

PROPOSED PERMANENT RULEMAKING

In accordance with N.C.G.S. §150B-19.1(c), the Real Estate Commission (“Commission”) hereby gives notice that it has submitted to the Office of Administrative Hearings - Rules Review Commission for publication in the *North Carolina Register* the Notices of Text for proposed rule amendments and readoptions under consideration. No federal certifications or fiscal notes are required for any of these proposed changes.

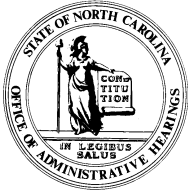
Each Notice of Text includes a summary that cites each rule affected and explains the reason for each proposed change. Changes to the proposed rule text are reflected by underscoring text that will be added and striking through text that will be deleted.

A public hearing on the proposed rule(s) will be held at the Commission’s office on Wednesday, March 13, 2019, at 9:00 a.m. Comments concerning the proposed rule(s) will be accepted beginning January 15, 2019, and continue through April 1, 2019. Members of the public may submit oral or written comments on any proposed rule(s) during the comment period by contacting the Commission’s Rulemaking Coordinator as follows:

Melissa A. Vuotto
Rulemaking Coordinator
North Carolina Real Estate Commission
P.O. Box 17100
Raleigh, NC 27619
(919) 875-3700
public.comment@ncrec.gov

Procedure for Subjecting a Proposed Rule to Legislative Review:

If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission (“RRC”). If the RRC receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the RRC approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The RRC will receive written objections until 5:00 p.m. on the day following the day the RRC approves the rule. The RRC will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the RRC, please call a RRC staff attorney at 919-431-3000.



NOTICE OF TEXT

[Authority G.S. 150B-21.2(c)]

OAH USE ONLY

VOLUME:

ISSUE:

CHECK APPROPRIATE BOX:

- Notice with a scheduled hearing
- Notice without a scheduled hearing
- Republication of text.** Complete the following cite for the volume and issue of previous publication, as well as blocks 1 - 4 and 7 - 13. If a hearing is scheduled, complete block 5.
Previous publication of text was published in Volume: Issue:

1. Rule-Making Agency:
2. Link to agency website pursuant to G.S. 150B-19.1(c):
3. Proposed Action -- Check the appropriate box(es) and list <u>rule citation(s)</u> beside proposed action: <input type="checkbox"/> ADOPTION: <input type="checkbox"/> READOPTION <u>with</u> substantive changes: <input type="checkbox"/> READOPTION <u>without</u> substantive changes: <input type="checkbox"/> AMENDMENT: <input type="checkbox"/> REPEAL:
4. Proposed effective date:
5. Is a public hearing planned? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes: Public Hearing date: Public Hearing time: Public Hearing Location:
6. If no public hearing is scheduled, provide instructions on how to demand a public hearing:

7. Explain Reason For Proposed Rule(s):

8. Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Rule(s) is automatically subject to legislative review. Cite statutory reference:

9. The person to whom written comments may be submitted on the proposed rule(s):

Name:

Address:

Phone (optional):

Fax (optional):

E-Mail (optional):

10. Comment Period Ends:

11. Fiscal impact (check all that apply).

If this form contains rules that have different fiscal impacts, list the rule citations beside the appropriate impact.

- State funds affected
- Environmental permitting of DOT affected
Analysis submitted to Board of Transportation
- Local funds affected
- Substantial economic impact (\geq \$1,000,000)
- Approved by OSBM
- No fiscal note required by G.S. 150B-21.4
- No fiscal note required by G.S. 150B-21.3A(d)(2)

12. Rule-making Coordinator:

Address:

Phone:

E-Mail:

Agency contact, if any:

Phone:

E-mail:

13. The Agency formally proposed the text of this rule(s) on Date:

14. Signature of Agency Head* or Rule-making Coordinator:

*If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name:

Title:

1 21 NCAC 58A .0105 is proposed for amendment as follows:

2

3 **21 NCAC 58A .0105 ADVERTISING**

4 (a) Authority to Advertise.

5 (1) A broker shall not advertise any brokerage service or the sale, purchase, exchange, rent, or lease of
6 real estate for another or others without the consent of his or her broker-in-charge and without
7 including in the advertisement the name of the firm or sole proprietorship with which the broker is
8 affiliated. In the advertisement, the name of the firm or sole proprietorship with which the broker
9 or team is affiliated, if any, shall be of equal or greater size as the name of the broker or team.

10 (2) A broker shall not advertise or display a "for sale" or "for rent" sign on any real estate without the
11 written consent of the owner or the owner's authorized agent.

12 (b) Blind Ads. A broker shall not advertise the sale, purchase, exchange, rent, or lease of real estate for others in a
13 manner indicating the offer to sell, purchase, exchange, rent, or lease is being made by the broker's principal only.
14 Every such advertisement shall indicate that it is the advertisement of a broker or firm and shall not be confined to
15 publication of only contact information, such as a post office box number, telephone number, street address, internet
16 web address, or e-mail address.

17 (c) A person licensed as a limited nonresident commercial broker shall comply with the provisions of Rule .1809 of
18 this Subchapter in connection with all advertising concerning or relating to his or her status as a North Carolina
19 broker.

20

21 *History Note: Authority G.S. 93A-2(a1); 93A-3(c); 93A-9;*

22 *Eff. February 1, 1976;*

23 *Readopted Eff. September 30, 1977;*

24 *Amended Eff. July 1, 2015; April 1, 2013; July 1, 2009; January 1, 2008; April 1, 2006; July 1,*
25 *2004; October 1, 2000; August 1, 1998; April 1, 1997; July 1, 1989; February 1, 1989;*

26 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1,*
27 *2018;*

28 *Amended Eff. July 1, 2020; July 1, 2018.*

1 21 NCAC 58A .1902 is proposed for amendment as follows:

2
3 **21 NCAC 58A .1902 POSTLICENSING EDUCATION REQUIREMENT**

4 ~~(a) The 90 classroom hour postlicensing education program shall consist of three 30 classroom hour courses~~
5 ~~prescribed by the Commission which may be taken in any sequence. A provisional broker as described in G.S. 93A-~~
6 ~~4(a1) or G.S. 93A 4.3(d) must satisfactorily complete at least one of the 30 hour courses during each of the first~~
7 ~~three years following the date of his or her initial licensure as a broker in order to retain his or her eligibility to~~
8 ~~actively engage in real estate brokerage. Upon completion of all three courses by a provisional broker, the~~
9 ~~provisional status of the broker's license shall be terminated by the Commission. The three courses shall be devoted~~
10 ~~to:~~

11 ~~(1) real estate brokerage relationships and responsibilities;~~

12 ~~(2) real estate contracts and transactions; and~~

13 ~~(3) specialized topics, including commercial real estate, rental management, real estate finance, real~~
14 ~~estate appraisal, real estate development, and real estate regulation.~~

15 ~~(b) If a provisional broker as describe in G.S. 93A 4(a1) or G.S. 93A 4.3(d) fails to complete the required~~
16 ~~postlicensing education described in Paragraph (a) of this Rule by the end of either the first or second year following~~
17 ~~the date of his or her initial licensure as a broker, his or her license shall be placed on inactive status. Between the~~
18 ~~end of the first year after initial licensure and the end of the third year after initial licensure, a provisional broker~~
19 ~~who is subject of the postlicensing education requirement and who desires to activate a license that is on inactive~~
20 ~~status shall make up any postlicensing education deficiency as well as satisfy the continuing education requirements~~
21 ~~for license activation described in Rule .1703 of this Subchapter, satisfy the requirement for supervision by a broker-~~
22 ~~in charge described in Rule .0506 of this Subchapter and file with the Commission a request for license activation as~~
23 ~~described in Rule .0504 of this Subchapter.~~

24 ~~(c) If a provisional broker as described in G.S. 93A 4(a1) or G.S. 93A 4.3(d) fails to complete all three~~
25 ~~postlicensing courses within three years following the date of his or her initial licensure, his or her license shall be~~
26 ~~placed on inactive status. In order to activate the license, the provisional broker shall demonstrate completion of all~~
27 ~~three postlicensing courses within the previous three years, which will terminate the provisional status of the~~
28 ~~broker's license, and shall satisfy the continuing education requirements for license activation described in Rule~~
29 ~~.1703 of this Subchapter.~~

30 (a) The 90-hour Postlicensing education program, prescribed by the Commission, shall consist of the following
31 three 30 instructional hour courses:

32 (1) Postlicensing Course 301;

33 (2) Postlicensing Course 302; and

34 (3) Postlicensing Course 303.

35 (b) A provisional broker as described in G.S. 93A-4(a1) shall complete all Postlicensing courses pursuant to
36 Paragraph (a) of this Rule within 18 months following the date of initial licensure.

1 (c) If a provisional broker fails to complete the required Postlicensing courses pursuant to Paragraph (b) of this
2 Rule, the provisional broker's license shall be placed on inactive status.

3 (d) A provisional broker seeking to activate a license that was placed on inactive status pursuant to Paragraph (c) of
4 this Rule shall:

5 (1) complete all three Postlicensing Courses within the previous two years described in Paragraph (a)
6 of this Rule;

7 (2) satisfy the continuing education requirements for license activation described in Rule .1703 of this
8 Subchapter; and

9 (3) file an activation form with the Commission pursuant to Rule .0504 of this Subchapter.

10

11 *History Note: Authority G.S. 93A-4; 93A-4(a1);*

12 *Eff. April 1, 2006;*

13 *Amended Eff. January 1, 2012;*

14 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. ~~May 1,~~*
15 *~~2018.~~ May 1, 2018;*

16 *Amended Eff. July 1, 2020.*

7. Explain Reason For Proposed Rule(s):

Please see attached Exhibit A.

8. Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Rule(s) is automatically subject to legislative review. Cite statutory reference:

9. The person to whom written comments may be submitted on the proposed rule(s):

Name: Melissa A. Vuotto

Address:

PO Box 17100
Raleigh, NC 27619-7100

Phone (optional):

Fax (optional):

E-Mail (optional): public.comment@ncrec.gov

10. Comment Period Ends: April 1, 2019

11. Fiscal impact (check all that apply).

If this form contains rules that have different fiscal impacts, list the rule citations beside the appropriate impact.

- State funds affected**
- Environmental permitting of DOT affected**
Analysis submitted to Board of Transportation
- Local funds affected**
- Substantial economic impact (≥\$1,000,000)**
- Approved by OSBM**
- No fiscal note required by G.S. 150B-21.4** 21 NCAC 58A .0601 & .1905; 21 NCAC 58H .0203, .0209, .0214, & .0302
- No fiscal note required by G.S. 150B-21.3A(d)(2)** 21 NCAC 58A .0108, .0506, .0612, & .2002

12. Rule-making Coordinator:

Melissa A. Vuotto

Address:

NC Real Estate Commission
PO Box 17100
Raleigh, NC 27619-7100

Phone: 919-875-3700, ext. 142

E-Mail: melissa@ncrec.gov

Agency contact, if any:

Robert A. Patchett

Phone: 919-875-3700, ext. 133

E-mail: rob@ncrec.gov

13. The Agency formally proposed the text of this rule(s) on

Date: December 12, 2018

14. Signature of Agency Head* or Rule-making Coordinator:

***If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.**

Typed Name: Melissa A. Vuotto

Title: Rule-making Coordinator

EXHIBIT A

21 NCAC 58A .0601 – Complaints/ Inquiries/ Motions/ Other Pleadings

Amend this Rule to clarify the text of the Rule that all brokers are required to cooperate with a Commission investigation.

21 NCAC 58A .1905 – Waiver of 90-hour Postlicensing Education Requirement

Amend this Rule to add language that a broker who was issued a license pursuant to 21 NCAC 58A .0511(b)(2) will not be granted a waiver of Postlicensing education.

21 NCAC 58H .0203 – Application for Original Approval of a Private Real Estate School

Amend this Rule to remove the requirement of a fire inspection report in a private school application.

21 NCAC 58H .0209 – Prelicensing and Postlicensing Course Enrollment

Amend this Rule to allow any broker to take a Postlicensing course.

21 NCAC 58H .0214 – Expiration and Renewal of a School Approval or License

Amend this Rule to remove the requirement of a fire inspection report in a private school renewal application.

21 NCAC 58H .0302 – Application and Criteria for Original Prelicensing, Postlicensing, or Update Course Instructor Approval

Amend this Rule to remove the instructor applicant video from the application process, to require instructor applicants to complete the New Instructor Seminar within the previous six months of application, and to set the completion requirements for the New Instructor Seminar.

1 21 NCAC 58A .0108 is proposed for re adoption without substantive changes as follows:

2
3 **21 NCAC 58A .0108 RETENTION OF RECORDS**

4 (a) Brokers shall retain records of all sales, rental, and other transactions conducted in such capacity, whether the
5 transaction is pending, completed, or terminated. The broker shall retain records for three years after all funds held
6 by the broker in connection with the transaction have been disbursed to the proper party or parties or the conclusion
7 of the transaction, whichever occurs later. If the broker's agency agreement is terminated prior to the conclusion of
8 the transaction, the broker shall retain such records for three years after the termination of the agency agreement or
9 the disbursement of all funds held by or paid to the broker in connection with the transaction, whichever occurs
10 later.

11 (b) Records shall include copies of the following:

- 12 (1) contracts of sale;
- 13 (2) written leases;
- 14 (3) agency contracts;
- 15 (4) options;
- 16 (5) offers to purchase;
- 17 (6) trust or escrow records;
- 18 (7) earnest money receipts;
- 19 (8) disclosure documents;
- 20 (9) closing statements;
- 21 (10) brokerage cooperation agreements;
- 22 (11) declarations of affiliation;
- 23 (12) broker price opinions and comparative market analyses prepared pursuant to G.S. 93A, Article 6,
24 including any notes and supporting documentation;
- 25 (13) sketches, calculations, photos, and other documentation used or relied upon to determine square
26 footage;
- 27 (14) advertising used to market a property; and
- 28 (15) any other records pertaining to real estate transactions.

29 (c) All records shall be made available for inspection and reproduction by the Commission or its authorized
30 representatives without prior notice.

31 (d) Brokers shall provide a copy of the written agency disclosure and acknowledgement thereof when applicable,
32 written agency agreement, contract, offer, lease, rental agreement, option, or other related transaction document to
33 the firm or sole proprietorship with which they are affiliated within three days of receipt.

34
35 *History Note: Authority G.S. 93A-3(c);*
36 *Eff. February 1, 1976;*
37 *Readopted Eff. September 30, 1977;*

1 *Amended Eff. July 1, 2004; September 1, 2002; August 1, 1998; February 1, 1989; February 1,*
2 *1998;*
3 *Temporary Amendment Eff. October 1, 2012;*
4 *Amended Eff. July 1, 2018; July 1, 2016; ~~April 1, 2013.~~ April 1, 2013;*
5 *Readopted Eff. July 1, 2019.*

1 21 NCAC 58A .0506 is proposed for readoption without substantive changes as follows:

2
3 **21 NCAC 58A .0506 PROVISIONAL BROKER TO BE SUPERVISED BY BROKER**

4 (a) This Rule shall apply to all real estate provisional brokers.

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

9 (c) Upon a provisional broker's affiliation with a real estate broker or brokerage firm, the broker-in-charge of the
10 office where the provisional broker will be engaged in the real estate business shall immediately file with the
11 Commission a provisional broker supervision notification on a form provided by the Commission containing
12 identifying information about the provisional broker and the broker-in-charge, a statement from the broker-in-charge
13 certifying that he or she will supervise the provisional broker in the performance of all acts for which a license is
14 required, the date that the broker-in-charge assumes responsibility for such supervision, and the signature of the
15 broker-in-charge. If the provisional broker is on inactive status at the time of associating with a broker or brokerage
16 firm, the broker-in-charge shall also file, along with the provisional broker supervision notification, a request for
17 license activation on a form provided by the Commission containing identifying information about the provisional
18 broker, the statement of the broker-in-charge that he or she has verified that the provisional broker has satisfied the
19 continuing education requirements prescribed by Rule .1703 of this Subchapter, and the postlicensing education
20 requirements, if applicable, prescribed by Rule .1902 of this Subchapter, the date of the request, and the signature of
21 the proposed broker-in-charge. Upon the mailing or delivery of the required form(s), the provisional broker may
22 engage in real estate brokerage activities requiring a license under the supervision of the broker-in-charge; however,
23 if the provisional broker and broker-in-charge do not receive from the Commission a written acknowledgment of the
24 provisional broker supervision notification and, if appropriate, the request for license activation, within 30 days of
25 the date shown on the form, the broker-in-charge shall immediately terminate the provisional broker's real estate
26 brokerage activities pending receipt of the written acknowledgment from the Commission. If the provisional broker
27 and broker-in-charge are notified that the provisional broker is not eligible for license activation due to a continuing
28 education or postlicensing education deficiency, the broker-in-charge shall cause the provisional broker to
29 immediately cease all activities requiring a real estate license until such time as the continuing education or
30 postlicensing education deficiency is satisfied and a new provisional broker supervision notification and request for
31 license activation is submitted to the Commission.

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

1 (e) Upon the termination of the supervisory relationship between a provisional broker and his or her broker-in-
2 charge, the provisional broker and the broker-in-charge shall provide written notification of the date of termination
3 to the Commission not later than 10 days following said termination.
4

5 *History Note: Authority G.S. 93A-2(b); 93A-3; 93A-9;*
6 *Eff. February 1, 1976;*
7 *Readopted Eff. September 30, 1977;*
8 *Amended Eff. April 1, 2013; April 1, 2006; July 1, 2005; July 1, 2004; October 1, 2000; August 1,*
9 *1998; July 1, 1996; July 1, 1995; ~~July 1, 1993;~~ July 1, 1993;*
10 *Readopted Eff. July 1, 2019.*

1 21 NCAC 58A .0601 is proposed for amendment as follows:
2

3 **SECTION .0600 – REAL ESTATE COMMISSION HEARINGS**
4

5 **21 NCAC 58A .0601 COMPLAINTS/INQUIRIES/MOTIONS/OTHER PLEADINGS**

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

9 (1) be in writing;

10 (2) identify the respondent broker or firm; and

11 (3) apprise the Commission of the facts which form the basis of the complaint.

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

16 ~~(c) When investigating a complaint, the scope of the Commission's investigation shall not be limited only to matters~~
17 ~~alleged in the complaint.~~

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

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

27 ~~(d) All answers, motions, or other pleadings relating to contested cases before the Commission shall be:~~

28 (1) in writing or made during the hearing as a matter of record; and

29 (2) apprise the Commission of the matters it alleges or answers.

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

35 ~~(e) During the course of an investigation, any broker that receives a Letter of Inquiry from the Commission shall~~
36 ~~submit a written response within 14 days of receipt. The response shall include:~~

37 (1) a full disclosure of all requested information; and

1 (2) copies of all requested documents.

2 ~~(f) Hearings in contested cases before the Commission shall be conducted according to the provisions of G.S. 150B,~~
3 ~~Article 3A.~~

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

5

6 *History Note: Authority G.S. ~~93A-3(d); 93A-3(c); 93A-6(a); 150B-38(h);~~*

7 *Eff. February 1, 1976;*

8 *Readopted Eff. September 30, 1977;*

9 *Amended Eff. July 1, 2019; July 1, 2000; August 1, 1998; May 1, 1992; February 1, 1989;*

10 *November 1, 1987;*

11 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1,*

12 *2018.*

13

14

1 21 NCAC 58A .0612 is proposed for readoption without substantive changes as follows:

2

3 **21 NCAC 58A .0612 PRESIDING OFFICER**

4 The Commission may designate any of its members to preside over the hearing in a contested case. When no
5 designation is made, the Chairman of the Commission shall preside, or, in his or her absence, the Vice Chairman shall
6 preside. The presiding officer shall rule on motions or other requests made in a contested case prior to the conduct of
7 the hearing in that case except when the ruling on the motion would be dispositive of the case. When the ruling on a
8 motion or request would be dispositive of the case, the presiding officer shall make no ruling and the motion or request
9 shall be determined by a majority of the Commission.

10

11 *History Note: Authority G.S. 93A-3(c); 150B-40(b);*

12 *Eff. May 1, 1992;*

13 *Amended Eff. ~~October 1, 2000.~~ October 1, 2000;*

14 *Readopted Eff. July 1, 2019.*

1 21 NCAC 58A .1905 is proposed for amendment as follows:

2
3 **21 NCAC 58A .1905 WAIVER OF 90-HOUR POSTLICENSING EDUCATION REQUIREMENT**

4 (a) A provisional North Carolina real estate broker may apply for a waiver of one or more of the three 30-hour
5 Postlicensing courses described in Rule .1902 of this Section in the following circumstances:

6 (1) the broker has obtained equivalent education that is parallel to the topics and timings described in
7 the Commission's Postlicensing course syllabi. In this case, the waiver request shall include the
8 course(s):

9 (A) jurisdiction of delivery;

10 (B) title;

11 (C) credit hours earned;

12 (D) beginning and end dates; and

13 (E) detailed subject matter description.

14 (2) the broker has obtained full-time experience as a licensed broker or salesperson in another state for
15 at least five of the seven years immediately prior to application for waiver, which shall include the
16 applicant's:

17 (A) employer;

18 (B) title at employer;

19 (C) dates of employment;

20 (D) hours per week devoted to brokerage;

21 (E) approximate number of transactions;

22 (F) areas of practice;

23 (G) approximate percentage of time devoted to each area of practice;

24 (H) detailed description of applicant's role and duties;

25 (I) managing broker's name, telephone number, and email address; and

26 (J) official certification of licensure issued within the six months preceding application from
27 a jurisdiction within a state, territory, or possession of the United States or Canada in
28 which the applicant holds a current real estate license that has been active within the three
29 years prior to application.

30 (3) the broker has obtained full-time experience as a licensed North Carolina attorney practicing
31 primarily in real estate matters for the two years immediately preceding application, which shall
32 include the applicant's:

33 (A) firm or practice name;

34 (B) law license number;

35 (C) dates of employment;

36 (D) hours per week devoted to real estate law practice;

37 (E) approximate number of closings conducted;

- 1 (F) detailed description of practice; and
2 (G) manager or supervising attorney's name, telephone number, and email address.
3 (b) The Commission shall not consider education or experience obtained in violation of any law or rule as fulfilling
4 the requirements for waiver of the 90-hour postlicensing education requirement.
5 (c) A broker shall be ineligible for a waiver of the 90-hour postlicensing education requirement if the broker was
6 issued a license pursuant to Rule .0511(b)(2) of this Section.

7
8 *History Note: Authority G.S. 93A-4(a1);*
9 *Eff. ~~July 1, 2017.~~ July 1, 2017;*
10 *Amended Eff. July 1, 2019.*

1 21 NCAC 58A .2002 is readopted without substantive changes as follows:

2

3 **21 NCAC 58A .2002 ESCROW ACCOUNT**

4 (a) The Commission shall establish an escrow account or accounts with a financial institution or institutions
5 lawfully doing business in this ~~state~~ State into which the Commission shall deposit and hold fees tendered during
6 any period of time when, pursuant to ~~G.S. 93B-2(d)~~. The G.S. 93B-2(d), the Commission's authority to expend
7 funds has been suspended. The Commission shall keep funds deposited into its escrow account or accounts
8 segregated from other assets, monies, and receipts for the duration of the suspension of the Commission's authority
9 to expend funds.

10 (b) The Commission may deposit into and maintain in its escrow account such monies as may be required to avoid
11 or eliminate costs associated with the account or accounts.

12

13 *History Note:* Authority G.S. 93B-2(d);
14 Eff. ~~July 1, 2010~~ July 1, 2010;
15 Readopted Eff. July 1, 2019.

1 21 NCAC 58H .0203 is proposed for amendment as follows:

2
3 **21 NCAC 58H .0203 APPLICATION FOR ORIGINAL LICENSURE OF A PRIVATE REAL ESTATE**
4 **SCHOOL**

5 (a) Any entity seeking original licensure as a private real estate school to conduct Prelicensing or Postlicensing
6 courses shall apply to the Commission on a form available on the Commission's website and shall set forth the
7 following criteria in addition to the requirements in G.S. 93A-34(b):

- 8 (1) the physical, website, and email addresses and telephone number of the principal office of the
9 school;
- 10 (2) the proposed school director's legal name, real estate license number, if any, email and mailing
11 address, and telephone number;
- 12 (3) the type of school ownership entity and the name, title, real estate license number, if any, mailing
13 address, and ownership percentage of each individual or entity holding at least 10% ownership in
14 the entity;
- 15 (4) the North Carolina Secretary of State Identification Number;
- 16 (5) the criminal history and history of occupational license disciplinary actions of individual school
17 owner(s);
- 18 (6) the physical address of each proposed school location;
- 19 (7) the source of real estate examinations to be used for each course offered;
- 20 ~~(8) a copy of a current fire inspection report;~~
- 21 ~~(9)~~ (8) a copy of a criminal background check for the previous seven years on the proposed school
22 director;
- 23 ~~(10)~~ (9) a signed Consent to Service of Process and Pleadings form available on the Commission's website,
24 if a foreign entity;
- 25 ~~(11)~~ (10) the Prelicensing or Postlicensing courses to be offered by the school;
- 26 ~~(12)~~ (11) the Update courses to be offered by the school; and
- 27 ~~(13)~~ (12) the signature and certification of the school owner(s).

28 (b) Private real estate school names shall contain the words "Real Estate" and other words identifying the entity as a
29 school, such as "school," "academy," or "institute" that are distinguishable from other licensed private real estate
30 schools and from continuing education course sponsors approved by the Commission.

31 (c) The school name shall be used in all school publications and advertising.

32 (d) Each school shall certify that its facilities and equipment are in compliance with all applicable local, state and
33 federal laws and regulations regarding health, safety, and welfare, including the Americans with Disabilities Act.

34 (e) The original license application fee shall be two hundred dollars (\$200.00) for each proposed school location.

35 (f) The initial fee for a school to offer a Prelicensing or Postlicensing course at any of its locations during the
36 licensing period shall be forty dollars (\$40.00) per Prelicensing or Postlicensing course.

1 (g) Private real estate schools offering Prelicensing or Postlicensing courses pursuant to Paragraph (a) of this Rule
2 shall be eligible to offer Update courses and continuing education courses.

3 (h) If a school relocates any location during any licensing period, the school owner shall submit an original
4 application for licensure of that location pursuant to this Rule.

5

6 *History Note: Authority G.S. 93A-4; 93A-33; 93A-34;*

7 *Eff. ~~July 1, 2017~~, July 1, 2017;*

8 *Amended Eff. July 1, 2019.*

1 21 NCAC 58H .0209 is proposed for amendment as follows:

2

3 **21 NCAC 58H .0209 PRELICENSING AND POSTLICENSING COURSE ENROLLMENT**

4 ~~(a)~~—A school shall not enroll an individual in a Postlicensing course ~~if~~ if:

5 (1) _____ the first day of the Postlicensing course occurs while the individual is enrolled in a Prelicensing
6 ~~course or if that individual has not passed the license examination.~~ course; or

7 ~~(b) A school shall not enroll an individual in a Postlicensing course if~~

8 (2) _____ the first day of the Postlicensing course occurs while the individual is taking another Postlicensing
9 course at the same school or a different school if such enrollment results in the individual being in class for more
10 than 30 instructional hours in any given seven day period.

11

12 *History Note: Authority G.S. 93A-4(a1); 93A-33;*

13 *Eff. ~~July 1, 2017.~~ July 1, 2017;*

14 *Amended Eff. July 1, 2019.*

1 21 NCAC 58H .0214 is proposed for amendment as follows:

2

3 **21 NCAC 58H .0214 EXPIRATION AND RENEWAL OF A SCHOOL APPROVAL OR LICENSE**

4 (a) All Commission approvals and licenses issued to real estate schools shall expire annually on June 30 following
5 issuance of approval or licensure.

6 (b) A school shall file an electronic application for renewal of its approval or license within 45 days immediately
7 preceding expiration of approval or licensure on a form available on the Commission's website. The school renewal
8 application form shall include:

9 (1) the school name;

10 (2) the school number;

11 (3) the school director's name;

12 (4) the school's mailing address, telephone number, and web address, if applicable;

13 (5) all Commission approved courses offered by the school;

14 (6) any change in the school's business entity;

15 (7) court records of any conviction, guilty plea, or plea of no contest to, a misdemeanor or felony
16 violation of state or federal law by a court of competent jurisdiction against the school owner(s)
17 and school director since the last renewal;

18 (8) records pertaining to any disciplinary action taken against the school owner(s) and school director
19 by an occupational licensing board since the last renewal;

20 (9) a copy of the current bulletin;

21 (10) proof of bond as required in G.S. 93A-36; and

22 ~~(11) proof of a current fire inspection; and~~

23 ~~(12)~~(11) the school director's signature.

24 (c) The private school license renewal fee shall be one hundred dollars (\$100.00) for each school location.

25 (d) The renewal fee for a private real estate school to offer a Prelicensing or Postlicensing course at any of its
26 locations-during the licensed period shall be twenty-five dollars (\$25.00) per Prelicensing or Postlicensing course.

27

28 (e) If a school approval or license has expired, the school shall submit an application for original approval or
29 licensure.

30

31 *History Note: Authority G.S. 93A-4; 93A-33; 93A-34(b); 93A-35(b); 93A-36;*

32 *Eff. ~~July 1, 2017.~~ July 1, 2017;*

33 *Amended Eff. July 1, 2019.*

1 21 NCAC 58H .0302 is proposed for amendment as follows:

2
3 **21 NCAC 58H .0302 APPLICATION AND CRITERIA FOR ORIGINAL PRELICENSING,**
4 **POSTLICENSING, OR UPDATE COURSE INSTRUCTOR APPROVAL**

5 (a) An individual seeking original instructor approval shall submit an application on a form available on the
6 Commission's website that shall require the instructor applicant to indicate the course(s) for which he or she is
7 seeking approval and set forth the instructor applicant's:

- 8 (1) legal name, address, email address, and telephone number;
- 9 (2) real estate license number and instructor number, if any, assigned by Commission;
- 10 (3) criminal and occupational licensing history, including any disciplinary actions;
- 11 (4) education background, including specific real estate education;
- 12 (5) experience in the real estate business;
- 13 (6) real estate teaching experience, if any;
- 14 (7) a signed Consent to Service of Process and Pleadings for nonresident applicants; and
- 15 (8) signature.

16 (b) An instructor applicant shall demonstrate that he or she possesses good reputation and character pursuant to G.S.
17 93A-34(c)(9) and has:

- 18 (1) a North Carolina real estate broker license that is not on provisional status;
- 19 (2) completed continuing education sufficient to activate a license under 21 NCAC 58A .1702;
- 20 (3) completed 60 semester hours of college-level education at an institution accredited by any college
21 accrediting body recognized by the U.S. Department of Education; ~~and~~
- 22 ~~(4) completed the New Instructor Seminar, prescribed by the Commission, within the previous six~~
23 ~~months; and~~

24 ~~(4)~~ (5) within the previous seven years has either:

- 25 (A) two years full-time experience in real estate brokerage with at least one year in North
26 Carolina;
- 27 (B) three years of instructor experience at a secondary or post-secondary level;
- 28 (C) real estate Prelicensing or Postlicensing instructor approval in another jurisdiction; or
- 29 (D) qualifications found to be equivalent by the Commission, including a current North
30 Carolina law license and three years' full time experience in commercial or residential
31 real estate transactions or representation of real estate brokers or firms.

32 ~~(c) Along with their application, an instructor applicant shall submit a digital video recording of themselves~~
33 ~~teaching a 50 minute block of a single topic in a Prelicensing, Postlicensing, or Update course that demonstrates the~~
34 ~~ability to teach the subject in a manner consistent with the course materials. The digital video recording shall comply~~
35 ~~with Rule .0305(e) of this Section.~~

36 ~~(d) The digital video recording requirement described in Paragraph (c) of this Rule shall be waived by the~~
37 ~~Commission if the instructor applicant has a current:~~

1 ~~(1) approval as either a General Update Course, Prelicensing, or Postlicensing instructor; or~~

2 ~~(2) Distinguished Real Estate Instructor (DREI) designation that has been awarded to the instructor by~~
3 ~~the Real Estate Educators Association or an equivalent instructor certification.~~

4 ~~(e) Prior to teaching any Prelicensing or Postlicensing course, an approved instructor shall take the Commission's~~
5 ~~New Pre/Postlicensing Instructor Seminar.~~

6 (c) In order to complete the New Instructor Seminar, a broker shall:

7 (1) attend at least ninety percent of all scheduled hours; and

8 (2) demonstrate the ability to teach a 15-minute block of a single Prelicensing topic in a manner
9 consistent with the Commission's Prelicensing Syllabi.

10 (d) Instructors approved prior to July 1, 2019 shall be exempt from the New Instructor Seminar requirement
11 pursuant to Paragraph (b)(4) of this Rule.

12 ~~(e)~~ (e) Prior to teaching any Update course, an approved instructor shall take the Commission's annual Update
13 Instructor Seminar for the current license period. The Update Instructor Seminar shall not be used to meet the
14 requirement in Rule .0306(b)(4) of this Section.

15
16 *History Note: Authority G.S. 93A-3(f); 93A-4; 93A-10; 93A-33; 93A-34;*

17 *Eff. ~~July 1, 2017.~~ July 1, 2017;*

18 *Amended Eff. July 1, 2019.*