

North Carolina Real Estate
Prelicensing
Course Syllabus
(Student Version)

March 2024 Edition
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INTRODUCTION

Mission Statement: The *Prelicensing Course* is an introductory level real estate principles and practices course with heavy emphasis on real estate brokerage law and practice.

Required Course for Real Estate Licensure in North Carolina: Successful completion of the *Prelicensing Course* is generally required to qualify for the North Carolina real estate license examination and to obtain a North Carolina real estate broker license.

Course Description: This course is intended to

- (1) provide students with the basic knowledge and skills necessary to act as a licensed real estate broker in a manner that protects and serves the public interest; and
- (2) prepare students for the North Carolina real estate license examination.

Major topics

- basic real estate concepts and law
- property taxation
- land use controls
- environmental hazards
- brokerage relationships and practices
- real estate contracts
- real estate financing
- closing a real estate sale transaction
- real property valuation
- property insurance basics
- fair housing laws
- landlord and tenant
- property management
- federal income taxation of real estate
- basic construction
- basic real estate investment
- North Carolina Real Estate License Law
- North Carolina Real Estate Commission Rules and Trust Account Guidelines

Requirements for Offering the Course: This course may only be offered by Commission-certified Education Providers (EPs) that have received course approval for each specific course delivery method. EPs may only use instructors approved by the North Carolina Real Estate Commission to teach Prelicensing and Postlicensing courses. Rules governing the conduct of the course, including scheduling, course delivery, course completion standards, course completion reporting, and other related matters may be obtained on the Commission website (www.ncrec.gov). The *Prelicensing Course* must be taught as prescribed by the Commission in this Syllabus.

Course Hours and Delivery Method: The *Prelicensing Course* must consist of a minimum of 75 instructional hours, although approved Education Providers may, at their option, schedule the course for more than 75 hours. The course may be offered

via in-person, synchronous distance, self-paced distance, or blended delivery. Pre-approval is required for each type of course delivery.

Course Materials: [Commission Rule 58H .0205\(a\)](#) requires: "All courses shall have course materials that cover current North Carolina real estate related laws, rules, and practices. The nature and depth of subject matter coverage shall be consistent with the competency and instructional levels prescribed by the syllabus for the course for which approval is sought."

In addition to their own course materials, Education Providers must ensure that they provide and/or review all of the resources that are referenced throughout this Syllabus. Such resources include, but are not limited to:

- 1) **North Carolina Real Estate License Law and Commission Rules (Also including the Comments on the Law and Rules):** Available for free download or as printed booklet for purchase on www.ncrec.gov
- 2) **Residential Square Footage Guidelines:** Available for free download or as printed booklet for purchase on www.ncrec.gov
- 3) **North Carolina Real Estate Agent Safety Guide** brochure published by the North Carolina Real Estate Commission and the North Carolina Association of REALTORS® Real Estate Safety Council: Available for free download or as published booklet for purchase on www.ncrec.gov
- 4) **NC REALTORS® Offer to Purchase and Contract – Standard Form 2-T** (as indicated in the Syllabus): Available via ShareFile to approved instructors and education directors.
- 5) **Real Estate Licensing in North Carolina (RELINC):** Available for free download or as a printed booklet for free on www.ncrec.gov
- 6) Various Course Topics / Sections from *Update* Courses
- 7) Various Disclosure Forms and Publications

Instructor Note: Educators should always use the current edition of the *Real Estate Licensing in North Carolina* booklet (hereinafter called *RELINC*), the *North Carolina Real Estate Manual* (hereinafter called *Manual*), and *North Carolina Real Estate License Law and Commission Rules* (hereinafter called *LLCR*) as major resources; they can be ordered in print or digital format through the [Commission's website](#). Copies of standard NC REALTORS® forms required for teaching this course may be downloaded (by instructors and education directors) from your ShareFile account (<https://ncrec.sharefile.com>) with *SAMPLE* watermarked across each page.

Course Scheduling: Refer to [Commission Rule 58H .0404](#) for course scheduling parameters.

Instructor Conduct and Performance: [Commission Rule 58H .0304](#)

a) All instructors shall ensure that class sessions are conducted at the scheduled time and for the full amount of time that is scheduled or required. Instructors shall conduct courses in accordance with the Commission's rules, and any applicable course syllabi, instructor guide, or course plan. Instructors shall conduct classes demonstrating the ability to:

- 1) state student learning objectives at the beginning of the course and present accurate and relevant information;
- 2) communicate correct grammar and vocabulary;
- 3) utilize a variety of instructional techniques that require students to analyze and apply course content, including teacher-centered approaches, such as lecture and demonstration, and student-centered approaches, such as lecture discussion, reading, group problem solving, case studies, and scenarios;
- 4) utilize instructional aids, such as:
 - A) whiteboards;
 - B) sample forms and contracts;
 - C) pictures;
 - D) charts; and
 - E) videos;
- 5) utilize assessment tools, such as:
 - A) in-class or homework assignments, and
 - B) quizzes and midterm examinations for Prelicensing and Postlicensing courses;
- 6) avoid criticism of any other person, agency, or organization;
- 7) identify key concepts and correct student misconceptions; and
- 8) maintain control of the class.

b) Instructors shall not obtain, use, or attempt to obtain or use, in any manner or form, North Carolina real estate license examination questions.

Instructor Note: EPs and instructors are REQUIRED to comply with the Instructor Notes and conduct "Required Activities" when teaching this course. "Suggested Activities" are offered to spur the educator's creative ideas and are not required to be implemented.

Real Estate Mathematics Instruction: Instruction on relevant mathematical functions is to be provided under the appropriate subject areas rather than as a separate arithmetic course section. To assist instructors, however, all required real estate mathematics instruction is listed in Section XVI of the Outline. Consideration was given to the amount of mathematics involved in each subject area when establishing the recommended number of instructional hours for subject areas. This integrated approach is recommended because it helps assure that students understand how various mathematical functions relate to the various areas of real estate practice. *Instruction in basic mathematics concepts such as decimals, fractions, percentages, multiplication, division, etc. is not included in this course syllabus. Students deficient in basic math skills should be provided special assistance outside of class or directed to take a math refresher course.*

End-of-Course Examinations and Course Completion Standards: For successful completion of the course, students must

- 1) satisfactorily complete any required activities and homework exercises,
- 2) meet attendance requirements, and
- 3) pass the end-of-course examination.

Regarding homework exercises, instructional time should only be used for the introduction, and review upon completion, of the assignment(s).

EPs are required to utilize end-of-course examinations in accordance with [Commission Rule 58H .0207](#). End-of-course exams must be comprehensive, closed-book, and proctored. The minimum passing grade is 75%. EPs, at their option, may require a higher passing grade and/or other assessments. EPs and instructors shall safeguard the integrity and confidentiality of examinations at all times.

Syllabus Copies:

- The Student Course Syllabus is posted on the Commission’s website, under Education.
- EPs and instructors may reproduce all or part of the Syllabus for student use at their own expense, and may charge students for the cost of reproduction.

Presentation Order: Educators are NOT required to teach topics in the order of this syllabus. In fact, doing so would be difficult. For example, teaching the basics of agency for the National section separate from agency as practiced in North Carolina would be awkward and possibly have a negative impact on student understanding of the overall agency topic. Educators are expected to deliver the content in an order that is logical and conducive to retention of the information.

Instructional Levels: The Commission utilizes *Instructional Levels* to prescribe the scope and depth of coverage of topics and subtopics throughout the course. There are three levels, with Level 1 being the lowest and Level 3 being the highest level of instruction. Instructional Levels are based on Bloom’s Taxonomy.

Below are the definitions of the three Instructional Levels, including the prescribed competency and instruction for each. Competency means what students will be able to do by the end of the topic/subtopic coverage. Instruction means the prescribed depth of coverage and instructional methods.

Level 1 – Recall

NOTE: Level 1 is based on Bloom’s Taxonomy Level 1-Understand and Level 2-Remember.

Competency: Students should be able to *recall facts and basic concepts* and to *explain ideas or concepts*. Learning objectives may include terms such as define, duplicate, classify, explain, and describe.

Instruction: Instructor should review and discuss basic definitions, facts, concepts, procedures, etc. In-depth instruction is not required.

Level 2 – Application

NOTE: Level 2 is based on Bloom’s Taxonomy Level 3-Apply and Level 4-Analyze.

Competency: Students should be able *to use information in new situations and to draw connections among ideas.* Learning objectives may include terms such as implement, solve, demonstrate, interpret, differentiate, relate, compare, and contrast.

Instruction: Instructor should review and discuss the topic in moderate depth sufficient to illustrate and enhance understanding of facts, principles, procedures, etc. and their relevance to brokerage practice.

Level 3 –Analysis

NOTE: Level 3 is based on Bloom’s Taxonomy Level 5-Evaluate and Level 6-Create.

Competency: Students should be able *to justify a stand or decision and to produce new or original work* based on the information. Learning objectives may include terms such as defend, judge, critique, weigh, design, assemble, develop, or formulate.

Instruction: Instructor should review and discuss the topic in substantial depth, using examples to reinforce understanding of ideas, principles and practices, and requiring students to complete practical work assignments to demonstrate both their understanding of the topic and their ability to apply their knowledge to common fact situations that will be encountered in real estate practice.

Each *major topic* (i.e., preceded by a capital letter) in this Syllabus has been assigned an Instructional Level. In some instances where a subtopic should be afforded significantly greater or lesser emphasis than the major topic under which it is listed, that subtopic has been assigned a different Instructional Level that applies to that subtopic only.

Education providers and instructors are REQUIRED to comply with the assigned Instructional Levels when teaching this course.

RECOMMENDED MAJOR SUBJECT AREA EMPHASIS

<u>Major Subject Area</u>	<u>Number of Hours</u>
Licensure	2.0
Basic Real Estate Concepts	1.0
Property Characteristics, Description, & Use	4.0
Property Ownership Types and Transfers	6.0
Property Disclosures	6.0
Taxation & Insurance	4.0
Agency	13.0
Contracts and Closing	18.0
Real Estate Financing	7.0
Real Property Valuation	6.0
Fair Housing/Anti-discrimination	1.5
Landlord/Tenant & Property Management	3.5
End-of-course Examination	<u>3.0</u>
TOTAL INSTRUCTIONAL HOURS	75

Note: There is no separate timing for coverage of Real Estate License Law and Commission Rules, Agent Safety, and Real Estate Mathematics because all of them should be appropriately scattered throughout the course.

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BROKER PRELICENSING COURSE SYLLABUS

Legend:

Notes contain testable points and important information about testing parameters.

Italicized terms are basic terms for which students should know the definitions.

Required Activities must be completed as part of the course; additional activities may be required by the Education Provider for successful completion of the course.

Math calculations should be addressed throughout the course as part of each appropriate topic.

Law & rule references are included where relevant with hyperlinks. Instructors and students are strongly encouraged to read actual North Carolina General Statutes (NCGS) and Commission rules when referenced. Students will be tested on concepts, **not** on law or rule numbers.

Section I: NC Real Estate Licensure [Level 1 unless otherwise noted]: State Exam Category (3 Items)

A. Licensing Process

Note: This Section includes several videos to explain the licensing process. Watch [Overview of the Licensing Process \(3:18\)](#) now.

1. Prelicensing Education
2. Application
3. Consideration of Applicant's Character

a. Criminal Record Report (CRR)

Note: To allow plenty of time to submit a license application, students are encouraged to wait to order their criminal record report until they are successfully through at least half of the Prelicensing course, because the report is only valid for 6 months. Be aware that reports for multiple names or residency in multiple states or other countries will take longer to obtain.

b. Petition for Pre-Determination

Note: An individual with a criminal history record may petition the Commission for a predetermination of whether that history will likely disqualify the individual from obtaining a license. Detailed info is available on NCREC website under [Licensing/Apply for a License](#).

4. License Examination

Note: Watch [Basic Info about the NC License Examination \(4:17\)](#) now.

- a. Examination format
- b. Applying for & scheduling an examination

Note: Watch [Scheduling an Exam with Pearson VUE \(3:56\)](#). Please be aware of the following points:

- A student can begin the on-line NCREC license application but cannot complete it until the EP reports their passing of the *Prelicensing Course* to NCREC.
- The *Prelicensing Course* is valid for licensing purposes for 3 years from the course completion date on the certificate received after passing the end-of-course exam.
- Once a license applicant has all the required parts of the license application (proof of course completion; criminal record report; complete on-line application), the \$100 application fee is paid to submit the app.
- The license candidate will be emailed a *Notice of Exam Eligibility* that notes their 180-day Exam Eligibility Period during which the license candidate must pass both the National and State section of the license examination.
- Candidates will automatically receive a separate *Authorization to Test* email from Pearson VUE with a link for testing registration.
- By contract with NCREC, Pearson VUE must provide a candidate at least one testing opportunity at the candidate's preferred test center within 7 days of the candidate attempting to schedule an exam. The candidate does not have to accept that offered testing date and time, and can opt to test more than 7 days after contacting Pearson VUE.
- These steps must be repeated every time a candidate needs to retake one or both exam sections, they must log into their applicant portal on the NCREC website, pay another \$100 application fee, and resubmit a license application.
- The examination fee for every time a candidate takes the comprehensive 2-part exam is \$60. The cost will be \$50 if only one examination section is being taken.
- By rule, the earliest that a candidate can retake is on the 10th day after their last testing date, **IF** there are at least 10 days remaining in their current Exam Eligibility Period.
- If both exam sections are not passed within the same 180-day Exam Eligibility Period, the candidate must submit a new license application including a new criminal record report before obtaining eligibility to test again. Any exam section that was passed in the previous eligibility period is forfeited.

Note: Watch [Touring a Pearson VUE Test Center \(3:17\)](#) now.

c. Other examination information

5. Licensee Information

Note: A license candidate is required to keep the information on their application accurate, including email and phone contact information.

B. License Qualification Requirements [Level 2 unless otherwise noted]

Note: On the National exam section, a salesperson is an entry-level licensee, similar to a provisional broker in NC. Watch [Real Estate Licensing Requirements \(5:04\)](#).

1. Basic Licensing Requirement [NCGS [93A-1](#)]

2. License Categories [Level 1]

a. Provisional Broker, Broker and Broker-In-Charge [NCGS [93A-2\(a\)](#), [2\(a1\)](#) and [2\(a2\)](#)]

b. Limited Nonresident Commercial Broker [NCGS [93A-9\(b\)](#); [Commission Rules 58A .1801](#), [58A .1803\(a\)](#), [58A .1806](#), [58A .1807\(a\)-\(c\)](#), [58A .1808](#)]

- c. Licensing of business entities (firms) [NCGS [93A-1](#) and [2](#); [Commission Rule 58A .0502](#)]
- 3. Activities Requiring a License [NCGS [93A-2\(a\)](#)]
 - a. Listing (or offering to list) real estate for sale or rent
 - b. Selling or buying (or offering to sell or buy) real estate
 - c. Leasing or renting (or offering to lease or rent) real estate
 - d. Conducting (or offering to conduct) a real estate auction
 - e. Selling, buying, leasing, assigning or exchanging any interest, in connection with the sale or purchase of real estate
 - f. Referring a party to a real estate licensee, if done for compensation
- 4. Permitted Non-brokerage Activities of Unlicensed Assistants/ Employees
- 5. Exempt Activities [NCGS [93A-2\(c\)](#)]
 - a. Business entity selling or leasing entity-owned real estate
 - b. Attorney-in-fact
 - c. Attorney-at-law
 - d. Person acting under a court order (e.g., receiver, trustee, guardian, administrator, executor)
 - e. Trustee
 - f. Salaried employees of broker-property managers
 - g. Individual property owner selling or leasing personally owned real estate
 - h. Housing authority under [NCGS 157](#)
- C. The Real Estate Commission
 - 1. Composition [NCGS [93A-3\(a\)](#)]
 - 2. Purpose and Powers [NCGS [93A-3\(a\), \(c\) and \(f\)](#); NCGS [93A-6](#); NCGS [93A-4\(d\)](#), [4A](#) and [4.2](#) & [4.3](#); NCGS [93A-9](#)]
 - 3. Disciplinary Authority [NCGS [93A-6\(a\)-\(c\)](#)]
- D. General Licensing Provisions

Note: This Section is not discussed in the **LLCR** but must be covered.

1. Licensing of Individual Persons [NCGS [93A-4\(a\) and \(a1\)](#); [Commission Rules Section 58A .1900](#)]
 - a. Provisional Broker (PB): prelicensing and postlicensing education requirements
 - b. Termination of provisional status and consequence of not satisfying postlicensing education requirement

Note: Be aware that credit for postlicensing courses is only valid for 2 years from date of completion [[Commission Rule 58A .1902\(d\)\(1\)](#)].
2. License Expiration and Renewal [NCGS [93A-4\(c\)](#); [Commission Rule 58A .0503](#)]
3. Continuing Education [NCGS [93A-38.5](#); [Commission Rule Section 58A .1700](#)]
4. Active and Inactive License Status [[Commission Rule 58A .0504](#)]
5. License Reinstatement [NCGS [93A-4\(c\)](#); [Commission Rule 58A .0505](#)]
6. Payment of License Fees [NCGS [93A-4\(a\)](#); [Commission Rule 58A .0507](#)]
7. Proof of Licensure [[Commission Rule 58A .0101\(a\)-\(d\)](#)]
8. Change of Name or Address [[Commission Rule 58A .0103](#)]
9. Reporting Criminal Convictions [[Commission Rule 58A .0113](#)]

Section II: Broker Supervision & Compensation [Level 3 unless otherwise noted]:
State Exam Category (4 Items)

A. Supervision

Note: This Section is not discussed in the **LLCR** but must be covered.

1. Broker Supervision of Provisional Brokers [NCGS [93A-2\(b\)](#); [Commission Rule 58A .0506](#)]
 2. Broker-in-Charge [NCGS [93A-2\(a1\)](#) and [93A-4.2](#); [Commission Rule 58A .0110 9\(g\)\(1, 3, 4, 5, 6, 7, & 10\)](#)] [Level 1]
- B. Earning a Real Estate Brokerage Fee (Sales) [NCGS [93A-6\(a\)\(9\)](#); [Commission Rule 58A .0109](#)]
1. Earning Compensation as a Listing Agent
 - a. Legal requirements for establishing claim to compensation
 - i. Current real estate license on active status
 - ii. Valid written listing contract
 - iii. Procurement of *Ready, Willing and Able* Buyer
 - iv. *Procuring Cause* Doctrine

- v. Entitlement to fee if broker has fulfilled contract duties even when contract does not close, when/if:
 - Seller refuses to close
 - Seller's spouse will not sign the contract or deed
 - Seller has an uncorrected defect in the title
 - Seller is unable to deliver possession within a reasonable time
 - Seller insists on sales terms and conditions not stated in the listing contract
 - Buyer and seller conspire after the sales contract has been signed and agree to cancel the contract
- b. Sharing of the listing broker's compensation
- i. The in-house sale
 - How earned brokerage fee is split
 - Ability to receive compensation determined by employment agreement between broker and brokerage company
 - Affiliated provisional brokers must be compensated by supervising BIC [NCGS [93A-6\(a\)\(5\)](#)]
 - Affiliated "full" brokers must be compensated by supervising BIC [[Commission Rule 58A .0120\(b\)](#)]
 - ii. The co-brokered sale
 - Ability to receive compensation from the listing company is negotiated between parties
 - Cooperative listing service agreements
 - iii. Co-brokerage with broker licensed in another state
 - Out-of-state (foreign) broker must hold an active real estate license in the state from which they are conducting the brokerage activity, such as placing a referral, **and**
 - Foreign broker does **not** enter NC any time during the transaction to engage in any brokerage activity related to the transaction
2. Earning Compensation as a Buyer Agent
- a. Legal requirements for establishing claim to compensation
 - i. Current real estate license on active status
 - ii. Valid written buyer agency contract
 - iii. Procurement of property described in agency agreement that buyer agrees to purchase by enforceable contract
 - *Retainer Fee* and *Success Fee*
 - Sharing in the Listing Broker's Fee
 - b. Legal payment to broker with an expired or inactive license status
 - i. License must be on active status when brokerage activity is performed
 - ii. Broker must stop **all** brokerage activity when license expires or becomes inactive

Note: If the licenses of the firm and the individual broker were both on active status at the time that any brokerage service was rendered in the transaction, then the firm may be paid compensation and the firm may in turn pay the individual broker, even if their license is not active at the time of payment. Payment is forfeited if either of the licenses were not active at any time that services were being performed.

Section III: Real Property Characteristics, Legal Descriptions & Property Use [Level 1 unless otherwise noted]:

National Exam Category (9 Items)

A. Basic Real Estate Concepts

1. Basic Terminology and Definitions

- a. *Land*
- b. *Real estate*
- c. *Real property*
- d. *Personal property*

Note: The terms *real property*, *real estate* and *land* are often used interchangeably.

2. Physical Characteristics of Land

- a. Immobility
- b. Indestructibility
- c. Uniqueness (non-homogeneity)

3. Economic Characteristics of Land

- a. Scarcity
- b. Location (*situs* or area preference)
- c. Improvements (modifications)
- d. Permanence of investment (*fixity*)

4. Scope of the Real Estate Business

5. The Real Estate Market

B. Property Ownership and Interests [Level 2 except as noted below]

1. The Concept of Property

- a. *Real property*
- b. *Personal property (chattel or personalty)*
 - i. Movable items
 - ii. *Severance vs. annexation/attachment*
 - iii. Transferred by *Bill of Sale*

c. Fruits of the soil [Level 1– this subtopic]

- i. *Fructus naturales*
- ii. *Fructus industriales (emblems)*

d. *Fixtures* [Level 3 – this subtopic]

Required Activity: Use pictures to help students recognize items that might cause confusion in a transaction. Have students apply the Total Circumstances Test to predict how a judge might rule if the issue went to court.

i. *Total Circumstances Test*

- Used in court when contract terms are silent about an item; written contract terms should clarify intent of contract parties
- Four (4) test criteria for determining if item is a fixture
 - Intent of annexor
 - Relationship of annexor to property
 - Method of annexation
 - Adaption to real estate

Note: All 4 criteria must be present to indicate that an item is a fixture. Most standard listing agreements and sales contracts include a list of common items that will be considered fixtures for the transaction unless otherwise addressed in the document.

ii. *Trade fixtures*

e. Improvements (modifications) [Level 1– this subtopic]

- i. *Improvements **to** the land*
- ii. *Improvements **on** the land*
- iii. Depending on context, *Improved Land* or *Improved Lot* may have dual meanings

Note: On the National exam section, an improvement is an appurtenance.

2. *Encumbrances to Real Property* [Level 2 except as noted below]

a. *Liens* (Discussion in *Section VI*)

b. *Special assessments* (Discussion in *Section VI*)

c. *Lis pendens* (notice of pending litigation)(Discussion in *Section VI*)

d. Restrictive (protective) covenants (CC&Rs) (Discussion later in this Section)

e. *Easements*

i. Terminology

- *Dominant estate or tenement*
- *Servient estate or tenement*

ii. General Categories

- *Appurtenant easement*

- *Easement in gross*
 - Personal vs. commercial easement in gross

Note: Distinguish from a *license*, which is a personal, revocable, non-assignable right, but **not** an encumbrance.

- iii. Creation of easements
 - Express
 - Implied
 - Arising by operation of law

- iv. Recordation of easements

Note: An easement must be recorded to be binding against a purchaser of the servient estate.

- v. Termination of easements

- vi. *Party wall (cross easements)*

f. *Encroachments*

- i. Examples
- ii. Usually detected by an up-to-date survey
- iii. Not discoverable by title search

C. Understanding Legal Descriptions [Level 2 except as noted below]

1. Property Description

- a. Adequacy of description

- b. Methods of describing real estate

- i. Metes and bounds

Required Activity: Provide a deed and a survey that illustrate description by metes and bounds.

- Primary method in original 13 colonies, including NC
- *Point-of-beginning* (POB)
- Outside boundaries are described through a series of *calls*

- Descriptions include
 - *Monuments*
 - *Distance (metes)*
 - *Course or direction (bounds)*

- ii. Government (rectangular) survey system [Level 1 – this subtopic]

Required Activity: Provide a visual illustration of an accompanying government survey description.

- Primary method for states other than the original 13 colonies

- Division into squares based on the intersection of prime meridian lines (run north/south) and base lines (run east/west)
- *Township*
- *Sections*

Note: Although this method is not used in NC, basic principles are subject to testing on the National section of the exam; **no** calculations are tested on the exam.

- iii. Reference to recorded plat (lot and block)

Required Activity: Provide a copy of an approved subdivision plat map.

- iv. Reference to publicly recorded documents
- v. Informal reference (e.g., street address)

2. Property Survey

Required Activity: Provide a copy of a residential property survey. Ideally the survey will show setbacks for buildings, utility easements, and possibly an encroachment from an adjacent parcel.

Note: A broker should never offer an opinion about accuracy of the parcel boundaries, whether improvements are properly located on the tract, where easements are located on the property, or similar matters; refer such queries to a licensed surveyor or civil engineer.

a. *Survey*

- b. Title defects that would have been discovered by a property survey are frequently not covered by title insurance, if a survey was not performed as part of the transaction

Note: A buyer should be strongly encouraged to order an updated survey as part of their due diligence process.

D. Land Use Controls

1. Public Controls in Land

a. Governmental powers (*PETE*)

- i. **P**olice power
 - For protection of public
 - Includes zoning & environmental laws
- ii. **E**scheat
- iii. **T**axation
- iv. **E**minent domain

b. *Zoning*

- i. Brief historical overview
- ii. Zoning purposes and general guidelines
- iii. Zoning ordinances, systems (districts and codes) and administration
 - Administered primarily by city or county planning department

- Local boards of adjustment generally handle requests for variances or special use permits
 - *Extra-territorial jurisdictions (ETJ)*
- iv. Zoning districts and codes

Note: There is no uniformity of zoning codes; codes and their meanings can vary widely throughout the state.

- v. Zoning concepts, terminology and special procedures [Level 2 -this subtopic]

Required Activity: Provide examples of each of the following zoning concepts.

- *Nonconforming use*

Note: Buyer should never assume a nonconforming use can continue after transfer of ownership or destruction of improvements.

- *Illegal use*
- *Zoning amendments*
- *Variance*
- *Special-use permit (or conditional-use permit)*
- *Overlay district*
- *Historic preservation zoning*
- *Aesthetic zoning*
- *Spot zoning*
- *Cluster zoning*
- *Buffer zone*

- c. Urban and regional use planning

Note: These exist to assure orderly and systematic development of land use.

- d. Subdivision statutes and regulations [Level 2 - this subtopic]

- i. *Subdivision*

- ii. Typical subdivision approval procedures (NC and elsewhere)

- Preliminary planning phase
- Review and approval phase usually by multiple municipal departments
- Final subdivision plat approved and recorded

- e. Regulation of special land types

- i. *Flood zones*
ii. *Wetlands*

- f. Highway access restrictions

Note: Ability to access an existing public highway or street that abuts the property is a material fact; access may be restricted or forbidden by state or local municipality.

g. Interstate Land Sales Full Disclosure Act [USC 1701 *et seq*]

- i. Purpose
- ii. Land registration requirement
- iii. Application
- iv. Exemptions

h. Government land ownership

Note: Public ownership controls land for the benefit and use of the entire population, such as national/state/municipal parks, road system, and preservation of natural resources.

2. Privately-Imposed Land Use Controls [Level 2 except as noted below]

a. *Restrictive/protective covenants* Purpose

- i. Set forth in a deed or in a separately recorded declaration of covenants
- ii. Also called *covenants, conditions and restrictions (CC&Rs)*

b. Typical matters addressed

c. Covenants run with the land (*appurtenant*) and are binding on all subsequent owners

d. Enforcement

Note: When covenants differ from zoning regulations on a particular matter, the more restrictive of the two will control.

Section IV: Property Taxes & Insurance [Level 2 except as noted below]:
State Exam Category (4 Items)

A. Ad Valorem Property Tax

1. *Ad valorem*

2. Tax Rate and Calculations

a. NC real property tax rate is set annually by municipality (e.g., county and town/city)

Note: A property located within a city or town limit in NC will be subject to both county and city/town taxes.

b. NC tax rate is expressed as \$xxx per \$100 of assessed value

- c. Many other states express the tax rate as a *mill rate*. A mill is 1/10th of a cent; a mill rate is described as *mills per dollar of assessed value*. [Example: A NC tax rate of \$1.50 per \$100 (which is \$0.015 per dollar) is the same as a mill rate of 15 mills per dollar.]

Note: Either of the above tax rates may be cited in National exam section items and students must be able to perform calculations using either rate.

- d. Tax Calculations [[Level 3 – this subtopic](#)]

3. All Real Property in NC is Subject to Taxation

4. Appraisal and Assessment

- a. *NC Machinery Act* regulates taxation in NC

- i. Assessed value of real property for property taxation purposes in NC must be, with few exceptions, its market value or "...its true value in money" at the time of assessment
- ii. State authority to tax delegated to local municipalities (e.g., county, city, town)
- iii. *Octennial Reappraisal*: NC real property must be reassessed every 8 years
- iv. *Horizontal reappraisal* by municipality possible in 4th year

- b. In other states, the assessed value for property taxation purposes may be a value that is less than market value – such as 50% of market value

Note: National exam section items might mention an assessed value that is less than market value and these items should be answered based on the given information rather than on NC practice. Also, the term *true market value* should be assumed to mean *market value*.

5. NC Property Tax Timetable

- a. January 1 = tax lien attaches to property

Note: Real property tax liens attach to the property on the 1st day of listing period, even though the tax is not due until later in the year.

- b. January 31 = taxable real & personal property listing deadline

- c. July 1 = annual tax rate must be set by municipalities

- d. September 1 = annual tax bill is due and payable

- e. January 5 of next year = last day to pay current tax bill without late penalty

Note: If the previous year's taxes not paid by December 31, it is possible on January 1-5 for property to have taxes liens for two successive years that are both current.

6. Special Priority of Real Property Tax Liens [[NCGS 105-356](#)]

Note: Real property tax liens are superior to all other liens, charges, assessments, rights and claims regardless of when acquired.

B. NC Excise Tax [[NCGS 105-228.30](#)]

1. Key concepts

- a. Paid by the grantor in NC; but may vary in other states
- b. Formerly called revenue stamps or deed transfer tax

2. NC excise tax rate: \$1.00 on each \$500 (or portion thereof) of the total sales price

3. Calculations [Level 3 – this subtopic]

4. Local transfer tax (possible in some NC counties)

Note: Excise tax always rounds up to a full dollar amount in NC; there are no cents.

C. Homeowner's (Hazard) property insurance basics

1. Definitions [Level 1 – this subtopic]

- a. *Insurance*
- b. *Insured*
- c. *Insurer*
- d. *Premium*
- e. *Condition*
- f. *Endorsement (rider)*
- g. *Exclusion*
- h. *Property (casualty) insurance*
- i. *Liability insurance*

2. Package insurance [Level 1 – this subtopic]

- a. Combination of property and liability coverage (e.g., HO-3)
- b. Typical coverage

3. *Coinsurance* clause [Level 1 – this subtopic]

4. Specialized policies

- a. Homeowner's coverage (HO-3)
- b. Renter's coverage (HO-4)
- c. Condominium coverage (HO-6)

Note: Buyer should make sure insurance is appropriate for property type and use.

D. Flood Insurance

1. Separate policy; not included in standard homeowner policy
2. National Flood Insurance Program administered by FEMA delivered through private insurance companies
 - a. Purpose of program
 - b. Designated or special *FEMA flood hazard zones*

Note: The 100-year flood plain refers to a flood having a 1% chance of equaling or exceeding the map elevation any given year, not a flood that occurs only every 100 years.

E. Insurance Issues

1. Insurability issues
 - a. High insurance claim history
 - b. Comprehensive Loss Underwriting Exchange (C.L.U.E.)

Note: Consumers are entitled to a free copy of their C.L.U.E. report per the Fair Credit Reporting Act.
2. Residential sales transaction concerns
 - a. *Unoccupied Building Exclusion*

Note: Definition of *unoccupied* varies widely; read policy for specific parameters for a particular property.
 - b. Early or late possession by parties
 - c. Keep insurance in place until recordation/closing; refer to "Risk of Loss" provision in sales contract
3. Broker's responsibility [**Level 3 – this subtopic**]
 - a. Advise seller client about the importance of having and maintaining appropriate insurance coverage throughout listing and transfer of title/closing
 - b. Listing agent should advise absentee seller to verify continued insurance coverage of unoccupied listed property
 - c. Be alert for red flags (e.g., nearby water sources possibly requiring flood insurance)
 - d. Disclose location of any part of the property in a FEMA special flood zone as a material fact
 - e. Buyer client should be advised to check availability and cost of insurance as part of buyer due diligence

F. Federal Income Taxation of Home Ownership [Level 1 except as noted below]

Note: Licensees should **never** attempt to provide tax advice to clients or customers unless they possess special knowledge and expertise in the tax field that qualifies them to provide such advice. The limited instruction provided in this course in no way qualifies the student to provide tax advice and is merely intended to enable agents to recognize situations where a consumer might benefit from professional tax advice so that the agent might then refer the consumer to a qualified tax accountant or attorney.

1. Common income tax deductions for owners of personal residences

- a. Real property taxes (principal and second homes)
- b. Loan expenses (principal and second homes)
 - i. Mortgage interest includes regular interest payments plus any late payment charges or prepayment penalty
 - ii. Loan discount points paid as prepaid interest at the time of loan origination

2. Taxation of capital gain on sale of principal residence [Level 3 – this subtopic]

Note: Concepts are testable, but there are **no** math calculations on this topic.

- a. Eligible property
- b. Definitions
 - i. *Basis and adjusted basis*
 - ii. *Capital improvement*
 - Note:** Maintenance is **not** a capital improvement.
 - iii. *Amount realized*
 - iv. *Gain and loss*
- c. Rules for taxation of capital gain
 - i. Tax-free limits
 - Married couple filing income tax return jointly
 - Single person or married couple filing income tax return singly
 - ii. Restrictions
 - Must have been the primary residence for 2 of last 5 years
 - Exclusion allowed only once every 2 years

3. Special tax treatment for some residential transactions

- a. Installment sales (or contract for deed in NC) — basic concept
- b. Like-Kind or 1031 Tax-Deferred Exchange — basic concept
- c. Vacation homes — basic rule for owner use
- d. Office in home — basic concept

Section V: Property Disclosures & Environmental Issues [Level 1 except as noted below]: **National Exam Category** (8 Items)

A. Disclosure of Property Conditions by Real Estate Brokers [Level 3]

1. Responsibilities for Verification of Land Use and Recognition of Potential Land Use Problems
 - a. When a property is or might be subject to zoning and/or covenants, advise consumer that:
 - i. Ordinances or covenants could affect consumer's use and enjoyment of the property
 - ii. Property owners may be subject to owners' association dues and assessments
 - iii. Careful review of any covenants and owners' association governing documents is recommended prior to signing any offer
 - b. Avoid any misrepresentation about a property's zoning or permitted land uses
 - c. Recognize "red flag" situations

Note: Recognizing and taking appropriate action with regard to potential problems with zoning and restrictive covenants is particularly important.
 - d. Recognize patent signs of flooding on a property or when a property's location may make it susceptible to flooding
 - e. Disclose planned major highway or public transportation changes in the area as material fact
2. The presence on a property of any of the environmental hazards covered in this Section is a material fact that must be disclosed to all transactional parties.
3. Owner of a property with hazardous waste may be liable for cleanup, even if caused by a previous owner
4. Underground Storage Tanks (USTs)
 - a. Any broker who knows of any current or abandoned USTs on the property must disclose to all prospective purchasers or tenants
 - b. Buyer agent should strongly encourage buyer to hire an expert to inspect any tanks and conduct a soil contamination test
5. The mere presence of a radon mitigation system in a property elevates the broker's responsibility to discover and disclose the reason behind that presence
6. Sale of property "As Is"

Note: Broker's disclosure responsibilities under Real Estate License Law **not** affected by "as is" status.

B. Environmental Issues in Real Estate

1. Selected Hazards Pertinent to Real Estate Brokerage

a. Lead [Level 2 – this subtopic]

Required Activity: Review the *Lead-Based Paint or Lead-Based Paint Hazard Addendum*, NCAR Form 2A9-T.

- i. Residential use of lead-based paint banned in 1978; disclosure required by federal law since 1992
- ii. Sources of lead
- iii. Serious health risk of lead poisoning
- iv. Federal Residential Lead-Based Paint Hazard Reduction Act of 1992 and updated HUD and EPA rules [www.epa.gov/lead]
 - Disclosure requirement
 - Applies to *target housing*
 - Brokers have legal duty to ensure compliance with the lead paint disclosure requirements
 - Informing seller/lessor of their obligations under these rules
 - Either ensure that seller/lessor has performed all activities required by the rules or broker must **personally** ensure compliance
 - Enforcement and penalties

Note: No federal law requires the owner to test for the presence of lead or lead-based paint.

b. Asbestos

- i. *Friable*
- ii. Serious health risk for various respiratory diseases as well as lung and stomach cancer
- iii. Remediation
 - Costly removal process requires state-licensed asbestos abatement contractor and sealed areas
 - *Encapsulation*

Note: The mere presence of asbestos is not a health hazard unless it is friable.

c. Radon

- i. Health risk as one of the leading causes of lung cancer
- ii. Radon presence over the EPA's actionable level of 4.0 picocuries is a material fact

Note: Do-it-yourself radon tests are available; professional testing is generally more accurate.

- iii. Remediation through mitigation system that uses ventilation

d. Toxic mold

- i. Characteristics and where found
- ii. Can cause allergic reaction, respiratory and sinus problems
- iii. Potential homeowner's insurance issues
- iv. Remediation

- e. Miscellaneous potential issues
 - i. Groundwater contamination
 - ii. Underground storage tanks (USTs)
 - iii. Waste disposal sites
 - iv. *Brownfields*

2. Environmental Protection Agency (EPA)

- a. **Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)**
 - i. Also known as the Superfund
 - ii. Identifies hazardous waste sites for clean up
 - iii. Environmental Site Assessments (Phase I & II studies) & Impact Studies
- b. **Clean Air Act**
 - i. Establishes and enforces air quality standards
 - ii. Affects property owners & businesses that own or repair appliances using refrigerants, such as air conditioners and refrigerators
- c. **Clean Water Act**
 - i. Regulates pollutant discharges into water
 - ii. Sets water quality standards
 - iii. Protects *wetlands*

Section VI: Forms of Ownership, Transfer & Recording of Title [Level 2 except as noted below]: National Exam Category (8 Items)

A. Estates in Real Property

- 1. *Freehold Estates* (last for indeterminable period of time) [Level 1 – this subtopic]
 - a. Estates of inheritance (owner can determine who inherits)
 - i. Fee Simple Estate (*Fee Simple Absolute*)
 - ii. *Defeasible Fee* (Qualified) Estates
 - Fee Simple Determinable (Fee Simple to a Condition Precedent)
 - Fee Simple Conditional (Fee Simple to a Condition Subsequent)
 - iii. *Estate for Life of Another (pur autre vie)*
 - Note:** Based on life of named third party, the *measuring life*
 - b. Estates not of inheritance (*Life Estates*)
 - i. Estate for Tenant's Own Life (Conventional Life Estate)
 - *Life tenant*
 - Rights of and restrictions on life tenants
 - *Estovers*
 - *Remainderman*

- ii. Marital life estates
- iii. Remainder vs. reversionary interest
- iv. *Homestead*
- v. The Bundle of Legal Rights concept [Level 1- this subtopic]
 - Right to possession (to occupy)
 - Right to control (of property and legal profits)
 - Right of enjoyment (to use in any legal manner without interference from others claiming a superior title)
 - Right of exclusion (to restrict access)
 - Right of disposition (to transfer ownership or interests including right to encumber/mortgage)

2. Estates in Landlord/Tenant [Level 1 – except as noted]

a. Definitions

- i. *Landlord (Lessor)*
- ii. *Tenant (Lessee)*
- iii. *Lease*
- iv. *Privity of estate*
- v. *Privity of contract*

b. *Leasehold (Nonfreehold) Estates* [Level 2 – this subtopic]

Required Activity: Provide real world examples of each type of estate. Make note that the difference between the different leasehold estates is how they end.

- i. *Tenancy (or estate) for years*
- ii. *Tenancy (or estate) from period to period*

Note: Also known as *periodic tenancies*, week-to-week, month-to-month

- iii. *Tenancy (or estate) at will*
- iv. *Tenancy (or estate) at sufferance*

Note: Unlike trespassing, this estate began legally.

c. Leases

Required Activity: Explain real world use of each type of lease.

- i. Types of leases
 - *Fixed rental (flat or gross) lease*
 - *Percentage lease* [Level 3 – this subtopic]
 - Other lease types [Level 1 – this subtopic]
 - *Net lease*
 - *Graduated (step-up) lease*
 - *Index lease*
 - *Full service lease*
 - *Ground lease*

ii. Essential lease provisions

Note: Same as for any contract.

iii. Other common provisions

- Tenant's use of premises

Note: Lessee may make any legal use of the property unless there are use restrictions in the lease. Tenant has Implied Covenant of Quiet Enjoyment; lessor has **no** right to enter premises during lease term unless granted in the lease

- Assignments and subleases
 - *Assignment*
 - *Sublease*
 - *Assignee vs. assignor*
 - *Novation*
 - Renewal and termination
 - Lessee has no implied right to renew the lease
 - Automatic renewal clause can be included in the lease terms

B. Ownership, Interests, and Rights in Real Property

1. *Severalty* (Sole) Ownership

Note: Sole owner can be an individual person or a single business entity.

2. Concurrent (Joint) Ownership

a. *Tenancy in common*

- i. Undivided fractional interest; may be unequal interest
- ii. Unity of possession
- iii. Co-owner may dispose of individual interest without permission of co-tenant(s)
- iv. Upon death, undivided interest of co-owner passes to the heir(s); no right of survivorship

b. *Joint tenancy*

- i. Title must intentionally create joint tenancy
- ii. 4 required unities/elements (e.g., possession, interest, time, title) must be equal
- iii. *Right of survivorship* (Automatic in states other than NC)
- iv. Termination
 - By agreement
 - Partition suit

c. *Tenancy by the entirety*

- i. Available only to legally married couples in some states

Note: Other types of ownership do **not** automatically convert to tenancy by the entirety if property owners marry each other later.

- ii. Equal undivided interest
- iii. 4 required unities/elements (e.g., possession, interest, time, title) must be equal
- iv. Automatic right of survivorship that cannot be waived; overrides a will
- v. Conveyance requires signatures of both spouses

Note: A spouse cannot convey 1/2 interest.

- vi. Termination
 - By agreement
 - Divorce
 - Death of a spouse
3. Common Interest Community (Hybrid) Ownership
- a. General concepts
 - i. Managed by owner associations [e.g., homeowners' association (HOA) or property owners' association (POA)]
 - Enforce rules regarding operation and use
 - Maintain, repair, and clean common areas
 - Maintain insurance
 - Additional responsibilities by agreement
 - ii. Governed by covenants and general statutes
 - iii. May be residential, commercial, industrial, or mixed-use
 - b. Condominium ownership
 - i. *Condominium (condo)*
 - ii. Governed by horizontal property acts
 - iii. Individual unit owner holds fee simple "title to airspace" for single story unit
 - iv. Individual unit owners own an undivided share of *common elements*
 - Own as tenants in common without right of partition
 - Periodic fees/assessments charged to unit owners
 - Possible exclusive use of *limited common elements*
 - v. Nationally, a *townhouse* is generally a multi-story condo
 - c. Cooperative ownership [Level 1 – this subtopic]
 - i. *Cooperative*
 - ii. Title to land and building held by a corporation
 - iii. Tenant purchases corporate stock shares (personal property)
 - *Proprietary lease*
 - No individual deed for units
 - d. Time share ownership
 - i. *Time share*

Note: Also called vacation lease, prepaid hotel reservation, club membership, limited partnership, vacation bond.
 - ii. Allows multiple parties to buy interest in the same real estate (e.g., resort or hotel property)
 - iii. Interest may be leasehold or deeded ownership
 - iv. Buyers receive right to occupy property for a specific time period during ownership

Required Activity: Provide an assessment to determine if student can differentiate between these types of hybrid ownership.

4. *Trusts* [Level 1 – this subtopic]

Note: Legal advice is strongly recommended before broker handles a transaction involving property owned by a trust.

- a. Fiduciary arrangement
 - i. Third party trustee holds assets on behalf of beneficiary
 - ii. Trust agreement sets parameters of trustee's authority
 - iii. May allow assets to pass outside of probate
- b. Brokers should deal with trustee vs. beneficiary regarding disposition of real estate

5. Appurtenant rights (*Appurtenances*)

- a. Subsurface rights
- b. Air rights
- c. Water rights
 - i. *Riparian rights*
 - ii. *Littoral rights*
 - iii. *Foreshore*
 - iv. Boundary shifts due to *accretion, reliction, erosion, or avulsion*
 - v. Doctrine of Prior Appropriation [Level 1– this subtopic]

Note: Water rights cannot be retained when the property title is transferred.

- d. Support rights [Level 1– this subtopic]
 - i. Right to lateral support
 - ii. Right to subjacent support
- e. Benefit of any appurtenant easement
- f. Benefit of any protective (restrictive) covenants

6. Liens

- a. *Specific liens*
 - i. Mortgages (deeds of trust)
 - ii. Real estate tax and assessment liens
 - iii. *Mechanics' liens* (materialman's lien)
- b. *General liens*
 - i. *Judgment liens*
 - ii. Personal property tax liens

- iii. State tax liens
- iv. Federal tax liens

c. Lien priority

- i. Order of recordation
- ii. Exceptions to "pure race system"
 - Real property and special assessment liens hold superior priority
 - Mechanic's liens, effective from 1st day of providing services or materials
 - Voluntary *subordination* of a superior lien

d. *Writ of attachment* [Level 1 – this subtopic]

7. *Special Assessments*

- a. Examples
- b. Levied by local municipalities
- c. Special priority

8. *Lis Pendens* (Notice of Pending Litigation)

Note: This is notice of an active lawsuit that may affect title.

C. Methods of Transferring Title [Level 1]

1. By Descent

Note: When owner dies with no will (*intestate*), state laws regarding *Intestate Succession* will rule [[NCGS Chapter 29](#)].

2. By Will (*Testate*)

Note: Remember that a will cannot override the survivorship clause in a deed.

3. By *Voluntary Alienation* (by Deed)

4. By *Involuntary Alienation*

- a. Lien foreclosure sale
- b. *Adverse possession*
- c. *Escheat*
- d. *Eminent domain*

D. Deeds

1. *Grantor vs Grantee*

2. Essential Elements of a Valid Deed

- a. Named parties (grantor/grantee)

- b. Words of conveyance (granting clause)
- c. Accurate legal description of property
- d. Legal capacity of grantor
- e. Signature of grantor(s)
- f. Delivery to and voluntary acceptance of the deed by grantee (usually by recordation)
- g. Deed must be in writing

Note: Recordation of the deed is **not** a legal essential element; but the standard sales contracts in many states like North Carolina require recordation of the deed to complete closing. Non-essential elements frequently included in a deed are date, acknowledgement, amount of consideration, witnesses, seal, and signature of grantee.

3. Types of Deeds

- a. Types most commonly used
 - i. *General Warranty Deed* (also called *Full Covenant and Warranty Deed* or *Warranty Deed*)
 - 5 Covenants
 - Covenant of seisin and right to convey
 - Covenant against encumbrances
 - Covenant of quiet enjoyment
 - Covenant of warranty forever
 - Covenant of further assurance
 - ii. *Special Warranty Deed* (also called *Limited Warranty Deed*)
 - Only 2 warranties
 - Warranty that grantor received title
 - Warranty against encumbrances during the grantor's period of ownership
 - Frequently used by lenders to convey title to foreclosed properties
 - iii. *Quitclaim Deed* (also called *Non-Warranty Deed*)
 - Grantor makes no promise about quality of title
 - Often used as correction or release deeds
- b. Bargain and Sale Deed – Used in some states; very similar to a Quitclaim Deed
[Level 1 – this subtopic]
- c. Special purpose deeds [Level 1 – this subtopic]
 - i. *Correction deed*
 - ii. *Reconveyance deed*
 - iii. *Trustee's deed*
 - iv. *Sheriff's deed*
 - v. *Deed of trust* (see Section XII. Financing)
 - vi. *Deed of gift*
 - Transfer with little or no consideration

- Void in NC if not recorded within 2 years
- No excise tax required

E. Title Assurance [Level 1 except as noted below]

1. Title Examination (Title Search or Title Report)

- a. Public records search
- b. *Chain of title*
- c. *Abstract of title (title abstract)*
- d. *Opinion on title (by attorney)*

2. Title Insurance

- a. Purpose
- b. *Insurable title*
- c. Types of policies
 - i. Lender's policy
 - ii. Owner's policy

Note: Broker should strongly recommend that a buyer purchase an owner's title insurance policy even if there is no mortgage financing.

d. Basic policy coverage

Note: Broker should never suggest that a survey or owner's coverage is unnecessary; have buyer consult the closing attorney if buyer has questions.

e. Cost and procurement

- i. Payment of a one-time upfront premium by the buyer
- ii. Typically ordered by the settlement agent

3. Title Recordation [Level 2 – this subtopic]

- a. Purpose
- b. Recording contracts or memoranda of contract
 - i. *Constructive Notice vs Actual Notice*
 - ii. Most residential sales contracts are not recorded
 - iii. Recordation of a *memorandum* of a real estate contract may be used to serve as *constructive notice*
- c. Recordation procedures

Note: Recordation of lien satisfaction (e.g., mortgage payoff) is needed to clear a title from being encumbered by the previously recorded lien.

4. Covenants of Title in Deeds

Instructor Note: Mention only; covered earlier under Deeds

5. Marketable Title

- a. Action to Quiet Title (Quiet Title Suit)
- b. Cloud on title

Section VII: Real Estate Contracts & Agency [Level 3 except as noted below]:
National Exam Category (16 Items)

A. Basic Contract Concepts, Terminology & Classifications [Level 1- this subtopic]

1. Contract
2. Express/Implied
3. Bilateral/Unilateral
4. Executed/Executory
5. Valid Contracts
6. Void Contracts
7. Voidable Contracts
8. Addenda
9. Amendments
10. Contingency

B. Essential Elements of a Contract

1. *Mutual Assent* (also known as "Meeting of the minds", Mutual Agreement, Offer and Acceptance)
 - a. The offer

Note: Pay careful attention to terminology. There is a huge difference between an *offer* and a *contract*.

 - i. Offer
 - ii. Offeror vs offeree

Note: Typically, the buyer is the initial *offeror* and the seller is the initial *offeree*; but sellers can initiate offers.
 - b. Acceptance

Note: Communication to the agent is the same as communication to the principal.

c. Communication of offer and acceptance

- i. Oral communication
- ii. Personal delivery
- iii. Mail
 - Traditional or special mail, such as USPS, FedEx, UPS
 - *Mailbox Rule*

Note: Time of actual receipt by offeror is irrelevant. This Rule only applies to communicating acceptance of an offer; **not** termination of an offer or contract.

- iv. Electronic methods of communication
 - Use of email, text, or fax unless prohibited by terms of the offer
 - Effective upon receipt by offeror's communication equipment or computer

d. *Counteroffer*

Note: Once an offeree makes a counteroffer, they cannot change their mind later and "accept" the original offer.

e. Termination of offer

2. *Consideration*

Note: The sales price is the consideration in a sales contract, **not** the earnest money deposit or the due diligence fee. Rent is the consideration in a lease, **not** the tenant security deposit.

3. Legal Capacity of the Parties

- a. Minors (persons under legal age...18 in NC) - *voidable*
- b. Persons declared mentally incompetent by court of law - *void*
- c. Persons mentally incompetent in fact - *voidable*
- d. Persons intoxicated or under drug influence who temporarily do not understand what they are doing - *voidable*

4. Lawful Objective of the Contract

C. Requirement for Voluntary Reality of Consent [Level 2 - this subtopic]

<p>Required Activity: Provide real world examples of each of the following ways that real estate contracts may be declared void or voidable.</p>

1. Mistake

- a. *Mistake of fact*
 - i. Contract may be voidable if the mistake of fact
 - Involves a material term or aspect;
 - Is mutual; **and**
 - Is not the result of fraud or negligence

- ii. Unilateral mistakes of fact do not release parties from their obligations
- b. *Mistake of law*
- 2. *Fraud*
 - a. Elements
 - b. Voidable by the deceived party; not automatic
- 3. *Duress*
 - a. Examples
 - b. Voidable by injured party
- 4. *Undue Influence*
 - a. Examples
 - b. Voidable by injured party
- D. Other Contract Concepts [Level 2 - this subtopic]
 - 1. Uniform Electronic Transaction Act (UETA)
 - a. Applicable to real estate transactions
 - b. Electronic signatures are binding on contract parties
 - 2. Termination or Discharge of Contracts

Required Activity: Provide real world examples of each of the following ways that real estate contracts are terminated. Be sure to highlight that termination of a *contract* is different from termination of an *offer*.

 - a. Full and complete performance
 - b. Material breach of contract
 - c. Subsequent agreement of the parties due to dispute or negotiation
 - i. *Release*
 - ii. *Novation*
 - iii. Subsequent modifying agreement
 - iv. *Accord and satisfaction*
 - v. Cancellation
 - d. Impossibility of performance

Note: Generally refers to impossibility of the thing to be done, not the inability of the promisor to do it. For example, if a party dies after contract formation but prior to closing, the contract is binding upon the heirs and/or the estate of contract parties.

- e. Operation of law
- 3. *Assignment of Contracts*
 - a. *Assignor vs. assignee*
 - b. Unless released by the other party to the contract, the assignor will remain secondarily liable for performance of contract terms
- 4. *Time being of the essence*
- 5. Remedies for Breach of Contract
 - a. Money damages
 - i. *Compensatory damages*
 - ii. *Consequential damages*
 - iii. *Liquidated damages*
 - b. *Rescission*
 - c. *Specific performance*
- E. Basic Sales Contract Concepts
 - 1. Importance of the Sales Contract [Level 2 - this subtopic]
 - a. Sets forth the parameters of the legally binding agreement between the buyer and the seller
 - b. Standardized forms give uniformity to transactions and reduce brokers' temptation to draft
 - c. Importance of Using the Appropriate Standard Sales Contract Form
 - Note:** Brokers are expected to know when it is appropriate to use a particular contract form and to recognize situations where sellers and buyers should be referred to an attorney to have a suitable contract drafted.
 - 2. Contract Creation
 - Note:** Brokers are prohibited from drafting legal documents for others; this is seen as illegal practice of law in most states. Consumers should be encouraged to seek legal assistance if standard forms do not fit their needs.
 - a. Statute of Frauds in most states require contracts to be in writing to be enforceable
 - b. Offer and acceptance
 - i. Offer and acceptance using traditional methods (direct personal dealing, delivery through agents, mail, phone communication, etc.)
 - ii. Offer and acceptance by electronic means (e-mail, DocuSign, etc.)

c. Submitting offers

- i. Concurrent offers must be presented at the same time; no particular order of presentation is required
- ii. Applies to all brokers in the transaction regardless of who they represent or how they will be compensated
- iii. Listing broker generally has no authority to accept or reject an offer on behalf of seller-client
- iv. Only 1 contract signed by all parties required to be binding
- v. Buyer acquires *equitable title* once under contract

3. Handling Offer Modifications and Counteroffers

- a. Any change to an offer rejects the original offer; potentially creates a counteroffer
- b. Numerous term changes should prompt use of a new offer form completed with current terms under consideration by the parties

4. Handling Earnest Money as *Liquidated Damages*

5. Furnishing Copies of Offers and Contracts

6. Handling Contract Disputes and Modifications

- a. Seek legal advice before breaching contract terms
- b. Negotiate an amendment to contract

F. Special Contract Forms [**Level 1 - this subtopic**]

Important Note: Buyers and sellers should be referred to an attorney for preparation of any of the following documents. Drafting of such documents by a broker constitutes the unlawful practice of law.

1. *Installment Land Contract* (Also referred to as *Contract for Deed* or *Land Contract*)

- a. Key concepts
 - i. A sales contract **and** an owner-financing document
 - ii. Seller (*vendor*) retains *legal title* until the entire purchase price is paid
 - iii. Buyer (*vendee*) receives *equitable title* and possession
- b. No standard contract form; consult an attorney
Note: Do **not** use a standard sales contract
- c. Advantages to seller and buyer
- d. Disadvantages to seller and buyer

2. *Option to Purchase* Real Estate

- a. No standard option form; consult an attorney
Note: Do **not** use a standard sales contract

- b. Rights of parties
 - i. *Optionor*
 - ii. *Optionee*
- c. Two (2) types of consideration should be definitely and separately stated
 - i. Option fee, generally non-refundable
 - ii. Purchase price
- d. Requirements of options
 - i. Must be in writing and recorded generally per Statute of Frauds
 - ii. *Time Being of the Essence* in regard to date to exercise the option
- e. Residential leases may include an option to purchase

Note: No standard form exists for a residential lease with option to purchase, and a broker **must not** suggest that landlords/tenants attempt to tie together lease and offer to purchase forms. A broker should direct the parties to enlist an attorney to draft this special type of agreement.

3. Agreements for Preemptive Rights [Level 1 - this subtopic]

- a. *Right of first refusal*
- b. *Right of first opportunity to purchase*

G. Overview of Laws and Regulations Governing Brokerage Relationships

1. Overview of Laws and Regulations Governing Brokerage Relationships

- a. *Common Law of Agency*
- b. Contract law
- c. Individual state laws and regulations

2. Law of Agency — Basic Concepts

- a. Basic agency terms
 - i. *Agency*
 - ii. *Principal/client*
 - iii. *Agent*
 - iv. *Subagent*
 - v. *Third party*
 - vi. *Customer*
 - vii. *Facilitator/transactional broker*
 - Disclosure of material facts is normally required
 - Not allowed in North Carolina

- b. The real estate agent's fiduciary role
 - i. *Fiduciary*
 - ii. A fiduciary (e.g., agent) is bound to act primarily for the benefit of the principal (e.g., client) before any self-interest
 - c. Classifications of agency relationships
 - i. *Universal agent*
 - ii. *General agent*
 - iii. *Special agent*
 - d. Creation of real estate agency relationships
 - i. Relationships between brokers/firms and transaction parties (formed by agency contracts/agreements)
 - Listing contract
 - Buyer Agency contract
 - Dual Agency contract
 - Property Management contract
 - Tenant Representation contract
 - ii. Relationships between brokers and brokerage companies [Level 1 - this subtopic]
 - In-house brokerage employment contracts
 - Cooperation agreements between brokers/firms
 - iii. By conduct of parties (implied agency) [Level 1 - this subtopic] – For example, cooperation between firms based on brokers’ actual conduct and custom rather than an explicit agreement
3. Scope of Agent’s Authority
- a. *Express authority*
 - b. *Implied authority*
 - c. *Apparent authority*
4. Real Estate Agency Relationships
- a. The basic agency relationship
 - i. Consumer employs sole practitioner broker
 - Independent broker can function as a sole proprietor or as a licensed entity
 - Agency agreements would be between sole proprietor’s company and the consumer
 - ii. Consumer employs a real estate brokerage company/firm
 - Agency agreements would be between the consumer and the firm, **not** with the individual affiliated agents
 - A broker affiliated with a firm is an agent of the firm under the law of agency
 - All brokers affiliated with the firm automatically become subagents of any principal-client of the firm

b. Agency relationships in real estate sales

- i. Single agency -- seller agency only
 - The company only represents property owners
 - All affiliated brokers represent all seller-clients of the company as seller subagents
 - All potential buyers are shown any of the company's listed properties by any affiliated brokers as unrepresented third parties (customers)
- ii. Single agency -- buyer agency only
 - The company has no listings since it does not represent sellers
 - All affiliated brokers represent all buyer-clients of the company as buyer subagents
 - Affiliated brokers will only show properties listed with cooperating companies or unrepresented sellers (FSBOs)
- iii. Agency relationships when **two** brokerage companies cooperate in a cross sale or co-brokered transaction

Note: Beware of illegal undisclosed dual agency through careless actions of brokers.

 - Exclusive agency
 - Seller subagency
 - Listing company can refuse to offer subagency to the other company
 - Switching from seller subagent to buyer agent
- iv. Both seller and buyer agency with dual agency for "in-house" sales
 - The brokerage company represents both sellers and buyers
 - Intentional, disclosed dual agency; unintentional, undisclosed dual agency prohibited
 - Dual agency with designated agents

c. Agency relationships in real estate rentals

- i. Created by property management agreement
- ii. The management firm/broker is the agent and the landlord is the principal
- iii. Any licensed employees of the management firm/broker are subagents of the landlord
- iv. Residential prospective tenants are usually customers
- v. Commercial tenants may or may not be represented; any representation agreement should be in writing prior to an offer to rent a property

5. Agent's Duties to Principal under the Law of Agency

Required Activity: Use real world examples to illustrate each duty.

a. Obedience

b. Loyalty

- i. Avoidance of *self-dealing* by agent
 - ii. Written client consent to represent adverse interests (e.g., dual agency)
- c. Disclosure of information to include agent's affirmative duty to discover and disclose **all** transactional information including, but not limited to, material facts

Note: Personal information about a third party known to an agent that might influence the agent's principal in the transaction must be disclosed to the principal.

- d. Confidentiality
- e. Accounting for and safeguarding of goods and funds handled plus retention of transactional records

Note: No commingling of trust monies with company or personal funds.

- f. Skill, care and diligence

6. Termination of Agency Relationship

Required Activity: Provide examples of terminations and exceptions.

a. Termination of agency

- i. Purpose has been accomplished
- ii. Expiration of the term
- iii. Mutual agreement to terminate
- iv. Breach by a party
- v. Destruction or condemnation of the property
- vi. Death or incapacity of either party
- vii. Operation of law

b. Duty generally ends when agency ends, with the following exceptions

- i. Express promise or implied obligation
- ii. Pending transaction at termination date of agency agreement
- iii. Self-dealing

Note: Duty of confidentiality may be expected to continue as long as the agent has no duty to disclose to a new client.

7. Liabilities and Consequences of Agent's Breach of Duties [Level 3]

- a. Disciplinary action by regulatory agency against agent
- b. Civil liability of agent
- c. Criminal liability of agent
- d. Civil liability of principal for agent's misconduct; *tort*

8. Duties and Liabilities of Principals

a. Principal's duties to agent

- i. To act in good faith
- ii. To compensate the agent

- b. Principal's duties to third persons
 - i. No requirement to disclose property condition unless required by state regulations, but could be liable for misrepresentation
 - ii. Contract performance
- c. Liabilities and consequences of principal's breach of duties
 - i. Possible criminal liability
 - ii. Civil liability

Section VIII: Agency in NC [Level 3 except as noted below]:
State Exam Category (16 Items)

- A. Overview of NC Laws and Regulations Governing Brokerage Relationships
 [Level 1 - this subtopic]
 - 1. NC Real Estate License Law [[NCGS 93A](#)]
 - 2. NC Real Estate Commission rules [[Chapter 58A, Title 21 NCAC](#)]
 - 3. Disclosure of Agency Relationships in Residential and Commercial Sales [NCGS [93A-6\(a\)\(4\) and \(6\)](#); [Commission Rule 58A .0104 \(c-i\), \(m\), \(o\) and \(p\)](#)]
- B. Agency Disclosure
 - 1. Primary purposes of agency disclosure
 - a. To ensure that the consumer understands as soon as possible that there is no confidentiality between the broker and the consumer until an agency relationship is established
 - b. To introduce the consumer to available agency options
 - 2. Commission's Mandatory **Working with Real Estate Agents** (WWREA) Disclosure [[Commission Rule 58A .0104\(c\)](#)]; publication is available at www.ncrec.gov

Required Activity: Provide [WWREA Disclosure](#) and the [Questions & Answers on: Working with Real Estate Agents brochure](#).

 - a. Applies to **all** residential and commercial **sales** transactions; **not** required for property management or lease transactions
 - b. Provide at *First Substantial Contact* [[Commission Rule 58A .0104\(c\)](#)]
 - i. In-person: provide and review WWREA immediately at first substantial contact
 - ii. Phone or electronic means (e.g., email, social media, etc.): at earliest opportunity after first substantial contact (no later than 3 days after)
 - Transmit copy of WWREA to consumer

- Review agency options at earliest practicable opportunity after receipt by consumer
- Determine whether broker will act as an agent of the buyer or the seller in the transaction

Required Activity: Provide examples of when first substantial contact occurs in various situations, including, but not limited to, contact in-person, by phone, by electronic means such as email or social media, and at open houses.

c. Mandatory review of the disclosure form

Note: Inclusion of the WWREA Disclosure form in a broker's email signature or sending by an electronic signature program alone does **not** comply with the review component of disclosure requirements.

d. Completion and retention of the disclosure form for 3 years (even if agency is not reached) [[Commission Rule 58A .0108](#)]

e. [Questions & Answers on: Working with Real Estate Agents](#)

Note: This is a companion piece for the *WWREA Disclosure* that brokers should strongly consider giving consumers to provide more detail on agency options.

3. Additional Agency Disclosure Requirements [**Level 2 - this subtopic**]

a. Disclosure of agency status by seller agent or subagent to prospective buyer [[Commission Rule 58A .0104\(e\)](#)]

b. Disclosure of agency status by buyer agent to seller or seller agent [[Commission Rule 58A .0104\(f\)](#)]

Note: The Standard 2-T Offer to Purchase and Contract provides a place for agency disclosure and license numbers in the signature area.

c. Disclosure of and consent to proposed dual and designated (dual) agency [[NCGS 93A-6\(a\)\(4\) and \(6\)](#); [Commission Rule 58A .0104\(d\), \(i-n\)](#)]

d. Broker with ownership interest in listing [[Commission Rule 58A .0104\(o\)](#)]

e. Disclosure in auction sales situations [[Commission Rule 58A .0104\(g-h\)](#)]

C. Dual Agency

1. Dual Agency Basics

a. Inherent potential conflict of interest: centers around agent's common law duty to disclose all material facts to their principal

b. Intentional, disclosed dual agency requires informed, written consent of both principals (with oral agreement permitted in certain situations) [[NCGS 93A-6\(a\)\(4\)](#) and [Commission Rule 58A .0104\(d\)](#)]

c. Unintentional, undisclosed dual agency is prohibited

2. Current Approaches to Handling Dual Agency in North Carolina

a. Limiting dual agent's duties by contract

- i. Limiting disclosure of certain information to principals
- ii. Limiting the duties of loyalty and skill, care, and diligence
- iii. Effectually eliminates agent's role as an advocate for either client

b. Designated dual agency [[Commission Rule 58A .0104\(i\)-\(n\)](#)]

- i. Basic concept
 - An optional approach when brokerage company is dual agent
 - One or more agents of the company are designated to represent only the interests of the seller
 - One or more agents of the company are designated to represent only the interests of the buyer
 - The company and all non-designated agents of the company remain as dual agents
- ii. Major rule provisions
 - Prior express approval required
 - Confidential information of designated client may **not** be shared with the designated agent of the other party
 - Identity of all designated agents must be disclosed
- iii. Key concepts
 - Dual agency is not eliminated; merely a form of dual agency
 - Only possible for in-house dual agency sales situations
 - Mandatory written approval of both seller and buyer no later than making of the 1st offer
 - Individual designated dual agents will act only as agent for principal for whom designated, similar to an exclusive listing agent or buyer agent
 - A comprehensive written company policy on the practice of designated dual agency is recommended
 - A broker may **not** be appointed as a designated dual agent for one party if that broker has already received confidential information about the other party
 - A broker-in-charge (BIC) must **not** serve as a designated dual agent in a transaction opposite an affiliated provisional broker [[Commission Rule 58A .0104\(j\)](#)]

Note: Multiple agents can be designated to represent a principal, such as including the licensed personal assistant of a designated dual agent.

c. Individual broker dual agent under [Commission Rule 58A .0104\(n\)](#)

- i. Can represent a prospective buyer that wishes to buy a property listed with the broker with permission of both clients
- ii. Broker cannot share a client's information without their permission that pertains to
 - Willingness to agree to a price, terms or any conditions of sales other than those offered;
 - Motivation for engaging in the transaction unless disclosure is required by statute or rule; and
 - Any information that the client has identified as confidential unless disclosure is required by statute or rule

D. Agent's Duties

1. Agent's Duties to Principal under NC Real Estate License Law and Commission rules

Required Activity: Compare and contrast duties owed to clients vs. third parties. It is critical that licensees understand the difference in the standard for determining what information must be disclosed to a principal/client versus what must be disclosed to a third party/customer (such as a lender).

- a. Duty to avoid any willful or negligent misrepresentation of a material fact to the principal, and to disclose to the principal all material facts about which the agent has knowledge or should reasonably have acquired knowledge [NCGS [93A-6\(a\)\(1\) and \(3\)](#)]
- b. Duty to avoid making any false promises to the principal [NCGS [93A-6\(a\)\(2\) and \(3\)](#)]
- c. Duty to avoid any undisclosed conflict of interest [NCGS [93A-6\(a\)\(4\)](#); [Commission Rule 58A .0104\(d\)-\(f\), \(i\) and \(j\)](#)]
- d. Duty to properly account for funds held in trust for the principal [NCGS [93A-6\(a\)\(7\), \(12\) and \(14\)](#)]
- e. Duty to act competently in the performance of services required by the agency relationship [NCGS [93A-6\(a\)\(8\)](#); various rules]
- f. Duty to avoid improper conduct and to be honest in all dealings with the principal (as well as in dealings with other parties) [NCGS [93A-6\(a\)\(10\)](#)]
- g. Duty to deliver a copy of any written agency and transactional documents to client within 3 days of broker's receipt of the executed document [NCGS [93A-6\(a\)\(13\)](#); [Commission Rule 58A .0106](#)]
- h. Duty to disclose any commissions, referral fees, kickbacks and similar payments from third parties [[Commission Rule 58A .0109](#)]

2. Agent's Duties to Third Persons under NC Real Estate License Law and Case law [NCGS [93A-6\(a\)](#)]

Note: Emphasis should be on a proper understanding of misrepresentation and omission, and especially the affirmative duty to discover and disclose material facts to all parties to the contract, regardless of agency relationships.

- a. Duty to avoid any willful or negligent misrepresentation of a material fact to a third party and to disclose to the third party all material facts relating to the property about which the broker has knowledge or should reasonably have acquired knowledge [NCGS [93A-6\(a\)\(1\) and \(3\)](#) and case law]

E. General Requirements for Agency Contracts (Sales and Rental Transactions) [NCGS [93A-13](#); [Commission Rule 58A .0104\(a\)](#)]

Note: Prior to entering an agency agreement with a prospective client, the broker should ask if they already have an agency agreement with another broker. If “yes,” the broker should wait for that existing agency agreement be terminated or expire.

1. Agency contracts with property owners must be in writing from the outset of the relationship

Note: Oral listing agreements and property management agreements are unlawful in NC.

2. Requirements for Written Agency Agreement

- a. Have a definite expiration date;
- b. Contain the anti-discriminatory language prescribed by rule in a clear conspicuous manner; [[Commission Rule 58A .0104\(b\)](#)]
- c. Be signed by all parties; **and**
- d. Include the listing broker’s individual license number
- e. Exception: non-exclusive buyer or tenant agency contracts can be oral for an unspecified period of time if reduced to writing prior to 1st offer

F. Listing Practices (Working with Sellers)

1. Prelisting Activities – Gather documents needed for prelisting meeting and advise seller to gather the following information:

- a. Copy of seller’s deed
- b. Copy of survey (if available)
- c. Copy of protective covenants, HOA information (including dues and assessments)
- d. Balance due on seller’s mortgage(s) and status of mortgage(s)

2. Prelisting/Listing Meeting

- a. Agency disclosure
 - i. Caution seller about sharing confidential information prior to signing a listing contract
 - ii. Advise seller of company’s proposed brokerage fee and services
 - iii. Determine agency relationship with seller
- b. Inspect prospective seller’s property and prepare listing data sheet
 - i. Explain listing agent’s obligation to disclose material facts to all prospective buyers
 - ii. Note all significant features and defects

- iii. Identify personal property to be transferred and fixtures not to be conveyed
 - iv. Suggest needed repairs, improvements, staging, etc.
 - v. Determine square footage and acreage
 - vi. Make sure listing data is accurate and complete
- c. Inquire about construction/alteration/repair to uncover possible mechanic's liens and the need for permits
 - d. Inquire about septic system capacity/permit (if property has onsite septic system)
 - e. Discuss marketing plan
 - f. Review documents/information obtained from seller
 - g. Verify and properly report building square footage
3. Determine an Appropriate Listing Price
- a. Perform a Comparative Market Analysis (CMA)
 - b. Calculate the sale price needed to net "X" amount to seller **or** estimating net to seller with various sale prices
- Required Activity:** Assign math practice problems; students traditionally have difficulty with this on the license exam.
- c. Calculate net profit/loss to seller on sale
- Required Activity:** Assign practice problems.
- d. Review with seller all factors that should be considered
4. Complete Listing Contract Form
- Note:** Listing price must be determined before seller signs listing contract.
5. Comply with Residential Lead-Based Paint Hazard Reduction Act, if applicable
6. Market listed property per contract and customary marketing practices
- G. Working with Buyers
- 1. Provide and Review [Working with Real Estate Agents Disclosure](#); Explain Agency Options; Determine and Create the Agency Relationship (Obtaining an Agreement)
 - a. Working with buyers as a seller subagent
 - b. Working with buyers as a buyer agent
 - i. Option of acting under an temporary oral buyer agency agreement when permitted
 - Must be nonexclusive
 - May **not** bind the buyer for any specific period of time

- **All** terms of the written agency agreement must be addressed in the oral agreement
 - If oral agreement limited to a specific brokerage company or for a specific time period, agency must be reduced to a written agreement immediately
 - Must be reduced to writing no later than the time an offer to purchase is made by any party
 - ii. Exclusive vs. nonexclusive written agreement
 - iii. Option of limiting duration of an exclusive agreement
 - iv. Option of limiting exclusive agreement to specific properties
 - c. Working with an unrepresented seller (e.g., FSBO) as a buyer agent
 - i. Provide and review WWREA Disclosure
 - ii. Obtain a written agreement signed by the seller
 - iii. Refrain from actions that might be interpreted as the broker is representing the seller
2. Prequalify the Buyer

Note: Preferable approach is to have buyer prequalified by a mortgage loan officer.
 3. Select Properties for Showing
 4. Schedule Properties for Showing
 - a. Disclose agency status to listing agent (or seller, if a FSBO)
 - b. Obtain cooperation agreement with listing company, if needed

Note: In the Buyer Agency Agreement, the brokerage company promises to first seek compensation from the listing firm or the seller before looking to the buyer client for payment.
 5. Show Properties
 6. Discover and Disclose Material Facts to Buyer
 7. Obtain or Verify Information for Buyer (e.g., Property Disclosure Statements, HOA info, protective covenants, other info requested by buyer)
 8. Perform a CMA (to assist buyer in determining an appropriate offer price)
 9. Assist Buyer with Preparation of Offers; Present and Negotiate Offers
 10. Assist the Buyer with Preparations for Closing
- H. Working in Property Management **[Level 2 excepted as noted below]**
1. Relationship between a Property Owner and a Broker engaging in Property Management on the Owner's Behalf

Note: In NC, there is no separate real estate license for "property managers."

 - a. Authority of broker (agent) established by property management contract

- b. Duties of broker (agent) to property owner (principal) and to third persons (tenants and prospective tenants)
 - c. Property management fee [Level 3 – this subtopic]
2. Typical Provisions of Property Management Contracts
- Note:** Per [Commission Rule 58A .0104\(a\)](#), all property management agreements must be in writing from inception of the relationship.
- a. Property description
 - b. Contract period [[Commission Rule 58A .0104\(a\)](#)]
 - i. May allow automatic renewal
 - ii. Landlord may terminate with notice at end of any contract period or renewal period
 - c. Agent’s management fee
 - d. Agent’s authority
 - e. Responsibilities of agent and owner
3. Typical Property Management Duties [Level 1 - this subtopic]
- a. Preparing management plan
 - i. Establishing a *rental schedule*
 - ii. Preparing an *operating budget*
 - b. Marketing the property
 - c. Qualifying and selecting tenants
- Required Activity:** Discuss factors that may/may not be considered due to Fair Housing Act criteria (e.g., credit reports, criminal records).
- d. Executing leases for owner
 - e. Collecting rents and security deposits
 - f. Handling collected monies according to laws/rules
 - g. Maintaining the property
 - h. Preparing/enforcing rules and regulations
 - i. Maintaining property insurance
 - j. Maintaining accurate records
 - k. Preparing income/expense reports and accounting to owner

- l. Performing landlord's legal duties
- m. Instituting legal actions (e.g., tenant eviction)
- n. Complying with Americans with Disabilities Act (ADA) and Fair Housing laws

Section IX: Real Estate Practice [Level 2 except as noted below]:
National Exam Category (14 Items)

A. Broker Responsibility

- 1. Practice within Scope of Experience
- 2. Avoid Unauthorized Practice of Law
- 3. Beware of Solicitation of Active Clients of Other Firms/Brokers
 - a. May constitute *tortious interference with contractual relations*
 - b. Violates the Code of Ethics ([Article 16](#)) of the National Association of REALTORS® (which governs members of that Association)
 - c. If a seller whose property is currently listed with another company initiates a conversation with a broker about the possibility of the broker becoming their new listing agent, the broker
 - i. May discuss the terms of the possible listing agreement that would begin after the current listing ends
 - ii. Should not suggest that the seller terminate the current listing agreement early

B. Creating Brokerage Agreements

- 1. Seller – Listing Agreement
 - a. General concepts
 - i. Usually creates special agency
 - ii. Must usually be in writing
 - iii. Agency contract owned by the brokerage company
 - b. Types of listing contracts
 - i. Full service listing contracts

Required Activity: Clarify the characteristics that make the three listing contract types different, especially broker's entitlement to compensation.

- *Open or nonexclusive listing*
- *Exclusive agency listing*
- *Exclusive right to sell listing*

- ii. Limited service listing contracts
 - Brokerage compensation is frequently a fixed or flat fee vs. a percentage of gross sales price
 - May limit services, but generally should not limit legal duties dictated by statute or state regulations

Note: Consultation with a real estate attorney is recommended prior to creating such an agreement.

- iii. Protection agreements
 - Agreement between a buyer agent and a seller for a single transaction, usually when dealing with a For Sale By Owner (FSBO) situation
 - Agent should provide and review the *Working with Real Estate Agents Disclosure* with seller
 - Multiple or Cooperative Listing Services (MLS)

Note: Mandatory training on MLS use is standard among the various MLS organizations.

b. Typical full service listing contract provisions

- i. Term of agreement
- ii. Property description (including fixtures and personal property)
- iii. Listing price and terms of sale
- iv. Broker/firm's compensation
- v. Cooperation with/compensation to other brokerages
- vi. Brokerage company's duties
- vii. Marketing
- viii. Earnest money
- ix. Seller's representations and duties
- x. Dual/designated agency authorization
- xi. Names and signatures of parties

2. Buyer – Buyer Representation Agreement

a. Types of buyer agency contracts

- i. *Nonexclusive buyer agency*
- ii. *Exclusive buyer agency*

b. Typical provisions

3. Landlord – Property Management Agreement

a. Typical provisions of property management contracts

Note: Per [Commission Rule 58A .0104\(a\)](#), all property management agreements must be in writing from inception of the relationship.

- i. Property description
- ii. Contract period
- iii. Agent's management fee
- iv. Agent's authority
- v. Responsibilities of agent and owner

b. Typical property management duties [Level 1 - this subtopic]

- i. Establishing a *rental schedule*
- ii. Preparing an *operating budget*
 - Marketing the property
 - Qualifying and selecting tenants

Required Activity: Discuss factors that may/may not be considered due to Fair Housing Act criteria (e.g., credit reports, criminal records).

- iii. Executing leases for owner
- iv. Collecting rents and security deposits
- v. Handling collected monies according to laws/rules
- vi. Maintaining the property
- vii. Preparing/enforcing rules and regulations
- viii. Maintaining property insurance
- ix. Maintaining accurate records
- x. Preparing income/expense reports and accounting to owner
- xi. Performing landlord's legal duties
- xii. Instituting legal actions (e.g., tenant eviction)
- xiii. Complying with Americans with Disabilities Act (ADA) and Fair Housing laws

4. Termination of agency agreements

- a. Expiration
- b. Completion/full performance
- c. Termination by law
- d. Destruction of property or death of principal
- e. Mutual agreement
- f. Breach of contract

5. Broker/Firm's compensation

a. Types of compensation

Required Activity: Discuss various ways brokerage fees are determined.

- i. Percentage of gross sale price
- ii. Fixed or flat fee
- iii. Fee for Services for named services
- iv. *Protection period*
- v. *Net listing*

Note: Use of net listing arrangements is either illegal or strongly discouraged in most states due to the great potential for abuse and fraud based on inherent conflict of interest.

b. Co-listing by more than one broker/company

C. Fair Housing [Level 3 - this subtopic]

1. Federal Fair Housing Act ([Title VIII of 1968 Civil Rights Act](#))

a. Purpose: equal opportunity in housing

b. Protected classes

- i. *Familial status*
- ii. Race
- iii. Sex
- iv. Handicapping condition/disability
- v. Color
- vi. Religion
- vii. National Origin

c. Prohibited practices in the sale or rental of housing based on protected class status

Required Activity: Provide examples of each type of discrimination.

- i. *Blockbusting (or panic peddling)*
- ii. *Steering (or channeling)*
- iii. Refusing to sell, rent, or negotiate based on membership or perceived membership in a protected class
- iv. Representing that a dwelling is not available for sell or lease when it is
- v. Discriminatory practices
 - In terms, conditions, or privileges
 - In the financing of housing (e.g., *redlining* and related practices)
 - In advertising

Note: Includes any Internet or social media posting.

d. Exemptions

e. Design and construction of multi-family housing [Level 1 – this subtopic]

Note: All buildings with four or more residential units constructed after March 13, 1991 must allow access and use by persons with a handicapping condition.

f. Enforcement and penalties [Level 1 – this subtopic]

- i. *Conciliation*: an attempt to resolve complaint issue through informal negotiations
- ii. By administrative procedure through the Office of Fair Housing and Equal Opportunity (OFHEO) of the Department of Housing and Urban Development (HUD); complaint must be filed within 1 year
- iii. By Private Lawsuit in Federal Court; complaint must be filed within 2 years
- iv. Criminal penalties are provided for persons who coerce, intimidate, threaten or interfere with a person
 - Buying, renting or selling housing,
 - Making a complaint of discrimination; **or**
 - Exercising any rights under the fair housing law

2. Federal Civil Rights Act of 1866

a. Basic provisions

Note: Law only addresses discrimination based on **race**, with no exemptions.

b. Enforcement by private lawsuit in federal court only

3. Americans with Disabilities Act (ADA) — Facility accessibility and use requirements for “commercial facilities” or “places of public accommodation” [Level 1 - this subtopic]

Note: A real estate office is a *place of public accommodation*.

D. Risk Management [Level 1 - this subtopic]

1. Supervision

a. The basic agency relationship

i. Consumer employs sole practitioner broker

- Independent broker can function as a sole proprietor or as a licensed entity
- Agency agreements would be between sole proprietor’s company and the consumer

ii. Consumer employs a licensed real estate firm

- Agency agreements would be between the consumer and the firm, **not** the individual affiliated agents
- A broker affiliated with a firm is an agent of the firm under the law of agency
- All brokers affiliated with the firm automatically become subagents of any principal-client of the firm

iii. When an affiliated broker leaves the brokerage, they cannot take the contracts/clients with them

b. Responsibilities of the employing broker (firm/BIC)

- i. Supervising all actions of affiliated licensees and employees
- ii. Providing training for affiliated licensees

2. Do Not Call Laws/Rules (<https://www.fcc.gov/consumers/guides/stop-unwanted-robocalls-and-texts>; www.donotcall.gov)

a. *Do Not Call Registry* managed by Federal Trade Commission [<https://www.ftc.gov/>]

b. Do **not** make telephone calls or send robotexts to anyone on the *Do Not Call Registry* (with limited exceptions)

i. Prohibition includes calls

- To homeowners with expired listings with another broker/ company; the “established business relationship” exemption only applies to expired listing broker
- To solicit listing from *for sale by owner* (FSBO) on the registry

Note: Broker may call a registered FSBO on behalf of a prospective buyer-client who is interested in buying the FSBO property.

- ii. Exemptions, unless consumer asked to not be called
- iii. Penalties

Note: Brokers should stay up-to-date on any restrictions on electronic communication (e.g., email, texts, social media) that might affect their solicitation of business in that manner. Mass electronic newsletters or "just listed/sold" emails would be subject to such restrictions.

3. *Vicarious Liability*

- a. Liability for another's actions because of the relationship between the parties
- b. Brokerage company/Broker-in-charge is responsible for professional actions and conduct performed by all affiliated brokers
- c. Also occurs in subagency relationships

4. *Sherman Antitrust Act Prohibits Anti-competitive Practices*

- a. *Price fixing*
- b. *Boycotting*
- c. Examples
- d. Never imply or state that the quoted fee is "customary" or "the going rate" for the industry or a local area

Note: Brokers should only discuss their company's fee and not answer questions about how this fee compares to fees of other companies.

4. Fraud & Misrepresentation

- a. Employing broker must discourage all fraud/misrepresentation by affiliates
- b. Fraud is intentional or negligent misrepresentation of facts to a party who relied on the information and was harmed
- c. Misrepresentation is typically the unintentional misleading of another

5. Types of Liability Insurance

- a. Errors and Omissions (E&O) covers most mistakes made in listing and selling activities
- b. General liability covers the risk assumed when the public enters the brokerage building

Note: No insurance protects from criminal acts and most insurance companies will exclude coverage for fraud and violations of civil rights and antitrust laws.

Section X: Brokerage Practices in NC [Level 2 except as noted below]:
State Exam Category (12 Items)

A. Selected Regulated Practices

1. Land Use Controls [Level 1 - this subtopic except as noted below]

a. NC statutory authority for governmental zoning [[NCGS 153A](#) and [160A](#)]

- i. General Assembly has police power per the state constitution
- ii. Counties and municipalities delegated zoning power via the enabling acts

b. Highway access restrictions

Note: Ability to access an existing public highway or street that abuts the property is a material fact; access may be restricted or forbidden by state or local municipality.

c. Interstate Land Sales Full Disclosure Act [USC 1701 *et seq*]

- i. Purpose
- ii. Land registration requirement
- iii. Application
- iv. Exemptions

d. Broker's responsibilities for verification of land use and recognition of potential land use problems [Level 3 – this subtopic]

Note: Under the NC Real Estate License Law, a licensee has a duty to avoid any misrepresentation regarding permitted land use, to recognize potential land use problems, and an affirmative duty to discover and disclose any such problems. Licensee is not expected to conduct a title search for covenants or interpret covenants as to what activities are permissible; advising clients to have an attorney perform such actions would be appropriate.

- i. When a property is or might be subject to zoning and/or covenants, advise consumer that:
 - Ordinances or covenants could affect consumer's use and enjoyment of the property
 - Property owners may be subject to owners' association dues and assessments
 - Careful review of any covenants and owners' association governing documents is recommended prior to signing any offer
- ii. Avoid any misrepresentation about a property's zoning or permitted land uses
- iii. Recognize "red flag" situations

Note: Recognizing and taking appropriate action with regard to potential problems with zoning and restrictive covenants is particularly important.

- iv. Recognize patent signs of flooding on a property or when a property's location may make it susceptible to flooding
- v. Disclose planned major highway or public transportation changes in the area as material fact

2. Environmental Issues

- a. The presence on a property of any of the environmental hazards that is known or should have been known by a North Carolina broker is a material fact in North Carolina that must be disclosed to all transactional parties.
- b. NC Leaking Petroleum Underground Storage Tank Cleanup Act [[NCGS 143-215.94A](#)]
 - i. Owner of a property (residential or commercial) with a problematic underground storage tank (UST) may be liable for cleanup even if leak caused by previous owner
 - ii. Broker responsibilities
 - Any broker who knows of any current or previous USTs on the property must disclose to all prospective purchasers or tenants
 - Buyer agent should strongly encourage buyer to hire an expert to inspect tank and conduct soil contamination test

3. Delivery of Instruments [[NCGS 93A-6\(a\)\(13\) and \(14\)](#); [Commission Rule 58A .0106](#)] [Level 3 – this subtopic]

- a. Assist with delivery of completed RPOADS disclosure statements
- b. Submit offers
 - i. Brokers must present all offers (including multiple offers and back-up offers) to the offeree (or their agent) immediately but in no case later than 3 days from broker's receipt of executed offer [[NCGS 93A-6\(a\)\(13\)](#); [Commission Rule 58A .0106\(a\)](#)]
 - Even if property already under contract
 - Broker cannot "hold" offer while negotiating compensation agreement
 - ii. Concurrent offers must be presented at the same time; no particular order of presentation is required
 - iii. Oral presentation of the offer terms to the offeree does **not** negate the requirement for the broker to deliver the offer within 3 days
 - iv. Applies to all brokers in the transaction regardless of who they represent or how they will be compensated
- c. Furnish copies of offers and contracts [[Commission Rule 58A .0106\(a\)](#)]
- d. Broker's responsibilities relating to settlement statements [[NCGS 93A-6\(a\)\(14\)](#)]

4. Advertising [[Commission Rule 58A .0105](#)]

5. Record Retention [[Commission Rule 58A .0108](#)]

6. Handling Trust Funds [Level 2 except as noted below]

Important Note: Cover basics of trust accounts and handling of trust money. Detailed accounting/recordkeeping procedures for brokerage trust accounts are **not** tested on the license examination. Instructors and students are strongly urged to use the coverage of this topic in the Comments section of the *LLCR*.

- a. Definition of trust money [NCGS [93A-6\(a\)\(12\)](#); [Commission Rule 58A .0116\(a\)](#)]
 - i. *Trust money*: Money belonging to others received by an broker who is acting as an agent in a real estate transaction
 - ii. Includes money received as an escrow agent or temporary custodian of funds belonging to others
 - iii. Most common examples: earnest money deposits, down payments, tenant security deposits, and rents

- b. Trust account basics [NCGS [93A-6\(a\)\(12\)](#) and [\(g\)](#); [93A-45\(c\)](#); [Commission Rule 58A .0116](#); [Commission Rule 58A .0117](#); LLCR on Handling Trust Funds, pp. 99-102] [**Level 1 – this subtopic**]
 - i. Basic required features [NCGS [93A-6\(g\)](#); [Commission Rule 58A .0117\(b\)](#) and [\(f\)](#)]
 - ii. Proper designation of trust account and FDIC Insurance [[Commission Rule 58A .0117\(b\)](#)]
 - iii. When a trust account is required [[Commission Rule 58A .0116\(a\)](#)]
 - iv. Number of trust accounts required/permitted [[Commission Rule 58A .0118\(a\)](#)]
 - v. Commingling of funds prohibited [NCGS [93A-6\(a\)\(12\)](#)]
 - vi. Limited exception to commingling prohibition allowed to cover bank service charges on trust accounts [[Commission Rule 58A .0117\(c\)\(4\)\(B\)](#)]
 - vii. Requirements for interest-bearing trust account [NCGS [93A-6\(a\)\(12\)](#); [Commission Rule 58A .0116\(c\)](#)]
 - viii. Broker-In-Charge is responsible for trust account [[Commission Rule 58A .0110\(g\)\(4\)](#)]

Note: BIC remains responsible for trust monies and records even if others are allowed to assist with maintenance of the trust account.
 - ix. Disbursement of earnest money to settlement agent [[Commission Rule 58A .0116\(e\)](#)]
 - x. Handling disputed trust funds [NCGS [93A-12](#); [Commission Rule 58A .0116\(d\)](#)]

- c. Handling of trust money [NCGS [93A-6\(a\)\(7\)](#), [\(12\)](#) and [\(14\)](#); NCGS [93A-45\(c\)](#); [Commission Rule 58A .0116](#)]
 - i. Basic deposit rule [[Commission Rule 58A .0116\(a\)](#)]
 - ii. Exceptions to basic deposit rule [[Commission Rule 58A .0116\(b\)](#)]
 - Trust money received by Provisional Broker (PB)
 - Trust money received by a Limited Nonresident Commercial Broker [[Commission Rule 58A .1808](#)]
 - Earnest money or tenant security deposits paid by means other than currency
 - Check or other negotiable instrument payable to seller for an option or due diligence fee
 - Check or other negotiable instrument payable to third party escrow agent in sales transaction for trust monies
 - iii. General responsibility of licensees to safeguard trust monies [[Commission Rule 58A .0116\(g\)](#)]

B. Prohibited Practices

1. Misrepresentation/Omission of Material Facts [Level 3 – this subtopic]

Required Activity: Compare and contrast duties owed to clients vs. third parties. It is critical that licensees understand the difference in the standard for determining what information must be disclosed to a principal/client versus what must be disclosed to a third party/customer (such as a lender).

- a. Duty to avoid any willful or negligent misrepresentation of a material fact to the principal, and to disclose to the principal all material facts about which the agent has knowledge or should reasonably have acquired knowledge [NCGS [93A-6\(a\)\(1\)](#) and [\(3\)](#) and case law]

i. *Misrepresentation*

ii. *Omission*

iii. *Puffing*

iv. *Material facts*

- Categories of material facts
 - Facts about the property itself
 - Facts relating directly to the property
 - Facts relating directly to the ability of the parties to complete the transaction
 - Facts known to be of specific importance to a party
- Items declared “material” in North Carolina
 - EIFS/synthetic stucco exterior siding, even if fully replaced
 - Polybutylene pipes that have leaked, even if repaired or fully replaced
 - Current or former “meth” house
- Items declared “not material” in North Carolina
 - Reputation as a haunted property
 - Death or illness of previous or current occupant

- b. Discover and disclose material facts

- i. Affirmative duty to discover and volunteer material facts to all parties to the transaction, regardless of whom the broker represents
- ii. Broker cannot avoid responsibility for communicating incorrect and/or incomplete information by issuing disclaimers;
- iii. Broker has a duty to investigate “red flags” or questionable information
- iv. Broker’s disclosure responsibilities under Real Estate License Law are not affected by *doctrine of caveat emptor*; broker must still volunteer material facts to all transactional parties

2. Discriminatory Practices [NCGS [93A-6\(a\)\(10\)](#); Commission Rules 58A [.0120\(d\)](#) and [.1601](#)]

3. Unauthorized Practice of Law [NCGS [93A-4\(e\)](#); NCGS [93A-6\(a\)\(11\)](#); [Commission Rule 58A .0111](#)]

- a. Drafting of Sales Contracts by Brokers Prohibited [NCGS [93A-6\(a\)\(12\)](#); [Commission Rule 58A .0111](#); and [NCGS 84-2.1](#).]

- i. Drafting constitutes *unauthorized practice of law* [NCGS [93A-6\(a\)\(11\)](#)]
- ii. Brokers are legally permitted to “fill in the blanks” of preprinted forms

- iii. Prohibition against broker including prohibited provisions or drafting contract language, even at instruction of a client

Note: Have an attorney draft any unique contract language.

- b. Interpreting legal documents for others

4. Improper Brokerage Commissions [[Commission Rule 58A .0109](#)] [Level 3]

- a. Affiliated provisional brokers [NCGS [93A-6\(a\)\(5\)](#)] and affiliated “full” brokers [[Commission Rule 58A .0120\(b\)](#)] cannot be compensated directly by anyone other than their supervising BIC

- b. Compensation to broker licensed in another state only if:

- i. Out-of-state (foreign) broker holds an active real estate license in the state from which they are conducting the brokerage activity, such as placing a referral, **and**
- ii. Foreign broker does **not** enter NC any time during the transaction to engage in any brokerage activity related to the transaction

- c. Payment prohibited to broker with an expired or inactive license status unless:

- i. License must be on active status when brokerage activity is performed
- ii. Broker must stop **all** brokerage activity when license expires or becomes inactive

Note: If the licenses of the firm and the individual broker were on active status **throughout** the period during which brokerage services were rendered, then the firm may be paid and the firm may in turn pay the individual broker, even if their license is not active at the time of payment. Payment is forfeited if either of the licenses were not active at any time that brokerage services were being performed.

5. Disclosure of Offers Prohibited [[Commission Rule 58A .0115](#)]

- a. Existence of other offers is **not** a material fact
- b. Broker needs seller’s authority to share existence of other offers and/or terms that might be acceptable to the seller
- c. Broker prohibited from sharing material terms of an offer (e.g., sometimes called “shopping an offer”) without express permission of offeror

6. Failure to Deliver Settlement Statements to Client [NCGS [93A-6\(a\)\(14\)](#)]

- a. Broker may be subject to disciplinary action for failing to deliver a detailed and accurate settlement statement to their client at closing
- b. Broker may rely on the settlement agent who prepared that statement for its delivery, but broker must review the statement for accuracy and notify all parties to the closing of any errors (“all parties” would include buyer, seller, settlement agent, and lender) [NCGS [93A-6\(a\)\(14\)](#)]

7. Commingling Trust Money with Personal Funds [NCGS [93A-6\(a\)\(12\)](#); [Commission Rule 58A .0116\(g\)](#)]

Note: Limited exception to commingling prohibition allowed to cover bank service charges on trust accounts [[Commission Rule 58A .0117\(c\)\(4\)\(B\)](#)]

Section XI: Contracts & Closing in NC [Level 2 except as noted]: **State Exam Category** (7 Items)

A. Introduction

1. General Rules for Interpretation of Contracts
 - a. *Parol evidence rule*
 - b. Written overrides oral
 - c. Contracts are interpreted as a whole
 - d. Words will be interpreted per their ordinary meaning unless other intent is clearly noted
 - e. Written overrides preprinted language, if there is a conflict
 - f. Writer of ambiguous language will be held liable for confusion; court generally rules in favor of party that did not draft the confusing language
2. Drafting of Sales Contracts by Brokers Prohibited [NCGS [93A-6\(a\)\(11\)](#); [Commission Rule 58A .0111](#); and [NCGS 84-2.1.](#)]
 - a. Drafting constitutes *unauthorized practice of law* [NCGS [93A-6\(a\)\(11\)](#)]
 - b. Brokers are legally permitted to “fill in the blanks” of preprinted forms
Note: Have an attorney draft any unique contract language.
3. Sources of Standardized Sales Contract Forms
 - a. REALTORS® may obtain and use the contract forms created by NC REALTORS® as part of their membership benefits
 - b. Non-REALTOR® brokers may **not** initiate use of forms bearing only the REALTOR® logo
 - c. Non-REALTOR® brokers may obtain and use the sales contract forms and standard addenda that are jointly approved by North Carolina REALTORS® and the North Carolina Bar Association (NCBA), that bear only the NCBA logo/approval, through an attorney or forms vendor

Note: NCREC does **not** create the standardized sales contract forms used by the majority of NC licensees. The only standardized forms authored by the Commission are:

- *Working With Real Estate Agents Disclosure*
- *Residential Property and Owners' Association Disclosure Statement (RPOADS)*
- *Mineral and Oil and Gas Mandatory Disclosure Statement (MOG)*

B. The Offer to Purchase and Contract (May be referred to as *Sales Contract*, *Purchase Contract*, *Earnest Money Contract* or some similar name in other states) [**Level 3 – this subtopic**]

1. Requirements of Preprinted Sales Contract Forms Provided by Broker [[Commission Rule 58A .0112](#)]

a. Must include 19 items/issues required by rule

Note: Student do **not** need to know the actual 19 items for the exam.

b. Prohibited provisions [[Commission Rule 58A .0112\(b\)](#)]

- i. Brokerage compensation
- ii. Liability disclaimer of the broker

c. Prohibition against broker including prohibited provisions or drafting contract language, even at instruction of a client

2. **The Offer to Purchase and Contract (OPC) Standard Form 2-T** and standard addenda forms jointly approved by NCAR and NCBA

Required Activity: The NCAR/NCBA OPC Standard Form 2-T, *Guidelines for Completing The Offer to Purchase and Contract Form*, and the most commonly used standard addenda forms designed for use with the 2-T form (listed below) must be provided to students and used in this instruction. Conduct a detailed review of each paragraph in the Standard Form 2-T, including any prompts to attach a completed standard addendum as part of the offer/contract. Be sure to discuss the purpose of each paragraph, and common issues in filling various blanks.

a. Proper use of the OPC form

- i. Primarily intended for sale of existing single-family residences
- ii. Use standard addenda to tailor to needs of the parties
- iii. Do **not** use for lease-option agreement, lease-purchase agreement, or installment land contract

b. Item-by-item review of all OPC contract provisions and instructions on proper form completion using the *Guidelines*.

i. General guidelines for contract completion

- Type or print legibly
- Fill in **ALL** the blanks; enter "N/A" or "none" as appropriate
- Be precise; avoid abbreviations, acronyms, or unclear terminology
- Both Buyer and Seller should initial and date **every** change, addition, or deletion

- Rewrite offer if there are numerous changes; retain copies of all offers and contracts
- Review ALL contract provisions with the parties and recommend they obtain legal advice to answer legal questions

Note: Be sure to highlight all the Notes and Warnings in the form.

ii. Paragraph #1: Terms and Definitions

Note: Whenever a term that would not normally be capitalized appears in the body of a contract and begins with a capital letter, it indicates that the word or phrase is a *defined term* that can be found somewhere earlier in that contract. Most of the *defined terms* in Form 2-T are defined in Paragraph #1. Words that appear in parenthesis, such as (Additional) Earnest Money Deposit in 1(d), are optional words to be used or ignored as appropriate.

- Names of Seller and Buyer
- Property Description
- Purchase Price
- *Earnest Money Deposit (EMD)* [[Commission Rule 58A .0116](#)]

Required Activity: Use various scenarios to explore how initial and additional types of EMD should be handled and when it should be delivered to the Escrow Agent at various points during the transaction. Pay particular attention to application of [Commission Rule 58A .0116\(b\)\(3-4\)](#) regarding following Buyer's instructions for delivery to and the timing of deposit by the Escrow Agent.

- *Escrow Agent*
 - Disputed EMD [NCGS [93A-12](#); [Commission Rule 58A .0116\(d\)](#)]
- *Effective Date*
- *Due Diligence*
 - *Due Diligence Fee (DDF)*
 - *Due Diligence Period (DDP)*
- *Settlement*

Note: Brokers are strongly cautioned against suggesting inclusion of a *time being of the essence* provision regarding the settlement date unless it is imperative to one of the parties that the transaction close by a specific date. Such an inclusion could be considered "unlawful practice of law" by a broker.

- *Closing*

Note: The settlement meeting and closing do not always happen on the same day, especially if settlement occurs late in the day.

- Special Assessments

iii. Paragraph #2: Fixtures and Exclusions

iv. Paragraph #3: Personal Property

v. Paragraph #4: Buyer's Due Diligence Process

Note: Buyers should be **strongly** advised to perform due diligence activities as quickly as possible to allow time for negotiation about any discovered issues to be resolved prior to the end of the DDP. The Buyer is **not** limited to the investigative items listed in this Paragraph. Seller is **not** obligated to engage in repair negotiations or extend the DDP. If the Buyer does not terminate the contract prior to the end of the DDP, the Buyer may continue to investigate the Property after the DDP but has waived their right to terminate without penalty unless there is a Seller breach.

▪ 4-a. Loan

Note: There are no financing or appraisal contingencies in this contract. Buyer should be strongly encouraged to meet with a mortgage lender prior to starting a property search. Ideally, DDP should be long enough for Buyer to receive the appraisal and to feel confident in their ability to obtain loan approval.

- 4-b. Property Investigation
- 4-c. Sale/Lease of Existing Property
- 4-d. Repair/Improvement Negotiations/Agreement
- 4-e. Buyer's Obligation to Repair Damage caused by inspections (even if contract fails)
- 4-f. Indemnification of Seller by Buyer for damage caused by Buyer or Buyer agents and contractors
- 4-g. Buyer's Right to Terminate
- 4-h. Closing shall constitute Acceptance unless other provision made in writing

vi. Paragraph #5: Buyer Representations

Note: Buyer is liable for the accuracy of all representations made and Seller is entitled to rely on the information. The representations are informational only and do not rise to the level of a contract condition or contingency absent relevant attached addenda.

- 5-a. Funds to complete purchase
- 5-b. Other Property
- 5-c. Performance of Buyer's Financial Obligations
- 5-d. & e. Property Disclosures [[NCGS 47E](#)]

vii. Paragraph #6: Buyer Obligations

- 6-a. Proposed Special Assessments: Buyer takes title *subject to*
- 6-b. Responsibility for certain costs
- 6-c. Authorization to disclose information

viii. Paragraph #7: Seller Representations

Note: Seller is liable for the accuracy of all representations made and Buyer is entitled to rely on the information. The representations are informational only and do not rise to the level of a contract condition or contingency absent relevant attached addenda.

- 7-a. Length of property ownership
- 7-b. Lead-Based Paint, if applicable
- 7-c. Owners' Association(s) and Dues

ix. Paragraph #8: Seller Obligations

Note: If Seller fails to comply with the numerous obligations imposed by the Contract, Buyer may terminate the Contract and receive a refund of any EMD and DDF paid. In a Seller breach, Buyer may also obtain reimbursement from Seller for reasonable costs incurred in conducting the Due Diligence without affecting any other remedies available to Buyer. Brokers are reminded that an attorney should be consulted to determine if a breach has occurred.

- 8-a. Evidence of Title, Payoff Statement(s) and Non Foreign Status
- 8-b. Authority to Disclose Information
- 8-c. Access to Property
- 8-d. Removal of Seller's Property
- 8-e. Affidavit & Indemnification Agreement (against Mechanics Liens) [[NCGS 44A-8](#)]
- 8-f. Designation of Lien Agent, Payment & Satisfaction of Liens [if required by [NCGS 44A-11.1](#)]
- 8-g. Good Title, Legal Access
- 8-h. Deed, Taxes & Fees
- 8-i. Agreement to Pay Buyer Expenses
- 8-j. Owners' Association Fees/Charges
- 8-k. Payment of Special Assessments, if any
- 8-l. Late Listing Penalties, if any
- 8-m. Negotiated Repairs/Improvements

Note: *Good and workmanlike manner* is a term of art that is not as vague as it first appears. It means the work has been completed to the standard of the industry.

- 8-n. Home Warranty
- 8-o. Seller's Breach of Contract (refer to Paragraph #23)

x. Paragraph #9: Charges by Owners' Association

xi. Paragraph #10: Prorations and Adjustments (Based on 365 days/ year)

- Taxes on Real Property
- Taxes on Personal Property
- Rents, if any
- Dues

xii. Paragraph #11: Condition of Property/Risk of Loss

Note: Paragraph 11 survives expiration of the DDP.

xiii. Paragraph #12: Delay in Settlement/Closing

Note: Clarify when a party is entitled to a seven (7) day delay in Settlement.

xiv. Paragraph #13: Possession

Note: If possession date is critical to Buyer, Settlement should be scheduled so that there is sufficient time for Closing to occur before desired possession date.

Required Activity: Discuss the advantages and disadvantages of allowing possession at a time other than Closing. Be sure to address insurance issues and what happens if the transaction does not close. Remind brokers to encourage their clients to consult an attorney about risks/implications of possession before/after closing.

xv. Paragraph #14: Addenda

Note: A NC real estate broker is **not** permitted to suggest or draft any addenda for others (unless they are an actively licensed NC attorney).

xvi. Paragraphs #15-22: Miscellaneous Paragraphs

- #15. Assignments
- #16. Tax-Deferred Exchange
- #17. Parties
- #18. Survival
- #19. Entire Agreement
- #20. Conduct of Transaction
- #21. Execution
- #22. Computation of Days/Time of Day

xvii. Paragraph # 23: Remedies

- Breach by Buyer
- Breach by Seller
- Attorneys' Fees

xviii. Page 14: Signature and Dates with Wire Fraud Warning

xix. Page 15: Notice Information

Note: Entry of any Buyer or Seller contact information in the Notice Information section authorizes communication directly to a Party rather than the standard practice of communicating through the agents.

- Enter names of individual listing and selling brokers, their license numbers, firm names and license numbers, and check appropriate agency representation boxes [[Commission Rule 58A .0104\(f\)](#)]

xx. Page 16: Acknowledgment of Receipt of Monies

C. Brief Review of Commonly Used Standard Addenda Forms (provided by NCAR and NCBA for use with the standard Offer to Purchase and Contract form)

Note: In an event of a conflict between information in an addendum and the contract, the addendum will control, unless the conflict involves the description of the Property or the identity of Buyer or Seller in which case the contract will control.

1. Additional Provisions Addendum (2A11-T)
2. Back-Up Contract Addendum (2A1-T)
3. FHA/VA Financing Addendum (2A4-T)
4. Lead-Based Paint or Lead-Based Paint Hazard Addendum (2A9-T)

5. Short Sale Addendum (2A14-T)
6. Buyer Possession Before Closing Agreement (2A7-T)
7. Seller Possession After Closing Agreement (2A8-T)
8. Vacation Rental Addendum (2A13-T)

Note: If, after licensure, a broker becomes a member of the NC REALTORS®, the association has numerous other contract-related forms that deal with matters such as repair requests, negotiations, termination of contract, etc. If a licensee is not a REALTOR®, an attorney must prepare any contract-related forms provided by the licensee to the parties if the content of the document will affect the parties' legal rights.

D. Sales Contract Procedures [Level 3]

1. Submitting Offers

- a. All offers (including multiple offers and back-up offers) must be presented within 3 days of broker's receipt of executed offer [[Commission Rule 58A .0106\(a\)](#)] even if Property is already under contract
- b. Disclosure of offer and/or terms
 - i. Existence of other offers is **not** a material fact
 - ii. Broker needs Seller's authority to share existence of other offers and/or terms that might be acceptable to the Seller
 - iii. Broker prohibited from sharing material terms of an offer (e.g., sometimes called "shopping an offer") without express permission of offeror [[Commission Rule 58A .0115](#)]

2. Handling Counteroffers and Contract Modifications

- a. Retain all offers, even if rejected, amended, or replaced [[Commission Rule 58A .0108](#)]

3. Delivery of Contract Copy to All Contract Parties Required [[Commission Rule 58A .0106](#)]

E. NC Closing Procedures

1. *Settlement Agent*

- a. Selected by the buyer to represent the buyer and the buyer's lender; may provide limited services to seller (e.g., preparing the deed)
- b. Seller may elect to have their own attorney; more common in commercial transactions
- c. Provide information to the settlement agent as soon as possible
 - i. Copy of the sales contract with all addenda and/or amendments
 - ii. Contact information for all parties

- iii. Have parties provide their social security numbers
- iv. Contact information for buyer's lender
- v. Seller's lender information for loan payoff
- vi. Copy of any survey
- vii. Copies of any required inspection reports
- viii. Property insurance binder

2. Buyer's Due Diligence Process

Note: Refer to the NCAR/NCBA Offer to Purchase and Contract Standard Form 2-T for buyer's responsibilities under the contract.

a. Buyer's loan

- i. Standard 2-T contract is not contingent on loan approval
- ii. Inability of the buyer to secure financing after the DDP would result in a buyer's breach of the contract

b. Appraisal

c. Property survey

d. Property insurance

- i. Lender will usually require that adequate homeowner insurance coverage be in effect as of the day of closing
- ii. Flood elevation certificate and flood insurance usually required by lender if any part of the financed property is in a FEMA special flood hazard zone

Note: It is extremely important for the buyer **and seller** to have appropriate insurance coverage in situations when the closing is delayed, when the buyer will occupy the property before closing, or when the seller will occupy the property after closing. Failure to have proper coverage in these situations may result in the property being uninsured for some period of time.

e. Property inspections

Note: Buyer should be advised to perform their own inspections instead of only relying on the information in the Residential Property and Owners' Association Disclosure Statement.

- i. Wood-destroying insect (termite) inspection
- ii. Property inspection usually performed by qualified professionals

Note: Buyer is encouraged to have inspections performed as soon as possible to allow time for any needed repair negotiations to be completed prior to the end of DDP.

iii. Physical inspection by buyer (and agent working with buyer)

Note: A broker working with a buyer is expected to recognize "red flag" situations and to assist the buyer in checking into such situations.

- Early *walk-through* to identify any potential issues
- Examples of things to investigate
 - Tenants
 - Easements and encroachments
 - Recent construction or renovations
 - Violations of zoning or restrictive covenants

Note: Buyer should obtain and read a copy of any subdivision covenants prior to physical inspection.

iv. Onsite septic system (if appropriate)

- Improved property
 - Obtain copy of septic permit from county health department, if possible

Note: Broker cannot advertise more bedrooms than allowed by septic permit regardless of how many rooms are designed as bedrooms.

- Unimproved property
 - Order a *soil suitability test* to determine if property will support a septic system; previously called a *perc test*
 - Even lots within an approved subdivision should be evaluated

v. Other common inspections (if needed or desired)

- Radon
- Lead-based paint
- Asbestos
- Mold
- Well water

f. Resolution of repair issues

- i. Anything can be negotiated during the DDP
- ii. Repairs themselves do **not** have to be completed prior to the end of the DDP, only prior to Settlement
- iii. There are standard forms available to ratify repair agreements as part of the sales contract

g. Review of covenants and homeowner's association documents

Note: Especially important if buyer is planning to add improvements, enlarge existing structures, or use the property for business purposes.

h. Other matters of interest subject to government regulation

- i. Permitted property use
- ii. Plans for adjacent undeveloped property
- iii. Public or private status of subdivision streets
- iv. School assignment

3. Other Pre-closing Matters

- a. Title examination by attorney, including personal property lien search and mechanic's lien inquiry

- b. Clearing of title defects by seller, if needed
- c. Loan closing package provided to settlement agent by buyer's lender
- d. Brokers perform advance review of settlement statement, if available
- e. Per TRID rule, lender must provide the Borrower's Closing Disclosure to the borrower at least 3 business days prior to settlement
- f. Buyer notified as to amount of certified funds needed to close (e.g., certified check, bank check, or wired to settlement agent)

Note: Cash and/or personal check are generally unacceptable as buyer funds to close.

- g. Settlement agent arranges for title insurance

4. Closing Procedures [Level 3 except as noted below]

a. Definitions

- i. *Settlement*
- ii. *Settlement meeting*
- iii. *Closing*

b. Pre-closing procedures

- i. Broker holding earnest money transfers EMD to settlement agent no more than 10 days prior to settlement [[Commission Rule 58A .0116\(e\)](#)] (or notifies settlement agent that EMD will be retained by escrow agent firm as credit toward brokerage fee)

c. Closing methods

- i. Escrow closing [Level 1 – this subtopic]
 - Parties do not attend a meeting; all documents and funds are delivered into escrow
 - Escrow/settlement agent performs all needed actions; frequently a title company or escrow division of a lending institution
 - *Relation back doctrine*
 - Seldom used in NC
- ii. Settlement meeting method
 - Most closings in NC use this method with an attorney conducting or supervising the closing process
 - Parties usually attend a meeting with settlement agent
 - In NC, a nonlawyer acting under the direct supervision of an attorney
 - May conduct the settlement meeting without the attorney being physically present, but attorney must be available for legal questions
 - May identify documents to be signed, show parties where to sign, and write checks disbursing proceeds
 - Must ask supervising attorney to address any legal concerns

- Record the deed and deed of trust prior to any disbursement of funds
 - Note:** Real estate brokers are strongly discouraged from attempting to act as a settlement agent.

d. Settlement meeting procedures

- i. Meeting location
- ii. Parties attending settlement meeting may include
 - Seller(s)
 - Buyer(s)
 - Settlement agent, always
 - Representative of the lender, rarely
 - Listing real estate broker
 - Selling real estate broker

Note: Brokers should attend the settlement meeting as part of their fiduciary duties to their clients; however, a broker whose real estate license is **not** on active status (for any reason) should **not** attend because they would be performing brokerage activity without a license.

- iii. Final settlement statement review for accuracy and completeness
- iv. Review and signing of documents and delivery of copies to all parties
- v. Collection of certified funds due from buyer and, occasionally, from seller

e. Procedures **after** the settlement meeting

- i. Title search update and recording of deed and deed of trust
- ii. Disbursement of proceeds and brokerage commission [[Level 1 – this subtopic](#)]

Note: No disbursement of funds should happen at settlement meeting

- iii. Cancellation of Seller's liens that were paid at closing (sometimes 30-60 days post-closing)
- iv. Income tax reporting requirements

f. NC broker responsibilities relating to settlement statements [[NCGS 93A-6\(a\)\(14\)](#)]

Note: Review [TRID section](#) from the 2015-2016 General Update.

- i. Brokers should possess a thorough understanding of settlement statements and closing disclosures in order to help protect the interests of transaction parties
- ii. For closing disclosures and settlement statements prepared by a settlement agent, the broker is to confirm completion in accordance with the sales contract and to verify the accuracy of those entries about which they have direct knowledge
- iii. For amounts due to or from third parties, the broker may assume the amounts entered by the settlement agent are correct (in the absence of a red flag); however, the broker is expected to assure that:
 - All relevant debits and credits are properly charged or credited
 - All calculations for prorated items, escrow reserves, interim interest, excise tax and *bottom-line* figures are correct
 - Any expense paid as part of the transaction is entered on the settlement statement, even if prepaid outside of closing (POC), (e.g., home inspection)

- iv. Broker may be subject to disciplinary action for failing to deliver a detailed and accurate settlement statement to their client at closing. Broker may rely on the settlement agent who prepared that statement for its delivery, but broker must review the statement for accuracy and notify all parties to the closing of any errors ("all parties" would include buyer, seller, settlement agent, and lender) [NCGS [93A-6\(a\)\(14\)](#)]

Section XII: Financing & Settlement [Level 1 except as noted]:
National Exam Category (7 Items)

Required Activity: Integrate mathematical calculations related to mortgage finance into the teaching of the essential concepts and terminology (e.g., simple lifetime interest, monthly principal and interest payment, mortgage debt reduction, loan origination fees, discount points, loan-to-value ratios, and yield). Refer to *Section XVI. Real Estate Math Calculations* for descriptions of the required calculations.

- A. Basic Finance Concepts, Terminology and Calculations
 - 1. Basic Concepts and Terminology
 - a. *Principal and interest*
 - b. *Amortization*
 - c. *Debt service*
 - d. *PITI*
 - e. *Equity*
 - f. *Usury*
 - g. *Discount points*
 - i. 1 point = 1% of the mortgage loan amount for the borrower
 - ii. 1 point = 1/8 % yield for the investor
 - h. *Yield*
 - i. *Loan value*
 - j. *Loan-to-value ratio*
 - 2. Mortgages and Deeds of Trust
 - a. Basic mortgage terminology and concepts
 - i. *Mortgage*
 - ii. *Promissory note (mortgage note)*

- iii. *Deed of trust*
- iv. *Hypothecation*
- v. *Lien theory*
- vi. *Title theory*
- vii. *Default*
- viii. *Foreclosure*

b. The mortgage note

- i. Essential elements of a valid note

Note: A promissory note is a form of contract.

- ii. Special note provisions
 - *Acceleration clause*
 - *Prepayment penalty clause*
 - *Due-on-sale clause (alienation clause)*
- iii. *Negotiable note vs. nonnegotiable note*
- iv. Some states use a *bond* in lieu of a promissory note

c. The mortgage (or deed of trust) instrument

- i. Distinction between mortgage and deed of trust

Note: The term *mortgage* is commonly used incorrectly to refer to the actual loan vs. the legal instrument that pledges the property for the loan (e.g., "I am going to get a mortgage" vs. "I am going to give a deed of trust to get a mortgage loan"). Brokers are expected to know the difference and the technical difference between a mortgage and a deed of trust.

- Mortgage
 - 2 parties
 - *Mortgagor*
 - *Mortgagee*
 - Lien theory
 - Judicial foreclosure
- Deed of trust (Commonly used in NC)
 - 3 Parties
 - *Grantor/trustor*
 - *Trustee*
 - *Beneficiary*
 - Title theory
 - Power of sale (non-judicial) foreclosure

- ii. Essential elements

Note: A mortgage or deed of trust is a form of contract.

- iii. Obligations of parties

- Borrower
- Lender

- iv. Signature of spouse

Note: If husband and wife are buying as tenants by the entirety (joint tenants in many other states) and only one spouse signs the mortgage note, both spouses must still sign the mortgage or deed of trust.

- v. Rights of borrowers
 - Right to possession and use
 - *Right of defeasance*
 - *Right (equity) of redemption*
- vi. Rights of mortgage lenders
 - Right to transfer (assign) the mortgage
 - Right to foreclose
 - Foreclosure methods
 - *Judicial*
 - *Power of sale (nonjudicial)*
 - *Strict*
 - Foreclosure procedures
 - Proper notice of foreclosure
 - Foreclosure sale at public auction
 - A 10-day statutory redemption period in NC
 - Disbursement of sale proceeds
 - Unsatisfied creditors may appeal to court for a *deficiency judgment*

Note: In NC, seller financing is prohibited from using deficiency judgments to recover deficit.

3. Sale of Mortgaged Property [Level 2 excepted as noted below]

Note: Assumptions of mortgages and purchases subject to a mortgage occur very infrequently because of due on sale clauses in most modern mortgages.

a. Cash sale

- i. Most common in residential transactions
- ii. Includes transactions where buyer obtains a new mortgage loan

b. Sale with assumption of seller's existing mortgage

c. Purchase subject to seller's existing mortgage [Level 1 – this subtopic]

d. *Short sale*

- i. Basic overview of procedure
- ii. Broker's role
 - Existence of a possible short sale situation is a material fact
 - Listing agent should attempt to identify potential prior to listing and advise seller-client about the process
 - Buyer agent should advise buyer client about the process and use appropriate contract addenda when making an offer; buyer agent is not expected to discover possibility of a short sale

Note: Broker cannot negotiate a "workout agreement" with the lender on the borrower's behalf because it would be unauthorized practice of law.

B. General Categories of Residential First Mortgage Loans [Level 2 except as noted below]

1. *Conventional Mortgage Loan*

Note: Conventional loans are typically seen as the most secure loans for lenders because they usually have the lowest loan-to-value ratio.

- a. *Conforming vs. nonconforming* mortgage loans
- b. *Private mortgage insurance (PMI)*
- c. *Home equity loan and home equity line of credit (HELOC)*

2. FHA-insured Mortgage Loan

- a. Loan program operated by Federal Housing Authority (FHA) under the Department of Housing and Urban Development (HUD)

- i. Purpose of program
- ii. FHA does **not** build housing or lend money for housing purchases
- iii. FHA insures FHA-approved lenders against loss if borrowers default; similar to PMI

- b. Title II, Section 203(b) Program – most widely used FHA program

- i. Applies to residential 1-4 unit property loans, including manufactured housing
- ii. General characteristics
 - Fixed-rate loans with up to 30-year terms made by lenders under FHA guidelines
 - FHA provides mortgage insurance
 - Mortgage insurance premium (MIP)
 - Owner (borrower) occupancy required
 - Maximum loan amount
 - Interest rates set by lender, **not** FHA
 - Appraisal
 - No prepayment penalty
 - Assumability
 - Original borrower may remain secondarily liable for repayment of an assumed loan

- c. Other FHA loan programs are available, including loans for special purposes, such as senior borrowers, rehabilitation, and condominium purchases plus special loan repayment plans, such as graduated payment mortgages (GPM), and adjustable rate mortgages (ARM) [Level 1- this subtopic]

Note: It is only necessary to be aware that other FHA programs exist.

3. VA-Guaranteed Mortgage Loan

- a. Loan program operated by the Department of Veterans Administration

- i. Purpose of program
- ii. VA does **not** build housing and only directly funds loans for housing for Native American veterans living on Federal trust land
- iii. VA guarantees (or backs) VA-approved lenders against loss if borrowers default

- b. Generally applies to residential 1-4 unit property loans under VA guidelines, including manufactured housing
- c. *VA Certificate of Eligibility*
- d. General characteristics
 - i. Most significant feature – possibility of no down payment
 - ii. Owner (borrower) occupancy required
 - iii. Property must meet VA property condition standards
 - iv. No maximum VA-guaranteed loan amount
 - v. Qualifying requirements
 - vi. Lender sets interest rate, **not** the VA
 - vii. *Funding fee*
 - viii. *Certificate of reasonable value* (CRV)
 - ix. No prepayment penalty
 - x. All VA loans are assumable for qualified owner-occupants

Note: A VA release of liability does **not** release the original borrower from liability to the lender; lender must provide separate release for original borrower to be fully absolved of all responsibility for an assumed VA loan.

4. US Department of Agriculture Rural Development Mortgage Loan [Level 1 – this subtopic]

- a. Operated through the Rural Housing Service of the US Department of Agriculture (USDA)
- b. Provides both direct and guaranteed single-family housing loans
- c. Eligibility requirements
- d. General characteristics
 - i. Longer than normal repayment period (e.g., 33 - 38 years)
 - ii. 100% financing; no down payment
 - iii. Subsidized interest rates
 - iv. Qualifying requirements

Note: Contact the NC state office at <https://www.rd.usda.gov/nc> to obtain loan and area office information.

5. Seller Financing [Level 1 – this subtopic]

- a. *Purchase money mortgage*
- b. Land contract/contract for deed

C. Types of Mortgage Loans

1. Types by Repayment Terms

- a. *Fixed rate - level payment mortgage* (fully amortized) [Level 2 – this subtopic]
 - i. Most commonly used residential loan repayment plan
 - ii. *Amortization*
 - b. *Adjustable rate mortgage loan (ARM)*
 - i. Cap rates
 - *Periodic (or anniversary) cap*
 - *Lifetime (or aggregate) cap*
 - *Index*
 - ii. *Payment cap*
 - May result in *negative amortization*
 - c. *Graduated payment mortgage loan (GPM)*
 - d. *Term mortgage loan* (interest only or *straight mortgage*)
 - i. Term period is usually very short (e.g., 3-5 years) and may be renewable
 - ii. Frequently used for construction loans or junior mortgages
 - e. *Growing equity mortgage Loan (GEM)*
 - f. *Buydown mortgage loan*
 - i. Interest rate is temporarily or permanently reduced (“bought down”)
 - ii. A lump sum (usually stated as points) is paid at closing to the lender to offset reduced payments; may be paid by buyer, seller, or third party
 - g. *Balloon mortgage loan* (partially amortized)
2. Types by Purpose or Special Feature
- a. *Construction mortgage loan*
 - b. *Open end mortgage loan*
 - i. Repaid and reused without additional closing costs
 - ii. Acts as a line of credit or equity line
 - c. *Blanket mortgage loan*
 - d. *Package mortgage loan*
 - e. *Bridge mortgage loan*
3. Mortgage Priorities [Level 2 – this subtopic]
- a. Types by mortgage priority
 - i. First (or senior)
 - ii. Second, third, etc. (junior)

- b. Effect and importance of recordation of mortgages (deeds of trust) AND the cancellation or release of a mortgage/deed of trust
 - c. *Subordination* of mortgages
- D. U. S. Monetary Policy
 - 1. Role of the Federal Reserve (the Fed)
 - 2. Effect on Mortgage Interest Rates
 - 3. Effect on Availability of Mortgage Funds
- E. The Primary Mortgage Market
 - 1. Purpose
 - 2. Various Sources of Mortgage Loans
 - a. Direct lenders (e.g., banks, savings associations, credit unions, etc.)
 - b. Mortgage banking companies
 - c. Mortgage brokers
 - d. Others
- F. The Secondary Mortgage Market
 - 1. General Concepts and Operation
 - a. Purpose
 - b. *Loan pooling*
 - c. *Mortgage-backed securities*
 - 2. The Various Government-Sponsored Enterprises (GSE)
 - a. Federal National Mortgage Association (FNMA – *Fannie Mae*)
 - b. Government National Mortgage Association (GNMA - *Ginnie Mae*)
 - c. Federal Home Loan Mortgage Corporation (FHLMC - *Freddie Mac*)
- G. Residential Lending Practices and Procedures in Transactions Subject to TRID [Level 2 – this subtopic]
 - 1. Loan Application Procedures
 - a. Information and documentation typically required
 - i. Borrower’s personal information, such as employment, earnings, assets, and outstanding financial obligations

- ii. Property information, such as legal description, improvements, title, survey, and taxes
 - iii. Loan information, such as purpose of loan, proposed loan amount, repayment terms, and interest rate
 - b. *Lender's loan estimate (LE)*
 - c. *Rate lock*
 - d. Lender denial must be in writing
2. Loan Underwriting Practices
- a. Borrower analysis (qualifying a buyer/borrower)

Note: Brokers are encouraged to prequalify prospective buyers early in the home buying process to minimize wasting time and energy on showing and writing offers on properties that cannot be afforded by the buyer.

 - i. Credit history and credit score
 - ii. Adequacy of assets to close the transaction
 - iii. Stability of income
 - iv. Types of acceptable income
 - v. Occupancy of the property
 - vi. Adequacy of income
 - Conventional loan
 - Borrower's expense to income ratios usually cannot exceed 28% for housing expense to gross income ratio and 36% for the recurring debt to gross income ratio
 - FHA loan
 - Qualifying ratios to gross income are 31% for housing expenses and 43% for recurring debt
 - VA loan
 - Considers several factors including an analysis of borrower's *residual income* and a maximum 43% ratio of gross income to recurring debt; exceptions are possible

Note: A buyer must qualify on both the income and the debt ratios.
 - b. Property analysis
 - i. Title opinion and title insurance
 - ii. Appraisal assigned randomly through an appraisal management company

Note: Loan value will be calculated on the contract sales price or the appraised value, whichever is lower.
 - c. Loan analysis
 - i. Yield (interest rate and discount points)
 - ii. Loan term
 - iii. Loan-to-value ratio
 - iv. Mortgage insurance

- d. Loan commitment and closing
 - i. Lender's letter of commitment
 - ii. Loan principal disbursed at settlement; "loan closing"

H. Federal Financing Legislation

Important Note: Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (hereafter known as Dodd-Frank Act), the Consumer Financial Protection Bureau (CFPB) was assigned the consumer protection responsibilities of seven (7) different federal agencies (including the Federal Reserve Board, HUD and the FTC). The CFPB is responsible for promulgating rules for the Truth-in-Lending Act, RESPA, the Fair Credit Reporting Act, and the Equal Credit Opportunity Act. One express mandate of the Dodd-Frank Act was that the CFPB consolidate the duplicate lender disclosures under TILA and RESPA, yielding the TRID rules (TILA/RESPA Integrated Disclosures).

1. Truth-in-Lending Laws/Regulations [Level 2 – this subtopic]

a. The *Truth-in-Lending Act* (TILA)

- i. Compilation of initial TILA, Truth in Lending Simplification and Reform Act (TILSRA), and Disclosure Improvement Act
- ii. Rules known as Regulation Z
- iii. Administered by the CFPB

b. Basic purpose

c. Applicability

- i. Applies to those who advertise or extend loans that
 - Involve a finance charge **or**
 - Are payable in more than 4 installments
- ii. Exemptions

d. Disclosure of credit information to borrowers

- i. Loan estimate (LE)
- ii. Delivery of preliminary and final LE
- iii. Significant change will probably require a new LE and a possible closing delay
- iv. Four (4) chief disclosures
 - Annual percentage rate (APR)
 - Note:** It is **not** the interest rate.
 - Finance charges
 - Amount financed
 - Total amount of all payments

e. Applicability to *Arrangers of Credit*

f. Disclosure of credit terms in advertising the sale of real estate

- i. Regulation Z governs any advertisement for consumer credit, regardless of who places the ad

- ii. *Trigger terms*
- iii. Required disclosures for any ad that includes trigger terms
 - The amount or percentage of down payment
 - Terms of loan repayment
 - APR

Note: Brokers may avoid Regulation Z issues by not including any numbers in their advertising, other than the list or lease price.

- 2. Fair Credit Reporting Act (implemented under Regulation B)
- 3. Equal Credit Opportunity Act (ECOA implemented under Regulation V)
 - a. Purpose
 - b. Protected classes

I. *Real Estate Settlement Procedures Act (RESPA)* [Level 2 – this subtopic]

- 1. Purpose
- 2. Applicability
 - a. All mortgage loans for 1-4 family dwelling (including manufactured housing) involving a *federally related mortgage loan* made by institutional lenders
 - b. Does **not** apply to loans for commercial, business, or agricultural purposes
- 3. Enforced by the Consumer Financial Protection Bureau (CFPB) and implemented by rules referred to as *Regulation X*
- 4. Major Requirements and Consumer Protections
 - a. Special information booklet
 - b. Loan estimate (LE) [formerly known as Good Faith Estimate (GFE)]
 - i. Disclosure of settlement charges must be provided by loan originators to borrowers within 3 business days following loan application
 - ii. Lender can only collect a fee for a credit report from the applicant prior to issuance of the LE
 - c. Possible borrower credit for “Yield Spread Premiums” paid to mortgage brokers
 - d. Buyer Closing Disclosure (BCD) form must be used by settlement agents in all transactions subject to TRID
 - e. RESPA prohibits the payment of a *kickback* or referral fee to **any** settlement service provider for referring consumers

Note: Real estate agents may neither **pay** nor **accept** any referral fee from a settlement service provider, such as an appraiser, home inspector, attorney, etc. Real estate brokers are only permitted to pay and receive referral fees from each other. The law/rules also regulate controlled or affiliated business arrangements

(CBA) that provide real estate services (e.g., brokerage, mortgage loan, legal services, home inspections, etc.) under a one-stop shopping approach.

- f. Regulates reserve (impound or escrow) accounts
- g. Loan servicing information

5. *Loan Estimate (LE)*

Required Activity: Review a completed sample LE form to teach this topic.

- a. A federal form with details of proposed mortgage terms including written estimate of settlement charges the borrower will incur
- b. Tolerance limits for changes to settlement charges
 - i. Three categories of charges
 - No tolerance
 - 10% tolerance
 - Unlimited tolerance
 - ii. Lender must credit borrower for excess charges over the permissible limits
 - iii. If new information requires that a new LE be issued, there is a mandatory 3-day waiting period before closing can occur

Note: Brokers are expected to be aware of timing of the three business day disclosure delivery.

6. Borrower Closing Disclosure (BCD) Form

Required Activity: Review a completed sample BCD form to teach this topic. Examples available on CFPB website.

- a. Written detailed statement of final loan terms, prorations, and closing costs that borrower should compare to information on the sales contract and the LE
- b. Include tolerance limits and the four chief disclosures required by TILA
- c. Delivery requirements
- d. Changes that require a new BCD and a new 3 business day waiting period before settlement

7. Penalties

J. The Settlement Statement [**Level 3 – this subtopic**]

Required Activity: Show examples of both a HUD-1 and ALTA settlement statement.

Note: Because a broker will not normally be tasked with the preparation of the actual settlement statement for closing, a license candidate will not be expected to complete a settlement statement problem on the license examination. However, a broker cannot properly review a statement for accuracy without a thorough understanding of each party's responsibilities under the contract terms and the calculation of each entry. A license candidate will be expected to perform some calculations for individual entries and to know how the calculations will appear on the settlement statement (e.g., debits and credits).

1. Basic Settlement Statement Concepts

- a. *Settlement statement*
- b. *Debit*
- c. *Credit*
- d. *Prorations*

Note: Students should be able to calculate prorations using both methods listed below.

- i. 365-Day Year Method (Most commonly used method in practice)
- ii. 360-Day Year/30-Day Month Method (Method used on Prelicensing course end-of-course examination and real estate license examination)
- iii. License exam proration problems will specify which party is responsible for ("owns") the date of settlement; in NC, the seller "owns" the date of settlement
- iv. Items commonly prorated
 - Real estate taxes
 - When taxes have **not** been paid prior to settlement
 - Closing prior to tax due date in August
 - Closing after tax due date in August
 - When taxes have been paid prior to settlement
 - Homeowners' association dues
 - Rents (on rented properties being sold)
- v. Always a double entry on the settlement statement

Section XIII: Property Valuation & Appraisal [Level 1 except as noted below]: National Exam Category (11 Items)

A. Introduction

1. Key Definitions

- a. *Real estate appraisal*
- b. *Comparative Market Analysis (CMA)*
- c. *Broker Price Opinion (BPO)*

Note: On the National exam section, BPOs are performed specifically for lenders.

2. Purpose

3. Regulation of Appraisers

- a. Federal agencies
 - i. Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA)
 - Provided guidelines for regulating financial institutions

- Included amendments to improve competency of appraisers
- Created Appraisal Foundation
- ii. Appraisal Foundation (www.appraisalboard.org)
 - Developed appraisal standards
 - Established minimum qualifications for appraisers
- b. State licensing and certification by NC Appraisal Board (<http://www.ncappraisalboard.org/>)
- c. *Uniform Standards of Professional Appraisal Practice (USPAP)* appraisal form

B. Basic Valuation Concepts

1. Definitions

- a. *Appraisal*
- b. *Value*
- c. *Cost*
- d. *Price/market price*
- e. *Market value*

2. Assessment for Tax Purposes

3. Elements of Value

- a. *Demand*
- b. *Utility*
- c. *Scarcity*
- d. *Transferability*

4. Forces and Factors Influencing Property Value

Required Activity: Provide examples of how each affects value.

- a. Social trends
- b. Economic forces
- c. Government controls and regulations
- d. Environmental conditions

5. Basic Economic Principles of Value [Level 2 – this subtopic]

Required Activity: Provide an example of each principle.

a. *Anticipation*

b. *Change*

c. *Competition*

d. *Conformity*

e. *Contribution*

Note: This principle is based on the improvement's increasing or diminishing return, not on its cost.

f. *Highest and Best Use*

Note: There is only one highest and best use at any given time but it can change over time. This principle is a major factor for the appraisal process.

g. *Plottage*

Note: Combination or merger of adjacent lots into a single large parcel will generally result in a higher value than the combined values of the individual lots. *Assemblage* is the merger process.

h. *Substitution*

Note: This principle is the basis for the Sales Comparison Approach to value.

i. *Supply and Demand*

Note: In real estate, it is frequently seen as a *buyer's market* or a *seller's market*.

C. The Valuation Process

1. Define of the Problem (Task)
2. Determine Appropriate Scope of Work
3. Collect, Record, and Verify Data
4. Analyze Data to Determine Highest and Best Use
5. Estimate Value of Land
6. Apply Approaches to Value
7. Reconcile Approaches and Estimate Final Value
8. Complete Appraisal Report

Required Activity: Use a sample appraisal completed on a Uniform Residential Appraisal Report (URAR) form for illustration.

D. Approaches to Value (Appraisal Methods) [Level 2 except as noted below]

1. Sales Comparison (Market Data) Approach [Level 3 – this subtopic]

Note: Because the theory and methodology involved in this appraisal approach mirrors that used when a broker performs a BPO/CMA on a residential property, students should practice its use, with a focus on estimating the *probable sales price* of residential properties.

a. General information

- i. *Subject property*
- ii. *Comparable property (Comp)*
- iii. Estimates value by comparing subject property with recently sold similar or comparable properties; based on substitution principle
- iv. Most reliable and most commonly used approach for single-family properties or any property that has an active market with recent comparable sales available

b. Procedures

- i. Data collection and analysis
- ii. Selection of comparables
 - Need 3-4 comps of the same property type (e.g., residential, single-family detached, townhome, condo, etc.)
 - As similar as possible to subject
 - Location
 - Physical characteristics and condition
 - Terms and condition of sale
 - Date of sale

Note: Cannot use currently listed or under contract property as a comp.

iii. Adjustments to sale prices of comparables

Required Activity: Provide examples of how adjustments are made to the sales prices of superior and inferior comps.

- Make adjustments to sale prices of the comps; **never** adjust the subject property
 - *Superior comparable*
 - *Inferior comparable*
 - No standard for adjustment amounts
 - Value assigned for a feature adjustment is market value, which will probably be less than actual cost
 - *Paired sales analysis*
 - No adjustment needed for minor differences
- iv. Reconciliation and determination of value estimate
- Adjusted sales prices of comps should provide a tight range of value
 - Single indication of value should **not** be obtained by simple averaging of the adjusted sales prices of comps
 - *Weighted averaging*

2. Cost Approach

a. General information

- i. Involves separate estimates of value for the building and the land that are combined for a value estimate for the entire improved property; also based on the principle of substitution
- ii. Best approach for unique, non-income producing properties or special use properties (e.g., houses of worship, schools, public buildings) or newly constructed buildings that do not have comparable sales data available

b. Estimate of land (lot) value

- i. Estimate using the sales comparison method
- ii. Land is **never** depreciated

c. Estimating building costs

i. *Reproduction cost*

Note: Frequently used to incorporate inherent value of historical property.

ii. *Replacement cost*

- *Quantity survey method*
- *Unit-in-place method*
- *Square foot method*

d. Estimating depreciation

i. Definitions

- *Depreciation*
- *Effective age*
- *Economic life*

ii. Depreciation methods

Note: This is not the same concept as *depreciation* for tax purposes.

- Age/life (straight-line) method
- Market abstraction method [Level 1 – this subtopic]
- Breakdown method [Level 1 – this subtopic]
 - Physical deterioration (curable and incurable)
 - Functional obsolescence (curable and incurable)
 - Economic (external or locational) obsolescence (incurable only)

e. Steps in formulating the opinion of value

i. Estimate the value of building and other improvements

- Estimate the current replacement or reproduction cost of improvements on the property
- Estimate the amount of depreciation accrued over the life of the improvement
- Deduct the depreciation from the current cost estimate of the improvements

ii. Estimate the value of the land as if vacant

- iii. Add the depreciated cost of improvements to the estimated land value to determine value estimate for the entire property

3. Income Approaches (Direct Capitalization and GRM Methods Only)

a. General information

- i. Based on present worth of rights to future income
- ii. Approach used for income-producing or investment properties
- iii. *Capitalization (CAP) rate*

Note: The CAP rate measures the risk of an investment; the higher the CAP rate, the higher the risk. The CAP rate and the market value are inversely related; as one goes up, the other comes down.

b. Direct capitalization method

- i. Converts the estimate of projected future income into an estimate of current market value
- ii. Used for most income-producing property other than 1-4 unit residential properties

iii. Direct Capitalization formula

- Determine *net operating income (NOI)* estimate
 - Estimate potential annual *gross income*
 - Deduct an allowance for *vacancy* and rental loss to reach *effective gross income*
 - Deduct annual operating expenses
- $NOI = \text{Gross income} - \text{losses} - \text{expenses}$

Note: Mortgage payments of principal and interest are **not** operating expenses, and are not included in calculations.

- Derive capitalization rate from local market experts or by Market Abstraction Method
- Derive estimate of subject property value: $\text{Value} = \text{Net operating income (NOI)} \div \text{CAP rate}$

c. Gross rent multiplier (GRM) method

- i. Relates the sales price to the property's expected rental income
- ii. Used for 1-4 unit residential income-producing properties
- iii. GRM Formula
 - Obtain sales price and gross income (rent) data on recently-sold comparable properties
 - Derive GRM for each comparable: $GRM = \text{sales price} \div \text{income}$
 - Reconcile data to determine appropriate GRM
 - Derive estimate of subject property's value: $\text{Value} = \text{Rental income} \div GRM$

Note: GRM can use either monthly or yearly rental income data, but be sure to be consistent throughout calculations.

4. Reconciliation of the Three Approaches to Value and Derivation of Estimate or Opinion of Value

Required Activity: Show students on the appraisers' Uniform Residential Appraisal Report (URAR) form where the appraiser reconciles the approaches used in the appraisal to arrive at a single opinion of value.

- a. *Reconciliation*
- b. Weighted consideration is preferable to averaging of the approaches; greater weight given to the approach that is best for that particular type of property

Section XIV: NC Landlord & Tenant Concepts [Level 2]:
State Exam Category (3 Items)

A. Laws Protecting Residential Tenants

1. The NC Residential Rental Agreements Act [[NCGS 42 – Article 5](#)]

- a. Purpose
- b. Applicability
 - i. Grounds, area, and facilities normally used for residential tenants, including mobile homes and mobile home spaces
 - ii. Does **not** apply to
 - Commercial or industrial rentals
 - Transient occupancy
 - Rent-free dwelling units
- c. Waiver of Act is prohibited
Note: Requirements of the Act cannot be altered by lease provisions or other agreement between landlord and tenant.
- d. Obligations of landlord and tenant are mutually dependent
- e. Landlord's statutory duties
Note: Primary duty of landlord is *implied warranty of habitability*.
- f. Tenant's statutory duties
- g. Tenant remedies for breach by landlord
 - i. Tenant is prohibited from unilaterally withholding the rent until a court grants that right
 - ii. Tenant can bring an action against the landlord for damages, including the recovery of all or part of past rents paid while the unit was uninhabitable
 - iii. Common Law Doctrine of Constructive Eviction

h. Broker's duties under Act

Note: Broker that is managing the rental property for the landlord is defined as "the landlord" under the Act.

2. NC Residential Eviction Laws/Procedures

a. Residential summary ejectment (eviction procedure)

- i. *Summary ejectment*
- ii. *Self-help* eviction is prohibited in NC
- iii. Seizure of tenant's personal property is prohibited
- iv. Expedited eviction for criminal activity possible, but legal advice is recommended first

b. Act prohibiting retaliatory eviction [[NCGS 42 - Article 4A](#)]

- i. *Retaliatory eviction*
- ii. Some tenant activities are protected
- iii. Protected 12-month period after occurrence of protected activity

Note: There is no requirement for the landlord to renew an expired lease.

c. Statutory eviction procedures initiated in small claims court utilizing the court system must be followed

d. Common law

i. *Doctrine of Constructive Eviction*

- Legal concept and purpose
- General process
- Tenant can **never** legally withhold rent while in possession of the rental property

Note: A tenant should be advised to obtain legal advice before vacating a rented space and stopping rent payment based on this Doctrine; a court ruling may be required to eliminate liability for future rent.

ii. Landlord's liability under the *Law of Negligence*

- May be held liable for
 - Injury due to lack of maintenance of common areas under the landlord's control
 - Criminal acts of third persons on leased premises if landlord had reason to know of a threat of harm and did not take reasonable precautions to protect the tenants
- Generally not liable for injury sustained in a rental unit under the exclusive occupancy of a tenant

B. NC Tenant Security Deposit Act [[NCGS 42 - Article 6](#)]

Note: Any owner of residential rental property located in NC must comply with this Act, even if not a licensed broker.

1. Holding of Tenant Security Deposit (TSD)
 - a. Must be held in a properly designated trust or escrow account in a federally insured depository or trust institution authorized to do business in NC **or**
 - b. Owner-landlord must furnish a bond in the amount of the deposit from a licensed insurance company authorized to do business in NC
 - c. Broker working as property manager for the landlord does **not** have the option of providing a bond [[Commission Rule 58A .0116](#)]
2. Accounting to the Tenant
3. Permitted Uses of TSDs
4. Maximum TSD Amounts
 - a. Week-to-week tenancy
 - b. Month-to-month tenancy
 - c. Terms greater than month-to-month
5. Reasonable and Nonrefundable Pet Deposits Permitted

Note: A tenant's service animal is not a pet; therefore, a pet deposit cannot be charged.

C. North Carolina Vacation Rental Act [[NCGS 42A](#)]

Note: Act is modeled after the Residential Rental Agreement Act.

1. *Vacation rental*
2. Purpose
3. Applicability of Act
4. Requirement for vacation rental agreements
5. Procedures for handling rents and security deposits
 - a. Must be deposited into a trust/escrow account in a federally insured depository or trust institution authorized to do business in NC within 3 banking days of receipt
 - b. Posting a bond is **not** an option, even for an unlicensed landlord
6. Tenant Protection when Rental Property is Sold
 - a. Seller requirements
 - b. Requirements of new owner
7. Expedited Eviction Proceedings

8. Landlord and Tenant Duties
 - a. Most are similar to those under Residential Rental Agreement Act
 - b. Landlord must provide the property in "fit and habitable condition" **or**
 - i. Substitute a reasonably comparable property in such condition **or**
 - ii. Give full refund of all payments made by the tenant
 - c. Any automatic forfeiture of TSD due to a breach by the tenant is prohibited
9. Mandatory evacuations: refunds and insurance

D. Property Management Contracts

Note: Per [Commission Rule 58A .0104\(a\)](#), all property management agreements must be in writing from inception of the relationship.

Section XV: Other Relevant NC Laws [Level 2 except as noted]:
State Exam Category (11 Items)

A. Ownership of Real Property in NC

1. Joint Tenancy in NC

Note: Though used infrequently in NC, joint tenancy is widely used in many other states and is also tested on the National exam section.

- a. Title must intentionally create joint tenancy
- b. Four (4) required unities/elements (e.g., possession, interest, time, title)

Note: In NC, percentage of ownership interest can be unequal, if clearly stated in title.
- c. *Right of survivorship*
 - i. In NC, survivorship **not** automatic
 - ii. Attorney must draft exact wording in title required for right of survivorship
- d. Termination
 - i. By agreement
 - ii. Partition suit

2. Tenancy by the Entirety

- a. Available only to legally married couples
 - i. In NC, this is default ownership for buyers married at the time of purchase

- ii. Buyer should consult with real estate attorney to explore what ownership type is desired
 - iii. Other types of ownership do **not** automatically convert to tenancy by the entirety if property owners marry each other later
 - b. Equal undivided interest
 - c. Four (4) required equal unities/elements (e.g., possession, interest, time, title)
 - d. Automatic right of survivorship that cannot be waived; overrides a will
 - e. Conveyance requires voluntary signatures of both spouses
 - Note:** A spouse cannot convey 1/2 interest.
 - f. Termination
 - i. By agreement
 - ii. Divorce
 - iii. Death of a spouse
3. NC Common Interest Community (Hybrid) Ownership
- a. Condominium ownership
 - i. *Condominium*
 - ii. Governed by horizontal property acts, such as North Carolina Condominium Act of 1986 [[NCGS Chapter 47C](#)]
 - Application
 - Developer's disclosure requirements
 - Public offering statement
 - Buyer's 7-day rescission period on purchase of new condo
 - Resale certificate for resale condos; no right of rescission
 - iii. Individual unit owner holds fee simple "title to airspace" for unit
 - iv. Individual unit owners own an undivided share of *common elements* with other unit owners
 - Includes land and common areas, such as hallways, elevators, recreational facilities, etc.
 - Own as tenants in common without right of partition
 - Periodic fees/assessments charged to unit owners
 - Possible exclusive use of *limited common elements*
 - b. Townhouse ownership
 - i. *Townhouse*
 - Includes individual ownership of land, at least the land upon which the unit sits
 - Usually attached by *party walls*
 - ii. Individual unit owners have use of *common elements*
 - Owned by HOA
 - Maintenance funded by periodic fees/assessments charged to unit owners
 - iii. Most townhouse developments are subject to the NC Planned Community Act [[NCGS Chapter 47F](#)]

4. Manufactured (Factory Built) Housing [[Level 1 – this subtopic](#)]
 - a. Manufactured housing (mobile home) [[NCGS 143-143.9\(6\)](#)]
 - i. Description
 - Built to federal HUD standards; red HUD certification label
 - Titled and regulated by NC Dept. of Motor Vehicles (DMV)
 - Permanent non-removable steel chassis
 - ii. Personal property until converted to real property by: [[NCGS 47-20.6](#) and [105-273\(13\)](#)]
 - Attaching to permanent foundation on land owned by owner of home;
 - Removing wheels, axle, and moving hitch; **and**
 - Filing affidavit of conversion to cancel DMV title
 - b. Modular housing [[NCGS 105-164.3\(143\)](#) and [143-139.1](#)]
 - i. Description
 - Built to state building code
 - State inspection label with serial number
 - Assembled by builder on-site
 - ii. Becomes real property as soon as assembled on building site
 5. *Adverse Possession*
 - a. General requirements
 - b. Statutory time periods for continuous adverse possession
 - i. 20 years for regular adverse possession in NC
 - ii. 7 years if *under color of title* in NC
 6. *NC Agricultural Fixtures*
 - a. Definition
 - b. Per common law, became part of the real property and could not be removed at the end of the lease
 - c. Modern trend is to treat as trade fixtures
 - d. Lease terms should address right of removal
 7. Effect of NC Uniform Commercial Code (UCC) [[NCGS 25-9-313](#)] concerning security interests in fixtures
- B. NC Connor Act [[NCGS 47-18](#)]
1. Requires all conveyances of interest in real property be recorded to be effective against claims by third parties

2. *A pure race statute*

Note: Failure to record does not affect the validity of the document between the parties to the instrument.

3. Documents required to be recorded in the county where the property is located

C. Marketable Title Act/Torrens System [[Level 1 – this subtopic](#)]

1. *NC Marketable Title Act* [[NCGS 47B](#)]

2. *Torrens System* [[NCGS 43](#)]

D. NC Statute of Frauds [[NCGS 22-2](#)]

1. Certain contracts must be in writing to be enforceable

a. All contracts to convey interest in real property

b. A lease that exceeds 3 years from the “making”/signing of the lease agreement

c. Contract modifications

2. Verbal negotiations and agreements are **not** enforceable [See Parol Evidence Rule in *Section XI: Contracts & Closing in NC*]

3. Agency agreements are considered employment contracts, **not** real estate contracts, and are excluded from Statute of Frauds; Commission rules require agency agreements to be in writing.

E. NC Residential Property Disclosure Act [[NCGS 47E](#), [Commission Rules 58A .0114](#) & [.0019](#)]

Required Activity: Provide current [Residential Property and Owners’ Association Disclosure Statement \(RPOADS\)](#) and [Mineral and Oil and Gas Rights Disclosure \(MOG\)](#) disclosure forms. Discuss the purpose of each form and the correct way to advise property owners about completion and delivery of the forms.

1. Basic Requirements of the Act

a. Requirement for most sellers of 1-4 residential units

b. Major points of the Act

i. Seller required to provide completed disclosure forms to prospective buyers prior to presentation of 1st offer

ii. Seller **not** usually required to disclose facts about property condition (other than presence of lead-based paint) or if previous owners have severed mineral, oil, or gas rights

iii. Seller must keep information current and accurate

iv. Seller may be held civilly liable for misrepresentation by the courts if seller knows a problem exists and checks “No” rather than “No Representation” or if seller does not disclose any known latent defects that a diligent buyer cannot access

2. Use of Mandatory Forms *Residential Property and Owners' Association Disclosure Statement* and *Mineral and Oil and Gas Rights Mandatory Disclosure Statement*

Note: Forms, [REC 4.22](#) and [REC 4.25](#), are available at www.ncrec.gov

a. Delivery of completed disclosure statements

Note: Method of delivery is not prescribed; frequently attached to MLS entry.

b. Buyer's right to cancel contract

- i. Timing of cancellation
- ii. Written cancellation notice

c. Broker's responsibilities

- i. Advise seller client of disclosure requirements and the need for continued accuracy and timely delivery
- ii. Provide seller with copies of required disclosure form(s)
- iii. Assist seller in assessing the property for accurate completion of disclosure

Note: Broker must **not** complete the form(s) for the seller.

- iv. Assist with timely delivery of completed forms
- v. Retain executed disclosures
- vi. Must disclose any material fact regarding a listed property about which the broker knows or should reasonably be expected to be aware, even if the seller legally chooses not to disclose such material fact or marks *No Representation* regarding the matter

Note: If the seller demands that the listing agent agree to **not** disclose a material defect (or other material fact) as a condition of granting the listing, the listing should be refused.

3. Common *RPOADS* Exemptions

4. Unique Facts about *MOG*

- i. Same points as above for *RPOADS* with following differences
- ii. Seller must disclose if they have severed or will sever *MOG* rights; *No Representation* is not an option on this point
- iii. Common exemptions match those for *RPOADS* **excluding the transfers where *MOG* is still mandated**

5. Broker's Disclosure Responsibilities under Real Estate License Law **not** affected by Sellers' Disclosure under this Act

F. NC Good Funds Act [NCGS 45A](#) [Level 1 – this subtopic]

1. Prior to Any Disbursement of Funds, Act requires Settlement Agent to

- a. Verify funds paid by any party to the transaction
- b. Record the deed and deed of trust

2. No Disbursement of Funds should happen at Settlement Meeting

G. NC Anti-discriminatory Regulations

1. NC State Fair Housing Act [[NCGS Chapter 41A](#)] [Level 3 – this subtopic]
 - a. Unlawful discriminatory housing practices

Note: Provisions of the State Act are virtually identical to those of the Federal Act. Thus, a violation of either Act is generally a violation of the other Act.
 - b. Exemptions

Note: Exemptions under the NC State Act are substantially different from those under the Federal Act; when there is a conflict between the federal and state acts, the more restrictive law applies.
 - c. Enforcement
 - i. A NC-based complaint filed with HUD will be referred to the [NC Human Relations Commission](#) for investigation because NC has an equivalent state fair housing law
 - ii. By administrative procedure through the NC Human Relations Commission; complaints must be filed within 1 year
 - iii. By private lawsuit in state court; complaints must be filed within 1 year
2. NC Law Prohibiting Sexual Harassment by Residential Lessors or Their Agents [[NCGS 14-395.1](#)] [Level 1 – this subtopic]
3. Commission Rule Prohibiting Discrimination by Brokers in Promoting Their Broker Status or Conducting Brokerage Activities [Commission [Rule 58A .0120\(d\)](#)] [Level 1 – this subtopic]

H. NC Timeshare Act [Level 1 – this subtopic]

1. Definitions [[NCGS 93A-41\(2\), \(7a\), \(9\), \(9a\), \(12\) and \(13\)](#)]

Note: Must be at least 5 separated times over at least 5 years in NC.
2. Registration of Timeshare Programs [[NCGS 93A-40](#)]
3. License Requirement [[NCGS 93A-40](#)]
4. Developer's Obligation to Record Timeshare Instruments [[NCGS 93A-42](#)]
5. Escrow Requirements [[NCGS 93A-42\(c\) and \(d\)](#)]
6. Developer's Public Offering Statement [[NCGS 93A-44](#)]
7. Purchaser's Right to Cancel [[NCGS 93A-45](#)]
8. Commission's Disciplinary Authority [[NCGS 93A-54](#)]
9. Penalties [[NCGS 93A-56](#)]
10. Requirements for Registrar and Program Broker [[NCGS 93A-58](#)]

11. Timeshare Sales Operations [Commission Rules [Section 58B .0400](#)]
 12. Handling and Accounting of Funds [Commission Rules [Section 58B .0500](#)]
 13. Program Broker [Commission Rules [Section 58B .0600](#)]
- I. Other Disclosure Considerations in NC [Level 3 except as noted below]
1. Stigmatized Properties [[NCGS 39-50](#); [42-14.2](#)]
 - a. Stigmatized/psychologically impacted property is **not** a material fact in NC unless questioned by the buyer
 - b. Examples not considered material facts
 - i. Previous occupant died or had a serious illness while occupying the property
 - ii. Reputation as a haunted property
 - iii. A convicted sex offender required to register with law enforcement authorities occupies, occupied, or resides near a property [based on national law nicknamed "Megan's Law"]
 2. Unfair or Deceptive Trade Practice Act [[NCGS 75-1.1](#)] [Level 1 – this subtopic]
 - a. Applies to actions of real estate brokers (and some property owners), including advertising/postings on internet and social media
 - b. Creates legal cause of action with the possibility of *treble damages*
 3. Doctrine of *Caveat Emptor*
 - a. Latin phrase (*Let the buyer beware*) indicating that the burden of discovery is on the buyer to investigate because they are purchasing the property "as is"
 - b. In NC, seller is **not** required to disclose property condition information (other than known presence of lead-based paint), but may **not** commit fraud

Note: This is the reason for the "No Representation" option on the RPOADS.
 - c. Difficult to bring action against the seller, but seller could be held civilly liable **if**
 - i. Engages in fraud or misrepresentation
 - ii. Induces the buyer to forego an inspection
 - iii. Does not disclose seller-known latent defect that a diligent buyer cannot access
 - iv. Does not provide RPOADS & MOG (if required) prior to presentation of 1st offer

Note: Broker's disclosure responsibilities under Real Estate License Law are not affected by *doctrine of caveat emptor*; brokers must still volunteer material facts to all clients and customers.
 4. Square Footage
 - a. Verify and properly report building square footage
 - i. Square footage is **not** a material fact in NC, but must be accurate if reported

- ii. Brokers are expected to possess the expertise necessary to accurately measure, calculate, and report the square footage of most buildings
- iii. Broker should **not** rely on
 - Property owner's personal statement
 - Blueprints
 - Tax records
 - Information from an earlier transaction
- iv. A broker working with a buyer can reasonably rely on the listing agent's reported square footage unless there is an error that would be obvious to a prudent broker

b. *The Residential Square Footage Guidelines*

Required Activity: Thoroughly review the NCREC's [Residential Square Footage Guidelines](#); assign at least one practice problem; additional problems can be given as homework.

- i. In NC, the square footage of residential living area is calculated on exterior measurements
- ii. *Above grade vs. below grade area*
- iii. *Heated Living Area* criteria

5. Basic Construction [Level 1 – this subtopic]

Note: The purpose of this sub-section is to provide the student with an **elementary** knowledge of basic construction principles, techniques and terminology which will assist the student in listing/showing/selling such properties. Study is limited to the wood-frame (including brick veneer) construction because of its predominant use in NC.

a. Basic construction types

- i. One story (ranch) – generally the most expensive to build per square foot
- ii. 1½ story
- iii. Multi-story (two, 2½, or three levels)
- iv. Split-level

b. Foundations

- i. Basic components
- ii. *Footings*
- iii. *Slab*
- iv. *Foundation wall*
- v. *Piers*
- vi. Major types
 - Concrete slab
 - *Basement*
 - *Crawl space*
- vii. Termite protection
 - Chemical treatment of ground near foundation walls and piers
 - Pressure-treated wood
- viii. Ventilation
- ix. Waterproofing

c. Framing

- i. Framing systems
 - *Platform* (most common)
 - *Balloon*
 - *Post and beam*
- ii. Major floor components
 - *Sill* (also *sill plate* or *mud sill*)
 - *Floor joists*
 - *Girders*
 - *Bridging*
 - *Subfloor*
- iii. Basic wall components
 - *Studs*
 - *Headers*
 - *Top plate*
 - *Sole plate*
- iv. Roof and ceiling framing
 - Major roof designs
 - Gable
 - Hip
 - Shed
 - Flat
 - Mansard
 - Gambrel
 - Basic roof components
 - *Ceiling joists*
 - *Rafters*
 - *Ridge board*
 - *Eaves*

d. Exterior walls

- i. *Sheathing*
- ii. *Tar paper* (asphalt treated paper or felt) or *house wrap*
- iii. Siding: wood, manufactured wood, fiber cement, brick veneer, vinyl, stucco, synthetic stucco (EIFS)

e. Windows and exterior doors

- i. Windows
 - Types
 - Sliding windows: double-hung and horizontal sliding
 - Swinging windows: casement, jalousie, hopper, and awning
 - Fixed windows: picture, bay, and bow
 - Major components
 - *Sill*
 - *Header*
 - *Jamb*
 - *Sash*
 - *Muntins*
 - *Mullions*

- ii. Major door types: flush, panel, sliding glass, and French
- f. Roofing Components
- i. Roof sheathing (decking): plywood or material similar to wall sheathing
 - ii. Roofing felt
 - iii. Outer roof covering: asphalt and fiberglass composition shingles, wood shingles or shakes, tile
 - iv. *Eaves*
 - *Fascia board*
 - *Soffit*
 - *Frieze board*
 - v. *Pitch*
- g. Insulation
- i. Insulation materials: fiberglass batts or blankets, loose fill insulation, foam
 - ii. *Weatherstripping*
 - iii. Moisture control: vapor barriers and attic ventilation
 - iv. Required insulation under North Carolina Uniform Residential Building Code:
 - Walls R-13
 - Ceilings R-30
 - Floors R-19

Note: Higher R-values are required in the colder, mountainous counties of northwestern North Carolina.
- h. Heating/air conditioning systems
- i. Heating systems
 - Power sources: the sun, gas, oil, electricity, coal, wood, etc.
 - Measured in British Thermal Units (BTUs)
 - Methods of heating: solar, warm air, hot water, steam, electric wire
 - Types of heating systems
 - Central forced warm air (heat pumps or gas furnaces with fan and duct distribution system)
 - Gravity warm air (e.g., central furnace with no duct distribution system and fan)
 - Electric baseboard
 - Space heating systems (e.g., wood stoves, gas heaters, kerosene heaters, electric heaters, radiators, fireplaces, etc.)
 - Solar heating systems
 - ii. Air conditioning systems
 - Central forced-air
 - Room air conditioners
 - iii. Combination systems: heat pump
- i. Government regulation
- i. North Carolina Uniform Residential Building Code
 - ii. Building permits
 - *Certificate of occupancy (CO)*
 - HUD minimum standards
 - iii. Contractor licensing

6. Subdivision Approval Procedures [[NCGS 160D-Article 8](#)] (Commission's Q&A brochure: [Residential Subdivisions and Planned Communities](#))
 - a. *Subdivision*
 - b. Exemptions
 - c. Typical subdivision approval procedures (NC and elsewhere)
 - i. Preliminary planning phase
 - ii. Review and approval phase usually performed by multiple municipal departments
 - iii. Final subdivision plat approved and recorded with register of deeds
 - d. Selling lots in unapproved NC subdivision [[NCGS 160D-807](#)]
 - i. Illegal to subdivide or sell land prior to recordation of final approval of the subdivision plat
 - ii. Contracts to sell or lease allowed after approval of preliminary plat, **if** contract:
 - Includes copy of preliminary plat and requires owner to provide buyer a copy of the recorded final plat prior to closing
 - Clearly notifies buyer/tenant that until the final plat has been approved:
 - Changes to the preliminary plat are possible and
 - Contract may be terminated without breach by buyer/tenant if final recorded plat differs in any material respect from the preliminary plat
 - Buyer/tenant has time after delivery of final recorded plat to close
7. NC Subdivision Street Disclosure Law (Commission's Q&A brochure: [Residential Subdivisions and Planned Communities](#)) [[NCGS 136-102.6](#)]
 - a. Developer requirements
 - b. Responsibility for street maintenance is a material fact and should be in writing (e.g., private road maintenance agreement)

Note: Do not assume that public street designation on the plat equates to governmental acceptance of maintenance and repair responsibilities. Regardless of the age of the subdivision, brokers should verify private or public status of the streets before making any representation as to their status.
8. Onsite Septic Systems
 - a. Strongly recommend *soil suitability (perc) test* for unimproved land
 - i. For a seller prior to listing to determine appropriate listing price
 - ii. For a buyer prior to making an offer to determine appropriate offer terms

Note: It is a material fact if unimproved property will not support a septic system.
 - b. Obtain septic permit, if possible, to verify capacity of septic system and/or any system restrictions for improved property that is not connected to a municipal or community sewage system
 - i. Capacity indicated by number of bedrooms

- ii. Maximum occupancy is 2 persons per permitted bedroom
- iii. Brokers are subject to disciplinary action for misrepresentation of occupancy limits for property served by an onsite septic system

c. *Straight-piping* is illegal and a material fact

9. Liens against the Real Property

a. *Mechanics' lien* (materialman's lien)

- i. On all NC residential or commercial construction projects where the cost equals or exceeds \$40,000
- ii. A *lien agent* must be appointed
- iii. Owner-occupied single family residences are exempt
- iv. All service providers must file a Notice to Lien Agent
 - Ability to file a mechanics' lien (within 120 days after last day of providing services or materials)
 - Lien priority effective from 1st day of providing services or materials

Required Activity: Provide a timeline example of how mechanic's liens may take priority over other recorded liens.

b. NC Commercial Real Estate Broker Lien [Level 1 – this subtopic]

10. NC Lead-Based Paint Hazard Management Program (LHMP)

- a. Purpose
- b. Renovation
- c. Certification requirement
- d. NC fines for violations up to \$750 per day and up to \$32,500 per day under EPA sanctions
- e. Owner-occupied do-it-yourself renovations are exempt from certification requirement

Section XVI: Real Estate Math Calculations [Level 3]:

National Exam Category (7 Items)

A. Brokerage Commissions (Sales and Property Management transactions)

Required Activity: Calculate various sales commissions and property management fees based on typical ways they are determined.

B. Investment calculations

- 1. Profit/Loss (Appreciation/Depreciation) on Sale of Real Estate (including percentages)
- 2. Return on Investment (NOI)

3. Tax implications on investment

C. Area and Related Calculations

1. Conversion of acreage to square footage and vice-versa
2. Square footage of variously-shaped buildings and parcels of land with straight line sides, including irregular shaped parcels/buildings. (Use formulas for calculating the area of squares, rectangles, trapezoids and right triangles.)
3. Square yards
4. Cost/price per square foot/acre/front foot

D. Finance Calculations

1. Simple Interest (How to compute monthly interest, and amount of interest paid over life of a fixed-rate loan)
2. Monthly Principal and Interest Payment (How to compute monthly P & I payment using *factors*, if given the loan amount, interest rate, term and factor)
3. Mortgage Debt Reduction (How to compute principal balance after **one** monthly payment, given previous principal balance, monthly P & I payment and interest rate, with and without using *amortization tables*)
4. Loan Origination Fees and Discount Points
5. Loan Value (applying loan-to-value ratios)
6. Basic Buyer Qualification using given income and debt ratios
7. Equity (including percentages)
8. Yield (on mortgage loans involving discount points using "rule of thumb" value)

E. Settlement & Closing Costs

1. Estimating Net to Seller after Brokerage Fee and other Closing Expenses are Paid (when setting listing price or considering an offer) [Includes sale price needed to net \$X to seller]
2. Excise Tax on Property Transfers

Required Activity: Calculate excise tax for multiple properties: include scenarios for property that is located inside city/town limits, located only in the county, have odd purchase prices, or include seller concessions or financing information.

3. Calculation of individual amounts to be entered on settlement statement when the licensee has the data necessary to perform the needed calculation [e.g., Prorations (real estate taxes, rent, HOA dues); interim interest; escrow deposits; etc.]

4. Calculation of bottom-line figures given all relevant needed information: Total settlement charges to buyer-borrower and seller; net due seller (cash to seller); cash from buyer-borrower

Required Activity: Explain and demonstrate proration math calculations for handling annual homeowners' association dues, monthly rent, and annual real estate taxes. Tax problems should include closing dates early and late in the calendar year and when the seller has and has not already paid the annual tax bill. Students must be given multiple practice problems on various proration scenarios.

F. Property Management Calculations

1. Income and Expenses
2. Tenancy/Vacancy Rates and Rental Calculations

G. Property Valuation (Appraisal) Calculations

1. Assessed Value and Ad Valorem Property Taxes (amount of real property tax using a given tax rate and assessed value; students should be able to perform calculations using either a tax rate in dollars per \$100 of assessed value [NC method] or a mill rate [National method])

Required Activity: Perform multiple math calculations to determine annual property tax liability. Include property tax situations that do and do not require calculation of both county and city taxes.

2. Sales Comparison Approach and Comparative Market Analysis

Required Activity: Have students to prepare a CMA that includes superior and inferior comps to arrive at a range for probable sales price.

3. Cost Approach

Required Activity: Provide examples of estimating replacement cost using the square foot method. Have students determine a single estimate of value of at least one property by the cost approach using the replacement cost method with the square foot method and age/life depreciation for estimating the value of the building.

4. Income Capitalization Approach

Required Activity: Provide an example of estimating value using the Direct Capitalization Formula. Have students determine a single estimate of value of at least one property by the direct capitalization approach. Provide the CAP rate. There will be no calculations using a GRM.