Appendix A

North Carolina Real Estate License Law & Commission Rules
Requirement for a License GS 93A-1 & 2

License required for any person or business entity, who for compensation; Lists, Leases, Buys, Exchanges, Auctions, Negotiates, or Sells real property, for others for compensation.

LL BEANS
North Carolina Time Share Act

• **License Required**

A real estate license is **REQUIRED** to sell Time Shares. (93A-40)

**REMINDER**
Exemptions / **NOT** Requiring a License

A license is **NOT** required if business is leasing or selling their **OWN** real property; i.e., apartments, FSBO.

Business Entity exemption **NO LICENSE**!

G.S. 93A-2(c) - 1
A license is **NOT** required

- Attorney practicing law
- Appraiser
- Mortgage bankers / brokers
- Trustee in bankruptcy
- Guardian, Executor, etc.

**Exemptions**
G.S. 93A-2(c) – 2,3,4,5,6,7,8
Exemptions / **NOT** Requiring a License

- A license is **NOT** required for
  - Business entity selling / leasing their own property
  - The mere “Crier” of sales at an auction
    - *(The auction company requires a license & BIC)*
  - Person acting as attorney-in-fact under a Power of Attorney
  - Attorney at Law, trustee, housing authority, etc.

Exemptions

G.S. 93A-2(C) 1 - 8
Activities of **UNLICENSED** Employees

**UNLICENSED** salaried employees & assistants **MAY NOT**;

- May **NOT** show real property “**for sale**”
- May NOT “**negotiate**” any contract including sales, employment, or management contracts
- May NOT Offer opinions, advice, explanations, or interpretations
Activities of UNLICENSED Employees

UNLICENSED salaried employees & assistants MAY;

- MAY type (fill in the blanks), of offers, leases and other documents from broker-prepared drafts.

- If working in property management, may show rental units and complete preprinted lease forms.

Permitted Activities
G.S. 93A-2(b) – 10 & 11
License Categories & Status

- Only one “type” of license = **Broker** license.
  - Broker Synonyms: agent, licensee, broker associate, salesperson
  - All agents are NOT Realtor® members

- Additional license “status” or categories:
  - Provisional Broker
  - Broker
  - Broker-in-Charge
  - Broker-in-Charge eligible
  - Limited Nonresident Commercial Broker

G.S. 93A-2
• **Provisional Broker (status)**
  
  – Completed 75 hour class & passed State exam.
  – Requires **90** additional hours Postlicense education
  
  – Complete three 30-hour courses within 18 months to remain on active status; taken in any order:
    
    – Contracts and Closings course
    – Brokerage Relationships course
    – NC Law, Rules and Legal Concepts
  
  – May *complete* all three courses immediately upon license issuance.
License Categories & Status

- **Provisional Broker (status) continued**
  - May **NOT** operate independently
  - MUST be supervised by Broker-in-Charge (BIC)
  - May **NOT** receive compensation from ANYONE other than supervising broker
  - Initial license is “**inactive**” – **must** be activated by a BIC
  - Completion of 90 hour postlicense education *automatically* removes **Provisional “status”**
License Categories & Status

- **Broker (status)**
  - Completed 75 hour class & passed State exam
  - Satisfied all post license education requirements
  - May elect to operate independently as a sole proprietor
    - **NO** advertising as a non-BIC sole proprietor
    - **NO** Trust Account as a non-BIC sole proprietor
  - May qualify and elect to self-designate as a Broker in Charge (BIC)
License Categories & Status

- **Broker (status)** - continued

  - An individual broker practicing alone **MUST** declare as a BIC if;
    - Hiring staff (licensed or not)
    - Holding Trust Funds
    - Promoting brokerage services, including oral solicitation of brokerage clients and providing business cards
License Categories & Status

• **Broker-in-Charge (BIC) (status)**
  - Completed 75 hour class & passed State exam
  - Satisfied all post license education requirements
  - **NOT** a Provisional Broker
  - License on “active” status
  - Two-years full-time ACTUAL brokerage experience
  - Must complete 12 hour BIC course within 120 days
License Categories & Status

- **Limited Nonresident Commercial Broker (status)**
  - Resides outside of NC
  - MUST enter (affiliate) into a “declaration of affiliation” AND a “Brokerage Cooperation Agreement” with a resident NC Broker (NOT on PB status)
  - MAY conduct commercial real estate brokerage activity in NC
• **Broker-in-Charge “Eligible” (status)**
  - BIC must maintain license on active status and take the Broker-in-Charge Mandatory Update (BICUP) and any approved Elective Course.
Licensing of Business Entities

- Business entities; corporations, partnerships, LLC, etc., (NOT sole proprietors) must obtain a separate “firm” license
Active, Inactive, Expired license

- **Active** license

  - May be used to engage in brokerage activities
  - MUST have "active" license to receive compensation of commissions and "referral" fees
  - MAY NOT COLLECT REFERAL FEE(S) WITH INACTIVE LICENSE "IF" REFERRAL WAS MADE AFTER LICENSE BECAME INACTIVE.
**Active, Inactive, Expired license**

- **Inactive** license
  - A current license, but cannot engage in ANY brokerage or marketing activities

- **Example:**
  - Paid $45 annual renewal fee (must PAY to maintain an “inactive” license)
  - FAILED to complete continuing education requirements

  - NO marketing of any kind, to include handing out business cards, with **inactive** license
Active, Inactive, Expired license

- **Expired** license

- **NO license**

- **Example:**
  - FAILED to pay renewal fee on or before June 30
  - (Note: all licenses expire at midnight **June 30**)

58A.0503
• License Expiration and Renewal
NCREC Rule A.0503

− All real estate licenses expire at midnight on June 30 each year.
− Payment MUST be received no later than June 30.
− Payment is made at www.ncrec.gov
General License Provisions

- **License Expiration and Renewal**
  NCREC Rule A.0503
  - Paying renewal fee keeps license on “current” status
  - Annual renewal fee also required to maintain an “inactive” license
  - Licensees who fail to pay renewal fee will have their license placed on “expired” status
  - Payment is made at www.ncrec.gov
Prohibited Acts

• License

GS 93A-6(b) - 1

– A license may be Suspended or Revoked if obtained by false or fraudulent representation

Example: Falsifying documentation or failing to disclose prior criminal convictions
The Real Estate Commission

- **Purpose**: To protect the **public** in dealings with real estate
The Real Estate Commission

- Composed of nine members
  - three members must be brokers
  - two members cannot be involved in real estate

- Seven appointed by the Governor
- One by Speaker of the House
- One by President Pro-Tem of Senate
The Real Estate Commission

• Powers
  - License real estate brokers
  - Approve real estate schools and instructors
  - Educate & inform the public and brokers
  - Regulate real estate business activities
The Real Estate Commission

- **Disciplinary Authority of the NCREC**
  - **Censure.** To express severe disapproval of someone or something, in an official formal statement.
  - **Reprimand.** An official scolding by formal statement.
  - **Suspend License.** License *temporarily* withdrawn and reissued after a period of time prescribed by the NCREC.
  - **Revoke License.** To call back or rescind license.
  - NCREC can **NOT** fine licensees or “mandate” reimbursements to consumers for losses incurred.
General License Provisions

- **Proof of License** NCREC Rule A.0101(a)-(d)
  
  - All *licensees* must physically carry their pocket card (license) while engaging in any brokerage activity.
  
  - Must produce the card upon request; including entry to education courses.
  
  - Every real estate *entity* or *firm* must display its license certificate in each office.
General License Provisions

• **Change of Name or Address**

  NCREC Rule A.0103

  - All **licensees** must notify the Commission in writing of each change of business address, personal name, or trade name within **10 days** of the change.
General License Provisions

- Reporting Criminal “Convictions”
  NCREC Rule A.0113
  - All licensees who have been “convicted” of any felony or misdemeanor must notify the Commission in writing within 60 days of the conviction.
  - Driving While Impaired is a criminal conviction.
  - All licensees who receive disciplinary action from any other occupational licensing board must notify the Commission within 60 days of the action.
General License Provisions

• **Continuing Education (CE) Requirements**

  NCREC Rule A.1700

  - Active brokers **MUST** complete eight hours of CE each year no later than **June 10**

  - Provisional Broker CE requirements begin the SECOND license renewal period

  - MUST complete a 4 hour General Update (GenUp) course and a 4 hour elective course
General License Provisions

- **License Deadlines**

  - June
    - CE: 11th
    - Renew: 29th

  --- | --- | --- | --- | --- | --- | ---
  5   | 6   | 7   | 8   | 9   | 10  | 11
  12  | 13  | 14  | 15  | 16  | 17  | 18
  19  | 20  | 21  | 22  | 23  | 24  | 25
  26  | 27  | 28  | 29  | 30  | Notes:
Agency Disclosure Requirement

➢ EVERY **SALES** transaction

➢ FIRST substantial contact

➢ PRIOR to disclosure of confidential information

➢ Signature NOT required

➢ MUST maintain panel for 3 years

➢ Does **NOT** create agency relation
Seller subagency; disclose in brochure!

Broker exclusively represents the seller in a transaction

Advantage. Loyalty to 1 – selling “client.”

Buyer Agency

Buyer agency

Broker exclusively represents the buyer in a transaction

- May be oral; **MUST** be reduced to writing **BEFORE** presentation of offer.
- If oral agreement; agent can NOT restrict the buyer’s right to work with other agents OR to bind buyer for a specified time period.
Consent to Dual Agency

**Disclosed dual agency**
- Intentionally created
- In-house transactions only
- **Informed consent** of both parties, *written prior to presentation of first offer*

Client #1  <--- Agent(cy)  ---> Client #2
Designated Agency

- In-house transactions only
- Need written company policy
- Informed written consent of both parties
- BIC appoints different agents to exclusively represent different principals
- PB can NOT be designated opposite BIC
Undisclosed Dual Agency - Prohibited

- Real estate agents acting for more than one Party in a transaction without consent of all Parties = *Undisclosed Dual Agency* and is prohibited by law.
Prohibited Conduct

- Willful misrepresentation
- Negligent misrepresentation
- Willful omission
- Negligent omission
Prohibited Conduct

Willful Misrepresentation

Licensee has “actual knowledge” of a material fact and “deliberately” misinforms buyer, seller, tenant, landlord concerning such a fact.
Prohibited Conduct

Willful Misrepresentation

Example: Agent knows the heat pump at a listed house does not function properly but tells a customer or client that all mechanical systems are in good condition.

GUILTY: willful misrepresentation.
Prohibited Conduct

Negligent Misrepresentation

Licensee “unintentionally” misinforms a customer or client concerning a material fact because the agent does not know, or has incorrect information, or made a mistake.
Negligent Misrepresentation

Example: Listing Agent records incorrect information in the MLS. Buyer’s representative provides MLS sheet to prospective buyer.

GUILTY: “Listing Agent” for providing negligent information.
Prohibited Conduct

Willful Omission

Licensee has “actual knowledge” of a material fact AND duty to disclose such fact, but “deliberately” fails to disclose.
Prohibited Conduct

Willful Omission

Example: Agent “knows” a zoning change, highway, etc., that would significantly enhance OR adversely affect the value, but fails to disclose to buyer.

GUILTY: willful omission
Negligent Omission

Licensee does NOT have knowledge of a material fact and does NOT disclose the fact; BUT reasonably should have known the fact.
Negligent Omission

Seller informs listing agent of roof leak. Listing agent forgets and fails to disclose leaking roof in MLS.

GUILTY: negligent omission.
• Properties branded by society as undesirable
• Site of criminal activity or event, death of occupant or owner, or AIDS / HIV

**Not a material fact by North Carolina law**
• By NC state law, the presence of a sex offender is **NOT** a material fact

• Licensee *may* voluntarily disclose or advise consumer to visit registry
  – (*Verify company policy at real estate firm)
Licensees are prohibited from making false promises likely to influence, persuade, or induce.

**Example:** Agent “promises” a prospect an apartment will be painted prior to occupancy and fails to have the work completed.

**GUILTY:** Making false promises
• Broker’s must follow license law at all times when representing the broker’s own interests and those of the public.
Brokers are prohibited from paying an “unlicensed” person for acts which require a real estate license.

**Example**: Payment by licensee of a “finder’s fee,” “referral fee,” “bird dog fee,” or other valuable consideration.
• Being **Unworthy** or **Incompetent** to act as a real estate agent in a manner as to endanger the interest of the public.

**Example**: Failure to properly (fill in) the blanks of real estate contracts or to use contract forms which are legally adequate.
• Conduct constituting improper, fraudulent, or dishonest dealing.

Example: Breach of agent’s duty to exercise *skill, care, or diligence* in behalf of a client.
Discriminatory Practices

- Violations of the NC State Fair Housing Act is “improper conduct” and a violation of license law.
Practice of Law - Prohibited

- Licensees may **not** perform legal services.

**Example:** “**DRAFTING**” deeds, deeds of trust, leases, contracts, etc., for others.

Licensees **MAY** fill in the blanks of approved preprinted real estate forms.
Advertising

- Licensees may **NOT** advertise or display a “for sale” or “for rent” sign on a property without *written* consent of the owner(s).

- *Provisional Broker’s* may **NOT** advertise *ANY* brokerage service(s) without consent of the BIC.

- Blinds Ad’s are prohibited.
• Agents **MUST** immediately, but in no event later than five days from the date of execution, deliver copies of any agency agreement, contract, offer, lease or option affecting real property.
• A broker shall **NOT** disclose **price or material terms** contained in a party’s offer to purchase, sell, lease, rent, or to option real property to a compelling party **without express authority of the offering party**.

**58A.0115**
Retirement of Records

- Brokers are **required** to retain records for brokerage transactions for **three years** from the **successful or unsuccessful** conclusion of transaction.
Disclosure to Principal of Compensation from a Vendor

Licensee’s are prohibited from receiving any form of valuable consideration from a vendor or supplier of goods without FIRST obtaining written consent of Principal.

Example: property manager receives a kick back from the cleaning company for every unit cleaned.
Disclosure to Party of Compensation for Recommending Services

Licensees are prohibited from receiving any form of valuable consideration for recommending, procuring or arranging for services without FULL disclosure to such party.

Examples: mortgage company referral fees.
Disclosure to a Principal of Compensation for Brokerage Services

Broker may NOT receive ANY compensation, incentive, bonus, rebate, etc., unless the compensation is provided for in the written agency contract.

Example: **Selling Bonus $$$$**

* Not required to disclose a *nominal* gift.
Broker must disclose in writing to principal ANY possible builder’s incentive for selling agents with regard to a property being shown to the buyer.

Examples: *Bonus* $ at closing, vacation trips.

* Not required to disclose a nominal gift.
Disclosure to a Principal of Compensation for Brokerage Services

**NOMINAL** compensation (gifts);

The NC Real Estate Commission has cited $25 - $50 gifts as [nominal].
A licensee is **not** required to disclose compensation received from a Principal and is **NOT** required to disclose compensation received from the firm; i.e., individual share / split of the commission from the firm.
Licensees are prohibited from drafting legal instruments;

Example: contracts, deeds, deeds of trust, etc.

Example: Can NOT draft additional provisions for a standard form contract or lease.
Licensees MAY utilize ANY pre-printed sales contract form for consumer use that meets the criteria enumerated in Rule 58A.0112.
...at the time of the sales transaction is consummated, to deliver to the client a detailed and accurate closing statement showing the receipt and disbursement of all monies...*which the broker knows or reasonably should know.***
PROPERTY TAXES

General Ad valorem tax

Machinery Act governs;

Ad valorem value = market value

Taxing bodies (county, city, town) levy taxes

Jan 1; tax lien attaches to property
SPECIAL ASSESSMENTS

Levied by the taxing body

Superior lien to ALL other liens
EXCEPT ad valorem tax liens
EXCISE TAX

PAID BY THE SELLER

Rate is $1 per $500 of consideration
Calculated on the Purchase Price!
e.g., 265,400 (PP) / 500 = 530.80
ROUND UP! $531.00
Attorney Supervised Closings

Settlement Meeting Method = “attorney” supervised closings
NC Good Funds Settlement Act

Deed & deed of Trust MUST be recorded in order to disperse funds (including broker real estate commissions).
“...at the time a sales transaction is consummated, to deliver to the broker’s client a detailed and accurate closing statement showing the receipt and disbursement of all monies relating to the transaction about which the broker knows or reasonably should know.”
RESIDENTIAL EVICTION REMEDIES

- **Landlord**
  - **Summary Ejectment.** A hearing before a magistrate. (example: past due rent)
  - **Retaliatory Eviction.** *Illegal* for Landlord to evict Tenant who requests repairs, etc.

- **Tenant**
  - **Constructive Eviction.** Cancel lease with notice & vacate due to habitability requirements
  - Tenant may NOT legally withhold rent while in possession of the rental unit
Rapid Fire!

The North Carolina Real Estate Commission may, after a hearing take disciplinary action against a NC licensee who has

I. Violated any of the provisions of the NC license law.

II. Been disciplined by the South Carolina Real Estate Commission.
Rapid Fire!

A real estate license must be renewed no later than every

A. Anniversary of licensure
B. June 10
C. December 31
D. June 30
In North Carolina, all real estate brokers must

A. maintain a trust account
B. belong to the local Board of Realtors
C. complete continuing education each year in order to keep the license current
D. include their firm’s name in advertisements of a client’s property
How many days does a Provisional Broker have to deposit earnest money?

A. no later than 3 banking days from receipt
B. no later than 3 banking days from contract acceptance
C. No later than 5 business days excluding national holidays
D. None Provisional Brokers do not deposit Trust Funds.
Student Homework – Appendix A

- STUDY!!!! pages 707 – 728
- **Key Point Review pages 729 – 736**
  - This is a AWESOME review section!
- **Student State Quiz pages 737 – 740**
  - These are AWESOME quiz questions!