affect title to the property?..... | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 19. OWNERS' ASSOCIATION OR "COMMON AREA" EXPENSES OR ASSESSMENTS?..... | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 20. FLOOD HAZARD or that the property is in a FEDERALLY-DESIGNATED FLOOD PLAIN?..... | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

* If you answered "Yes" to any of the above questions, please explain (Attach additional sheets, if necessary): _____

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

**SECTION A.0200
GENERAL PROVISIONS
(Repealed)**

**SECTION A.0300
APPLICATION FOR LICENSE**

A.0301 Form

An individual or business entity who wishes to file an application for a broker or salesperson license shall make application on a form prescribed by the Commission and can obtain the required form upon request to the Commission. In general, the application form for an individual calls for information such as the applicant's name and address, the applicant's social security number, satisfactory proof of the applicant's identity, places of residence, education, prior real estate licenses, and such other information necessary to identify the applicant and determine the applicant's qualifications and fitness for licensure. The application form for a business entity is described in Rule .0502 of this Section.

A.0302 Filing and Fees

(a) Applications for a real estate license shall be complete and, except as provided by Rule .0403 of this Subchapter, shall be submitted to the Commission's office accompanied by the application fee. Examination scheduling of applicants who are required to pass the real estate licensing examination shall be accomplished in accordance with Rule .0401 of this Subchapter. An applicant for a real estate salesperson license shall not make application for a broker license while the salesperson application is pending unless the applicant first withdraws the salesperson application.

(b) Except for persons applying for licensure under the provisions of Section .1800 of this Subchapter, the license application fee shall be \$30.00. In addition to the license application fee, applicants for licensure who are required to take the license examination must pay the examination fee charged by the Commission's authorized testing service in the form and manner acceptable to the testing service. Persons applying for licensure under Section .1800 of this Subchapter shall pay the application fee set forth in Rule .1803 of this Subchapter.

(c) An applicant shall update information provided in connection with an application or submit a newly completed application form without request by the Commission to assure that the information provided in the application is current and accurate. Failure to submit updated information prior to the issuance of a license may result in disciplinary action against a licensee in accordance with G.S. §93A-6(b)(1). In the event that the Commission requests an appli-

cant to submit updated information or to provide additional information necessary to complete the application and the applicant fails to submit such information within 90 days following the Commission's request, the Commission shall cancel the applicant's application. The license application of an individual found by the Commission to be qualified for the licensing examination shall be immediately canceled if the applicant fails to pass a scheduled licensing examination, fails to appear for and take any examination for which the applicant has been scheduled without having the applicant's examination postponed or absence excused in accordance with Rule .0401(b) and (c) of this Section, or fails to take and pass the examination within 180 days of filing a complete application as described in Rule .0301 of this Section and having the application entered into the Commission's examination applicant file. Except as permitted otherwise in Rule .0403 of this Subchapter, an applicant whose license application has been canceled and who wishes to obtain a real estate license must start the licensing process over by filing a complete application to the Commission and paying all required fees.

A.0303 Payment of Application Fees

Payment of application fees shall be made to the Commission by bank check, certified check, money order, debit card, or credit card. Once an application has been filed and processed, the application fee may not be refunded.

A.0304 Experience Qualifications for Applicants

Experience obtained by a salesperson or broker applicant in violation of law or rule may not be recognized by the Commission as fulfilling the requirements for licensure when the applicant is requesting the Commission to waive the prescribed education requirement based wholly or in part on equivalent experience obtained by the applicant.

**SECTION A.0400
EXAMINATIONS**

A.0401 Scheduling Examinations

An applicant who is required and qualified to take the licensing examination shall be provided a notice of examination eligibility that shall be valid for a period of 180 days and for a single administration of the licensing examination. Upon receipt of the notice of examination eligibility, the applicant shall contact the Commission's authorized testing service to pay for and schedule the examinations in accordance with procedures established by the testing service. The testing service will schedule applicants for examination by computer at their choice of one of the testing locations and will notify applicants of the time and place of their examinations.

(b) An applicant may postpone a scheduled examination provided the applicant makes the request for postpone-

ment directly to the Commission's authorized testing service in accordance with procedures established by the testing service. An applicant's examination shall not be postponed beyond the 180 day period allowed for taking the examination without first refiling another complete application with the Commission.

A request to postpone a scheduled licensing examination without complying with the procedures for re-applying for examination described in Rule .0403 of this Subchapter shall be granted only once unless the applicant satisfies the requirements for obtaining an excused absence stated in Paragraph (c) of this Rule.

(c) An applicant may be granted an excused absence from a scheduled examination if the applicant provides evidence that the absence was the direct result of an emergency situation or condition which was beyond the applicant's control and which could not have been reasonably foreseen by the applicant. A request for an excused absence must be promptly made in writing and must be supported by documentation verifying the reason for the absence.

The request must be submitted directly to the testing service in accordance with procedures established by the testing service. A request for an excused absence from an examination shall be denied if the applicant cannot be rescheduled and examined prior to expiration of the 180 day period allowed for taking the examination without first refiling another complete application with the Commission.

A.0402 Subject Matter 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) In order to pass the real estate licensing examination, an applicant must attain a score at least equal to the passing score established by the Commission 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. Passing applicants will receive only a score of "pass"; however, failing applicants will be informed of their actual score. A passing examination score

obtained by a license applicant shall be recognized as valid for a period of one year from the date of examination, during which time the applicant must fully 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 by issuance of a notice to the applicant, pursuant to Rule .0501(c) of this Section, 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 canceled and the applicant shall be required to reapply and satisfy all requirements for licensure, including retaking and passing the license examination, in order to be eligible for licensure.

A.0403 Re-applying for Examination

(a) An individual whose license application has been canceled and whose 180 day examination eligibility period has expired who wishes to be rescheduled for the real estate license examination must re-apply to the Commission by filing a complete license application as described in Rule .0301 of this Subchapter and paying the prescribed application fee. Subsequent examinations shall be scheduled in accordance with Rule .0401 of this Section.

(b) An individual whose license application has been canceled who wishes to be rescheduled for the license examination before the expiration of his or her 180 day examination eligibility period may utilize an abbreviated electronic license application and examination rescheduling procedure by directly contacting the Commission's authorized testing service, paying both the license application fee and the examination fee to the testing service, and following the testing service's established procedures.

(c) An applicant who fails the license examination shall not be allowed to retake the examination for at least 10 calendar days.

A.0404 Cheating and Related Misconduct

Applicants shall not cheat or attempt to cheat on an examination by any means, including both giving and receiving assistance, and shall not communicate in any manner for any purpose with any person other than an examination supervisor during an examination. Applicants shall not disrupt the quiet and orderly administration of an examination in any manner. Violation of this Rule shall be grounds for dismissal from an examination, invalidation of examination scores, and denial of a real estate license, as well as for disciplinary action if the applicant is a licensed salesperson.

A.0405 Confidentiality of Examinations

Licensing examinations are the exclusive property of the Commission and are confidential. No applicant or licensee shall obtain, attempt to obtain, receive or communicate to oth-

er persons examination questions. Violation of this Rule shall be grounds for denial of a real estate license if the violator is an applicant and disciplinary action if the violator is a licensee.

A.0406 Examination Review

(a) An applicant who fails an examination may review the examination as provided in Paragraphs (b) and (c) of this Rule. Applicants who pass an examination may not review the examination. Applicants who review an examination may not be accompanied by any other person at a review session, nor may any other person review an examination on behalf of an applicant.

(b) An applicant who fails an examination taken by computer may review the examination at the testing center immediately following completion of the examination and receipt of the applicant's examination results but prior to leaving the testing center. An applicant eligible for examination review who fails to review the examination at the testing center immediately following completion of the examination will be deemed to have waived the right to review the examination.

(c) An applicant who fails an examination taken by the paper and pencil method may review the examination at such times and places as are scheduled by the Executive Director provided the applicant makes a request to review the examination not later than the request deadline date established by the Executive Director for a scheduled examination review date. Failure to request an appointment to review an examination by the request deadline date shall constitute a waiver of the right to review such examination. An applicant who has taken the examination by the paper and pencil method may be granted an excused absence from a scheduled examination review if the applicant provides evidence satisfactory to the Commission that the absence was the direct result of an emergency situation or condition which was beyond the applicant's control and which could not have been reasonably foreseen. A request for an excused absence must be promptly made in writing and must be supported by appropriate documentation verifying the reason for the absence. A request for an excused absence received more than 15 days after the scheduled examination review will be denied unless the applicant was unable to file a timely request due to the same circumstances that prevented the applicant from attending the examination review. An applicant who fails to appear for a scheduled examination review and who does not obtain an excused absence in accordance with this Rule shall be deemed to have waived the right to review the examination.

SECTION A.0500 LICENSING

A.0501 Character (Repealed)

A.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 shall be required to submit a new application immediately upon making the change and to obtain a new license. 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 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 North Carolina Secretary of State Identification Number if required to be registered with the Office of the North Carolina Secretary of State;
- (6) the name, real estate license number and signature of the proposed principal broker for the proposed firm;
- (7) the address of and name of the proposed broker-in-charge for each office where brokerage activities will be conducted, 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;
- (11) if a business entity other than a corporation, limited liability company or partnership, a full 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) 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) any other information required by this rule.

The Commission also may require the applicant to declare in the license application that the applicant's organi-

zational 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 Paragraph, the term principal shall mean any person or entity owning ten 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 that at least one principal of said business entity holds a broker license on active status and in good standing and will serve as qualifying broker of the entity, the entity shall be licensed provided it appears that the applicant entity employs and is directed by personnel possessed of the requisite truthfulness, honesty, and integrity. 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 the performance of the qualifying broker's duties with regard to both entities.

(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 at which real estate brokerage activities are conducted;
- (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 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 .0107 of this chapter;

(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 for which said records are required to be retained by Rule .0108 of this chapter; and

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

(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.

A.0503 License Renewal; Penalty for Operating While License Expired

(a) **(Effective until January 1, 2006)** All real estate licenses issued by the Commission under G.S. 93A, Article 1 shall expire on the 30th day of June following issuance. Any licensee desiring renewal of a license shall apply for renewal within 45 days prior to license expiration by submitting a renewal application on a form provided by the Commission and submitting with the application the required renewal fee of forty dollars (\$40.00).

(b) **(Effective January 1, 2006)** Any person desiring to renew his or her license on active status shall, upon the second renewal of such license following initial licensure, and upon each subsequent renewal, have obtained all continuing education required by G.S. 93A-4A and Rule .1702 of the Subchapter.

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

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

A.0504 Active and Inactive License Status

(a) Except for licenses that have expired or that have been revoked, suspended or surrendered, all licenses issued by the Commission shall be designated as being either on active status or inactive status. The holder of a license on active status may engage in any activity requiring a real estate license and may be compensated for the provision of any lawful real estate brokerage service. The holder of a license on inactive status may not engage in any activity requiring a real estate license, including the referral for compensation of a prospective seller, buyer, landlord or tenant to another real estate licensee or any other party. A licensee holding a license on inactive status must renew such license and pay the prescribed license renewal fee in order to continue to hold such license. The Commission may take disciplinary action against a licensee holding a license on inactive status for any violation of G.S. 93A or any rule promulgated by the Commission, including the offense of engaging in an activity for which a license is required while a license is on inactive status.

(b) Except as provided by Rule .1804 of this Subchapter, a salesperson's license shall, upon initial licensure, be assigned to inactive status. The license of a broker or firm shall be assigned to active status. Except for persons licensed under the provisions of Section .1800 of this Subchapter, a broker or salesperson may change the status of his or her license from active to inactive status by submitting a written request to the Commission. Except for salespersons licensed under Section .1800 of this Subchapter, a salesperson's license shall be assigned by the Commission to inactive status when the salesperson is not under the active, personal supervision of a broker-in-charge. A firm's license shall be assigned by the Commission to inactive status when the firm does not have a qualifying broker. Except for persons licensed under the provisions of Section .1800 of this Subchapter, a broker or salesperson shall also be assigned to inactive status if, upon the second renewal of his or her license following initial licensure, or upon any subsequent renewal, he or she has not satisfied the continuing education requirement described in Rule .1702 of this Subchapter.

(c) A salesperson with an inactive license who desires to have such license placed on active status must comply with the procedures prescribed in Rule .0506 of this Section.

(d) A broker with an inactive license who desires to have such license placed on active status shall file with the Commission a request for license activation on a form provided by the Commission containing identifying information about the broker, a statement that the broker has satisfied the continuing education requirements provided by Rule .1703 of this Subchapter, the date of the request, and the signature of the broker. Upon the mailing or delivery of this form, the broker may engage in real estate brokerage activities requiring a license; however, if the broker does not receive from the Commission a written acknowledgment of the license activation

within 30 days of the date shown on the form, the broker shall immediately terminate his or her real estate brokerage activities pending receipt of the written acknowledgment from the Commission. If the broker is notified that he or she is not eligible for license activation due to a continuing education deficiency, the broker must terminate all real estate brokerage activities until such time as the continuing education deficiency is satisfied and a new request for license activation is submitted to the Commission.

(e) A firm with an inactive license which desires to have its license placed on active status shall file with the Commission a request for license activation on a form provided by the Commission containing identifying information about the firm and its qualifying broker. If the qualifying broker has an inactive license, he or she must satisfy the requirements of Paragraph (d) of this Rule. Upon the mailing or delivery of the completed form by the qualifying broker, the firm may engage in real estate brokerage activities requiring a license; however, if the firm's qualifying broker does not receive from the Commission a written acknowledgment of the license activation within 30 days of the date shown on the form, the firm shall immediately terminate its real estate brokerage activities pending receipt of the written acknowledgment from the Commission. If the qualifying broker is notified that the firm is not eligible for license activation due to a continuing education deficiency on the part of the qualifying broker, the firm must terminate all real estate brokerage activities until such time as the continuing education deficiency is satisfied and a new request for license activation is submitted to the Commission.

(f) A person licensed as a broker or salesperson under Section .1800 of this Subchapter shall maintain his or her license on active status at all times as required by Rule .1804 of this Subchapter.

A.0505 Reinstatement of Expired License, Revoked, Surrendered or Suspended License

(a) Licenses expired for not more than six (6) months may be reinstated upon the submission of a complete and accurate application and payment of a fifty-five dollar (\$55.00) reinstatement fee. In order to reinstate such license on active status, the applicant shall also present clear and convincing evidence of having obtained such continuing education as is required by Rule .1703 of this Subchapter to change an inactive license to active status. A person reinstating such a license on inactive status shall not be required to have obtained any continuing education in order to reinstate such license; however, in order to subsequently change his or her reinstated license from inactive status to active status, the licensee must satisfy the continuing education requirement prescribed in Rule .1703 of this Subchapter, and be supervised by a broker-in-charge in compliance with the requirements of Rule .0506 of this Section.

(b) Reinstatement of licenses expired for more than 6 (six) months may be considered upon the submission of a

complete and accurate application and payment of a fifty-five dollar (\$55.00) fee. Applicants must satisfy the Commission that they possess the current knowledge, skills and competence, as well as the truthfulness, honesty and integrity, necessary to function in the real estate business in a manner that protects and serves the public interest. To demonstrate current knowledge, skills and competence, the Commission may require such applicants to complete real estate education or pass the license examination or both.

(c) Reinstatement of a revoked license may be considered upon the submission of a complete and accurate application and payment of a thirty dollar (\$30.00) fee. Applicants must satisfy the same requirements as those prescribed in Paragraph (b) of this Rule for reinstatement of licenses expired for more than six (6) months.

(d) Reinstatement of a license surrendered under the provisions of G.S. 93A-6(e) may be considered upon termination of the period of surrender specified in the order approving the surrender and upon the submission of a complete and accurate application and payment of a thirty dollar (\$30.00) fee. Applicants must satisfy the same requirements as those prescribed in Paragraph (b) of this Rule for reinstatement of licenses expired for more than six (6) months.

(e) When a license is suspended by the Commission, the suspended license shall be restored at the end of the period of active suspension provided that any applicable license renewal fees that accrued during the time of the suspension are paid by the licensee. In order for the license to be restored on active status, the licensee shall be required to also demonstrate that the licensee has satisfied the continuing education requirement for license activation prescribed by Rule .1703 of this Subchapter and that the licensee is supervised by a broker-in-charge in compliance with the requirements of Rule .0506 of this Section, if applicable.

A.0506 Salesperson to be Supervised by Broker

(a) This rule shall apply to all real estate salespersons except those salespersons licensed under the provisions of Section .1800 of this Subchapter.

(b) A salesperson may engage in or hold himself or herself out as engaging in activities requiring a real estate license only while his or her license is on active status and he or she is supervised by the broker-in-charge of the real estate firm or office where the salesperson is associated. A salesperson may be supervised by only one broker-in-charge at a time.

(c) Upon a salesperson's association with a real estate broker or brokerage firm, the salesperson and the broker-in-charge of the office where the salesperson will be engaged in the real estate business shall immediately file with the Commission a salesperson supervision notification on a form provided by the Commission containing identifying information about the salesperson and the broker-in-charge, a

statement from the broker-in-charge certifying that he or she will supervise the salesperson in the performance of all acts for which a license is required, the date that the broker-in-charge assumes responsibility for such supervision, and the signatures of the salesperson and broker-in-charge. If the salesperson is on inactive status at the time of associating with a broker or brokerage firm, the salesperson and broker-in-charge shall also file, along with the salesperson supervision notification, the salesperson's request for license activation on a form provided by the Commission containing identifying information about the salesperson, the salesperson's statement that he or she has satisfied the continuing education requirements prescribed by Rule .1703 of this Subchapter, the date of the request, and the signatures of the salesperson and the salesperson's proposed broker-in-charge. Upon the mailing or delivery of the required form(s), the salesperson may engage in real estate brokerage activities requiring a license under the supervision of the broker-in-charge; however, if the salesperson and broker-in-charge do not receive from the Commission a written acknowledgment of the salesperson supervision notification and, if appropriate, the request for license activation, within 30 days of the date shown on the form, the broker-in-charge shall immediately terminate the salesperson's real estate brokerage activities pending receipt of the written acknowledgment from the Commission. If the salesperson and broker-in-charge are notified that the salesperson is not eligible for license activation due to a continuing education deficiency, the broker-in-charge shall cause the salesperson to immediately cease all activities requiring a real estate license until such time as the continuing education deficiency is satisfied and a new salesperson supervision notification and request for license activation is submitted to the Commission.

(d) A broker-in-charge who certifies to the Commission that he or she will supervise a licensed salesperson shall actively and directly supervise the salesperson in a manner which reasonably assures that the salesperson performs all acts for which a real estate license is required in accordance with the Real Estate License Law and Commission rules. A supervising broker who fails to supervise a salesperson as prescribed in this Rule may be subject to disciplinary action by the Commission.

(e) Upon the termination of the supervisory relationship between a salesperson and his or her broker-in-charge, the salesperson and the broker-in-charge shall provide written notification of the date of termination to the Commission not later than 10 days following said termination.

A.0507 Payment of License Fees

Checks, credit cards, and other forms of payment given the Commission for fees due which are returned unpaid shall be considered cause for license denial, suspension, or revocation.

A.0508 Duplicate License Fee (Repealed)

A.0509 Duplicate License Fee

A licensee may, by filing a prescribed form and paying a five dollar (\$5.00) fee to the Commission, obtain a duplicate real estate license or pocket card to replace an original license or pocket card which has been lost, damaged or destroyed or if the name of the licensee has been lawfully changed.

A.0510 Cancellation of Salesperson License upon Broker Licensure

When a person holding a salesperson license is issued a broker license, the person's salesperson license shall be automatically canceled.

**SECTION A.0600
REAL ESTATE COMMISSION HEARINGS**

A.0601 Complaints/Inquiries/Motions/Other Pleadings

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

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

(c) When a complaint has not been submitted in conformity with this rule, the Commission's legal counsel may initiate an investigation if the available information is sufficient to create a reasonable suspicion that any licensee or other person or entity may have committed a violation of the provisions of the Real Estate License Law or the rules adopted by the Commission.

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

(e) During the course of an investigation of a licensee, the Commission, through its legal counsel or other staff, may send the licensee a Letter of Inquiry requesting the licensee to respond. The Letter of Inquiry, or attachments thereto, shall set forth the subject matter being investigated. Upon receipt of the Letter of Inquiry, the licensee shall respond within 14 calendar days. Such response shall include a full and fair disclosure of all information requested. Licensees shall include with their written response copies of all documents requested in the Letter of Inquiry.

(f) Hearings in contested cases before the Commission shall be conducted according to the provisions of Article 3A of Chapter 150B of the General Statutes of North Carolina.

(g) Persons who make complaints are not parties to contested cases, but may be witnesses.

A.0616 Procedures For Requesting Hearings When Applicant's Character Is In Question

(a) When the moral character of an applicant for licensure or approval is in question, the applicant shall not be licensed or approved until the applicant has affirmatively demonstrated that the applicant possesses the requisite truthfulness, honesty and integrity. For the purposes of this rule, applicant means any person or entity making application for licensure as a real estate broker or salesperson or for licensure or approval as a prelicensing or continuing education instructor, director, coordinator, school, or sponsor. When the applicant is an entity, it shall be directed and controlled by persons who are truthful and honest and who possess integrity.

(b) When the character of an applicant is in question, the Commission shall defer action upon the application until the applicant is notified by letter. The letter informing the applicant that his or her moral character is in question shall be sent by certified mail, return receipt requested, to the address shown upon the application. The applicant shall have 60 days from the date of receipt of this letter to request a hearing before the Commission. If the applicant fails to request a hearing within this time or if a properly addressed letter is returned to the Commission undelivered, applicant's right to a hearing shall be considered waived and the application shall be deemed denied. If the applicant makes a timely request for a hearing in accordance with the provisions of this rule, the Commission shall provide the applicant with a Notice of Hearing and hearing as required by Article 3A of Chapter 150B of the North Carolina General Statutes.

(c) Nothing in this Rule shall be interpreted to prevent an unsuccessful applicant from reapplying for licensure or approval if such application is otherwise permitted by law.

**SECTION A.0700
PETITIONS FOR RULES**

**SECTION A.0800
RULE MAKING**

**SECTION A.0900
DECLARATORY RULINGS**

**SECTION A.1000
SCHOOLS
(Transferred to C.0100)**

**SECTION A.1100
REAL ESTATE PRE-LICENSING COURSES
(Transferred/Repealed. Transfers are at C.0300
Prelicensing and Pre-certification Courses)**

**SECTION A.1200
CERTIFICATION OF REAL ESTATE
INSTRUCTORS
(Repealed)**

**SECTION A.1300
PRIVATE REAL ESTATE SCHOOLS
(Transferred/Repealed. Transfers are at
C.0200)**

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

SECTION A.1500 FORMS (Repealed)
*Interested persons may obtain a copy of Sections
A.0600 through A.1500 by making written request to
the North Carolina Real Estate Commission.*

**SECTION A.1600
DISCRIMINATORY PRACTICES PROHIBITED**

A.1601 Fair Housing

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

**SECTION A.1700
MANDATORY CONTINUING EDUCATION**

A.1701 Purpose and Applicability

This Section describes the continuing education requirement for real estate brokers and salespersons authorized by G.S. 93A-4A, establishes the continuing education requirement to change a license from inactive status to active status, establishes attendance requirements for continuing education courses, establishes the criteria and procedures relating to obtaining an extension of time to complete the continuing education requirement, establishes the criteria for obtaining continuing education credit for an unapproved course or related educational activity, and addresses other similar matters.

A.1702 Continuing Education Requirement

(a) Except as provided in 21 NCAC 58A.1708 and A.1711, in order to renew a broker or salesperson license on active status, the person requesting renewal of a license shall, upon the second renewal of such license following ini-

tial licensure, and upon each subsequent annual renewal, have completed, within one year preceding license expiration, eight classroom hours of real estate continuing education in courses approved by the Commission as provided in Subchapter 58E. Four of the required eight classroom hours must be obtained each license period by completing a mandatory update course developed annually by the Commission. The remaining four hours must be obtained by completing one or more Commission-approved elective courses described in Rule .0305 of Subchapter 58E. The licensee bears the responsibility for providing, upon request of the Commission, evidence of continuing education course completion satisfactory to the Commission. A licensed salesperson who applies for a broker license after the first renewal of his or her salesperson license must have completed the current mandatory update course and one approved elective course during the license period in which the broker license application is filed.

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

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

(d) The terms "active status" and "inactive status" are defined in Rule .0504 of this Subchapter. For continuing education purposes, the term "initial licensure" shall include the first time that a license of a particular type is issued to a person, the reinstatement of a revoked or surrendered license and any license expired for more than six months.

A.1703 Continuing Education for License Activation

(a) A broker or salesperson requesting to change an inactive license to active status on or after the licensee's second license renewal following his or her initial licensure shall be required to demonstrate completion of continuing education as described in Paragraph (b) or (c) of this Rule, whichever is appropriate.

(b) If the inactive licensee's license has properly been on active status at any time since the preceding July 1, the licensee is considered to be current with regard to continuing education and no additional continuing education is required to activate the license.

(c) If the inactive licensee's license has not properly been on active status since the preceding July 1 and the licensee has a deficiency in his or her continuing education record for the previous license period, the licensee must make up the deficiency and fully satisfy the continuing education requirement for the current license period in order to activate the license. Any deficiency may be made up by completing, dur-

ing the current license period or previous license period, approved continuing education elective courses; however, such courses will not be credited toward the continuing education requirement for the current license period. When crediting elective courses for purposes of making up a continuing education deficiency, the maximum number of credit hours that will be awarded for any course is four hours. When evaluating the continuing education record of a licensee with a deficiency for the previous license period to determine the licensee's eligibility for active status, the licensee shall be deemed eligible for active status if the licensee has fully satisfied the continuing education requirement for the current license period and has taken any two additional continuing education courses since the beginning of the previous license period, even if the licensee had a continuing education deficiency prior to the beginning of the previous license period.

A.1704 No Credit for Prelicensing Courses

No credit toward the continuing education requirement shall be awarded for completing a real estate prelicensing course.

A.1705 Attendance and Participation Requirements

In order to receive any credit for satisfactorily completing an approved continuing education course, a licensee must attend at least 90 percent of the scheduled classroom hours for the course, regardless of the length of the course, and must comply with student participation standards described in Rule .0511 of Subchapter 58E. No credit shall be awarded for attending less than 90 percent of the scheduled classroom hours.

A.1706 Repetition of Courses

A continuing education course may be taken only once for continuing education credit within a single license period.

A.1707 Elective Course Carry-Over Credit

A maximum of four hours of continuing education credit for an approved elective course taken during the current license period may be carried over to satisfy the continuing education elective requirement for the next following license period if the licensee receives no continuing education elective credit for the course toward the elective requirement for the current license period or the previous license period. However, if a continuing education elective course is used to wholly or partially satisfy the elective requirement for the current or previous license period, then any excess hours completed in such course which are not needed to satisfy the four-hour elective requirement for that license period may not be carried forward and applied toward the elective requirement for the next following license period.

A.1708 Equivalent Credit

(a) A licensee may request that the Commission award continuing education credit for a course taken by the licens-

ee that is not approved by the Commission, or for some other real estate education activity, by making such request on a form prescribed by the Commission and submitting a non-refundable evaluation fee of thirty dollars (\$30.00) for each request for evaluation of a course or real estate education activity. In order for requests for equivalent credit to be considered and credits to be entered into a licensee's continuing education record prior to the June 30 license expiration date, such requests and all supporting documents must be received by the Commission on or before June 10 preceding expiration of the licensee's current license, with the exception that requests from instructors desiring equivalent credit for teaching Commission-approved continuing education courses must be received by June 30. Any equivalent continuing education credit awarded under this Rule shall be applied first to make up any continuing education deficiency for the previous license period and then to satisfy the continuing education requirement for the current license period; however, credit for an unapproved course or educational activity, other than teaching an approved elective course, that was completed during a previous license period may not be applied to a subsequent license period.

(b) The Commission may award continuing education elective credit for completion of an unapproved course which the Commission finds equivalent to the elective course component of the continuing education requirement set forth in Section .0300 of Subchapter 58E. Completion of an unapproved course may serve only to satisfy the elective requirement and cannot be substituted for completion of the mandatory update course.

(c) Real estate education activities, other than teaching a Commission-approved course, which may be eligible for credit include, but are not limited to: developing a Commission-approved elective continuing education course, authorship of a published real estate textbook; and authorship of a scholarly article, on a topic acceptable for continuing education purposes, which has been published in a professional journal such as a law journal or professional college or university journal or periodical. The Commission may award continuing education elective credit for activities which the Commission finds equivalent to the elective course component of the continuing education requirement set forth in Section .0300 of Subchapter 58E. No activity other than teaching a Commission-developed mandatory update course shall be considered equivalent to completing the mandatory update course.

(d) The Commission may award credit for teaching the Commission-developed mandatory update course and for teaching an approved elective course. Credit for teaching an approved elective course shall be awarded only for teaching a course for the first time. Credit for teaching a Commission-developed mandatory update course may be awarded for each licensing period in

which the instructor teaches the course. The amount of credit awarded to the instructor of an approved continuing education course shall be the same as the amount of credit earned by a licensee who completes the course. Licensees who are instructors of continuing education courses approved by the Commission shall not be subject to the thirty dollar (\$30.00) evaluation fee when applying for continuing education credit for teaching an approved course. No credit toward the continuing education requirement shall be awarded for teaching a real estate prelicensing course.

(e) A licensee completing a real estate appraisal prelicensing, precertification or continuing education course approved by the North Carolina Appraisal Board may obtain real estate continuing education elective credit for such course by submitting to the Commission a written request for equivalent continuing education elective credit accompanied by a nonrefundable processing fee of twenty dollars (\$20.00) and a copy of the certificate of course completion issued by the course sponsor for submission to the North Carolina Appraisal Board.

A.1709 Extensions of Time to Complete Continuing Education

A licensee on active status may request and be granted an extension of time to satisfy the continuing education requirement for a particular license period if the licensee provides evidence satisfactory to the Commission that he or she was unable to obtain the necessary education due to an incapacitating illness or other circumstance which existed for a substantial portion of the license period and which constituted a severe and verifiable hardship such that to comply with the continuing education requirement would have been impossible or unreasonably burdensome. The Commission shall in no case grant an extension of time to satisfy the continuing education requirement for reasons of business or personal conflicts. The Commission also shall not grant such an extension of time when, in the opinion of the Commission, the principal reason for the licensee's inability to obtain the required education in a timely manner was unreasonable delay on the part of the licensee in obtaining such education. If an extension of time is granted, the licensee shall be permitted to renew his or her license on active status but the license shall be automatically changed to inactive status at the end of the extension period unless the licensee satisfies the continuing education requirement prior to that time. If an extension of time is not granted, the licensee may either satisfy the continuing education requirement prior to expiration of the license period or renew his or her license on inactive status. The length of any extension of time granted and the determination of the specific courses which shall be accepted by the Commission as equivalent to the continuing education the licensee would have been required to have completed had

the licensee not been granted the extension is wholly discretionary on the part of the Commission. The licensee's request for an extension of time must be submitted on a form prescribed by the Commission.

A.1710 Denial or Withdrawal of Continuing Education Credit

(a) The Commission may deny continuing education credit claimed by a licensee or reported by a course sponsor for a licensee, and may withdraw continuing education credit previously awarded by the Commission to a licensee upon finding that:

- (1) The licensee or course sponsor provided incorrect or incomplete information to the Commission concerning continuing education completed by the licensee;
- (2) The licensee failed to comply with either the attendance requirement established by Rule .1705 of this Section or the student participation standards set forth in Rule .0511 of Subchapter 58E; or
- (3) The licensee was mistakenly awarded continuing education credit due to an administrative error.

(b) When continuing education credit is denied or withdrawn by the Commission under Paragraph (a) of this Rule, the licensee remains responsible for satisfying the continuing education requirement. However, when an administrative error or an incorrect report by a course sponsor results in the denial or withdrawal of continuing education credit for a licensee, the Commission may, upon request of the licensee, grant the licensee an extension of time to satisfy the continuing education requirement.

(c) A licensee who obtains or attempts to obtain continuing education credit through misrepresentation of fact, dishonesty or other improper conduct shall be subject to disciplinary action pursuant to G.S. 93A-6.

A.1711 Continuing Education Required of Nonresident Licensees

(a) Real estate brokers and salespersons licensed in North Carolina but residing in another state at the time they apply for license renewal who wish to renew their licenses on active status may fully satisfy the continuing education requirement by any one of the following means:

- (1) A nonresident licensee 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.
- (2) A nonresident licensee may, within one year preceding license expiration, complete the Commission-prescribed Update course plus four classroom hours of instruction in Commission-approved continuing education elective courses.
- (3) A nonresident licensee 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 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 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 state of residence or in the state where the course was taken.

(4) A nonresident licensee 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 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 12 months, a nonresident broker or salesperson 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.

(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.

SECTION A .1800 LIMITED NONRESIDENT COMMERCIAL LICENSING

A.1801 General Provisions

(a) Any person resident in a state or territory of the United States other than North Carolina may perform the acts or services of a real estate broker or salesperson in North Carolina in transactions involving commercial real estate if said person first applies for and obtains a limited nonresident commercial real estate broker or salesperson license as provided in this Section.

(b) Corporations, business associations and entities shall be ineligible for licensure under this Section.

(c) Nothing in this Section shall be construed to limit the rights of any person duly licensed as a real estate broker or salesperson in North Carolina under the provisions of N.C.G.S. §§ 93A-4 or 93A-9(a).

A.1802 DEFINITIONS

For the purposes of this Section:

(1) "Commercial Real Estate" means any real property or interest therein, whether freehold or non-freehold, which at the time the property or interest is made the subject of an agreement for brokerage services:

(a) is lawfully used primarily for sales, office, research, institutional, warehouse, manufacturing, industrial or mining purposes or for multifamily residential purposes involving five or more dwelling units;

(b) may lawfully be used for any of the purposes listed in (1) above by a zoning ordinance adopted pursuant to the provisions of Article 18 of Chapter 153A or Article 19 of Chapter 160A of the General Statutes or which is the subject of an official application or petition to amend the applicable zoning ordinance to permit any of the uses listed in (1) above which is under consideration by the government agency with authority to approve the amendment; or

(c) is in good faith intended to be immediately used for any of the purposes listed in (1) above by the parties to any contract, lease, option, or offer to make any contract, lease, or option.

(2) "Qualifying state" means the state or territory of the United States where an applicant for, and the holder of, a limited nonresident commercial license issued under this Section is licensed in good standing as a real estate broker or salesperson. The qualifying state must be the state or territory where the applicant or limited nonresident commercial licensee maintains his or her primary place of business as a real estate broker or salesperson. Under no circumstances may North Carolina be a qualifying state.

A.1803 Requirements For Licensure; Application And Fee

(a) A person desiring to obtain a broker or salesperson license under this Section shall demonstrate to the Real Estate Commission that:

(1) he or she is a resident of a state or territory of the United States other than North Carolina;

(2) he or she is licensed as a real estate broker or salesperson in a qualifying state and that said license is on active status and not in abeyance for any reason. If licensed as a salesperson, he or she shall also demonstrate that he or she is acting under the supervision of a broker in accordance with the applicable governing statutes or regulations in the qualifying state; and

(3) he or she possesses the requisite honesty, truthfulness, integrity, and moral character for licensure as a broker or salesperson in North Carolina.

A person applying for licensure under this Section shall not be required to show that the state or territory where he

or she is currently licensed offers reciprocal licensing privileges to North Carolina brokers and salespersons.

(b) A person desiring to be licensed under this Section shall submit an application on a form prescribed by the Commission and shall show the Commission that he or she has satisfied the requirements set forth in (a) of this rule. In connection with his or her application a person applying for licensure under this rule shall provide the Commission with a certification of license history from the qualifying state where he or she is licensed. He or she shall also provide the Commission with a report of his or her criminal history from the service designated by the Commission. An applicant for licensure under this Section shall be required to update his or her application as required by Rule .0302(c) of this Subchapter.

(c) The fee for persons applying for licensure under this Section shall be \$100 and shall be paid in the form of a certified check, bank check, cashier's check, money order, or by credit card. Once paid, the application fee shall be non-refundable.

(d) If the Commission has received a complete application and the required application fee and if the Commission is satisfied that the applicant possesses the moral character necessary for licensure, the Commission shall issue to the applicant a limited nonresident commercial real estate broker or salesperson license corresponding to the license the applicant possesses in the qualifying state.

A.1804 Active Status

Licenses issued to brokers and salespersons under this Section shall be issued on active status and shall remain valid only so long as the licensee's license in the qualifying state remains valid and on active status. In addition, a license issued to a salesperson under this Section shall remain valid only while the salesperson is acting under the supervision of a real estate broker in accordance with the applicable laws and rules in the qualifying state. A broker or salesperson licensed under this Section shall immediately notify the Commission if his or her license in the qualifying state lapses or expires, is suspended or revoked, made inactive, or is placed in abeyance for any reason.

A.1805 Renewal

(a) A license issued under this Section shall expire on June 30 following issuance unless it is renewed in accordance with the provisions of Rule .0503 and Rule .1711 of this Subchapter.

(b) The Commission shall not renew a license issued under this Section unless the licensee has demonstrated that he or she has complied with the requirements of paragraph (a) of this rule and that his or her license in the qualifying state is on active status in good standing and is not lapsed, expired, suspended, revoked, or in abeyance for any reason.

A.1806 Limitations

(a) A person licensed under this Section may act as a real estate broker or salesperson in this state only if:

- (1) he or she does not reside in North Carolina;
- (2) the real property interest which is the subject of any transaction in connection with which he or she acts as a broker or salesperson in this state is commercial real estate as that term is defined in Rule .1802 of this Section; and
- (3) he or she is affiliated with a resident North Carolina real estate broker as required in rule .1807 of this Section.

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

A.1807 Affiliation With Resident Broker

(a) No person licensed under N.C.G.S. 93A-9(b) shall enter North Carolina to perform any act or service for which licensure as a real broker or salesperson is required unless he or she has first entered into a brokerage cooperation agreement and declaration of affiliation with an individual who is a resident in North Carolina licensed as a North Carolina real estate broker.

(b) A brokerage cooperation agreement as contemplated by this rule shall be in writing and signed by the resident North Carolina broker and the non-resident commercial licensee. It shall contain:

- (1) the material terms of the agreement between the signatory licenses;
- (2) a description of the agency relationships, if any, which are created by the agreement among the non-resident commercial licensee, the resident North Carolina broker, and the parties each represents;
- (3) a description of the property or the identity of the parties and other information sufficient to identify the transaction which is the subject of the affiliation agreement; and
- (4) a definite expiration date.

(c) A declaration of affiliation shall be written and on the form provided by the Commission and shall identify the nonresident commercial licensee and the affiliated resident North Carolina licensee. It shall also contain a description of the duties and obligations of each as required by the North Carolina Real Estate License Law and rules duly adopted by the Commission. The declaration of affiliation may be a part of the brokerage cooperation agreement or separate from it.

(d) A nonresident commercial licensee may affiliate with more than one resident North Carolina broker at any time.

However, a nonresident commercial licensee may be affiliated with only one resident North Carolina broker in a single transaction.

(e) A resident North Carolina broker who enters into a brokerage cooperation agreement and declaration of affiliation with a nonresident commercial licensee shall:

- (1) verify that the nonresident commercial licensee is licensed in North Carolina;
- (2) actively and personally supervise the nonresident commercial licensee in a manner which reasonably insures that the nonresident commercial licensee complies with the North Carolina Real Estate License Law and rules adopted by the Commission; and
- (3) promptly notify the Commission if the nonresident commercial licensee violates the Real Estate License Law or rules adopted by the Commission; and
- (4) insure that records are retained in accordance with the requirements of the Real Estate License Law and rules adopted by the Commission; and
- (5) maintain his or her license on active status continuously for the duration of the brokerage cooperation agreement and the declaration of affiliation.

(f) The nonresident commercial licensee and the affiliated resident North Carolina broker shall each retain in his or her records a copy of brokerage cooperation agreements and declarations of affiliation from the time of their creation and for at least three years following their expiration. Such records shall be made available for inspection and reproduc-

tion by the Commission or its authorized representatives without prior notice.

A.1808 Trust Monies

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

A.1809 Advertising

In all advertising involving a nonresident commercial licensee's conduct as a North Carolina real estate broker or salesperson and in any representation of such person's licensure in North Carolina, the advertising or representation shall conspicuously identify the nonresident commercial licensee as a "Limited Nonresident Commercial Real Estate Broker (or Salesperson)."

A.1810 Payment Of Fees

Commissions, fees, or other compensation earned by a nonresident commercial licensee shall not be paid directly to the licensee if said licensee is employed by or working for a real estate broker or firm. Instead, such fees or compensation shall be paid to the licensee's employing broker or firm.

Subchapter 58B Time Shares

SECTION B.0100 TIME SHARE PROJECT REGISTRATION

B.0101 Application for Registration

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

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

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

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

Act, and, where the project is a condominium, the Condominium Act or Unit Ownership Act.

(c) An entity which owns time shares at a time share project where there are one or more existing registered developers may also apply to the Commission for registration of its time shares, provided that the entity does not control a registered developer, is not controlled by a registered developer, and is not in common control of the project with a registered developer.

B.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 of any time share project, or for a subsequent registration of a time share project by a developer proposing to sell or develop time shares equivalent to at least 20 per cent of the original time share project, the fee is \$1,000.00. For a subsequent registration of a previously or presently registered time share project by a developer proposing to sell or develop time shares equivalent to less than 20 per cent of the original time share project, the fee is \$800.00. For an initial or subsequent time share project consisting of a single family dwelling unit or a single dwelling unit in a multiple dwelling unit property and in which 10 or less time shares will be or have been created, the fee is \$600.00. 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 \$400.00.

(b) 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.

B.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 prescribed by the Commission during the month of June. Every such renewal application shall be accompanied by a certified check made payable to the North Carolina Real Estate Commission in the amount of seven hundred fifty dollars (\$750.00). To renew the time share project registration, the properly completed renewal application

accompanied by the prescribed fee must be received at the Commission's office prior to the expiration of the certificate of registration.

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

B.0104 Amendments to Time Share Project Registration

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

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

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

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

- (1) the name and address of the project and its registration number;
- (2) the name and address of the developer;
- (3) the document or documents to which the amendment applies;

(4) whether or not the changes represented by the amendment required the assent of the time share owners and, if so, how the assent of the time share owners was obtained; and

(5) the recording reference in the office of the register of deeds for the changes, if applicable.

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

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

B.0105 Notice of Termination

(a) A developer of a registered time share project which, for any reason, terminates its interest, rights, ownership or control of the project or any significant part thereof shall immediately notify the Commission in writing on a form prescribed by the Commission for that purpose. Notice of termination to the Commission shall include the date of termination, the reasons therefor, the identity of the developer's successor, if any, and a report on the status of time share sales to purchasers on the date of termination.

(b) Upon receipt of a properly executed notice of termination of the developer's interest in a time share project, the Commission shall enter a notation of cancellation of registration in the file of the project, and shall notify the developer of cancellation. A developer's failure to give notice of termination as provided herein shall not prevent cancellation of the project's registration under G.S. 93A-52

SECTION B.0200 PUBLIC OFFERING STATEMENT

B.0201 General Provisions

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

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

- (1) the real property type of the time share program, whether tenancy-in-common, condominium or other, and a description of the estate the purchaser will own, the term of that estate and the remainder interest, if any, once the term has expired;
- (2) the document creating the time share program, a statement that it is the document which governs

the program and a reference to the location where the purchaser may obtain or examine a copy of the document;

(3) whether or not the property is being converted to a time share from some other use and, if so, a statement to that effect and disclosure of the prior use of the property;

(4) the maximum number of time shares in the project, each recreational and other commonly used facility offered, and who or what will own each facility, if the project is to be completed in one development or construction phase;

(5) if the project is planned in phased construction or development, the complete plan of phased offerings, including the maximum number of time shares which may be in the project, each recreational and other commonly used facility, who or what will own each facility, and the developer's representations regarding his or her commitment to build out the project;

(6) the association of owners or other entity which will ultimately be responsible for managing the time share program, the first date or event when the entity will convene or commence to conduct business, each owner's voting right, if any, and whether and for how long the developer, as time share owner, will control the entity;

(7) the location where owners may inspect the articles and bylaws of the owners association, or other organizational documents of the entity and the books and records it produces;

(8) whether the entity has lien rights against time share owners for failure to pay assessments;

(9) whether or not the developer has entered into a management contract on behalf of the managing entity, the extent to which the managing entity's powers are delegated to the manager and the location where a copy of the management contract may be examined;

(10) whether or not the developer will pay assessments for time shares which it owns and a statement that the amount of assessments due the managing entity from owners will change over time, as circumstances may change;

(11) whether or not the developer sponsors or will sponsor a rental or resale program and, if so, a summary of the program or programs; and

(12) the developer's role at the project, if the developer is a separate entity from any other registered developer of the time share project.

(c) The inclusion of false or misleading statements in a public offering statement shall be grounds for disciplinary action by the Commission.

B.0202 Public Offering Statement Summary

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

PUBLIC OFFERING STATEMENT SUMMARY

NAME OF PROJECT:

NAME AND REAL ESTATE LICENSE NUMBER OF SALESPERSON:

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

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

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

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

NOTICE

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

B.0203 Receipt for Public Offering Statement

(a) Prior to the execution of any contract to purchase a time share, a time share developer or a time share salesperson shall obtain from the purchaser a written receipt for the public offering statement, which shall display, directly over the buyer signature line in type in all capital letters, no smaller than the largest type on the page on which it appears, the following statement: DO NOT SIGN THIS RECEIPT UNLESS YOU HAVE RECEIVED A COMPLETE COPY OF THE PUBLIC OFFERING STATEMENT TO TAKE WITH YOU.

(b) Receipts for public offering statements shall be maintained as part of the records of the sales transaction.

SECTION B.0300 CANCELLATION

B.0301 Proof of Cancellation

(a) The postmark date affixed to any written notice of a purchaser's intent to cancel his or her time share purchase shall be presumed by the Commission to be the date the notice was mailed to the developer. Evidence tending to rebut this presumption shall be admissible at a hearing before the Commission.

(b) Upon receipt of a purchaser's written notice of his or her intent to cancel his or her time share purchase, the developer, or his or her agent or representative, shall retain the notice and any enclosure, envelope or other cover in the developer's files at the project, and shall produce the file upon the Commission's request.

(c) When there is more than one registered developer at a time share project and a purchaser gives written notice of his or her intent to cancel his or her time share purchase that is received by a developer or sales staff other than the one from whom his or her time share was purchased, the developer or sales staff receiving such notice shall promptly deliver it to the proper developer who shall then honor the notice if it was timely sent by the purchaser.

SECTION B.0400 TIME SHARE SALES OPERATIONS

B.0401 Retention of Time Share Records

A time share developer and a time share salesperson shall retain or cause to be retained for a period of three years complete records of every time share sale, rental, or exchange transaction made by or on behalf of the developer. Records required to be retained shall include but not be limited to offers, applications and contracts to purchase, rent or exchange time shares; records of the deposit, maintenance and disbursement of funds required to be held in trust; receipts; notices of cancellation and their covers if mailed; records regarding compensation of sales-

persons; public offering statements; and any other records pertaining to time share transactions. Such records shall be made available to the Commission and its representatives upon request.

B.0402 Time Share Agency Agreements and Disclosure

Time share sales transactions conducted by licensees on behalf of a time share developer are subject to 21 NCAC 58A .0104.

SECTION B.0500 HANDLING AND ACCOUNTING OF FUNDS

B.0501 Time Share Trust Funds

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

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

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

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

SECTION B.0600 PROJECT BROKER

B.0601 Designation of Project Broker

The developer of a registered time share project shall designate for each project subject to the developer's control a project broker by filing with the Commission an affidavit on the form prescribed. The developer may from time to time change the designated project broker by filing a new designation form with the Commission within ten days following the change. A broker licensed under the provisions of Section .1800 of Subchapter 58A shall not be designated as a project broker.

B.0602 Duties of the Project Broker

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

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

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

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

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

SECTION B.0700— TIME SHARE FORMS

B.0701 Forms for Time Share Projects

B.0701 is not reprinted in this booklet but is available upon written request to the North Carolina Real Estate Commission.

Subchapter 58C Real Estate Prelicensing Education

Rules for Subchapter 58C are not reprinted in this booklet but are available upon written request to the North Carolina Real Estate Commission.

Subchapter 58D Real Estate Appraisers (Repealed)

Subchapter 58E Real Estate Continuing Education

Rules for Subchapter 58E are not reprinted in this booklet but are available upon written request to the North Carolina Real Estate Commission.