

SECTION THREE

LAW & RULE UPDATES



1. Jacqueline was a broker until June 30, 2014, when she decided not to pay the renewal fee since she was moving out of state and not planning to return. Her license expired. To her surprise, Jacqueline finds herself moving back to North Carolina in November, 2017. She wants to get back in the brokerage business. What steps will Jacqueline have to take to reinstate her license? _____

2. Is your real estate website ADA compliant? ____ Should it be? _____
3. Can I use the drone that I bought my children as a holiday toy to take aerial views of my new listing? _____

Learning Objectives

After completing this Section you should be able to:

- describe updates to License Law and Commission rules;
- explain proposed changes to disclosure requirements under TRID;
- point out basic components of ADA-compliant websites; and
- differentiate between recreational and commercial use of drones.

Changes in State Laws

Real Estate License Law [GS 93A-4]

Effective July 1, 2017, the following fees are prescribed by **License Law**:

- 1) The fee to *apply* for a broker or firm license is \$100. The Commission may increase the application fee no more than \$5 per year up to a maximum cap of \$120.
- 2) The fee to *reinstate* a broker or firm license following expiration is twice the amount of the renewal fee. Because the renewal fee is \$45, the reinstatement fee is \$90 ($\$45 \times 2 = \90).

Revised Commission Rules

While many of the rules in Chapter 58A were reviewed and some slightly revised, only the changes that impact brokers will be summarized here.

Also, the Commission has revised and merged all rules pertaining to real estate education providers [schools, sponsors, and instructors of prelicensing, postlicensing, and continuing education] from two chapters into one comprehensive chapter. However, the revised education rules will not be reviewed here, given their limited impact on brokers. All new education rules are now in Chapter 58H.

All revised and new rules may be viewed on the Commission's website.

Rule 58A .0101: Proof of Licensure

Brokers must carry a "legible form" of their pocket card when engaging in brokerage activity.

A *digital version of your pocket card is now available* and may be downloaded on your favorite smart device from the Commission's website.

As of July 1, 2017, the Commission no longer issues paper pocket cards unless specifically requested by a licensee. You can print a copy of your pocket card at any time at the Commission's website at no charge. It will cost you \$5.00 if you prefer that the Commission print and mail you a pocket card.



If I save a copy of my digital pocket card on my smart phone (or other device that I keep with me at all times), do I have to carry a paper version, too?

No. Carrying a digital version is sufficient.

Rule 58A .0103: Broker Name and Address

- A broker notifying the Commission of a change in legal name, or the legal name of an entity, shall provide evidence of the name change with the notice, such as a court order or, for an entity, a name change amendment filed with the NC SOS.

NOTE: if the legal name of a licensed person or an entity changes, a new wall license and pocket card must be issued in the licensee's new legal name.

- A broker may not include the name of another current or former broker in the broker's business name without the consent of the other broker or that broker's authorized representative.

Rule 58A .0302: License Application and Fee

This rule was revised to increase the license application fee to \$100 for both brokers and firms in accordance with the changes in License Law previously discussed.

Also, applicants must notify the Commission if any information in the application changes.

Rule 58A .0304: Waiver of 75-hour Prelicensing Education Requirement

This amended rule defines criteria for request for waiver of the 75-hour NC Broker Prelicensing Course. The Rule states:

The Commission shall grant a waiver of the 75-hour education program pursuant to G.S. 93A-4(a) if an applicant submits:

- (1) an application pursuant to Rule .0301 of this Section;
- (2) a written request for a waiver of the 75-hour education program;

and either

(3) a transcript and copy of a baccalaureate or higher degree in the field of real estate, real estate brokerage, real estate finance, real estate development, or a law degree conferred on the applicant from any college or university accredited by a college accrediting body recognized by the U. S. Department of Education;

or

- (4) a course completion certificate or transcript evidencing the completion of a prelicensing education program in another state that:
 - (a) consisted of at least 75 hours of instruction;
 - (b) was completed within one year prior to license application while the applicant was a resident of said state; and
 - (c) is parallel to the topics and timings described in the Commission's Prelicensing course syllabus.

Thus, an applicant must provide evidence of completion of approved education with the application for licensure.

Rule 58A .0502: Firm Licensing

When an entity applies for a firm license, it must disclose in the application the name of the federally insured depository institution where the entity's trust accounts will be held, if applicable.

Rule 58A .0503: License Renewal

The rule continues to require licensees to renew their license online and to provide an email address for the Commission's use (which the licensee may designate as "private").

Online renewal is the quickest, safest, and most effective way to renew your license and allows a licensee to confirm or update the information the Commission has about him/her.

The change effective July 1, 2017, is that a *designated broker-in-charge must also disclose*, if applicable:

- 1) the name of each federally insured depository institution where the broker's trust accounts are maintained; and
- 2) any criminal convictions or occupational license disciplinary actions imposed within the previous year.

Rule 58A .0505: Reinstatement of a License

The annual license renewal fee must be *received* by the Commission by 11:59:59 pm on June 30. Otherwise, the former licensee will no longer have a license as of 12:01a.m. on July 1 and must immediately cease all brokerage activity until his/her license has been reinstated and is back on "active" status.

You may reinstate an expired license **for the first six (6) months of expiration (July 1-December 31)** by paying the reinstatement fee online on the Commission's website. As of July 1, 2017, the reinstatement fee is \$90.

If your license has been expired, revoked, or surrendered for more than six (6) months and no more than two (2) years, you must submit a reinstatement application complete with the \$90 reinstatement fee and criminal background report [and license certification from the licensing agency in any state in which you are currently licensed] and either:

- complete one 30-hour Postlicensing course within six (6) months prior to application
OR
- take and pass the license examination within 180 days after application.

If your license has been expired, revoked, or surrendered for more than two (2) years, then you are subject to all requirements of a brand new license applicant, which means you must ...

- complete prelicensing education;
- submit an application with the \$100 application fee and criminal background report [and license history from the licensing agency in any state in which you are currently licensed]; and
- pass both the National and State sections of the license examination.

NOTE: For a detailed explanation of the reinstatement process and requirements, visit the "Reinstate your License" page on the Commission's website (www.ncrec.gov) or call the Commission office and ask to speak with a Licensing Specialist (919.875.3700).

Rule 58A .1905: Waiver of 90-Hour Postlicensing Education Requirement

This new rule defines criteria to request a waiver of one or more of the three 30-hour Postlicensing courses. The Rule states that the request for waiver may be made based on:

- 1) equivalent education that is parallel to the topics and timings described in the Commission's Postlicensing course syllabi; or
- 2) full time experience as a licensed salesperson or broker in another state for at least five (5) of the seven (7) years immediately preceding the waiver request; or
- 3) full time experience as an attorney practicing primarily in real estate for two (2) years immediately preceding the waiver request.

Education or experience obtained in violation of any law or rule won't be considered towards the waiver requirements.

Federal Law and Regulations Updates

Consumer Financial Protection Bureau (CFPB)

Shortly after TRID was implemented in October 2015, brokers began complaining that lenders and settlement agents would not permit them to see copies of sellers' or buyers' Closing Disclosures. While the Closing Disclosure technically is not a "settlement statement," many brokers initially viewed it as replacing the HUD-1 in RESPA transactions. Many states require brokers to provide, or at least review, comprehensive settlement statements reflecting all monies received and disbursed in relation to their clients' transactions.

The seller's Closing Disclosure only reflects monies due and expenses charged to the seller. Pages 2 and 3 of the buyer's Closing Disclosure detail all monies received, all expenses paid, and by whom (similar to the HUD-1 format), but pages 1, 4, and 5 contain personal information about the buyer's loan. Lenders initially feared that releasing the buyer's personal information to anyone other than the settlement agent or buyer might violate the privacy aspects of the Gramm-Leach-Bliley Act (GLBA).

The CFPB has concluded that releasing closing disclosures to real estate brokers falls within an exception to the non-disclosure requirements of the GLBA.

CFPB Press Release – Proposed Rulemaking

Accordingly, the CFPB issued a press release on July 29, 2016, announcing proposed clarifying amendments to the TRID rule, including the release of Closing Disclosures to real estate brokers. The CFPB stated:

The Bureau understands that it is usual, accepted, and appropriate for creditors and settlement agents to provide a closing disclosure to consumers, sellers, and their real estate brokers or other agents. The Bureau is proposing additional commentary to clarify how a creditor may provide separate disclosure forms to the consumer and the seller.

Public comment on the proposed rules closed in late fall of 2016, but the proposed rules were not finalized as of April 2017. Once finalized, they will be published in the Federal Register and may be found at www.consumerfinance.gov/policy-compliance/rulemaking/final-rules.

However, the complaints are fewer, and it appears that lenders, settlement agents/closing attorneys, consumers and real estate brokers may all agree that a real estate broker representing a buyer or seller should be permitted to see his/her client's closing disclosure. *Even if a broker is denied the opportunity to see/review the closing disclosure, there still should be some comprehensive settlement statement that details all monies received and disbursed related to that transaction that the broker must review.*

Broker Obligations



What is a broker's obligation for the settlement statement under License Law?

License Law [G.S. 93A-6(a)(14)] states that a broker may be disciplined for failing to deliver to the broker's client at the consummation of a sales transaction:

...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. If a closing statement is prepared by an attorney or lawful settlement agent, a broker may rely on the delivery of that statement, but the broker must review the statement for accuracy and notify all parties to the closing of any errors. [Emphasis added.]

What must a broker review when the settlement statement is prepared by the closing attorney or a "lawful settlement agent" *other than* the broker? A broker must confirm the accuracy of all **entries about which s/he has direct knowledge**. Such items include, but may not be limited to:

- 1) the sale price;
- 2) amount of the due diligence fee and earnest money deposit;
- 3) amount of the brokerage commission and split; and
- 4) any amounts due either party under the offer to purchase and contract, e.g., closing costs paid by seller, as well as any sums paid by or due to third parties related to the transaction, if the broker knows or should know about the expense.

As to amounts paid by or due to third parties, brokers generally may assume that the amounts or charges and fees as stated on the settlement statement are correct *unless* there is something that would lead a reasonable broker to suspect that an amount is incorrect. As to all debits and credits related to the transaction, whether paid before or at closing, the broker must:

- 1) review and confirm that all charges and credits have been properly debited or credited to the seller or buyer and are entered in the correct column;
and
- 2) review and confirm the accuracy of the calculations for all prorated items, escrow reserves, interim interest, excise tax and the "bottom line figures," i.e., total settlement charges to each party, cash from borrower-buyer, and cash to seller.

If a broker is aware of *any expense* related to the transaction paid to or by either party or any third party that is not included on the settlement statement, the broker must notify both the settlement agent and the lender of the omission, as ***the settlement statement should reflect all expenses and payments related to the transaction***, not just monies the settlement agent disburses. Failure to notify the lender of any such expense or payment would be considered willful failure to disclose a material fact. Examples include not telling the lender that a friend loaned the buyer money for closing costs; or that the builder-seller is giving the buyer a \$200 gift card; or that the \$450 paid to the home inspector prior to closing was paid by the borrower's parents; or that the buyer's agent gave \$500 of his/her sales commission to the buyer. Understand that none of the foregoing acts are illegal ***as long as they are disclosed to and approved by the lender and*** appear in the proper column on the settlement statement/Closing Disclosure. If the lender doesn't approve a payment, then the borrower/buyer may not accept it.

A broker should notify the settlement agent if the broker believes there are any errors or omissions on the disclosure statement.

Websites and ADA Compliance

Whether the Americans with Disabilities Act (ADA) applies to websites used for business purposes is unclear. Under the ADA, a "*place of public accommodation*" is a business that is open to the public, including retail stores, which most likely includes real estate companies since they are marketing and providing services and goods. The question, however, is ***whether a retail website is a "place of public accommodation."***

Three federal circuit courts (the Third, Ninth, and Eleventh) have held that the ADA only applies to websites that have a connection to goods and services available at a physical location, while three other federal circuit courts (the First, Second, and Seventh) have ruled that the ADA applies more broadly to any website that offers the direct sale of goods and services, even if not connected to any physical space.

In 2010, the United States Department of Justice (DOJ) published "*ADA Standards for Accessible Design*" that covered design requirements for physical spaces, though some are now trying to apply it to websites, arguing that disabled individuals should have the same level of accessibility to online services as the law requires for offline services. In July 2010, the DOJ also announced proposed rule-making on website accessibility issues and invited public comment which closed in January 2011, but the long-awaited rules still have not been published. **The current target date for DOJ rules concerning ADA compliance and website accessibility is now 2018.**

Most commentators recommend that businesses begin their due diligence now to determine what they must do to make their websites ADA compliant, as it seems likely that the DOJ will decide that the ADA applies to business websites.

Guidelines for Website Development

Accessible websites are those that allow individuals to use a special browser or special device to translate or to access the information on the website in an understandable manner.

Lesley Walker explained in RealtorMag©:

“An accessible website allows adaptive software and specialized browsers used by persons with disabilities to augment content and make it easier to consume. For example, these programs might add text descriptions to complex graphics, voice-overs that read text aloud, or transcripts of videos. Accessible websites allow the specialized programs and browsers to easily interact with a website in order to improve and help maximize a person’s experience on the site, obtaining the site’s information in a format that takes their disability into account.” Read more at <http://realtormag.realtor.org/technology/feature/article/2016/04/your-website-ada-compliant>.

There are no federal regulations or guidelines at present regarding ADA-compliant websites. An organization known as the World Wide Web Consortium (W3C) has published voluntary guidelines titled *Web Content Accessibility Guidelines (WCAG) 2.0* that are well-recognized and cited by many authorities. The outline for *Web Content Accessibility Guidelines (WCAG) 2.0* is as follows:

1: Perceivable

- 1.1: Provide text alternatives for any non-text content so that it can be changed into other forms people need, such as large print, braille, speech, symbols or simpler language.
- 1.2: Provide alternatives for time-based media.
- 1.3: Create content that can be presented in different ways (for example, simpler layout) without losing information or structure.
- 1.4: Make it easier for users to see and hear content including separating foreground from background.

2: Operable

- 2.1: Make all functionality available from a keyboard.
- 2.2: Provide users enough time to read and use content.
- 2.3: Do not design content in a way that is known to cause seizures.
- 2.4: Provide ways to help users navigate, find content, and determine where they are.

3: Understandable

- 3.1: Make text content readable and understandable.
- 3.2: Make Web pages appear and operate in predictable ways.
- 3.3: Help users avoid and correct mistakes.

4: Robust

- 4.1: Maximize compatibility with current and future user agents, including assistive technologies.

To review the guidelines in their entirety, go to: <https://www.w3.org/TR/WCAG20/>.

Other resources include:

<https://www.vieodesign.com/blog/what-is-ada-website-compliance>

<http://www.employerlawreport.com/2015/12/articles/eeo/website-accessibility-regulations-delayed-until-2018-but-businesses-should-not-table-the-issue-until-then/>

<https://www.business.com/articles/is-your-website-ada-compliant-how-to-check-and-how-it-affects-your-business/>

<https://www.ada.gov/pcatookit/chap5toolkit.htm> This link discusses ADA website accessibility requirements for local and state government websites that the DOJ has enacted under Title II of the ADA. Title III of the ADA applies to private entities and those rules are still being developed.

<http://www.natlawreview.com/print/article/your-website-ada-compliant>

Unmanned Aerial Systems, a.k.a. Drones

Unmanned Aerial Systems (UAS), commonly referred to as drones, are becoming increasingly popular, whether for personal use as high-tech toys or for commercial use. Using drones to record or photograph a property the broker is marketing has become more common, but brokers must be aware of federal and state laws governing the use of drones.

The Federal Aviation Administration (FAA) has enacted rules regulating drone use for recreational purposes versus commercial purposes. These rules and many helpful tools may be found on the FAA’s website at <https://www.faa.gov/uas/>.

The table below may be found at https://www.faa.gov/uas/getting_started/.

Getting Started

The rules for operating an unmanned aircraft depend on why you want to fly.

The rules for operating an unmanned aircraft		
	<u>Fly for Fun</u>	<u>Fly for Work</u>
Pilot Requirements	No pilot requirements	Must have Remote Pilot Airman Certificate Must be 16 years old Must pass TSA vetting
Aircraft Requirements	Must be registered if over 0.55 lbs.	Must be less than 55 lbs. Must be registered if over 0.55 lbs. (online) Must undergo pre-flight check to ensure UAS is in condition for safe operation
Location Requirements	5 miles from airports without prior notification to airport and air traffic control	Class G airspace*
Operating Rules	Must ALWAYS yield right of way to manned aircraft Must keep the aircraft in sight (visual line-of-sight) UAS must be under 55 lbs. Must follow community-based safety guidelines Must notify airport and air traffic control tower before flying within 5 miles of an airport	Must keep the aircraft in sight (visual line-of-sight)* Must fly under 400 feet* Must fly during the day* Must fly at or below 100 mph* Must yield right of way to manned aircraft* Must NOT fly over people* Must NOT fly from a moving vehicle*
Example Applications	Educational or recreational flying only	Flying for commercial use (e.g. providing aerial surveying or photography services) Flying incidental to a business (e.g. doing roof inspections or real estate photography)
Legal or Regulatory Basis	Public Law 112-95, Section 336 – <i>Special Rule for Model Aircraft</i> FAA Interpretation of the Special Rule for Model Aircraft	Title 14 of the Code of Federal Regulation (14 CFR) Part 107

*These rules are subject to waiver.

What does this mean for North Carolina brokers?

Recreational drone users must register with the FAA but are **not** required to register with the NC Department of Transportation (NCDOT). Commercial drone users must register with both the FAA and NCDOT. The NCDOT website is <https://www.ncdot.gov/aviation/UAS/>.

NOTE: The registration and use requirements for a drone for recreational purposes are much simpler than the requirements when a drone is used for commercial purposes. A frequently used example is a broker who has a drone for personal, recreational purposes only, but who then agrees to photograph his neighbor's house for a modest fee so the neighbor can use the photos to market his/her property *For Sale by Owner*. That broker just moved from the "Fly for Fun" to the "Fly for Work" category and should possess the required credentials before photographing his neighbor's property.

As to the predicted use of drones in real estate brokerage, licensees are referred to an article in the November 2016 edition of *Insight* magazine (pp 18-21) titled "DRONES: the next frontier in real estate," which may be found at this link:

https://issuu.com/ncarinsight/docs/insight_q4november2016_7b5e31ec51e523/18?e=10873153/40085886

B4UFLY App

The FAA also has created a mobile app known as B4UFLY designed for recreational users (not commercial). According to the FAA's website:

The app is available for free download in the App Store for iOS and Google Play store for Android. B4UFLY is an easy-to-use smartphone app that helps unmanned aircraft operators determine whether there are any restrictions or requirements in effect at the location where they want to fly. Key features of the B4UFLY app include:

- A clear "status" indicator that immediately informs the operator about the current or planned location. For example, it shows flying in the Special Flight Rules Area around Washington, D.C. is prohibited.
- Information on the parameters that drive the status indicator.
- A "Planner Mode" for future flights in different locations.
- Informative, interactive maps with filtering options.
- Links to other FAA UAS resources and regulatory information.

See also B4UFLY General Questions and Answers at:

https://www.faa.gov/uas/where_to_fly/b4ufly/media/UAS_B4UFLY_QandA.pdf

ANSWERS TO DISCUSSION QUESTIONS

For Discussion on page 43

1. Jacqueline was a broker until June 30, 2014, when she decided not to pay the renewal fee since she was moving out of state and not planning to return. Her license expired. To her surprise, Jacqueline finds herself moving back to the state in November, 2017. She wants to get back in the brokerage business. What steps will Jacqueline have to take to reinstate her license?

Answer: Because Jacqueline's license has been expired for more than 2 years, she must complete the 75-hour NC Broker Prelicensing Course, submit an application for licensure (including \$100 app fee and criminal background report), and pass both the National and State portions of the license examination. Assuming no character issues prevent her licensure, Jacqueline's license will be reinstated as a broker license on provisional status, subject to the postlicensing education requirement.

2. Is your real estate website ADA compliant? Should it be?

Answer: Possibly. The law is yet unclear as to which websites must be ADA compliant. A prudent broker or firm would begin taking steps towards ADA compliance in anticipation of laws requiring it.

3. Can I use the drone that I bought my children as a holiday toy to take aerial views of my new listing?

Answer: Yes, but this type of use would likely be considered a "commercial use." As a result, you, as a "commercial" pilot, must first obtain require certification and pass the vetting process with TSA. Plus, you will be subject to more stringent operating rules.