

# 2023-2024 General Update Course

## Segment 1

# Headlining Today's News NCREC Top Complaints





1. How many complaints do you think are filed with the Commission each year?

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2. Provide examples of the types of complaints filed with the Commission.

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### *Interactive News Reporting*

Which of the following complaints would result in the Commission opening an investigation file?

- a) My broker stated that the property was on municipal water and sewer. The property has a septic system.
- b) My HOA is increasing my homeowner association fees to hire pool management and a landscaping company. They did not hold a vote on the increase.
- c) I rent from a private owner and don't have a property manager. The owner is refusing to return my security deposit.

- d) My broker won't return my phone calls and is always very rude when I interact with them.

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## LEARNING OBJECTIVES

After completing this section, you should be able to:

- define N.C.G.S. §93A-6(a);
- identify the types of complaints within the Commission's scope of authority;
- explain a broker's duty to cooperate with a Commission investigation; and
- list the most common complaints received by the Commission.

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## TERMINOLOGY

**Complaint:** A written statement which includes allegations of misconduct by a real estate broker.

**Complaining witness:** The person(s) who submits a complaint to the Commission.

**Complainant = Plaintiff:** Upon review of a submitted complaint, if the Commission opens an investigation against a Respondent, the Commission (NOT the Complaining witness) is the Complainant.

**Letter of Inquiry:** Written correspondence sent by the Commission often via email to a real estate licensee informing them that a complaint has been filed against them or another licensee and requesting a written response and, possibly, transaction documents.

**Respondent = Defendant:** The person against whom the complaint is made and who must reply to the complaint.

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## Commission Authority

### *Disciplinary Action by Commission*

***Where does the Commission get the authority to discipline real estate brokers?***  
N.C.G.S. §93A-6(a) authorizes the Commission to take disciplinary action either on its own initiative or by complaint of any person. This authority allows the Commission to:

- investigate brokers and unlicensed activity;

- issue subpoenas for records and to compel attendance of witnesses to testify at hearings;
- hold hearings on broker misconduct; and
- impose sanctions for misconduct.

## Complaints

Each year the Commission investigates a multitude of disciplinary cases as a result of complaints filed against real estate brokers. In 2022, the Commission received 1,459 complaints. According to Rule 58A .0601, a complaint must:

- *be in writing;*
- *identify the respondent broker or firm; and*
- *apprise the Commission of the facts which form the basis of the complaint.*

Moreover, the Commission does not require a specific form to be used when filing a complaint; however, a standard complaint form can be found on the Commission’s website.

Additionally, the Commission may receive an anonymous complaint. If the Commission does receive an anonymous complaint, the Commission will investigate it if the information that is supplied by the complaining witness provides sufficient detail. If a complaint is truly anonymous, then the Commission does not know the identity or contact information of the complaining witness. However, during the investigation, the identity may become known to the Commission and the Respondent. If a complaining witness asks the Commission to keep their identity anonymous, we inform them that, once an investigation begins, a complaint becomes part of the public record and the Commission cannot conceal the identity of the complaining witness.

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## ANATOMY OF AN INVESTIGATION



Upon receipt of a complaint, a Commission staff attorney in the Regulatory Affairs Division assigns a file number and evaluates the complaint to ensure that it falls under the Commission's authority. If it does not, the complaining witness is notified that the complaint is dismissed. If it does, a disciplinary case is opened and assigned to a Consumer Protection Officer (**hereafter known as "CPO"**) or an Auditor/Investigator who initiates a correspondence or field investigation.

**NOTE:** The Commission may also initiate its own complaint if it becomes aware of possible brokerage misconduct.

### ***Letter Inquiry Investigation***

A Letter Inquiry investigation is initiated when the **CPO** sends a Letter of Inquiry to the Respondent (i.e. the broker and/or brokerage against whom the complaint was filed) and to witnesses, some of whom may be brokers. Historically, Letters of Inquiry were sent via USPS in a brown envelope. However, Letters of Inquiry are now sent via email to the licensee's private email address on record with the Commission and include copies of the original complaint and supporting documentation.

Due to the Commission sending Letters of Inquiry electronically, it is important that brokers ensure their contact information within their license record remains current, including an active email address that they check regularly. Pursuant to Rule 58A .0103(b), every broker shall notify the Commission in writing within 10 days of each change of:

- *personal name;*
- *firm name;*
- *trade name;*
- *residence address;*
- *firm address;*
- *telephone number; and*
- *email address.*

**NOTE:** Brokers may make the above changes using specified forms under Licensee Forms on the Commission's website.

All brokers must notify the Commission within 10 days of any changes in:

- Email address
- Name
- Firm Name
- Trade Name
- Home address
- Firm address
- Phone number

### *Is a response to a Letter of Inquiry necessary?*

If a broker/brokerage receives a Letter of Inquiry, Rule 58A .0601 requires the submission of a written response within 14 days of receipt. The response to the Letter of Inquiry must include:

- *a disclosure of all requested information and*
- *copies of all requested documents.*

A broker's failure to promptly and fully respond to a Letter of Inquiry is itself an offense that may result in a disciplinary action pursuant to Rule 58A .0601(e). According to Rule 58A .0108(a), brokers must *retain records of all sales, rentals, and other transactions conducted in such capacity, whether the transaction is pending, completed, or terminated*. Further, subsection (c) of this rule also requires brokers to make all records *available for inspection and reproduction by the Commission or its authorized representatives without prior notice*. Therefore, a broker/brokerage must include copies of all requested transactional documents while responding to the Letter of Inquiry.

Before failing and/or refusing to respond to a Letter of Inquiry, a broker should consider their response as an opportunity to refute the allegations within the complaint. Also, if the broker has a factual or legal defense, then it should be raised in the response. If a broker receives a Letter of Inquiry from the Commission, they should speak with their broker-in-charge (BIC) about the allegations within the complaint. It is also permissible for a BIC to review a broker's written response *before* it is sent to the Commission. However, a BIC cannot submit a written response on behalf of their affiliated broker. Most importantly, the Commission expects a separate response from *each* party named in the complaint.

Further, if additional time is needed to provide a thorough response, the broker should contact the CPO who sent the Letter of Inquiry and request an extension in writing. A well-drafted thorough response to a Letter of Inquiry that includes supplemental documentation can potentially assist the broker in avoiding disciplinary proceedings.

While a Respondent is not required to hire an attorney to submit a response to a Letter of Inquiry on behalf of the Respondent, some Respondents choose to hire attorneys to assist them.

### ***Field Investigations***

The Commission also conducts field investigations. Field investigations are conducted when cases require in-person interviews, trust account audits, or the examination of evidence that cannot be easily identified/obtained through written correspondence. Auditors/investigators in the Regulatory Affairs Division are responsible for conducting field investigations. Once their investigation has concluded, written reports are submitted to staff attorneys for further evaluation.

## ANATOMY OF A COMPLAINT RESOLUTION



### ***Burden of Proof***

According to the North Carolina Administrative Procedures Act (e.g. N.C.G.S. Chapter §150B-25.1), the petitioner (e.g. Commission) in a contested case has the burden of proving the facts alleged in the petition (e.g. complaint) by a preponderance of the evidence; although for the imposition of civil fines and penalties, the burden of proof is clear and convincing evidence. Basically, the burden is on the Commission to prove that the person who was sanctioned more likely than not committed the act for which the sanction was imposed. According to Merriam-Webster Dictionary, a sanction is defined as an action taken to enforce a law or rule.

**NOTE:** Brokers are presumed to be innocent until proven guilty. The Commission will not pursue disciplinary action against a broker without having sufficient, admissible evidence of a violation that warrants such action.

### ***Probable Cause***

If the investigation indicates that disciplinary action is warranted, Regulatory Affairs must convince the Commission that “probable cause” exists. Probable cause is essentially a judicial constraint. The United States Supreme Court has stated that there is not a precise definition because the existence of probable cause deals with probabilities (e.g. it is more probable than not that this conduct occurred) and the totality of the circumstances.

Further, probable cause submissions for the Commission's consideration contain only a summary of the facts without any names or locations. The Commission determines probable cause by evaluating a summary of the evidence and ascertaining if there is **sufficient indication** at the conclusion of the investigation/inquiry that the broker has violated License Law and Commission rules. Further, they decide whether to proceed with a hearing or dismiss the case based on the facts presented.

If there is sufficient indication, then the Commission orders a hearing which is conducted in accordance with the North Carolina Administrative Procedures Act, N.C.G.S. § 150B. If a hearing is conducted, the Commission receives the sworn testimony of witnesses and gives brokers the opportunity to answer charges and present evidence in their defense.

### ***Settlements***

Prior to the hearing date, the Commission attorney and Respondent may discuss possible settlement options in lieu of going to hearing. Sometimes a licensee will offer to voluntarily surrender their license in lieu of proceeding to a hearing and possible disciplinary action. The surrender may allow the licensee to reapply, reapply after a specified time period, or be permanent. Finally, the Commission must approve any final signed agreement or consent order.

**NOTE:** Statistically, only 10% of complaints proceed to a hearing.

### ***Sanctions***

At the conclusion of an investigation, the Commission may find that the broker has violated License Law and Commission rules. If the Commission imposes sanctions, they may include the following:

- license revocation with or without an option of re-applying for a license in the future. A broker whose license is revoked has no license.
- license suspension for a stated period of time. A broker whose license is suspended still has a license, but is prohibited from using it for a specified period of time.
- reprimand which is a public statement of disapproval by the North Carolina Real Estate Commission. A broker who has been reprimanded continues to have an active license and may engage in real estate brokerage activities.

In addition to having the ability to impose sanctions, the Commission may impose reasonable conditions, restrictions, and limitations upon a license. For example, the Commission may impose a restriction such as a broker being ineligible to become a BIC for 5 years.

***Did you know that the Commission has additional requirements under state law if they revoke or suspend a broker's license?*** If the Commission revokes or suspends a broker's license for any period of time, state law requires the Executive Director of the Commission to transmit a certified copy of the disciplinary order to the Clerk of Superior Court in the county where the broker maintains their principal place of business. Once the certified copy is received, the Clerk of Superior Court enters the order in the judgment docket as part of the public record.

Brokers may also incur a possible *stigma* of incompetence or unprofessionalism due to their sanction(s) being discoverable via a basic search on the Internet, Commission website, eBulletin, and/or social media.

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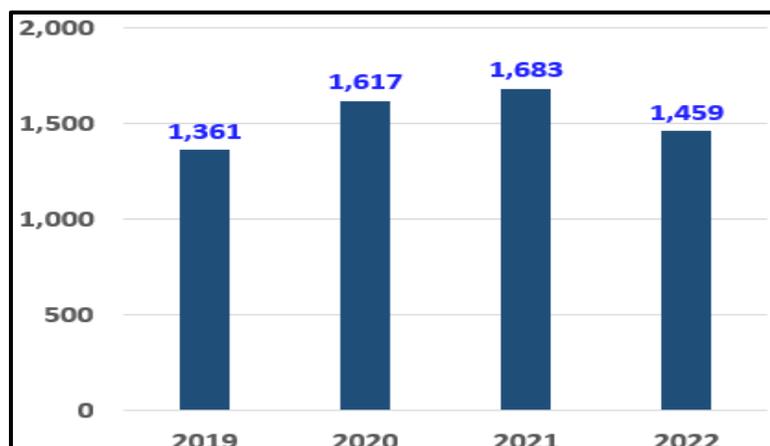
## THE STATISTICS OF COMPLAINTS

### The Most Common Complaints

- Agency agreements
- Competing offers
- False promises
- Material facts
- Trust accounts
- Unlicensed assistants



In 2019, Regulatory Affairs received 1,361 complaints, 1,617 in 2020, 1,683 in 2021, and 1,459 in 2022. Based on this data, Regulatory Affairs receives an average of 1,500 complaints each year.



Once a complaint is evaluated to determine that the alleged misconduct falls within the Commission's jurisdiction under its statutory authority, it is investigated to determine whether there is a probable violation of real estate license law or Commission rules.

Many complaints do not fall within the Commission's scope of authority. Some do not allege facts that indicate a probable law or rule violation, and others lack sufficient witness testimony or documentation to meet the Commission's burden of proof in either establishing probable cause or proving the allegations by a preponderance of the evidence.

Examples of complaints that are NOT actionable because they do not fall within the Commission's scope of authority include the following:

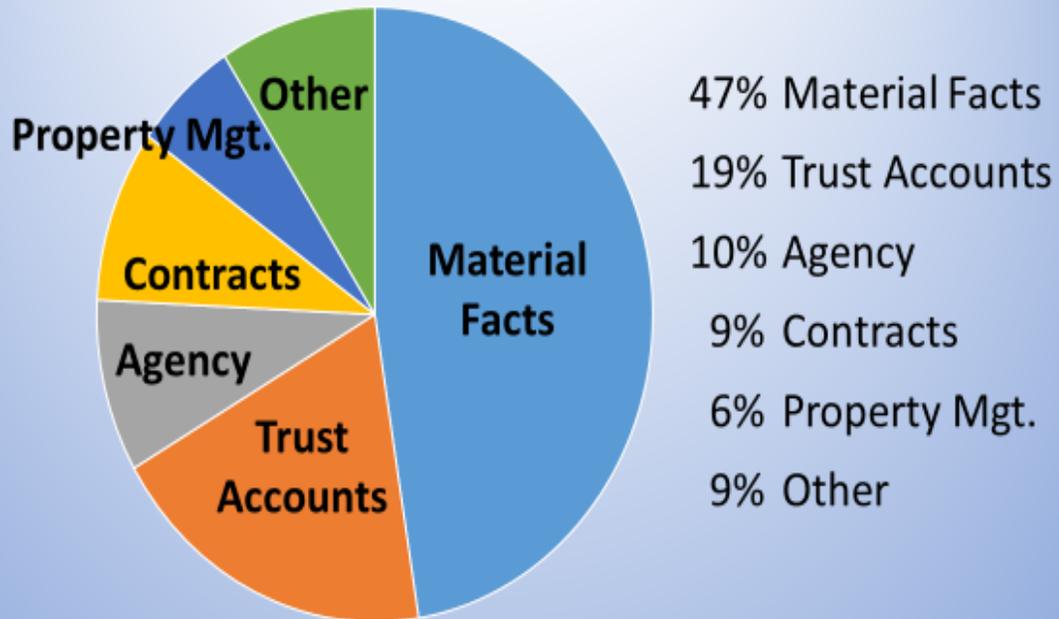
- Disputes between cooperating brokers regarding commissions;
- Disputes between affiliated brokers and their BICs regarding brokerage policies;
- Distribution of marital assets between brokers who get divorced;
- Disputes regarding the sale of heir's property by a disgruntled family member against the broker;
- Fake landlord scams;
- Homeowner association policies, procedures and fees;
- Out of state brokers who do not enter North Carolina to practice brokerage;
- Tenants renting directly from private landlords who are not licensees; and
- Timeshare resale scams by unlicensed, out of state individuals.

The Commission has jurisdiction over brokers. It does not have jurisdiction over unlicensed persons and entities. However, the Commission does have the authority to seek injunctive relief in Superior Court against persons and entities who are engaged in unauthorized and unlicensed brokerage services.

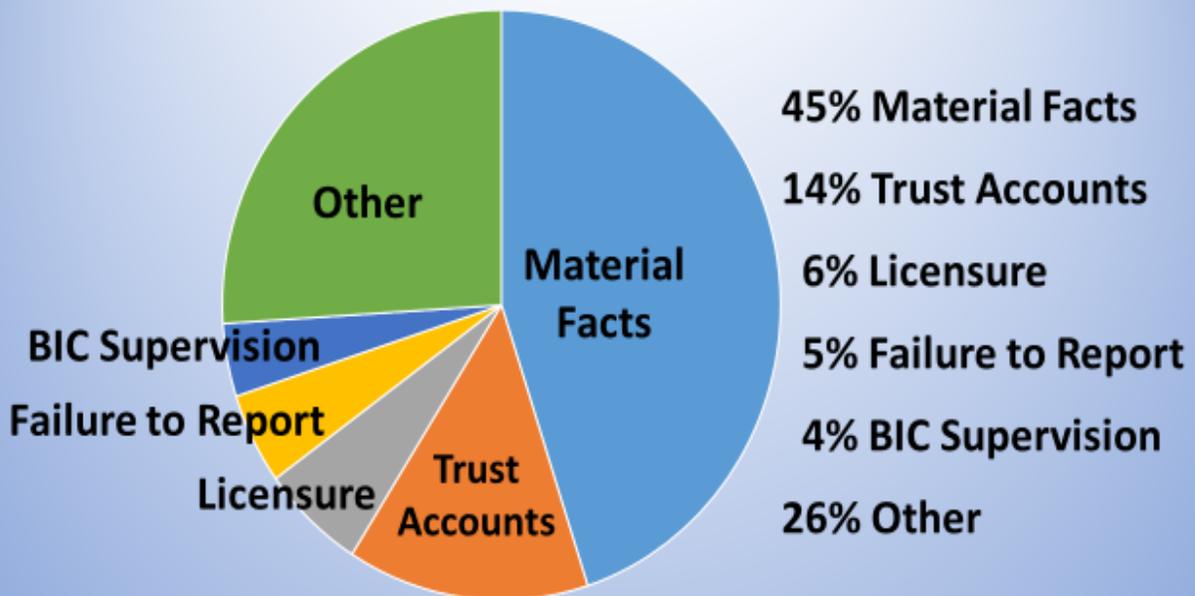
When the Commission closes a case without disciplinary action, because it lacked authority or was not able to establish sufficient evidence, the Commission notifies the Complaining Witness and Respondents in writing, usually using electronic communication.

The statistics of most common complaints do not align perfectly with the most common disciplinary issues. The following two charts provide insight into the statistics of actual disciplinary actions over the two most recent license years.

## NCREC Disciplinary Actions 2020-2021



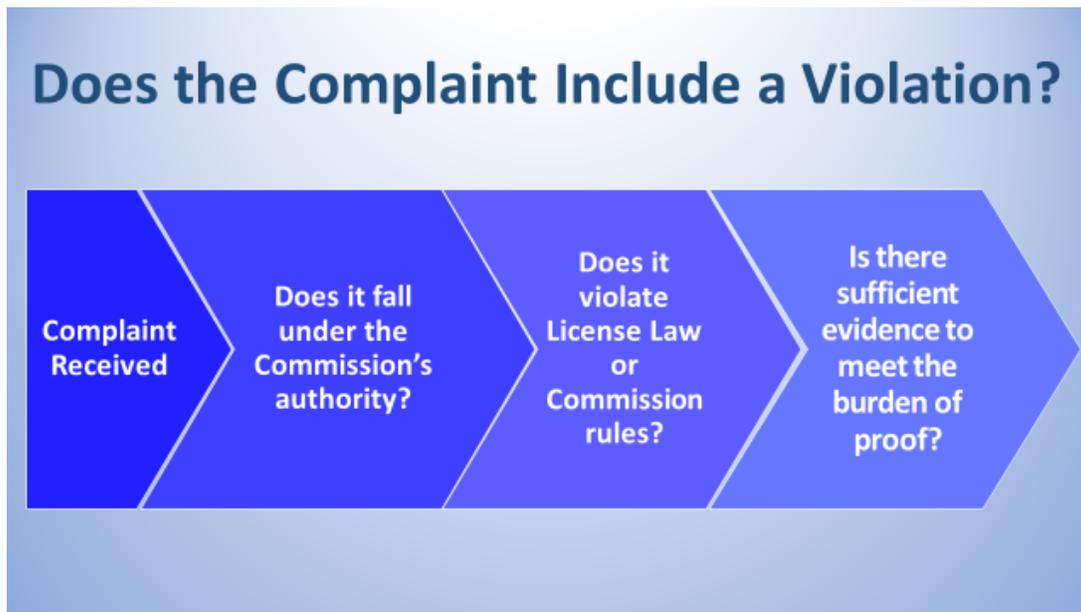
## NCREC Disciplinary Actions 2021-2022



The inordinately high 26% “Other” category in the 2021-2022 license year contained a wide variety of topics including:

- Failure to follow a seller’s instructions;
- Falsifying documents;
- License examination improprieties;
- Communicating terms of offers without authorization;
- Failures to respond to Letters of Inquiry;
- Committing loan fraud; and
- Licensees who failed to comply with landlord /tenant laws.

Let’s discuss whether or not the following sample complaints allege a License Law and Commission rule violation.



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## AGENCY COMPLAINTS

*Takin’ it to the Streets:*



*I went to ABC Realty to help me find a rental property. During my office visit, Terris, the BIC, informed me that ABC Realty has a sales brokerage division and a property management brokerage division. Therefore, they could assist me with locating a property for rent now and also assist me with purchasing a property in the future.*

*Sam, an affiliated broker who works specifically in residential sales, assisted me with locating a rental property. During the transaction, I thought Sam represented my interest. Instead, after I signed the lease for the property, it stated that ABC Realty represented the owner of the property. I think Sam misled me while he was assisting me. I never signed any agreements with Sam prior to signing the lease, and he did not tell me that ABC Realty represented the owner.*

Upon initial review of these allegations, Commission staff may determine that these complaints involve a possible violation of Rule 58A .0104, Agency Agreements and Disclosures. Rule 58A .0104(a), states:

*Every agreement for brokerage services in real estate transaction and every agreement for services connected with the management of a property owners association shall be in writing and signed by the parties thereto. Every agreement for brokerage services between a broker and owner of the property to be the subject of a transaction shall be in writing and signed by the parties at the time of its formation. Every agreement for brokerage services between a broker and a buyer or tenant shall be express and shall be in writing and signed by the parties thereto not later than the time one of the parties makes an offer to purchase, sell, rent, lease, or exchange real estate to another.*

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## COMPETING OFFERS

***Takin' it to the Streets:***



*My broker stated that the listing agent disclosed my offer to other parties so they offered more than me for the property. I think the seller didn't accept my offer because of their listing agent.*

Commission Rule 58A .0115 prohibits brokers from sharing the price or other material terms with competing parties without the express authority of the offering party (usually the buyer). Express authority is an agent's power to act on behalf of their principal. In other words, the client gives the broker permission to perform some act. However, brokers should know that License Law and Commission rules strictly prohibits the "shopping" of offers without everyone's permission to do so. A listing agent should not reveal to anyone other than the seller-client that a 'full-price' or 'cash' offer has been submitted, because sharing such information with a competing buyer would be a violation of Rule A .0115.

For clarification, a seller has the right to consider and respond to one offer or all offers. However, if the seller finds the offers received unacceptable, the seller may request the listing agent to ask prospective buyers to submit their highest and best offers. The seller makes this decision, not the listing agent. If the seller calls for highest and best offers, the listing agent should advise buyers to submit a new offer or stand by their original offer. However, under no circumstances should the listing agent share the offer amount of any offeror without their express authority. Additionally, the listing agent cannot redact the **offering price** within an offer and share this information without express authority to competing buyers, because “other material terms” are still being shared.

In October of 2017, the Commission published the article, [“Be Prompt, Fair, and Honest When Dealing with Multiple Offers.”](#) This article focuses on ensuring that brokers present all offers immediately to the seller; however, the seller determines which offers to consider.



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## FALSE PROMISES

*Takin' it to the Streets:*



*My buyer agent informed me that the HVAC system on the property was new. Once I was under contract on the property, I had the property inspected. The home inspector indicated in the home inspection report that the HVAC system was outdated. Further, my broker stated the home inspector was incorrect because the listing agent and the seller stated the*

*system was new. Also, my broker stated they would add an addendum to our agency agreement and pay me \$5K toward replacing the HVAC system if I went through with the purchase of the property. I purchased the property and I never received the \$5k from my buyer agent.*

Subsections of N.C.G.S. §93A-6(a) indicate the Commission has the power to suspend or revoke at any time a license issued under the provisions of this chapter, or to reprimand or censure any licensee, if, following a hearing, the Commission adjudges the licensee to be guilty of (1) *making any willful or negligent misrepresentation or any willful or negligent omission of material fact*, (2) *making any false promises of a character likely to influence, persuade, or induce*, or (3) *pursuing a course of misrepresentation or making of false promises through agents, advertising or otherwise*.

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## MATERIAL FACTS

*Takin' it to the Streets:*



*The listing agent did not tell my buyer agent that the seller's driveway encroached on the neighbor's property after they were informed by the seller. As a result, my buyer agent did not notify me of this encroachment. I asked if I should have a survey conducted on the property and my buyer agent said not to waste my*

*money. I purchased the property and now my neighbor wants me to dig up my driveway because it is on their property.*

## Material Facts

**Any fact that could affect a reasonable person's decision to buy, sell, or lease**

- 1) Facts about the property
- 2) Facts that relate directly to the property
- 3) Facts directly affecting the principal's ability to complete the transaction
- 4) Facts that are known to be of special importance to a party



The disclosure of material facts is mandatory and must be volunteered freely to all parties in a transaction without regard to whom the broker represents. A broker must disclose material facts in a timely manner.

If a material fact is known prior to contract formation, then the broker must disclose the material fact prior to contract formation. If a material fact is discovered after contract formation, then the broker must disclose the material fact immediately. The broker cannot decide to wait for a party to ask about the material fact or refrain from disclosing the material fact to any party because they believe that the material fact was common knowledge.

Therefore, the broker’s responsibility is to research whether a material fact exists and disclose the presence of a material fact or potential material fact to the transactional parties so they can possess the adequate knowledge to:

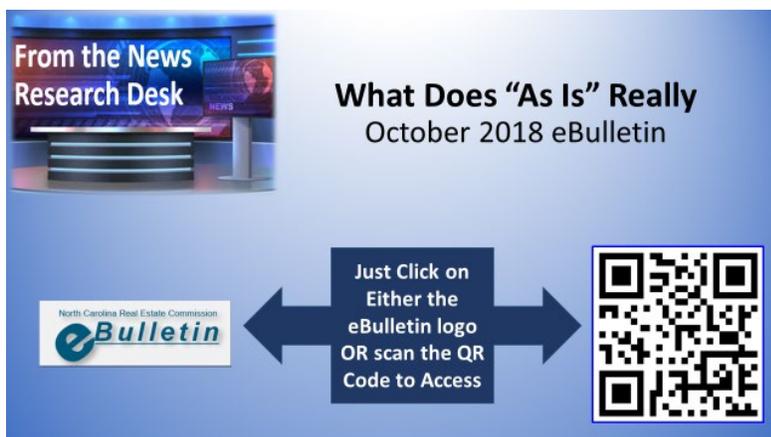
- make an intelligent decision regarding selling or acquiring the property,
- negotiate repair services, or
- decide to terminate an existing contract.

Additionally, the broker’s responsibility includes the following:

- facts the broker know exist,
- facts the broker reasonably should know exist, and
- information considered common knowledge.

In an effort to avoid complaints of misrepresentation or omission of material facts, brokers need to take affirmative action to research and check the accuracy of advertisements in print, MLS, and websites. For clarity, a broker may reasonably rely on the property description given by a listing agent unless the information seems suspicious or questionable.

The Commission has a plethora of resources on its website to assist brokers with comprehending their duties/obligations regarding the disclosure of material facts. The articles elaborate on the responsibilities under the General Statute for all brokers in a transaction. Specifically, articles such as [“What Does “As Is” Really Mean?”](#) and [“Regulatory Affairs Case Study: Get Answers First”](#) explain the statutory requirements for listing agents and buyer agents to discover and disclose material facts to all parties in a transaction.





From the News  
Research Desk

NEWS

Regulatory Affairs Case Study: Get Answers First  
December 2020 eBulletin

North Carolina Real Estate Commission  
eBulletin

Just Click on  
Either the  
eBulletin logo  
OR scan the QR  
Code to Access

Also, the Commission has discussed the duty of a broker to discover and disclose material facts in the 2018-2019, 2019-2020, and 2022-2023 Update Courses. You can access these courses under *Publications* on the Commission's website.

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## TRUST ACCOUNTS

### *Takin' it to the Streets:*



*After entering into a contract for the property, I gave my buyer agent \$1,000 via the Venmo app for my due diligence fee and I have a screenshot of my receipt. My buyer agent then using their Venmo app sent it to the seller. Now I want to cancel and the seller and my buyer agent are telling me that I cannot get my due diligence*

*fee back. My due diligence time period has not expired yet.*

What is Trust Money?

Trust money is defined as:

- any funds belonging to others,
- received by a broker,
- while acting as an agent in a fiduciary capacity related to a real estate transaction.

Trust money includes (but is not limited to):

- any cash,
- earnest money deposits,
- rent payments,
- final settlement funds,
- sales and use tax,
- tenant security deposits,
- HOA dues,
- advance rental deposits, and
- funds used to maintain owners' properties.

All brokers have an obligation to safeguard and protect the trust money and property of others that is in the broker's possession. Therefore, brokers are expressly prohibited from:

- converting the money or property of others to their use;
- applying such money or property to a purpose other than what it was intended for; or
- permitting or assisting any other person in the conversion or misapplication of such money or property.

**NOTE:** Brokers *must* deposit cash into a trust account before disbursing it. Real Estate License Law protects consumers by protecting their money. Brokers who handle money belonging to others are in a position of trust and must act with a high level of honesty and integrity at all times. Additionally, the due diligence fee is generally nonrefundable and brokers should ensure they clearly explain the due diligence process to their clients.

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## UNLICENSED ASSISTANTS

*Takin' it to the Streets:*



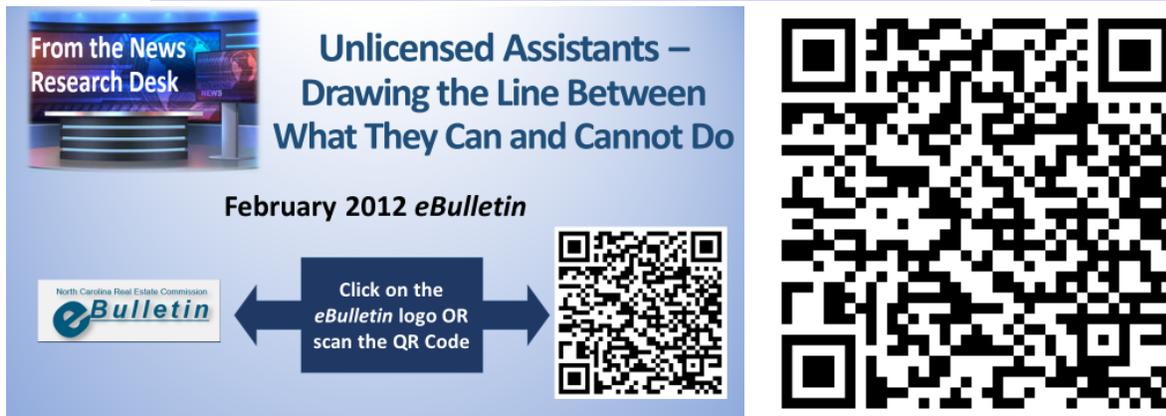
*My buyer agent works for XYZ Realty. The firm's unlicensed office assistant took me to view a property I wanted to purchase. She informed me that I should offer \$275,000 for the property based on the "comps" that my buyer agent had given her. She assisted me with preparing the offer, but it was not accepted. I feel like*

*she did not represent my interest. My offer wasn't accepted because the seller said my offer was incomplete.*

To clarify, the Commission has provided a chart that indicates the permitted activities of an unlicensed, salaried assistant relating to property management in the [2018-2019 Update Course](#).



The Commission has also written an article regarding the activities that are permitted by an unlicensed, salaried assistant. The following article can be used as a resource for brokers, “[Unlicensed Assistants - Drawing the Line Between What They Can and Cannot Do.](#)”



**Managing** real property in North Carolina often involves the leasing or renting of property. Therefore, any individual or entity that manages real property belonging to others for compensation or consideration must be an actively licensed real estate broker.

N.C.G.S. §93A-2(c)(6), permits brokers who engage in property management activities to hire unlicensed salaried employees to assist them with leasing activities. These unlicensed assistants may:

- show rental properties to prospective tenants;
- provide the prospective tenants with information about the lease of the units;
- accept applications for lease of the units;
- complete and execute preprinted form leases; and
- accept predetermined security deposits and rental payments for the units only when the deposits and rental payments are made payable to the broker employed by the owner.

However, under no circumstances is an unlicensed, salaried employee permitted to solicit landlord-clients, enter into property management agreements, or negotiate rental amounts or tenant security deposits. A licensed real estate broker must perform these tasks.

### ***Transaction Coordinators***

Brokers may also utilize the services of a transaction coordinator to assist them with managing administrative aspects within the transaction. However, if a transaction coordinator does not have an active real estate license, they cannot participate in brokerage activities like negotiating repairs and contingencies. Basically, an unlicensed transaction coordinator can assist with:

- the completion of preprinted documents with broker oversight;
- ensuring documentation is complete;
- scheduling inspections/surveys;
- ensuring appropriate deadlines are met; and
- ensuring the closing attorney receives all of the required documents prior to settlement.

Although a transaction coordinator handles administrative tasks, the broker is still responsible for their activities and must check to ensure the transaction coordinator is adhering to the law. If a transaction coordinator has an active real estate license, brokers must evaluate what the role/purpose of the transaction coordinator is during the transaction to ensure that all brokerage activity and related tasks are not violating the law, agency agreements, and company policies.

Further, if an unlicensed assistant does engage in activities that:

- are illegal,
- violate License Law and Commission rules, and/or
- violate state and federal laws,

the BIC of the brokerage and/or affiliated broker may be held liable for the conduct of the unlicensed assistant. In an effort to ensure that unlicensed assistants are not participating in brokerage activities, training programs and educational resources should be available for the company's unlicensed assistants. These training programs and resources should thoroughly explain the obligations that an unlicensed assistant must adhere to while performing their duties.

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## IN OTHER NEWS

During the course of an investigation or later disclosure by a broker, the Commission may become aware of a:

- felony or misdemeanor criminal charge or conviction,
- military court-martial,
- disciplinary action by another occupational licensing board,
- BIC who fails to supervise a provisional broker,
- BIC who doesn't fulfill their obligations under Rule 58A .0110(g), and/or
- broker who fails to respond to a Letter of Inquiry.

Rule 58A .0601(c) states, when investigating a complaint, the scope of the Commission’s investigation shall not be limited only to matters alleged in the complaint. Therefore, if Commission staff is made aware of a possible rule violation during the course of an investigation, they can discipline the broker for the “new” allegation in addition to the allegation(s) already set forth in the complaint.

For example, the Commission may initiate a complaint upon its own action when a broker fails to timely report, per Rule 58A .0113, their felony or misdemeanor criminal conviction, military court-martial, or disciplinary action received by another occupational licensing board.

Specifically, Commission Rule 58A .0113 requires:

*Any broker who is convicted of a felony or misdemeanor, or who is disciplined by or enters into a conciliation agreement or consent order with any governmental agency in connection with any occupational license or whose notarial commission is restricted, suspended, or revoked, shall file with the Commission a Criminal Conviction Disciplinary Action Reporting Form of such conviction or action within 60 days of the final judgment, order, or disposition in the case.*

Essentially, if a broker has a criminal conviction, they must file a Criminal Conviction Disciplinary Action Reporting Form. The Criminal Conviction Disciplinary Action Reporting Form is available on the Commission’s website at [www.ncrec.gov](http://www.ncrec.gov) or upon request to the Commission. The broker shall set forth the following in the form:

- 1) full legal name;
- 2) physical and mailing address;
- 3) real estate license number;
- 4) telephone number;
- 5) email address;
- 6) social security number;
- 7) date of birth; and
- 8) description of the criminal conviction and disciplinary action including the jurisdiction and file number.

**NOTE:** If a broker fails to timely report a felony or misdemeanor criminal conviction, military court-martial, or disciplinary action by another occupational licensing board but notifies the Commission when applying for BIC Eligible status, BIC designation, instructor approval, or completing a firm license application, the application for any of the aforementioned will be placed on hold. The Commission will initiate an investigation for the failure of the broker to report the conviction and to review the applicant’s fitness of character. The application that is placed on hold will be addressed once the investigation and any subsequent disciplinary action has been resolved.

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## YOU BE THE INVESTIGATIVE NEWS REPORTER

Read the following factual allegations.

Determine what, if any, License Law or Commission rules were violated.

- 1. My landlord is the private owner of the property located at 123 Main Street. He does not have a property manager. I have directly paid him my lease payment for the last two years. I have chosen not to renew my lease and he is upset. He said I damaged 26 blinds and he needs to replace them. He refuses to return my security deposit.*
- 2. I am a licensed real estate broker. I represented a buyer in a transaction and had a cooperating agreement with the listing company that I would receive a percent of the commission. However, the listing brokerage has refused to pay me. The settlement occurred 21 days ago.*
- 3. My BIC stated that I could not affiliate with “Z Property Management Firm.” ABC Realty does not allow property management but I want the experience. My BIC is violating the license law.*
- 4. My broker is licensed in Florida, and I currently live in Florida as well. I purchased a property in Nags Head, NC. My Florida broker has assisted me in the past with purchasing properties in Florida so I trusted him. However, he did not tell me that the property in NC had recently flooded and the seller performed their own mold remediation. I also attended the property inspections alone. The broker never accompanied me to view the property. The broker owes me money because the property is infested with mold.*
- 5. Linda is a licensed real estate broker in NC. Linda had contacted me because she saw a “For Sale by Owner” sign in my yard. She stated that she was interested in purchasing my property. After we negotiated on a price, Linda and I entered into a contract for her to purchase my property. One week prior to settlement, I contacted Linda to make sure everything was okay and she told me that Joe is the new buyer and he will adhere to the terms in the contract. Apparently, after we entered into a contract, she sold her rights to buy my property to Joe for \$17,000. Joe was going to use my property as his primary residence. She provided me with Joe’s information and an updated contract. I contacted Joe and he stated he could not obtain financing; therefore, he was unable to purchase the property. I turned down several offers because Linda stated she was going to buy my property.*

6. *My HOA does not maintain the pool or common areas in my subdivision. They are increasing the fee from \$90 to \$135 in July of 2023. This fee is excessive because they are not using the money appropriately; further, they are already fining the owners for things like keeping their garbage bins outside in their yard. They are squandering my fees that I pay each month.*
7. *John and I are licensed real estate brokers who decided to start a company together and work as a team. We were married for 7 years and just recently got a divorce. John has not paid me for three transactions. If we split the commission as agreed upon previously, he owes me \$47,000. This fee was also decided by the court and referenced in the Equitable Distribution Order when our divorce case was finalized.*
8. *I attempted to purchase a 2-acre parcel of land listed by Jake, a private seller. My buyer agent assisted me with preparing a contract to purchase the vacant lot. We negotiated that I would pay \$10K as a due diligence fee. However, once I paid the due diligence fee, neither I nor my buyer agent heard from Jake, the seller, again. We contacted the telephone number provided and it is no longer in service. We also sent emails, and the emails came back “undeliverable.”*

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## SUMMARY OF IMPORTANT POINTS

- N.C.G.S. §93A-6(a) authorizes the Commission to take disciplinary action either on its own initiative or by complaint of any person. This authority allows the Commission to:
  - investigate brokers and unlicensed activity;
  - hold hearings on broker misconduct;
  - issue subpoenas for records and to compel attendance of witnesses to testify at hearings; and
  - impose sanctions for misconduct.
- The Commission may impose sanctions such as a:
  - license revocation with or without an option of re-applying for a license in the future. A broker whose license is revoked has no license.
  - license suspension for a stated period of time. A broker whose license is suspended still has a license but is prohibited from using it for a specified period of time.
  - reprimand which is a public statement of disapproval by the North Carolina Real Estate Commission. A broker who has been reprimanded continues to have an active license and may engage in real estate brokerage activities.
- According to Rule 58A .0601, a complaint must:
  - be in writing;
  - identify the respondent broker or firm; and
  - apprise the Commission of the facts which form the basis of the complaint.
- Upon receipt of a complaint, a Commission staff attorney in the Regulatory Affairs Division evaluates the complaint to ensure that it falls under the Commission's authority.
- A Letter Inquiry investigation is initiated when the Consumer Protection Officer (CPO) sends a Letter of Inquiry to the broker and/or brokerage against whom the complaint was filed, and any witness.
- Rule 58A .0601 requires a broker/brokerage to submit a written response within 14 days of receipt of a Letter of Inquiry. The response must include:
  - a full disclosure of the requested information and
  - copies of all requested documents.
- The Commission also conducts field investigations. Field investigations are conducted when cases require in-person interviews, trust account audits, or the examination of evidence that cannot be easily identified/obtained through written correspondence.

- The petitioner (e.g. Commission) in a contested case has the burden of proving the facts alleged in the petition (e.g. complaint) by preponderance of the evidence.
- The Commission determines probable cause by evaluating the evidence and ascertaining if there is ***sufficient indication*** at the conclusion of the investigation/inquiry that the broker has violated License Law and Commission rules.
- The Commission and Respondent may discuss possible settlement options in lieu of going to hearing. Further, the Commission must approve any final signed agreement or consent order.
- Regulatory Affairs receives an average of approximately 1,500 complaints each year during the last four years.
- Every complaint that is filed is evaluated to determine whether the alleged misconduct falls within the Commission’s jurisdiction under Real Estate License Law or Commission rules.
- The most common complaints received by Regulatory Affairs that are within the Commission’s scope of authority includes the following:
  - agency agreements;
  - competing offers;
  - false promises;
  - material facts;
  - trust account discrepancies; and
  - unlicensed assistants.
- During an investigation or later disclosure by a broker, the Commission may become aware of a:
  - felony or misdemeanor criminal charge or conviction,
  - military court-martial,
  - disciplinary action by another occupational licensing board,
  - BIC who fails to supervise a provisional broker,
  - BIC who doesn’t fulfill their obligations under Rule 58A .0110(g), and
  - broker who fails to respond to a Letter of Inquiry.

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## ANSWERS TO DISCUSSION QUESTIONS

### *Newsroom Roundtable on page 2*

1. How many complaints do you think are filed with the Commission each year?

*Answer: Over the last four years, an average of 1500 complaints have been filed with the Commission annually.*

2. Provide examples of the types of complaints filed with the Commission:

*Answer: The types of complaints that are filed with the Commission vary. However, the most frequently filed complaints are regarding agency agreements, competing offers, false promises, material facts, trust account discrepancies, and unlicensed assistants.*

### *Interactive News Reporting on page 2*

Which of the following complaints would result in the Commission opening an investigation file?

- a) My broker stated that the property was on municipal water and sewer. The property has a septic system.

*Answer: Yes. The Commission has authority to discipline the broker pursuant to N.C.G.S. §93A-6(a)(1).*

- b) My HOA is increasing my homeowner association fees to hire pool management and a landscaping company. They did not hold a vote on the increase.

*Answer: No. The Commission does not have the authority to discipline homeowner associations.*

- c) I rent from a private owner and don't have a property manager. The owner is refusing to return my security deposit.

*Answer: No. The Commission does not have the authority to discipline the private owner. However, the tenant may file a smalls claim complaint against the private owner pursuant to N.C.G.S. §42.*

- d) My broker won't return my phone calls and is always very rude when I interact with them.

*Answer: No. The Commission does not have the authority to discipline rude behavior.*

### **Takin' it to the Streets on pages 12-13**

I went to ABC Realty to help me find a rental property. During my office visit, Terris, the BIC, informed me that ABC Realty has a sales brokerage division and a property management brokerage division. Therefore, they could assist me with locating a property for rent now and also assist me with purchasing a property in the future. Sam, an affiliated broker who works specifically in residential sales, assisted me with locating a rental property. During the transaction, I thought Sam represented my interest. Instead, after I signed the lease for the property, it stated that ABC Realty represented the owner of the property. I think Sam misled me while he was assisting me. I never signed any agreements with Sam prior to signing the lease, and he did not tell me that ABC Realty represented the owner.

#### **Answer:**

**Does the Commission have the authority to discipline a Respondent under the alleged facts?** *Yes. The Commission has authority to discipline the Respondent under 58A .0104(a), Agency Agreements and Disclosure.*

**Do the facts indicate a probable violation of License Law and Commission rules?** *Yes. In accordance with Rule 58A .0104(a), every agreement for brokerage services between a broker and a buyer or tenant shall be express and shall be in writing signed by the parties thereto not later than the time one of the parties makes an offer to purchase, sell, rent, lease, or exchange real estate to another. If the broker did not enter into an agency agreement with the tenant prior to the tenant signing the lease, the broker may be in violation of Rule 58A .0104(a).*

**What documentation do you think the Commission will request/analyze during the investigation?** *The Commission may request the following information during the investigation: copies of the written office policies of ABC Realty, the property management agreement, the lease agreement, and any electronic correspondence (emails and text messages), if applicable.*

### **Takin' it to the Streets on page 13**

My broker stated that the listing agent disclosed my offer to other parties so they offered more than me for the property. I think the seller didn't accept my offer because of their listing agent.

#### **Answer:**

**Does the Commission have the authority to discipline a Respondent under the alleged facts?** *Yes. The Commission has authority to discipline the Respondent under 58A .0115, Disclosure of Offers Prohibited.*

**Do the facts indicate a probable violation of License Law and Commission rules?** *Yes. In accordance with Rule 58A .0115, a broker shall not disclose the price or other material terms contained in a party's offer to purchase, sell, lease, rent, or to option real property to a competing party without the express authority of the offering party. If the broker disclosed the terms of an offer without the express authority of the offering party, they may be in violation of this rule.*

**What documentation do you think the Commission will request/analyze during the investigation?** *The Commission may request the following information during the investigation: electronic correspondence (i.e. emails, text messages, etc.) with the seller and buyer agents or buyers if they are unrepresented, and copies of all offers.*

#### **Takin' it to the Streets on page 14**

My buyer agent informed me that the HVAC system on the property was new. Once I was under contract on the property, I had the property inspected. The home inspector indicated in the home inspection report that the HVAC system was outdated. Further, my broker stated the home inspector was incorrect because the listing agent and the seller stated the system was new. Also, my broker stated they would add an addendum to our agency agreement and pay me \$5K toward replacing the HVAC system if I went through with the purchase of the property. I purchased the property and I never received the \$5k from my buyer agent.

#### **Answer:**

**Does the Commission have the authority to discipline a Respondent under the alleged facts?** *Yes. The Commission has the authority to discipline the broker under N.C.G.S. §93A-6(a).*

**Do the facts indicate a probable violation of License Law and Commission rules?** *Yes. In accordance with N.C.G.S. §93A-6(a), brokers are prohibited from making false promises to induce, persuade, or influence an individual to perform an act they would not have otherwise performed. In this fact pattern, the buyer was reluctant to purchase a property with an outdated HVAC system. However, their buyer agent indicated that if they proceeded with purchasing the property, they would give them \$5k toward the purchase of a new system. Once the buyer consummated the transaction, the broker failed to provide the \$5k for the new system.*

**What documentation do you think the Commission will request/analyze during the investigation?** *The Commission may request the following information during the investigation: electronic correspondence (i.e. emails, text messages, etc.), home inspection report, addendum to agency agreement, copies of MLS listing, copies of communication with listing agent, and statements from the home inspector.*

### **Takin' it to the Streets on page 15**

The listing agent did not tell my buyer agent that the seller's driveway encroached on the neighbor's property after they were informed by the seller. As a result, my buyer agent did not notify me of this encroachment. I asked if I should have a survey conducted on the property and my buyer agent said not to waste my money. I purchased the property and now my neighbor wants me to dig up my driveway because it is on their property.

#### **Answer:**

**Does the Commission have the authority to discipline a Respondent under the alleged facts?** *Yes. The Commission has the authority to discipline the broker under N.C.G.S. §93A-6(a)(1).*

**Do the facts indicate a probable violation of License Law and Commission rules?** *Yes. The facts indicate that the listing agent may be in violation of failing to discover and disclose the encroachment on a neighbor's property which is a material fact. A listing agent should take reasonable steps to verify all of the property information so they can advertise accurate data for the listing. Since the listing agent did not disclose that the property encroached on the neighbor's property, they omitted this information which is a possible violation under N.C.G.S. §93A-6(a)(1). Omission is defined as the failure to disclose material information.*

**What documentation do you think the Commission will request/analyze during the investigation?** *The Commission may request the following information during the investigation: written office policies for the brokerage regarding encroachments, attendance records for trainings, a list of the dates of trainings regarding encroachments, MLS listing, electronic correspondence (i.e. text messages and emails), and surveys, etc.*

### **Takin' it to the Streets on page 17**

*After entering into a contract for the property, I gave my buyer agent \$1,000 via the Venmo app for my due diligence fee and I have a screenshot of my receipt. My buyer agent then using their Venmo app sent it to the seller. Now I want to cancel and the seller and my buyer agent are telling me that I cannot get my due diligence fee back. My due diligence time period has not expired yet.*

#### **Answer:**

**Does the Commission have the authority to discipline a Respondent under the alleged facts?** *Yes. The Commission has authority to discipline the broker under Rule 58A .0116(g).*

**Do the facts indicate a probable violation of License Law and Commission rules?** *Yes. The facts allege that the broker received the buyer's due diligence fee via the Venmo app. According to Rule 58A .0116, all monies received by a broker acting in their fiduciary capacity (hereinafter "trust money") shall be deposited in a trust or escrow account as defined in Rule 58A .0117(b) no later than three banking days following the broker's receipt of monies. Therefore, based upon these facts, it is possible that the broker may not have a trust account which is required if they are going to accept receipt of funds belonging to others.*

**What documentation do you think the Commission will request/analyze during the investigation?** *The Commission may request the following information during the investigation: written office policies for the brokerage regarding trust accounts, the transaction file for this owner, copies of trust account records, and electronic correspondence with the owner (i.e. text messages and emails).*

### **Takin' it to the Streets on page 18**

My buyer agent works for XYZ Realty. The firm's unlicensed office assistant took me to view a property I wanted to purchase. She informed me that I should offer \$275,000 for the property based on the "comps" that my buyer agent had given her. She assisted me with preparing the offer, but it was not accepted. I feel like she did not represent my interest. My offer wasn't accepted because the seller said my offer was incomplete.

### **Answer:**

**Does the Commission have the authority to discipline a Respondent under the alleged facts?** *Yes. The Commission has authority to discipline the buyer agent responsible for the supervision of the office assistant under N.C.G.S. §93A-1.*

**Do the facts indicate a probable violation of License Law and Commission rules?** *Yes. The facts indicate that the unlicensed office assistant informed the buyer to offer \$275,000 on the property and assisted the buyer with preparing the offer. An unlicensed assistant cannot advise clients on what offers to make nor complete documentation for an offer. These duties require an active real estate license. If the unlicensed office assistant participated in this illegal brokerage conduct, the supervising broker may be in violation of under N.C.G.S. §93A-1.*

**What documentation do you think the Commission will request/analyze during the investigation?** *The Commission may request the following information during the investigation: written office policies for the brokerage regarding unlicensed assistants, documentation regarding trainings conducted for unlicensed assistants, copies of signed documentation acknowledging receipt of permitted activities of unlicensed assistants, comparative market analysis, offers, and electronic correspondence with the owner (i.e. text messages and emails), etc.*

**You Be the Investigative News Reporter on pages 23-24**

1. My landlord is the private owner of the property located at 123 Main Street. He does not have a property manager. I have directly paid him my lease payment for the last two years. I have chosen not to renew my lease and he is upset. He said I damaged 26 blinds and he needs to replace them. He refuses to return my security deposit.

*Answer: No. The Commission does not have the authority to discipline private landlords for failing to account to the tenant and disburse the tenant security deposit. However, the tenant can file a claim in Small Claims Court against the landlord pursuant to N.C.G.S. §42-52.*

2. I am a licensed real estate broker. I represented a buyer in a transaction and had a cooperating agreement with the listing company that I would receive a percent of the commission. However, the listing brokerage has refused to pay me. The settlement occurred 21 days ago.

*Answer: No. The Commission does not have the authority to discipline a broker when the allegations in the complaint indicate there is a discrepancy regarding commission disbursements between cooperating brokerages.*

3. My BIC stated that I could not affiliate with “Z Property Management Firm.” ABC Realty does not allow property management but I want the experience. My BIC is violating the license law.

*Answer: No. The Commission does not have the authority to discipline a BIC for indicating in their office policies that an affiliated broker may not affiliate with another brokerage. BICs have the authority to determine their office policies and procedures for their brokerage as long as the policies/procedures do not violate License Law and Commission rules.*

4. My broker is licensed in Florida, and I currently live in Florida as well. I purchased a property in Nags Head, NC. My Florida broker has assisted me in the past with purchasing properties in Florida so I trusted him. However, he did not tell me that the property in NC had recently flooded and the seller performed their own mold remediation. I also attended the property inspections alone. The broker never accompanied me to view the property. The broker owes me money because the property is infested with mold.

*Answer: No. The Commission does not have the authority to discipline a broker who is not licensed in NC. Although the broker represented a client in a transaction in Nags Head, NC. The broker did not come to NC during the transaction. Therefore, the Commission does not have authority to discipline the broker because the allegations do not allege a possible violation of NC License Law and Commission Rules.*

5. Linda is a licensed real estate broker in NC. Linda had contacted me because she saw a “For Sale by Owner” sign in my yard. She stated that she was interested in purchasing my property. After we negotiated on a price, Linda and I entered into a contract for her to purchase my property. One week prior to settlement, I contacted Linda to make sure everything was okay and she told me that Joe is the new buyer and he will adhere to the terms in the contract. Apparently, after we entered into a contract, she sold her rights to buy my property to Joe for \$17,000. Joe was going to use my property as his primary residence. She provided me with Joe’s information and an updated contract. I contacted Joe and he stated he could not obtain financing; therefore, he was unable to purchase the property. I turned down several offers because Linda stated she was going to buy my property.

*Answer: Yes. The Commission has the authority under N.C.G.S. §93A-6(a)(10) to discipline Linda if during the course of the investigation the Commission determines that Linda was dealing improperly, fraudulently, or dishonestly with the seller. If Linda intended to participate in a wholesale deal, as a licensed real estate broker, she must treat everyone with good faith and honesty. Therefore, Linda should have communicated truthfully with the seller regarding her intentions.*

6. My HOA does not maintain the pool or common areas in my subdivision. They are increasing the fee from \$90 to \$135 in July of 2023. This fee is excessive because they are not using the money appropriately; further, they are already fining the owners for things like keeping their garbage bins outside in their yard. They are squandering my fees that I pay each month.

*Answer: No. The Commission does not have the authority to discipline homeowner associations in NC.*

7. John and I are licensed real estate brokers who decided to start a company together and work as a team. We were married for 7 years and just recently got a divorce. John has not paid me for three transactions. If we split the commission as we had agreed upon, he owes me \$47,000. This fee was also decided by the court and referenced in the Equitable Distribution Order when our divorce case was finalized.

*Answer: No. The Commission does not have the authority to take disciplinary action against a broker for failing to disburse earned commissions subject to an Equitable Distribution Order by the Court.*

8. I attempted to purchase a 2-acre parcel of land listed by Jake, a private seller. My buyer agent assisted me with preparing a contract to purchase the vacant lot. We negotiated that I would pay \$10K as a due diligence fee. However, once I paid the due diligence fee, neither I nor my buyer agent heard from Jake, the seller, again. We contacted the telephone number provided and it is no longer in service. We also sent emails and the emails came back “undeliverable.”

*Answer: No. The Commission does not have authority to discipline Jake, the private seller, because he does not have a real estate license. However, the Commission does have the authority to discipline the buyer agent if during the course of the investigation the Commission finds that the buyer agent did not adhere to their fiduciary duties while representing their client according to N.C.G.S. §93-6(a)(8).*