

2023-2024 General Update Course

Segment 4

Legislative Desk Law & Rules Updates



1. What do you know about the process the Commission must follow to implement rule changes?

2. What new rule changes have you heard about?

LEARNING OBJECTIVES

By the end of this section, you should be able to describe updates to License Law and Commission rules that became effective on July 1, 2023.

TERMINOLOGY

Office of Administrative Hearings (OAH): The Office of Administrative Hearings is an independent quasi-judicial agency that was established to ensure that the functions of rulemaking, investigation, advocacy, and adjudication are not combined in the administrative process. OAH performs legal analysis and administrative and technical work in the review, compilation, and publication of the NC Register and the NC Administrative Code. It also provides administrative support and legal counsel to the Rules Review Commission.

Public Comment Period: The time period after proposed rule text is published that affords interested parties an opportunity to express support or opposition for the proposed rule. The comments can be submitted to the Commission during a 60 day comment period, or at a public hearing held shortly after the proposed rule text is published.

Rule: A rule is adopted by administrative agencies to clarify laws and the processes for compliance. Rules have the effect of law. The North Carolina Real Estate Commission rules are published in the North Carolina Administrative Code which is the official publication of the rules that govern the state's agencies, boards, and commissions.

Rules Review Commission (RRC): The executive agency created by the General Assembly in 1986 charged with reviewing and approving rules adopted by state agencies. The Rules Review Commission's substantive review procedures are set by the General Assembly and are codified in the Administrative Procedure Act, Chapter 150B, Articles 1 and 2A.

Statute: Statutes are laws which are passed by the North Carolina General Assembly. The General Assembly consists of the Senate and House of Representatives.

THE RULEMAKING PROCESS

Rulemaking is the process by which the Commission clarifies laws through the adoption, amendment, or repealing of rules. During permanent rulemaking, the Commission proposes rule language and sends it to the Office of Administrative Hearings (*hereafter known as "OAH"*). OAH publishes the proposed rule text in the North Carolina Register which provides notices to interested parties that the Commission has started the process to amend, adopt, or repeal a rule.

Once the text is published, interested parties have two opportunities to comment on the proposed language. The first opportunity is the public comment period. Public comments can be submitted to the Commission during a 60 day comment period. The second opportunity is during a public hearing that is held shortly after the proposed rule text is published. During the public comment period or public hearing, interested parties have the opportunity to express support or opposition for the proposed rule.

Once the comment period and public hearing have passed, the Commission must consider all of the comments and decide whether to amend, adopt, or reject the rule text. If the Commission rejects the rule text, the rulemaking process will end. However, if the Commission makes a substantial change to the rule text based upon the comments, then the revised proposed rule text is republished and another 60 day comment period begins. Further, if the Commission adopts the rule text as written, the proposed rule is sent to the Rules Review Commission (hereafter known as “RRC”).

Once RRC is in receipt of the proposed rules, the proposed rules are reviewed to ensure the Commission has followed the rulemaking requirements, the rule text establishes a purpose with clear language, and the Commission has the legal authority to make the rule. During the review of the rule, RRC can either approve or object to the rule(s). If the rule(s) are objected, the Commission has the authority to either revise the proposed rule or end the rulemaking process. However, if RRC approves a Commission rule, it is entered in the North Carolina Administrative Code.

Basically, the rulemaking process takes several months. The Commission has to ensure that rulemaking adheres to the rules required by OAH, analyze all of the comments received during the public comment period/public hearing, and evaluate how the amendment, adoption, or repealing of rule text will affect stakeholders (i.e. brokers, brokerages, education providers, and instructors) prior to the RRC approving the rule.



BEST PRACTICE: Brokers can subscribe to the Commission's mailing list to receive notice of rulemaking at <https://www.ncrec.gov/Home/Subscribe>.



COMMISSION RULE CHANGES EFFECTIVE JULY 1, 2023

The Commission revised several rules with an effective date of July 1, 2023, in Chapters 58A, 58B, and 58H. The changes that directly impact brokers will be summarized in this section.

The rule revisions are reprinted at the end of this section. Also, all revised rules can be viewed on the Commission's website.

Rule 58A .1708: Equivalent Credit

Purpose of the Rule Change

Rule 58A .1708 was changed in part to save brokers the cost of \$50.00 to submit a course for approval because the education provider did not do so. North Carolina now provides an opportunity for brokers to take their courses in a variety of instructional methods (e.g. blended, distance, synchronous, etc.) that would meet their educational needs, which previously did not exist. There are over 600 different approved CE electives available to NC brokers via various delivery methods.

Elimination of this Rule will also reduce the number of brokers going inactive because equivalent credit was not granted for last minute applications and will also generally reduce confusion regarding continuing education.

Prior to July 1, 2023, Rule 58A .1708 permitted brokers to submit an equivalent credit waiver to receive equivalent credit for continuing education elective courses for:

- teaching a Commission Update Course,
- teaching a Commission approved continuing education elective for the first time any given continuing education elective credit is taught,
- completing an unapproved course that the Commission finds equivalent to the elective course component of the continuing education requirement in Rule 58A .0407(a),
- developing a continuing education course approved by the Commission,
- authoring a real estate textbook, or
- authoring a scholarly article on a real estate topic published in a professional journal or periodical.

Rule 58A .1708 was amended on July 1, 2023, to **eliminate** submission of equivalent credit waivers for continuing education elective credit courses. The Rule now states:

- a) *The Commission shall award an approved instructor continuing education credit for teaching a Commission Update course. An approved instructor seeking continuing education credit for teaching a Commission Update Course shall submit a form available on the Commission's website, that requires the approved instructor to set forth the:*
 - 1) *approved instructor's name, license number, instructor number, address, telephone number, and email address;*
 - 2) *Update course number;*
 - 3) *education provider's name and number;*
 - 4) *education provider's address; and*
 - 5) *date the course was taught.*

- b) *The Commission shall award a broker continuing education elective credit the first time an approved continuing education elective course is taught by the broker. A broker seeking continuing education credit under this Paragraph shall submit a form, available on the Commission's website, that requires the broker to set forth the:*
 - 1) *broker's name, license number, address, telephone number, and email address;*
 - 2) *course title;*
 - 3) *course number;*
 - 4) *education provider's name and number;*
 - 5) *education provider's address; and*
 - 6) *date the course was taught.*

- c) *The Commission may award continuing education elective credit for developing a continuing education elective course the first time it is approved by the Commission pursuant to 21 NCAC 58H .0401. However, a broker shall only receive credit for the year in which the continuing education elective course is approved. A broker seeking continuing education credit under this Paragraph shall submit a form, available on the Commission's website that requires the broker to set forth the:*
 - 1) *broker's name, license number, address, telephone number, and email address;*
 - 2) *the course title;*
 - 3) *the course number;*
 - 4) *the date of course approval; and*
 - 5) *a fifty dollar (\$50.00) fee for each course for which the broker seeks credit.*

In order for any application for equivalent credit to be considered and credits applied to the current licensing period, a complete application, the appropriate fee, and all supporting documents shall be received by the Commission no later than 5:00 p.m. on June 17.

Anticipated Impact to Brokers

The impact brokers will incur is minimal. Although the Commission is no longer taking waivers for continuing education courses, brokers have a multitude of courses they can take to receive continuing education elective credit. Additionally, the courses that the brokers must take going forward, are already approved continuing education courses by the Commission.

Best Practices for Compliance

As a best practice, brokers may wish to search continuing education courses that are approved on the Commission's website. Brokers can find courses by following these steps:

- go to www.ncrec.gov;
- click on the Education menu;
- click on Search CE Course Schedule; and
- click on Search Providers.



NOTE: A full listing of courses currently scheduled across the state will be displayed. A broker may wish to enter search criteria, such as education provider, instructor, or city for a narrowed list. The broker should contact the Education Provider directly to register for a course.



Interactive News Reporting

Can I get any CE credit for CCIM® courses, appraisal courses, or courses offered by the REALTOR® Associations such as GRI®?

- a) No. CE credit will no longer be given for any of these courses.
- b) You might, but you are going to have to make a special request to get CE credit.
- c) Any course you take that lasts at least 4 hours provides CE credit.
- d) Yes. Many of these courses are already approved. They just have to be submitted by the provider and you don't have to file a special request or pay \$50 if NCREC has approved them.



Takin' it to the Streets:

Ashley, a broker with XYZ Homes, lives in Oklahoma. On June 6, 2023, Ashley certified that she had an active license in Oklahoma when she renewed her license. Therefore, under Commission rules in effect at that time, Ashley did not have to take any continuing education in North Carolina to keep her NC license on active status.

On May 17, 2024, she wants to certify that her license in Oklahoma is still on active status while renewing her NC license so that she does not have to take NC continuing education. Can she still do that? _____

Does it matter that Ashley is actively licensed in another state?

Does it matter what education she completed in Oklahoma?

Does it matter that she doesn't live in NC? _____

Rule 58A .1711: Continuing Education Required of Nonresident Brokers

Purpose of the Rule Change

The Commission repealed this Rule because nonresident brokers have the ability to easily take all of their North Carolina continuing education (CE) courses due to the variety of instructional methods now available to brokers.

Additionally, nonresident brokers will benefit from the education provided in the mandatory Update Course to ensure their continued compliance with License Law and Commission rule requirements in North Carolina.

Basically, all brokers with a North Carolina real estate license should:

- be subject to the same CE requirements;
- show competence regarding NC License Law and Commission rules;
- not rely on licensure or course completion in another state to indicate their competence in NC; and
- use the various instructional methods offered by NC certified education providers to meet the CE requirements in NC.

Rule 58A .1711 was repealed by the Commission on July 1, 2023. Prior to July 1, 2023, nonresident NC brokers could meet CE requirements for renewal, if they:

- certified during license renewal that they had an active license in another state; or
- completed the Commission-prescribed Update course and Commission-approved continuing education elective course; or
- completed two Commission-approved continuing education elective courses.

Effective July 1, 2023, nonresident brokers must now comply with North Carolina CE requirements as specified in Rule 58A .1702, ***Continuing Education Requirements***. Essentially, Rule 58A .1702 requires ***all*** brokers to take eight credit hours of NCREC-approved real estate continuing education courses within one year prior to the expiration of their license as follows:

- 1) *four credit hours of elective courses; and*
- 2) *four hours of either:*
 - A) *the “General Update Course,” or*
 - B) *for a broker with BIC Eligible status, “the Broker-in-Charge Update Course” in lieu of the “General Update Course.”*

Anticipated Impact to Brokers

Nonresident brokers will be slightly impacted due to this Rule being repealed. Beginning July 1, 2023, nonresident brokers who wish to renew their NC license on active status will have to complete a mandatory NCREC Update course (GENUP or BICUP based upon their license status) and a 4-hour NCREC-approved CE elective by June 10, 2024. Therefore, nonresident brokers will no longer be able to utilize the CE requirements from another state to certify they have met the CE requirements in North Carolina.

Best Practices for Compliance

The following best practices are instrumental for nonresident brokers:

- check your license status on the Commission’s website;
- complete the appropriate Update Course for your license status (e.g. General Update/GENUP or Broker-in-Charge/BICUP Update); and
- complete a 4-hour NCREC-approved CE elective.

NOTE: Nonresident brokers must complete their CE requirements by June 10 of each license year according to Rule 58A .1702.

RPOADS (Residential Property and Owners' Association Disclosure Statement)



Interactive News Reporting

1. When a listing broker reviews the Residential Property and Owners' Association Disclosure Statement (*RPOADS*) and knows a seller's statement is incorrect, what should the broker do?

- a) Change the *RPOADS* and make the necessary corrections.
- b) Listing brokers do not need to review the *RPOADS*.
- c) Discuss the discrepancy with the seller, encourage them to correct it, and make additional disclosure if necessary.
- d) The broker does not need to do anything since the *RPOADS* contains the seller's representations.

2. Which property transfer is exempt from providing an *RPOADS*?

- a) Transfers involving the first sale of a dwelling never inhabited
- b) Transfers of residential rental property when the owner has never occupied the property
- c) Out of state sellers who do not currently live in the property
- d) Transfers where the seller informs the buyer in writing that they are not providing the document and clearly states that the property is being transferred "as is"

Rule 58A .0114: Residential Property and Owners' Association Disclosure Statement

Purpose of the Rule Change

The purpose of the rule change by the Commission was two-fold. First, the Commission wanted to remove the actual *RPOADS* form from the actual rule language so rule changes would not be necessary to adjust *RPOADS* formatting and accessibility. Second, the Commission incorporated the requirement for property owners to answer additional questions and provide additional disclosures that reflect the condition of the property, such as:

- flood status,
- historic registration/designation,
- private well testing, and
- elevator systems relating to the property.

On July 1, 2023, the Commission amended Rule 58A .0114 and the *RPOADS*.

Rule 58A .0114(a) requires every owner of real property that is subject to a transfer of the type governed by Chapter 47E of the General Statute to complete the *RPOADS* and furnish a copy to the buyer in a timely manner.

The Residential Property Disclosure Act in Chapter 47E of the General Statutes requires that most residential property owners complete a disclosure form to give to prospective purchasers. However, the Act is considered a **voluntary** disclosure law. In NC, the seller has the option to sell a property without making any representations as to the condition of the property or whether a previous owner severed the mineral, oil, and gas rights. Basically, a seller has three options while completing the *RPOADS* and *Mineral and Oil and Gas Rights Mandatory Disclosure Statement (MOG)* disclosure statements. They can check “Yes,” “No,” or “No Representation.”

Further, N.C.G.S. §47E-8 indicates that brokers have a duty to inform clients of their rights and obligations under the Statute and ensure their statutory compliance.

Anticipated Impact to Brokers

Although the language in this Rule appears to be substantially different; the required content remains the same and in correlation with the disclosure requirements of N.C.G.S. §47E-4. The Commission expects brokers to provide guidance to their clients while they are completing the additional disclosures (e.g. flood status, historic registration/designation, private well testing, and elevator systems relating to the property) that are on the revised *RPOADS*.

Best Practices for Compliance

As a best practice, brokers should educate their owner-clients regarding their rights and obligations to provide specific disclosure statements under N.C.G.S. §47E-4. Also, a listing agent should:

- furnish the RPOADS form to a residential seller-client and inform the client of their duty to complete the form and deliver it to a prospective buyer,
- not advise a residential seller-client on how to answer questions, and
 - If the client has questions, they should consult with an attorney.
- educate the owner on the broker’s mandatory obligation to discover and disclose material facts.

In an effort to ensure that brokers comprehend their statutory obligation to furnish the RPOADS to their residential seller-client and inform their client of their statutory duty to deliver it to a prospective buyer, let’s review the amended *RPOADS* in detail.

NOTE: The *RPOADS* is created by the North Carolina Real Estate Commission and is available for download from the Commission’s website at www.ncrec.gov. It has also been reprinted at the end of this section for your review.



In 2018, the Commission wrote an article entitled, [“Sellers Required by Law to Provide Two Disclosure Statements to Buyers,”](#) to assist brokers with comprehending their duties/obligations under Real Estate License Law.



Questions to Consider

Where does a broker get the *RPOADS* and *MOG* disclosure statements? The *RPOADS* and *MOG* disclosure statements are created by the Commission. Therefore, brokers may retrieve the forms from the Commission’s website by clicking *Forms* and then *Consumer Forms*.

Does the Residential Property Disclosure Act only apply to owners of residential real property? *Yes.* The law applies to each owner having a recorded present or future interest in a residential property subject to the law. The Residential Property Disclosure Act applies to owners who are transferring real property consisting of one-to-four dwelling units:

- by sale or exchange, including transfers by installment land contract;
- by an option contract, and
- by lease with an option to purchase, except where the lessee occupies or intends to occupy the dwelling

whether the transaction is accomplished with or without the assistance of a broker. The law also applies to a “*For Sale By Owner*”(FBSO) whether a real estate broker represents the owner or not ***unless*** the transaction is listed as exempt in General Statutes §47E-2.

What are the general duties of a real estate broker? *The general duty of a real estate broker is to inform the owner of their rights and obligations to provide prospective buyers the RPOADS, MOG, and owners’ association and mandatory covenants statements under General Statutes §47E-2.* Additionally, the broker should not advise the seller-client on how to answer the questions. Further, the broker should inform their client of the broker’s mandatory duty to discover and disclose material facts to all parties in a transaction.

What are the basic statutory duties of a listing agent? *The Residential Property Disclosure Act specifically charges a listing broker with the duty to inform the owner of the owner’s rights and obligations under this law.* To fulfill this duty, the listing broker should:

- advise the seller whether the seller has an obligation to provide prospective buyers with the disclosure statements in that particular transaction and, if so, perform the listed acts,
- advise the seller of the seller’s statutory duties, and
- advise the seller that the buyer has a three-day right to terminate a sales contract when the seller or their agent fails to deliver the disclosure statements to the buyer or their agent prior to or at the time the buyer makes an offer.

The listing agent must also explain that the buyer does not have any recourse if the disclosure statements are timely delivered or the buyer agrees that the *RPOADS* are not necessary. Although a buyer may waive the receipt of the *RPOADS*, a *MOG* disclosure form must still be provided by the seller, if applicable.

Are the listing agents the only brokers with statutory duties under the Residential Property Disclosure Act? *No.* A buyer agent has the duty to inform a prospective buyer of their right to terminate a contract if the seller does not provide the disclosure statements prior to or at the time an offer is made. Also, a buyer agent should explain the disclosure law to prospective buyers prior to viewing any properties so they can anticipate receipt of the disclosure statements.

However, the buyer agent must also clarify that the prospective buyer has no special rights or recourse under the law if it is delivered in a timely manner.

Additional Duties for Brokers: Listing Agent

The Commission expects brokers to adhere to the Residential Property Disclosure Act to ensure that residential property sellers are providing disclosure statements to prospective buyers.

Therefore, listing agents have additional duties under the Act such as:

- providing the seller with copies of the *RPOADS* and *MOG* disclosure forms as required under the law,
- explaining to their seller the broker's duty to discover and disclose material facts that they know or reasonably should know regarding the property, even if the seller chooses not to disclose this information or makes no representation,
- reviewing the *RPOADS* and *MOG*, inquiring about unanswered questions and questions with "Yes" answers, and disclosing material facts to buyers and/or their agents,
- assisting the seller with assessing the property and properly completing the form,
 - the listing agent must not advise the seller-client on how to complete the *RPOADS*
- delivering a copy of the completed disclosure statements to prospective buyers and/or their brokers,
- monitoring the property to ensure continued accuracy of the information and assisting the seller with updating the form for accuracy, when/if needed,
- if working with a buyer, explaining the statements and instructional section to buyers, and
- obtaining from the buyer or selling agent, signed copies of the disclosure statements when the buyer submits an offer and retain the documents in the transaction records.

A listing agent will not be considered improperly engaging in the practice of law if they advise their seller-client of:

- the applicability of the law,
- their duty under the law,
- consequences of their failure to perform their duties, and
- the seller's options for completing the disclosure statements.

Additional Duties for Brokers: Seller’s Subagent Working with a Buyer

A seller’s subagent that is working with a prospective buyer also has additional duties to ensure adherence to the Residential Property Disclosures Act. The seller’s subagent should:

- obtain the completed disclosure statements from the listing agent/ brokerage and deliver the statements to the prospective buyer, and document the date and time of delivery,
- review the *RPOADS* and *MOG*, inquire about unanswered questions and questions with “Yes” answers, and share this information with buyer,
- review the instructional section and explain the disclosure statements to the prospective buyer, and
- obtain the buyer’s signature on the disclosure statement, retain a copy and provide it to the seller and/or their listing agent at the time a prospective buyer makes an offer.

Additional Duties for Brokers: Buyer Agent

A buyer agent has the duty to explain to a prospective buyer their rights under the Act. In addition, they should:

- obtain completed disclosure statements from the listing broker/brokerage and deliver it to the buyer with a note that specifies the date and time that it was delivered,
- review the *RPOADS* and *MOG*, inquire about unanswered questions and questions with “Yes” answers, and share this information with buyer,
- have the buyer sign the disclosure statements, retain copies in the broker’s transaction records, and return copies with the buyer’s signature to the listing broker at the time the offer is submitted, and
- assist the buyer in assessing the disclosure statements about the property, identify areas of concern, and recommend that the buyer obtain appropriate inspections of the property.

Delivery of Disclosure Statements



As mentioned previously, the seller must deliver the disclosure statements to the prospective buyer no later than the time the buyer makes an offer to purchase, exchange or option the property or exercises an option pursuant to a lease with an option to purchase. Additionally, the form must be signed by the buyer and not the

buyer’s agent. However, the disclosure statements can be delivered by the buyer agent.

The Statute is not specific regarding the permitted methods of delivery. However, delivering the disclosure statements in person, including them as an attachment to a property description in the Multiple Listing Services (“MLS”), or sending them via electronic correspondence is allowed.

The Residential Property Disclosure Act and Material Facts

The Residential Property Disclosure Act does not impact a broker’s duty under License Law and Commission rules to affirmatively discover and disclose material facts to all parties in the transaction, regardless of their brokerage role.



Therefore, if a seller makes “No Representation” regarding the existence of material facts on the property, or the seller is selling the property “As Is,” but the broker is aware or reasonably should be aware of the existence of material facts, the broker must disclose this information to prospective purchasers. A broker **must** disclose this information even if the seller indicates they do not want the information shared.



Does the Residential Property Disclosure Act apply to brokers who are also sellers? Yes. The Residential Property Disclosure Act applies to brokers as well if they are transferring personal real property consisting of one to four dwelling units unless an exception is met under the Act. Although brokers can check “Yes,” “No,” or “No Representation” on the *RPOADS* when selling their own property, they **must** still disclose material facts that they know or reasonably should know exists.



The Commission has written an article entitled, [“You Are A Broker and Selling Your Own Home”](#) that provides information on what brokers must do when selling their own residential property.

Seller Obligations

In conclusion, a seller's obligation to prospective buyers is very limited. Essentially, sellers cannot participate in fraud to induce a prospective buyer to purchase a property without potential legal repercussions. However, under the law, a seller must provide prospective buyers with the disclosure statements but are ***not*** mandated to disclose any problems with the property on the disclosure statements.

NOTE: A broker who fails to fulfill their duties, under the Residential Property Disclosure Act, may be in violation of the Real Estate License Law and Commission rules by engaging in unworthy, or incompetent behavior that may endanger the public.



Takin' it to the Streets:

Stan is in the armed forces and a licensed real estate broker. While on active duty in Miami, Stan went home to visit his family and friends. He failed to get authorization from his commanding officer to leave the base. Once Stan returned back to the base, he was arrested and later court martialed for taking unauthorized leave. He was sentenced to 30 days in the Brig and forfeiture of a month's pay.

Does Stan have to report the military court-martial to the Commission?

- a) No. Stan has not been convicted of a felony or misdemeanor.
- b) Yes. Stan must report the military court-martial conviction to the Commission in accordance with Rule 58A .0113.
- c) No. Stan was not disciplined by an occupational licensing agency.
- d) Yes. Stan must report the military court-martial because he had to spend 30 days in the Brig and forfeit a month's pay.



Technical Rule Changes

The following rules were amended by the Commission to either:

- add,
- delete, and/or
- revise verbiage for clarity.

Due to the minimal changes in the rule language, a brief overview of each rule that was impacted is referenced below for your review.

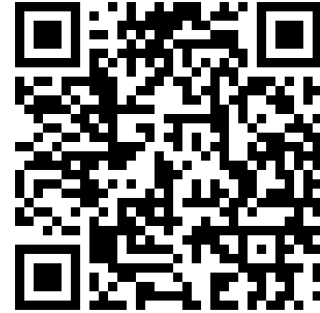
In addition to the brief overview, the Commission will discuss at the end of each substantial rule change, the following:

- the purpose of the rule change;
- the anticipated impact of the rule; and
- the recommended best practices to ensure brokers adhere to the rule requirements.

Rule 58A .0113: Reporting Criminal Convictions and Disciplinary Actions

Prior to July 1, 2023, this Rule did not require brokers to report military court-martial convictions on the Criminal Conviction Disciplinary Action Reporting Form. However, the Commission amended this Rule effective July 1, 2023, to clarify that military court-martial convictions are reportable offenses.

The new Rule states that brokers shall file with the Commission a [Criminal Conviction Disciplinary Action Reporting Form](#) within 60 days of:



- 1) a final judgment, order, or disposition of any felony or misdemeanor conviction;
- 2) a disciplinary action or entering into a conciliation agreement or consent order with a governmental agency or occupational licensing agency;
- 3) a final judgement, order, or disposition of a *military court-martial conviction*; or
- 4) a notarial commission sanction pursuant to G.S. 10B-60.

Rule 58A .0301: License Application

The Commission amended this Rule on July 1, 2023, to clarify that an individual is required to report military court-martial convictions in their license application when applying for a real estate license.

Rule 58A .0301(a) indicates *an individual seeking licensure as a real estate broker shall submit a license application that is available on the Commission's website and shall include the applicant's:*

- 1) *legal name;*
- 2) *mailing, physical, and email address;*
- 3) *telephone number;*
- 4) *social security number and date of birth;*
- 5) *qualification for license application;*
- 6) *real estate license history;*
- 7) *places of residence for the past seven years;*
- 8) *employment history for the past three years;*
- 9) *criminal offenses, military court-martial convictions, professional license disciplinary actions. Including the jurisdiction, file number, and explanation of each offense;*
- 10) *liens or unpaid judgments;*
- 11) *certifications the applicant has read the Real Estate Licensing in North Carolina brochure that is available on the Commission's website; and*
- 12) *declaration and signature.*

(b) In addition to Paragraph (a) of this Rule, the applicant shall submit:

- 1) *the license application fee pursuant to Rule .0302 of this Section; and*
- 2) *a criminal records report from a designated criminal reporting service obtained within six months prior to application submission.*

Rule 58A .0505: Reinstatement of a License

Rule 58A .0505 was amended on July 1, 2023. Subsection (b)(8) requires individuals to include a criminal record report from a designated criminal reporting service obtained within six months prior to application and subsection (c)(2) requires the *disclosure* of military court-martial convictions when they are seeking to reinstate their license.

Historically, Rule 58A .0505(e) required brokers who have been expired, revoked, or surrendered more than two years to submit an original license application, fee, and take the NC Real Estate License examination.

Rule 58A .0505(e) now requires brokers that have been expired, revoked, or surrendered for more than two years to reinstate their license by submitting a license application and application fee pursuant to N.C.G.S. §93A-4 and Rules .0301, .0302, and .0511.

Essentially, this Rule provides nonresident brokers the same option as brokers who reside within North Carolina when seeking to reinstate their license. Therefore, nonresident brokers now have the choice to reinstate their license by electing to either pass the “State” section of the NC Real Estate License examination or be issued a NC broker license on provisional status.

Rule 58A .1705: Attendance and Participation Requirements

Rule 58A .1705(a)(2) and (7) was amended by the Commission on July 1, 2023. The Commission replaced the term *course sponsor* with the term *education provider* to the Rule language. Therefore, this amendment clarified that education providers are individuals or entities that are certified to offer approved continuing education courses.

Rule 58B .0202: Public Offering Statement

The Commission amended this Rule to include **electronic mail** as a means of delivery for a timeshare cancellation notice pursuant to N.C.G.S. §93A-45(b).

The **NOTICE** in the Public Offering Statement now states:

*Under North Carolina Law, you may cancel your timeshare purchase without a penalty within five days after signing your contract. To cancel your timeshare purchase, you must mail, **electronically mail**, or hand deliver written notice of your desire to cancel your purchase to (name and address of project). If you choose to mail your cancellation notice, the North Carolina Real Estate Commission recommends that you use registered or certified mail and that you retain your postal receipt as proof of the date your notice was mailed. Upon cancellation, all payments will be refunded to you.*

LICENSE LAW AND COMMISSION RULES

The Commission amended and repealed several rules on July 1, 2023. Although all of the rules were not discussed in this section, brokers may retrieve the most current License Law and Commission rules by accessing the Commission's website using the following instructions:

- 1) go to www.ncrec.gov;
- 2) click on *Resources*;
- 3) click *License Law/Rules*;
- 4) click *Chapter 58* under Rules; and
- 5) review Real Estate Commission rules in Chapter 58.



ANSWERS TO DISCUSSION QUESTIONS

Newsroom Roundtable Discussion on page 105

1. What do you know about the process the Commission must follow to implement rule changes?

Answer: *Answers will vary.*

2. What new rule changes have you heard about?

Answer: *Answers will vary.*

Interactive News Reporting on page 110

Can I get any CE credit for CCIM® courses, appraisal courses, or courses offered by the REALTOR® Associations, such as GRI®?

- a) No. CE credit will no longer be given for any of these courses.

Answer: *If the course is approved by the NCREC and offered by a NCREC-certified education provider, 4 hours of CE credit will be awarded upon successful completion of the course. Also, a majority of these courses are already approved. However, prior to registering for the course, NC brokers must ensure that the course is approved by the North Carolina Real Estate Commission and offered by a NCREC-certified education provider.*

- b) You might, but you are going to have to make a special request to get CE credit.

Answer: *If the course is approved by the NCREC and offered by a NCREC-certified education provider, 4 hours of CE credit will be automatically awarded upon successful completion of the course. Also, a majority of these courses are already approved. However, prior to registering for the course, NC brokers must ensure that the course is approved by the North Carolina Real Estate Commission and offered by a NCREC-certified education provider.*

- c) Any course you take that lasts at least 4 hours provides CE credit.

Answer: *A broker will only receive 4 hours of CE elective credit after the successful completion of an already approved CE course that is offered by a NCREC-certified education provider.*

- d) Yes. Many of these courses are already approved. They just have to be submitted by the provider and you don't have to file a special request or pay \$50 if NCREC has approved them.

Answer: *Yes. However, prior to registering for the course, NC brokers must ensure that the course is approved by the North Carolina Real Estate Commission and offered by a NCREC-certified education provider. This is advantageous to brokers because the education provider is responsible for submitting their CE report to the Commission so that the Commission can award the brokers CE credit.*

Also, brokers will not incur any additional costs for this information being reported to the Commission because the course is already approved. Brokers may find approved courses by:

- *going to www.ncrec.gov;*
- *clicking on the Education menu;*
- *clicking on Search CE Course Schedule; and*
- *clicking on Search Providers.*

Takin' it to the Streets on page 111

Ashley, a broker with XYZ Homes, lives in Oklahoma. On June 6, 2023, Ashley certified that she had an active license in Oklahoma when she renewed her license. Therefore, under Commission rules in effect at that time, Ashley did not have to take any continuing education in North Carolina to keep her NC license on active status.

On May 17, 2024, she wants to certify that her license in Oklahoma is still on active status while renewing her NC license so that she does not have to take NC continuing education. Can she still do that?

Answer: No. See following questions for more detail.

Does it matter that Ashley is actively licensed in another state?

Answer: No. Ashley is no longer able to certify for North Carolina CE credit that she has an active license in Oklahoma while renewing her NC real estate license.

Does it matter what education she completed in Oklahoma?

Answer: No. According to Rule 58A .1702(a), all brokers with a NC real estate license must take eight hours of continuing education courses within one year prior to the expiration of their license. Specifically, Rule 58A .1702(b) requires a broker to take four hours of elective courses and four hours of the General Update Course or the Broker-in-Charge Update Course if the broker has BIC Eligible status.

Does it matter that she doesn't live in NC?

Answer: No. According to Rule 58A .1702(a), all brokers with a NC real estate license must take eight hours of continuing education courses within one year prior to the expiration of their license. Specifically, Rule 58A .1702(b) requires a broker to take four hours of elective courses and four hours of the General Update Course or the Broker-in-Charge Update Course if the broker has BIC Eligible status.

Interactive News Reporting on page 113

1. When a listing broker reviews the Residential Property and Owners' Association Disclosure Statement (hereafter referred to as "RPOADS") and knows a seller's statement is incorrect, what should the broker do?

a. Change the RPOADS and make the necessary corrections.

Answer: *The RPOADS is a seller disclosure that must remain accurate. Therefore, the seller-owner must complete the RPOADS and make the necessary corrections. The broker cannot complete the form; however, they can give the seller guidance on proper completion of the form and the importance of maintaining the accuracy of information. Additionally, the broker must discover and disclose material facts about the property, instead of relying on the RPOADS or the seller alone.*

b. Listing brokers do not need to review the RPOADS.

Answer: *The RPOADS is a seller disclosure that must remain accurate. Therefore, the seller-owner must complete the RPOADS and make the necessary corrections. The broker cannot complete the form; however, they can give the seller guidance on proper completion of the form and the importance of maintaining the accuracy of information. Additionally, the broker must discover and disclose material facts about the property, instead of relying on the RPOADS or the seller alone.*

c. Discuss the discrepancy with the seller, encourage them to correct it, and make additional disclosure if necessary.

Answer: *Correct. The RPOADS is a seller disclosure that must remain accurate. Therefore, the seller-owner must complete the RPOADS and make the necessary corrections. The broker cannot complete the form; however, they can give the seller guidance on proper completion of the form and the importance of maintaining the accuracy of information. Additionally, the broker must discover and disclose material facts about the property, instead of relying on the RPOADS or the seller alone.*

d. The broker does not need to do anything since the RPOADS contains the seller's representations.

Answer: *The RPOADS is a seller disclosure that must remain accurate. Therefore, the seller-owner must complete the RPOADS and make the necessary corrections. The broker cannot complete the form; however, they can give the seller guidance on proper completion of the form and the importance of maintaining the accuracy of information. Additionally, the broker must discover and disclose material facts about the property, instead of relying on the RPOADS or the seller alone.*

2. Which property transfer is exempt from providing an RPOADS?
- Transfers involving the first sale of a dwelling never inhabited
Answer: Correct. According to N.C.G.S. 47E-2(b), a transfer involving the first sale of a dwelling never inhabited is exempt from the RPOADS disclosure requirement.
 - Transfers of residential rental property when the owner has never occupied the property
Answer: According to N.C.G.S. 47E-2(b), a transfer of residential rental property when the owner has never occupied the property is not exempt from the RPOADS disclosure requirement.
 - Out of state sellers who do not currently live in the property
Answer: According to N.C.G.S. 47E-2(b), out of state sellers who do not currently live in the property are not exempt from the RPOADS disclosure requirement.
 - Transfers where the seller informs the buyer in writing that they are not providing the document and clearly states that the property is being transferred “as is”
Answer: According to N.C.G.S. 47E-2(b), transfers where the seller informs the buyer in writing that they are not providing the document and clearly state that the property is being transferred “as is” are not exempt from the RPOADS disclosure requirement.

Takin’ it to the Streets on page 120

Stan is in the armed forces and a licensed real estate broker. While on active duty in Miami, Stan went home to visit his family and friends. He failed to get authorization from his commanding officer to leave the base. Once Stan returned back to the base, he was arrested and later court martialed for taking unauthorized leave. He was sentenced to 30 days in the Brig and forfeiture of a month’s pay.

Does Stan have to report the military court-martial to the Commission?

- No. Stan has not been convicted of a felony or misdemeanor.
Answer: Military court-martial convictions are reportable offenses under Rule 58A .0113.
- Yes. Stan must report the military court-martial conviction to the Commission in accordance with Rule 58A .0113.**
Answer: Correct. Military court-martial convictions are reportable offenses under Rule 58A .0113.
- No. Stan was not disciplined by an occupational licensing agency.
Answer: Military court-martial convictions are reportable offenses under Rule 58A .0113.
- Yes. Stan must report the military court-martial because he had to spend 30 days in the Brig and forfeit a month’s pay.
Answer: Military court-martial convictions are reportable offenses under Rule 58A .0113.