

NC LAW, RULES, AND LEGAL CONCEPTS – POST 303 STUDY GUIDE

NC Broker Licensing

- When is an active NC Real Estate license required? **When any person or entity is performing brokerage activity for consideration as an agent for others.**
- What brokerage activities require a person or firm to have a NC Real Estate License? **listing, leasing, buying, exchanging, auctioning, negotiating, referring, selling (LLBEANRS). Also, selling time shares and advertising real property in any manner.**
- What activities DO NOT require a NC Real Estate License? **1. Business entities selling or leasing entity-owned real property (and their officers, partners, managers and W-2 employees); 2. Attorney in fact for consummation of contract performance (power of attorney); 3. Attorney at law performing practice of law; 4. Court appointed individuals; 5. Trustee (and their employees); 6. W-2 employees of Broker Property Manager; 7. Individual property owners selling or leasing personally owned property; 8. Housing authority selling or leasing property owned by the housing authority (and their employees).**
- Is there any exemption to the licensing requirement for engaging in a limited number of transactions or minimum amount of compensation received? **No**
- What are examples of permitted activities for an unlicensed assistant (or inactive licensee)? **Clerical and administrative functions such as scheduling appointments, computing commission checks for licensees, receiving and forwarding phone calls, assisting with assembling documents for closing, showing properties for lease, fill in the blanks on standard forms under the direction of and with information provided by a licensed broker, etc.**
- What are examples of activities that an unlicensed assistant (or inactive licensee) CANNOT perform? **conducting an open house, writing or creating promotional material, showing properties for sale, receiving compensation for referring a consumer to a real estate licensee, soliciting listings**
- What requirement does a Provisional Broker have to meet to activate their license to be able to lawfully engage in brokerage activities? **Be actively supervised by a designated broker-in-charge**
- What are the requirements to become BIC Eligible? **1. Active full broker license (non-provisional); 2. Two-years of full-time brokerage experience within previous 5 years; 3. Completion of 12-hour Broker-in-Charge course (no earlier than 1 year prior to request for BIC Eligible status or no later than 120 days after request for BIC Eligible status); 4. Request BIC Eligible status by completing and submitting form 2.25.**
- Can a Provisional Broker be a BIC or BIC Eligible? **No**
- If a Broker is BIC Eligible, do they ever have to become a designated BIC? **No**
- Does a Broker have to be a principal of a firm or sole proprietorship to be a BIC or BIC Eligible? **No**
- What are the responsibilities of a designated broker-in-charge? **ensure that affiliated brokers maintain active licensure, provide supervision for PBs, ensure compliance with agency agreement and disclosure rules, advertising of the firm and affiliated brokers, record retention including retaining all advertising used to market the listings of the BICs office, maintain the firm's trust account**
- When is a BIC required? **A BIC is required for each branch location/office of a firm that wants an active firm license and for a sole proprietorship that wishes to advertise themselves as a real estate broker.**
- What does a full broker need in order to affiliate with multiple firms (dually affiliate)? **Permission of the BICs at both firms. (Provisional brokers can only be dually affiliated with BICs of two different firms if both BICs are located at the same physical location and acting as co-listing or co-selling agents.)**

License Maintenance

- What are the postlicensing education requirements for Provisional Brokers? **Complete three 30-hour postlicensing classes within 18 months of the Broker's original license issuance date**
- What happens if a PB fails to complete postlicensing on time? **License will be placed on inactive status**
- What are the annual continuing education requirements? **For Provisional Brokers and Brokers: GENU and 4-hour elective by June 10; For BIC Eligible Brokers and Designated BICs: BICUP and 4-hour elective by June 10.**
- What happens if CE is not completed on time? **The broker's license will be placed on inactive status.**
- What happens if a broker's license is not renewed on time by June 30? **The broker's license expires and the broker must discontinue all brokerage activity immediately.**
- What happens when a Broker-in-Charge's license is not renewed on time? **The firm's license becomes inactive, full brokers affiliated with the BIC are still active but at their home address and PBs affiliated with the BIC become inactive.**
- When is a newly licensed provisional broker required to complete their first annual continuing education requirements? **after their first license renewal (before June 10 of the first full license year and before their second license renewal)**

Firm Licenses

- What are the requirements to obtain or be issued a Firm License? **authority from the NC Secretary of State to engage in business in NC, firm application (firm name on application must match entity's legal or trade name as registered with the Secretary of State), entity principals must satisfy character requirements, Qualifying Broker, BIC appointed to each physical location by QB**
- What is required to be a Qualifying Broker? **The QB must be a principal of the entity (general partner of a partnership, manager of an LLC or officer of a corporation) and be an actively licensed real estate broker.**
- Do all principals of the entity/firm have to have a real estate license? **No, just the QB must have an active full broker license in good standing.**
- Can unlicensed employees perform brokerage activity under the firm's license? **No**
- What are the responsibilities of a QB? **appoint brokers-in-charge for any branch office of the firm, renew the firm's license annually, notify the commission within 10 days of any change in the status of the firm's QB, retain the firm's pocket card, secure transactional and trust account records when the BIC changes**
- Must the QB also be the BIC of the firm's principal office? **No**
- How often does the QB renew the firm's license? **Every year between May 15 and June 30**

NC Limited Non-Resident Commercial License

- What is a Limited Non-Resident (LNR) Commercial License? **A license that allows a person from another state to enter NC for the purpose of engaging in commercial brokerage.**
- What are the requirements to obtain a Limited Non-Resident (LNR) Commercial License? **Must be a non-resident of NC, have an active real estate license in a qualifying state (the license can be similar to a NC broker's license or salesperson license if properly supervised) and must be an individual (cannot be a business entity/firm/company)**
- What documents are requirement before the LNR licensee can enter NC to engage in commercial brokerage? **Brokerage Cooperation Agreement and Declaration of Affiliation with a resident NC Broker**
- What limitations does a LNR Commercial License have? **Cannot broker land for development purposes.**
- How much commercial brokerage experience must the LNR licensee have to obtain this type of license? **None**

Teams

- What are some examples of types of team structures? **Voluntary cooperation between brokers with no entity/firm created, creation of a licensed entity/firm for the team with its own firm license, BIC and QB, entity created for compensation purposes only (no BIC required)**
- When does a team require a BIC? **When it becomes a firm with its own license and is advertising its team name**
- What must be shown in marketing materials and in agency agreements when advertising a team entity? **Both the team's name and the name of the firm the team is associated with.**
- Can a provisional broker be on a team organized as an entity with a team BIC? **Yes. The PB can be dually affiliated with BICs of two different firms as long as both BICs are located at the same physical location and acting as co-listing or co-selling agents.**

Broker Compensation

- What must happen for a licensee to receive their commission for a transaction that closes after their license becomes inactive? **The brokerage activity must have been completed while the Broker's license was still current and active.**
- If a broker continues to act as an agent in a transaction after the broker's license has expired, can the broker be compensated? **No**
- What must happen for a licensee to receive their commission for a transaction that closes after they move to another company/firm? **Both companies must agree to the payment of the commission.**
- Can a provisional broker be paid for a listing that sells after he or she leaves one firm and goes to work for another firm? **Yes, as long as the PBs employment contract allows it, the PB may be directly paid a commission by his/her BIC at his/her previous firm.**
- Who can receive referral fees? **Actively licensed brokers**
- What must happen for a broker property manager to receive a payment/rebate from a third-party related to a service performed on behalf of a property owner? **Disclosure of the payment/rebate and written permission from the property owner.**
- What must happen before brokers share a commission? **Must have authorization from the seller.**
- Should brokers who are not members of the same MLS as the listing broker assume they will be paid the buyer agency fee listed in MLS? **No**
- What should non-MLS members/brokers do before extending an offer on behalf of a buyer? **Confirm whether the listing company will share compensation with the non-MLS broker and in what amount.**
- If the non-MLS member/broker is a REALTOR, must the listing firm cooperate with the broker and compensate them? **No**
- If a listing firm is willing to compensate a non-MLS member/broker buyer agent, what should the listing agent do? **Verify that the buyer agent has an active NC broker's license**
- What real estate brokerage activities may an unlicensed assistant perform? **None**

NC Commercial Real Estate Broker Lien

- Who may place a lien for their commission on commercial property? **The listing Broker**
- Who may not place a lien for their commission on commercial property? **The selling (buyers) Broker**
- Can a lien be filed by the listing broker immediately after obtaining a written commercial brokerage listing agreement? **No, in sales transactions the lien must be filed after the broker has performed the terms of the written brokerage services agreement but before conveyance of the property, but no sooner than 30 days prior to closing.**
- Can a lien be filed by a listing broker for their commission on a residential property (1-4 family)? **No**
- Is the commercial real estate broker lien superior to mechanic's liens? **No, the mechanic's lien is superior.**

- Do you have to have a written agreement with a property owner for the sale or lease of commercial property to place a lien on the property? **Yes**

Disciplinary Process

- When a complaint is filed against a licensee, what will the licensee respond to? **A letter of inquiry.**
- How many days does a licensee have to respond to a letter of inquiry? **14 days**
- What is a broker-in-charge's obligation for a "full" broker? **active & current license, agency disclosure and agreements, advertising, record retention (transaction files), trust account/trust monies**
- What is a broker-in-charge's obligation for a provisional broker? **The BIC is fully accountable for ALL actions of affiliated PBs. If a complaint is filed against a PB, the BIC will also be named in the complaint.**
- What sanctions may the NC Real Estate Commission impose for licensee misconduct? **license revocation, license suspension, reprimand, warning, conditions, restrictions, limitations on the license**
- Can the NC Real Estate Commission fine a broker for misconduct? **No**

Condominiums and Townhomes

- What are the primary differences between a townhome and a condominium? **1. Land ownership: townhome ownership includes ownership of the land beneath the townhome while condo ownership does not include any land ownership; 2. Common area ownership: owned by the HOA in a townhome development (owners have use of the common areas but no ownership interest) but owned by the unit owners as tenants in common in a condo ownership**
- What is included with ownership of a condominium? **The airspace of the individual unit plus those items attached to the walls (but not any part of the walls or structure itself) plus an undivided interest in the common elements (e.g., land, building exterior, amenities) as tenants in common with all unit owners without the right to partition.**
- Is there special financing required for condos and townhomes? **Condos: Yes; townhomes: No**
- What types of properties can be condos and townhomes? **Residential, commercial, industrial, etc.**
- What act are condos subject to? **NC Condominium Act**
- According to the NC Condominium Act, what is the right of rescission period for new condo sales? **Buyer has a 7-day right to cancel a purchase contract for a new condo and receive a refund of all deposits. No right of rescission for condo resales.**

Time Shares

- What is the primary responsibility of the project broker? **To supervise all time share salespersons selling time shares on the project.**
- Is a NC Real Estate license required to sell time shares? **Yes**
- What is a Developer's Public Offering Statement? **Disclosure describing the purchaser's obligations, the term of the time share, information about the time share development and other information dictated by the Act.**
- When must the Public Offering Statement be provided to the buyer? **Prior to the date of contract for sale of the time share.**
- Are there limitations on the owner's usage of the property? **Right to occupy a unit a minimum of five time periods over a five-year period.**
- How much can a time share developer be fined for violating the Time Share Act? **Up to \$500 for each violation**

Manufactured Vs Modular Homes

- When is a modular home considered real property? **Once it is assembled on a permanent foundation on a lot owned by the purchaser of the modular home.**
- Does a manufactured home automatically become real property when placed on a lot owned by the purchaser of the manufactured home? **No**
- What is required to change a manufactured home from personal property to real property? **Attaching home to a permanent foundation on land owned by owner of home; removing wheels, axle and moving hitch; AND filing and recording affidavit of conversion to cancel DMV title.**
- Manufactured homes are built according to what building standards? **HUD standards/guidelines**
- Modular homes are built according to what building standards? **State and local building codes**

Commercial Real Estate

- What are some examples of types of commercial properties? **Office, retail, industrial, land, specialty**
- What terms are used to describe OFFICE space/areas? **Floor plate, core area, rentable area and useable area**
- Why would a broker want an absorption study? **When a broker wants to know how much of a particular type of property is available and how much of that type of property has been used for a particular period of time.**
- What are some special considerations when dealing with commercial properties? **Longer transaction cycles, greater expenses, zoning and other land use restrictions, special financing, etc.**

Property Management

- If an apartment becomes uninhabitable due to malfunctioning equipment while occupied, what option does the tenant have? **Constructive eviction: the tenant can self-evict and move out.**
- If an apartment becomes uninhabitable due to malfunctioning equipment while occupied, what can't a tenant do? **Withhold payment of rent until the landlord makes the required repairs.**
- Can an uninhabitable property be rented "as is" in exchange for reduced rent? **No. The tenant cannot take responsibility for habitability. Habitability is a statutory duty of the landlord.**
- Who is typically responsible for maintaining operational batteries in the required smoke and carbon monoxide detectors during the tenancy? **The tenant**
- Can the tenant and landlord contractually agree to waive their statutory duties? **No. Landlord and tenant duties under the Residential Rental Agreements Act cannot be waived.**
- What determines the amount of security deposit that can be collected by the landlord or property manager? **Length of tenancy**
- What are some examples of reasons that CAN be used to withhold a security deposit? **large holes in the wall, exceptionally filthy appliances or premises, broken windows, burned carpets, crayon marks on walls, etc.**
- What are some examples of reasons that CANNOT be used to withhold a security deposit? **Ordinary wear and tear such as small holes, worn carpeting, dirty windows and walls, burned out range elements, leaking faucets, etc.**
- What is the expedited eviction process for vacation rentals under the NC Vacation Rental Act? **Four (4) hours oral or written notice must be given to the vacation renter to leave the property; if tenant fails to leave voluntarily, a summons and complaint may be filed to initiate legal proceedings; within 12-48 hours after service on the tenant, a hearing may be held before a magistrate in small claims court; if magistrate finds in favor of landlord, tenant has 2-8 hours to vacate.**
- What type of judicial person must the action be brought before? **A magistrate.**

Commercial Leases

- What does the tenant pay for in a Percentage Lease? **Fixed base rent amount plus a percentage of the tenant's income or gross sales.**
- What does the tenant pay for in a Net Lease? **Fixed base rent amount plus some or all of the building's operating expenses (property taxes, building insurance and maintenance).**
- Why would commercial tenants agree to a Ground Lease to build their building on the leased parcel? **To reduce upfront cash requirements and to receive tax benefits through depreciation.**
- In addition to the rent and security deposit what other type of cost might the tenant have to pay before the space can be used by the tenant? **Upfitting**

Real Property Ownership in NC

- Must co-owners of property held as joint tenants hold equal interests in NC? **No, interests can be equal or unequal in NC.**
- Must co-owners of property held as joint tenants include the right of survivorship? **No, the right of survivorship is not automatic between joint tenants in NC. The deed must specify.**
- In NC, if a married couple buys a house together, how will they take title? **As tenants by the entirety (unless they request another type of ownership).**
- If a spouse purchased a property in severalty prior to getting married, will the title automatically convert to tenants by the entirety or joint tenants with the right of survivorship upon marriage? **No**
- For property purchased prior to a marriage by one party, what interest, if any, does the spouse have after marriage? **A marital interest**

Disclosure and Material Facts

- Is the death of a previous owner or tenant in a property a material fact? **No**
- Is the seller's inability to close due to not being able to provide a warrantable deed a material fact? **Yes**
- Is the buyer's inability to close for any reason, including the buyer's inability to obtain financing, a material fact? **Yes**
- Is a seller required to disclose any property condition information to a buyer? **No**
- Is a seller required to provide a buyer a Residential Property & Owners' Association Disclosure? **Yes, in most residential transactions**
- What is the listing broker's responsibility in the transaction with regard to the RPOADS and MOG disclosures? **Inform seller of seller's rights and obligations under the Act, provide seller with copies of disclosures to complete, assist in delivering completed forms to prospective buyers, retain signed forms in transactional files**
- Can the listing broker complete the RPOADS or MOG disclosures for the seller? **No**
- Is the MOG disclosure required for new construction and lease to own transactions? **Yes. The MOG disclosure is not exempt in these transactions (the RPOADS is exempt).**
- Can a broker make changes to or alter an RPOADS or MOG disclosure form provided by NCREC? **No**
- What question on the MOG disclosure can the seller check "No Representation"? **Whether the MOG rights have been severed by a previous owner.**
- How many days after contract formation does the buyer have to cancel the contract if the RPOADS and MOG disclosures were not delivered prior to or at the time a buyer makes an offer to purchase? **3 days**

Subdivision Laws and Street Disclosure

- What is the definition of a subdivision? **The division of land into 2 or more lots, building sites or other divisions for the purpose of sale or building development now or in the future.**

- When must a subdivision developer disclose whether streets will be declared private or public? **Prior to selling or conveying a lot.**
- Are subdivision streets constructed to state standards and dedicated as public automatically accepted by the state for maintenance upon completion? **No**
- Are street disclosure laws only applicable to new developments? **No. Brokers must disclose the status of streets and who maintains the streets on new developments and resales.**
- Do the street disclosure laws include disclosure of rear access alleyways? **No**
- What is required for streets to be maintained by the state? **The street must be built to state standards and approved by the state and then be accepted by the state for maintenance.**

Environmental Laws

- What is CAMA? **Coastal Area Management Act**
- Can development take place in CAMA regulated areas? **Yes, but only if properly permitted.**
- What types of wastewater systems are allowed in NC? **All wastewater must be treated through a septic system or sewage treatment plant. (Not allowed: A straight-pipe system where wastewater is discharged directly into the yard or into a nearby creek or stream or onto land is illegal and a material fact.)**
- Who is responsible for cleanup costs of oil spillage from an underground storage tank? **The owner of polluted property may have the heavy burden of cleanup costs even though the owner may have had nothing to do with the discharge of the hazardous substance.**
- What type of limitations are encountered on NC mountain areas? **Tall buildings or structures on protected mountain ridges (but not on ALL NC mountains)**

Fair Housing

- What response can you give to a client that requests you to only show them homes in a certain ethnic neighborhood? **Federal and state laws prevent me from discussing that information.**
- Are private owners who sell their own homes without the use of a real estate broker exempt from complying with the NC State Fair Housing Act? **No. They are exempt under the Federal Fair Housing Act but not the NC State Fair Housing Act.**
- Are private owners who sell their own home with the use of a real estate broker exempt from complying with the NC State or Federal Fair Housing Acts? **No. There is never an exemption when a real estate broker is involved in the transaction.**
- What are the exemptions under the Federal and State Fair Housing Acts for the rental of rooms? **Federal Act: Exempts the rental of a unit in a 1-4 residential unit building if the owner lives in one of the units. State Act: Exempts the rental of a unit in a 1-4 residential unit building if the owner or the owner's family member lives in one of the units. The state act also exempts the rental of rooms in a private home occupied by the owner.**
- Is the rental of rooms in a single-sex dormitory exempt from complying with the NC State Fair Housing Act? **Yes. This exemption is allowed in NC. There is no such exemption under the Federal Fair Housing Act.**
- Who does discrimination based on family status harm? **The children.**