

Section 3

Broker-in-Charge Responsibilities



“Part of the Time”

1. Hong is the BIC of ABC Realty. He has several full brokers under his supervision and one provisional broker, Lisa. Lisa has been practicing brokerage for seven months. During this time, Lisa has represented several clients without supervision.

Lisa has submitted all transaction documents to the firm within three days of receipt and has asked Hong to review the files with her for accuracy. Hong informs Lisa that since she is a former mortgage loan officer, he knows that she pays attention to detail, and he trusts that her files are accurate.

Lisa has assisted five buyer-clients with purchasing a home. Hong has not reviewed any of her transaction files.

Has Hong adhered to his BIC supervisory responsibilities for Lisa? YES/NO

Why or why not? _____

2. Are there different requirements for the BIC supervision of provisional brokers and full brokers? _____

LEARNING OBJECTIVES

After completing this section, you should be able to:

- explain the general requirements of a broker-in-charge (BIC);
- identify the BIC's responsibilities for supervising affiliated brokers; and
- identify best practices for BIC supervision.

TERMINOLOGY

- **Broker:** This is the primary license status for a broker license and includes any licensee who is affiliated with a firm or sole proprietorship.
- **Broker-in-Charge (BIC):** The broker who has been designated as the primary person having sole responsibility for the supervision and management of a brokerage office.
- **Provisional Broker (PB):** This is the entry-level license status for an individual broker license and includes any licensee who has not completed the 90-hour Postlicensing education program. A PB must be under the supervision of a BIC to be on active status and legally provide brokerage services.

BROKER-IN-CHARGE REQUIREMENTS

N.C.G.S. §93A-2(a1) defines a broker-in-charge as:

... a real estate broker who has been designated as the broker having the responsibility for the supervision of real estate provisional brokers engaged in real estate brokerage at a particular real estate office and for other administrative and supervisory duties as the Commission shall prescribe by rule. A broker-in-charge is not a separate license, but only a separate license status category.

Requirements for BIC Eligible Status

Pursuant to Commission Rule 58A .0110(e), in order for a broker to be designated as a broker-in-charge (hereafter referred to as "BIC") for a sole proprietorship, real estate firm or branch office, a broker must *first* attain BIC Eligible status by submitting an application on a form available on the Commission's website.

When a broker submits the [Request for BIC Eligible Status and/or BIC Designation \(Form 2.25\)](#), they are providing their licensure information to the Commission including their criminal history and history of occupational license disciplinary actions.

Most importantly, the broker is certifying that:

- their broker license is on active status but NOT on provisional status;
- they have at least two years of full-time or 4 years of part-time real estate brokerage experience within the previous 5 years or are a North Carolina licensed attorney with a practice that consists primarily of handling real estate closings and related matters in North Carolina for 3 years immediately preceding application; and
- they have completed the 12-hour Broker-in-Charge Course within one year prior to application or within 120 days after designation.

Requesting BIC Designation

A broker who wishes to serve as the BIC of a brokerage office must be designated as a BIC with the Commission. According to Rule 58A .0110(f), once a broker holds BIC Eligible status, they must submit the same form, the [Request for BIC Eligible Status and/or BIC Designation \(REC 2.25\)](#), to become the designated BIC for a sole proprietorship, real estate firm, or branch office. The BIC designation form shall include:

- (1) the broker's:
 - (A) name;
 - (B) license number;
 - (C) telephone number;
 - (D) email address; and
 - (E) criminal history and history of occupational license disciplinary actions; and
- (2) the firm's:
 - (A) name; and
 - (B) license number, if applicable.

A broker who has BIC Eligible status may request BIC designation on the [Request for BIC Eligible Status and/or BIC Designation \(REC 2.25\)](#) at any time while the broker continuously maintains their BIC Eligible status. The broker may also request BIC Eligible status and BIC Designation simultaneously.

Maintaining BIC Eligible Status

A broker must maintain their BIC Eligible status, and, in turn, BIC Designation by:

- renewing their license in a timely manner each license year,
- keeping their license on active status at all times, and

- completing the 4-hour mandatory BICUP and an approved 4-hour continuing education elective.

NOTE: The BICUP course satisfies the broker's 4-hour mandatory continuing education Update course requirement. If a broker with BIC Eligible status fails to take both the BICUP and one elective CE course by June 10 in any given year when required, the broker will lose BIC Eligible status, and BIC designation, if applicable, as of July 1.

BROKER-IN-CHARGE RESPONSIBILITIES

Commission Rule 58A .0110(a) requires every real estate firm to have a broker designated by the Commission who meets the qualification requirements to serve as BIC of the firm's principal office and a different broker to serve in the same capacity at each branch office.

A BIC may not be the BIC of more than one office location at a time, and no office of a firm shall have more than one designated BIC. In addition to each office having a BIC, most sole proprietorships (including sole practitioners) must also designate a BIC.

Per Rule 58A .0110(b), a sole proprietorship, even a broker practicing alone, must designate a BIC if the brokerage:

- engages in any transaction where the broker is required to deposit and maintain monies belonging to others in a trust account;
- engages in advertising or promoting their services as a broker in any manner; or
- has one or more other brokers affiliated with them in the real estate business.

BIC Duties

The designated BIC is the primary person the Commission will hold responsible for the supervision and management of an office. Therefore, the BIC has the **responsibility** to supervise affiliated brokers, employees, and others who perform duties on behalf of the brokerage.

Commission Rule 58A .0110(g) lists the specific responsibilities of a broker-in-charge as follows:

- (1) assure that each broker affiliated at the office has complied with Rules .0503, .0504, and .0506 of this Subchapter;
- (2) notify the Commission of any change of firm's business address or trade name and the registration of any assumed business name adopted by the firm for its use;

- (3) be responsible for the conduct of advertising by or in the name of the firm at such office;
- (4) maintain the trust or escrow account of the firm and the record pertaining thereto;
- (5) retain and maintain records relating to transactions conducted by or on behalf of the firm, including those required to be retained pursuant to Rule .0108 of this Section;
- (6) supervise provisional brokers associated with or engaged on behalf of the firm at such office in accordance with the requirements of Rule .0506 of this Subchapter;
- (7) supervise all brokers affiliated at the office with respect to adherence to agency agreement and disclosure requirements;
- (8) notify the Commission in writing that he or she is no longer serving as a BIC of a particular office within 10 days following any such change;
- (9) complete the Commission's Basic Trust Account Procedures Course within 120 days of assuming responsibility for a trust account in accordance with G.S. 93A-6(g), however, the BIC shall not be required to complete the course more than once in three years; and
- (10) supervise all unlicensed individuals employed at the office and ensure that unlicensed individuals comply with G.S. 93A-2(c)(6).

Specifically, a BIC has *five* supervisory responsibilities related to *all* affiliated brokers, including full brokers. The responsibilities can be remembered by using the acronym ALERT.

A BIC Must Be **ALERT To All of the Following for ALL Affiliated Brokers:**

- **A**gency Disclosures & Agreements
- **L**icenses, current and active
- **E**very Advertisement
- **R**ecord Keeping
- **T**rust Accounts

Rule 58A .0110(g)

For ALL affiliated brokers under the BIC's supervision

A BIC's responsibility for full brokers under Commission rules is limited to 5 things. The BIC has to ensure full brokers:

- comply with **agency agreements and disclosures**,
- have **current, active licenses**,
- comply with **advertising laws and regulations**,

- create, maintain, and retain transaction files, and
- properly handle trust money.

NOTE: The Commission may hold the BIC responsible for the brokerage conduct of a full broker due to their supervisory responsibilities under Rule 58A .0110.

Best Practices for Supervision: Affiliated Brokers

The BIC’s supervisory responsibilities outlined in Rule 58A .0110(g) are applicable to all brokers affiliated with a firm/company. Therefore, a BIC should establish some best practices to assist them with their supervisory responsibilities. A BIC may consider:

- creating a reminder to check for active and current licensure for brokers;
- developing a plan for reviewing all advertisements;
- developing policies for using social media for brokerage activity;
- creating a thorough transaction file checklist for needed documentation;
- reviewing all transaction files periodically for accuracy; and
- implementing and enforcing strict policies for the handling of all trust monies.

NOTE: These best practices can also assist the affiliated brokers with maintaining compliance with Commission rules.

BROKER-IN-CHARGE RESPONSIBILITIES FOR PROVISIONAL BROKERS

A PB is a person who has met all the license qualification requirements (including passing an approved Broker Prelicensing course and the Commission’s license examination) and is initially issued a broker license on “provisional status.”

Provisional status is an entry level license status category that is not intended to be retained indefinitely. PBs are required to complete Postlicensing education within 18 months of initial licensure to remove the “provisional” status from their license and to remain eligible for “active” status.

Unlike the limited supervision required for full brokers, a BIC must supervise all brokerage activities of PBs affiliated with the office. Generally, a PB may perform the same acts as a broker whose license is not on provisional status as long as they are supervised by a BIC. A PB may not operate *independently* in any way.

Commission Rule 58A .0506(d) states:

A broker-in-charge shall supervise the provisional broker in a manner that assures that the provisional broker performs all acts for which a real estate license is required in accordance with the Real Estate License Law and Commission rules. A supervising broker who fails to supervise a

provisional broker as prescribed in this Rule may be subject to disciplinary action pursuant to Rule .0110 of this Subchapter.

According to Rule 58A .0506(c), the PB may engage in real estate brokerage activities immediately once the BIC has submitted the Commission's *License Activation and Broker Affiliation Form (REC 2.08)*.

The [License Activation and Broker Affiliation Form \(Rec 2.08\)](#) sets forth the:

- (1) provisional broker's:
 - (A) name;
 - (B) license number, type of license, and current license status;
 - (C) physical, mailing, and emailing addresses;
 - (D) public and private phone numbers;
 - (E) completed Postlicensing courses, if necessary;
 - (F) completed continuing education courses, if necessary; and
 - (G) signature.
- (2) broker-in-charge's:
 - (A) name;
 - (B) license number;
 - (C) firm's name and license number;
 - (D) physical, mailing, and emailing addresses;
 - (E) public and private phone numbers; and
 - (F) signature.

If the PB and BIC do not receive written acknowledgement from the Commission confirming the PB's active status within 30 days of the date shown on the form, the BIC must immediately terminate the PB's real estate brokerage activities pending receipt of the written acknowledgement of license activation from the Commission.

Criteria for Assessing Proper Supervision of Provisional Brokers

A BIC may be held accountable for all brokerage conduct of a PB because the PB cannot have an active license or engage in brokerage activity without a supervising BIC.

If a PB is affiliated with two BICs, as permitted by Rule 58A .0506(a), BOTH BICs will share supervisory responsibility and are accountable for the PB.

The Commission has developed criteria to guide in assessing how a BIC properly supervises a PB. The presence or absence of these factors will be considered along with all other pertinent information in arriving at a disciplinary decision.

As noted in the 2017-2018 BICUP course, the guiding criteria include:

1. Is the BIC available to assist, advise, and review the PB's practices and, is the PB available to be supervised?

A BIC must be reasonably available to manage and supervise PBs. A BIC might consider providing their preferred contact information including office hours and their availability via email and phone to all affiliated brokers, including PBs. Similarly, a PB must be available to be supervised by their BIC.

2. Has the BIC established written policies and procedures under which all affiliated brokers are expected to operate?

BICs are encouraged to develop office policies that explain procedures and establish expectations for all individuals affiliated with/or working for the firm/company. These written policies and procedures should also be available for the brokers. BICs should uniformly adhere to and enforce the policies in place.

The BIC can utilize the [BIC Best Practices Guide](#) as a resource to assist with the development of written office policies.

NOTE: The procedures within a firm/company's policy manual will vary depending on the brokerage practice. BICs should consistently review and edit the policy manual to incorporate any changes in brokerage practice.

3. Does the BIC review and monitor the brokerage activities of PBs?

The BIC should have regular meetings with PBs to review their agency agreements and disclosures and monitor their brokerage practices to ensure the PBs are adhering to License Law and Commission rules.

4. Does the BIC hold regular meetings and otherwise assure proper implementation of and adherence to office policies and procedures?

Regular meetings, regardless of the format, are essential. During a meeting, a BIC has the opportunity to convey any revisions in office policies, changes in legislative statutes, forms, or provide regulatory updates.

NOTE: Attendance at a regularly scheduled office meeting will not impact the status of an independent contractor for IRS purposes.

5. Does the BIC provide ongoing quality training programs and materials to affiliated licensees and disseminate in a timely manner all regulatory information they receive pertaining to real estate brokerage practice?

Orientation and training programs are encouraged for all newly affiliated licensees and PBs so they can become familiar with the firm/company's policies and procedures.

These programs are instrumental in providing brokers with the skills they need to successfully practice brokerage like how to:

- properly complete preprinted forms;
- utilize mandatory disclosures;
- create effective sales practices and advertising;
- measure and calculate square footage; and
- negotiate repairs.

6. What is the experience level of the PB?

A BIC should consider the experience level of the PB to determine the level of supervision that is needed. If a PB is new to real estate, the BIC may have to provide more supervision and assistance with transactions. If a PB has experience in a related industry such as mortgage or finance, the BIC must still provide supervision; however, the level of supervision may vary.

NOTE: Under no circumstances does the prior experience level of a PB excuse a BIC from their supervisory responsibilities under Commission Rules 58A .0506 and .0110, respectively.

7. Has the BIC delegated supervisory duties to another broker in the office and, if so, what is the level of training and experience of that supervisory broker?

A BIC may choose to delegate an experienced broker to mentor the PB. The experienced broker may assist them with completing transactions and providing appropriate agency representation to clients in accordance with Commission rules.

NOTE: Although a BIC may delegate duties, the BIC is still ultimately responsible for PBs under their supervision.

8. In what types of activity is the PB engaged?

Once a BIC agrees to affiliate a PB, the BIC should inform the PB of the brokerage activities they are permitted to practice by using an employment agreement.

However, because the BIC is responsible for the supervision of the PB, they are not relieved of this responsibility when a PB participates in activities unknown to the BIC. Therefore, a BIC should be aware of **all** of the brokerage activities conducted by a PB that may affect their supervisory responsibilities.

NOTE: If a PB chooses to participate in activities that are outside the scope of their employment agreement, the BIC may wish to use the permitted brokerage activities outlined in the written employment agreement as a defense if the Commission conducts an investigation.

9. How many PBs does the BIC supervise and what is the ratio of supervisors to PBs?

The Commission does not specify the number of brokers a BIC may choose to affiliate with their firm/company. However, each BIC must evaluate their ability to supervise all brokers according to Commission rules.

During an evaluation of their ability, a BIC should consider:

- their own knowledge of License Law and Commission rules,
- their availability to offer guidance and advice during transactions, and
- the experience levels of the brokers.

As discussed previously, a BIC may delegate some supervisory duties to an experienced broker. However, the BIC should still meet with all brokers periodically to review their transaction files, and ensure they are conducting proper advertising and maintaining their files per Commission rules.

In plain words, the BIC must ultimately decide how many brokers they can effectively supervise while adhering to their supervisory responsibilities. Although a BIC may delegate duties to other brokers, the BIC is still the person the Commission holds responsible for all affiliated brokers and the management of the firm/company.

10. What, if any, corrective or remedial action does the BIC take upon learning of a violation of License Law or Commission rules by a PB for whom the BIC is responsible?

During their supervision, a BIC is expected to be aware of the brokerage activities that are conducted by a PB. In brokerage, violations of License Law and Commission rules may occur, and when they do, a BIC should immediately attempt to provide corrective or remedial action.

If a violation occurs, the Commission expects the BIC to investigate the issue, intervene and question the broker(s) and involved parties, propose a remedy, and implement a corrective action.

A BIC should utilize this criteria established by the Commission to ensure proper supervision of PBs.

Best Practices: Supervision of Provisional Brokers

A BIC incurs more responsibility while supervising PBs. Therefore, it is essential that BICs consider adopting best practices such as:

1. limiting activities of PBs (e.g., no short sales, no dual agency, etc.) until established criteria (e.g., # of successfully closed transactions; education completed, etc.) is met;
2. being available and maintaining regular office hours for supervision of PBs;
3. sharing best contact information & procedure for PBs needing consultation;
4. assigning a competent experienced broker as a mentor for PBs;
5. establishing expectations of when PBs will physically be in the office or available virtually;
6. scheduling periodic meetings and training with PBs; and
7. reviewing transaction files of the PBs.

COMPLAINTS

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 broker misconduct.

According to the 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.

Also, individuals can access the [Complaint Form](#) on the Commission's website.

NOTE: The Commission can also initiate a complaint.

Upon receipt of a complaint, a Commission staff attorney evaluates the complaint to ensure that it falls under the Commission's authority. If it does, a case is opened. The case is first assigned to a Consumer Protection Officer (CPO), who initiates an investigation. The investigation is initiated when the CPO sends a *Letter of Inquiry* to the broker and/or firm against whom the complaint was filed.

Further, Rule 58A .0601 requires a broker/firm to submit a written response within 14 days of receipt of a *Letter of Inquiry*. The response must include:

- a full disclosure of requested information; and
- copies of all requested documents.

The Commission may also conduct field investigations. Field investigations are conducted when cases require witness interviews, trust account audits, or the examination of evidence that cannot be easily identified or obtained through written correspondence. Auditors/Investigators in the Regulatory Affairs Division conduct field investigations and then prepare written reports that are submitted to staff attorneys for evaluation.

NOTE: A broker who receives a *Letter of Inquiry* from the Commission should speak with their BIC about the allegations within the complaint. Additionally, a BIC may choose 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 the broker. Further, the Commission expects a separate response from *each* party named in the complaint.

NOTE: Letters of Inquiry are sent via email. Therefore, it is imperative that brokers ensure that their contact information within their license record is current. Pursuant to Rule 58A .0103(b), every broker shall notify the Commission in writing of each change of:

- personal name,
- firm name,
- trade name,
- residence address,
- firm address,
- telephone number, and
- email address within 10 days of said change.

Full Brokers: BIC Responsibility per Rule

Most investigations conducted by Commission staff are handled via *correspondence*, meaning the CPO first sends a *Letter of Inquiry* to the broker/firm against whom the complaint was filed.

Although BICs are responsible for the supervision of all affiliated brokers; be aware that BICs don't automatically receive copies of *Letters of Inquiry* sent to affiliated brokers not on provisional status, i.e. "full" brokers. However, BICs will receive a *Letter of Inquiry* if an affiliated broker's alleged conduct falls within the standard categories of their supervision. If the affiliated brokers alleged conduct does not fall within the standard categories, BICs will receive a *courtesy* notification that an affiliated broker under their supervision has received a *Letter of Inquiry*.

Will the Commission investigate the BIC if a complaint is filed only against a full broker? It depends. Let's analyze some questions to determine when the BIC may be held responsible for the alleged conduct of an affiliated full broker.

1. Does the alleged conduct of the affiliated broker fall within the standard categories of a BICs supervisory responsibilities as specified in Rule 58A .0110?
2. If the alleged conduct does not fall within the standard categories of a BICs supervisory responsibilities, did the BIC have knowledge?

If the affiliated broker's alleged conduct does not fall under the standard categories of a BICs supervisory responsibilities (e.g., ensuring all affiliated brokers adhere to agency agreements and disclosures, have active, current licenses, follow advertising rules, maintain and retain transaction files, and the proper handling of trust accounts), the Commission will analyze all of the factual allegations within the complaint. The Commission CPO will determine whether or not the BIC was aware of or participated in the transaction, and reasonably knew or should have known about the affiliated broker's alleged actions. To assist with determining a BIC's knowledge, the Commission will review the transaction files, the written correspondence of parties involved in the transaction, the BIC's communication with the affiliated broker, and written office policies.

Also, while the Commission is analyzing the BIC's knowledge, it will take into consideration whether or not a BIC has an office policy manual (preferably written) and/or provides regular, need-based training about the correct way to handle and address various issues that may arise in the company's brokerage practice. The existence of written office policies and documented trainings may help to shift more of the responsibility and liability for inappropriate brokerage activity directly to the individual broker-respondent. Be aware that merely having written office policies may not be adequate if the policies are not enforced at all or consistently.

Even though the BIC may be included in the investigation, the BIC may not *automatically* be responsible for the actions of the affiliated full broker. A BIC's responsibility is contingent upon the findings after a thorough review of the facts of each case.

BICs are expected to be aware of what is going on in their offices. A BIC should be aware of trust account maintenance, supervision issues and administrative matters. Further, BICs are likely to face disciplinary action when:

- an issue exists for an extended period of time without their knowledge, and/or
- they attempt to conceal an issue rather than intervene and correct it.

A BIC who attempts to intervene and resolve an issue and even voluntarily informs the Commission of the situation, will be in a better position with the Commission than a BIC who refuses to accept responsibility for their own actions and the actions of their affiliated brokers.

On the other hand, if the alleged conduct of the affiliated full broker does fall within the standard categories of a BICs supervisory responsibilities (e.g. ensuring affiliated brokers adhere to agency agreements and disclosures, have active and current licenses, follow advertising rules, maintain and retain transaction files, and the proper handling of trust accounts), the BIC will probably receive their own Letter of Inquiry as a respondent and/or be contacted for more information by a CPO.

Provisional Brokers: BIC Responsibility

As noted previously, a BIC is responsible for supervising all PBs in all brokerage activity; therefore, the BIC is automatically included in any inquiry involving a PB. In plain words, if a PB receives a *Letter of Inquiry*, their supervising BIC will receive a *Letter of Inquiry* as well. The BIC is included because the PB cannot be on active status or be able to engage in brokerage without a supervising BIC.

Due to BICs being included in an inquiry involving a PB, it is imperative that BICs strongly consider using the Commission-created criteria to provide the appropriate level of supervision for PBs.

Possible Civil Liability of BIC/Firm

Although the Commission may not hold the BIC responsible for the alleged conduct of an affiliated broker, the firm/company may still be civilly liable for any acts or misconduct by an affiliated PB or full broker because they are acting as an authorized agent for the firm/company. Many complainants will not stop with just filing a disciplinary complaint with the Commission, but will also consider civil action.

NOTE: BICs may also want to include in their written office policies for affiliated brokers to notify them of any complaints/notices received from the Commission, governmental agencies, and/or attorneys threatening lawsuits.

NOTE: If a brokerage company carries errors & omission insurance (highly recommended), the BIC should be aware of the protocol that must be followed in order to keep the insurance in place when a complaint/lawsuit is filed.

Remember Jake from Material Facts?



KEY POINTS:

- Sam is the BIC of A+ Realty.
- Jake is a broker affiliated with A+ Realty and provides a listing presentation for Peter, a property owner.
- During the presentation, Peter informs Jake that he recently had a home inspection performed.
- The home inspection revealed water leakage in the basement and crawl space and a recommendation that experts be consulted to determine the cause and needed repair.
- Peter did not order further inspections to verify the issue or determine repair needs.
- Jake tours the property and observes no moisture or standing water.
- Jake does not ask Peter additional questions about the water leakage in the basement or crawl space.
- Peter lists the property with Jake.

- Peter selects “No Representation” on the *Residential Property and Owners’ Association Disclosure Statement* (RPOADS).
- During the listing period, there is no visible evidence of moisture or water.
- Jake does not mention Peter’s inspection report to any of the prospective buyers.

QUESTIONS FOR DISCUSSION: Remember Jake from Material Facts?

1. What if Jake is a PB? Will the Commission investigate Sam, the BIC?

Answer: Yes. If a complaint is filed against Jake, a PB, the Commission will automatically investigate Sam. The Commission will investigate Sam because he is responsible for supervising all the brokerage activities of Jake.

Rule 58A .0506(d) specifically states:

A broker-in-charge shall supervise the provisional broker in a manner that assures that the provisional broker performs all acts for which a real estate license is required in accordance with the Real Estate License Law and Commission rules.

2. If Jake is a PB, will Sam, the BIC, be *responsible* for Jake’s actions?

Answer: It depends. Jake was informed by Peter that a home inspection indicated his property had water leakage in the basement and crawl space. Jake did tour the property but did not observe moisture or standing water. However, Jake did not ask further questions of Peter to determine whether or not repairs were needed for or had been made to the property. Due to Peter informing Jake of the water leakage, Jake was aware of material facts regarding the property prior to listing it and had an affirmative duty to disclose this information to all parties in the transaction.

Sam is the BIC, thus he is the primary person the Commission will hold responsible for the management of A+ Realty and the supervision of all affiliated brokers. Although Sam is required to ensure Jake is performing real estate activities in adherence to the law, the Commission will **not automatically** hold Sam responsible for Jake’s brokerage activities.

However, the Commission will automatically investigate Sam, the BIC, since a complaint has been filed against Jake, a PB. During the investigation, the Commission will review Rule 58A .0110. This rule states that the BIC is responsible for supervising provisional brokers associated with or engaged on behalf of the firm.

According to this rule, Sam must supervise Jake and during this supervision, ensure he adheres to Commission rules. To determine the responsibility of Sam, the Commission will utilize the *Criteria for Accessing Proper Supervision of a Provisional Broker* while reviewing the facts of the complaint.

For example, the Commission will evaluate whether or not Sam:

- assisted, advised, and reviewed Jake's practices during the transaction and whether Jake was available to be supervised;
- established written office policies and procedures for the firm/company relating to the mandatory requirement to disclose material facts to all parties in the transaction;
- conducted regular office meetings and ensured that the office policies and procedures that were established were in fact implemented and followed by the affiliated brokers;
- provided ongoing quality training programs and materials to affiliated brokers and disseminated this information and regulatory information in a timely manner;
- considered the experience level of Jake when determining his supervision level;
- delegated supervisory duties for Jake to another broker in the office and, if so, what was their level of brokerage and training experience;
- evaluated the types of activities Jake was engaged in while conducting brokerage;
- had an appropriate ratio of PBs, full brokers, and appropriately supervised all of them;
- investigated and intervened when he learned of Jake's failure to disclose material facts; and
- provided a corrective action to ensure Jake timely disclosed material facts in the future.

The Commission will use the findings from the investigation along with the criteria mentioned above to determine whether or not Sam appropriately supervised Jake and if Sam will be held responsible.

If the Commission finds that Sam has:

- developed written office policies and procedures about how and when to timely disclose material facts,
- supervised Jake during the transaction,
- conducted quality training programs, and
- intervened and corrected the issue,

Sam may not be held responsible for Jake's actions.

However, if during the investigation it is evident that Sam did not appropriately supervise Jake based on the criteria established by the Commission, Sam may be held responsible for Jake's conduct.

3. What if Jake is a full broker? Will the Commission investigate Sam, the BIC?

Answer: *It depends.* If a complaint is filed against Jake, a full broker, Sam may or may not be the subject of an investigation. In an effort to determine whether or not Sam may be investigated, the Commission will ask the following questions during the course of the initial investigation:

- *Does the alleged conduct of the affiliated broker fall within the standard categories of a BICs supervisory responsibilities as specified in Rule 58A .0110?*
- *If the alleged conduct does not fall within the standard categories of a BICs supervisory responsibilities, did the BIC have knowledge?*

Specifically, a BIC is responsible for:

- ensuring all affiliated brokers adhere to agency agreements and disclosure requirements;
- assuring that each broker affiliated at the office has an active, current license;
- the conduct of advertising;
- retaining and maintaining records relating to transactions conducted by or on behalf of the firm; and
- maintaining the trust or escrow account of the firm and the records thereto.

If Jake is a full broker, his alleged conduct does not fall within the standard categories of supervisory responsibilities for Sam under Rule 58A .0110. Therefore, the Commission will evaluate what Sam knew or reasonably should have known during the transaction.

According to the bulletin article, [“What is Common Knowledge”](#), the Commission assesses what the broker knew or reasonably should have known about facts. To determine what a broker actually knew, the Commission reviews the transaction file and written communications of individuals directly or indirectly involved with the transaction. Further, the Commission examines public records, completion of relevant courses, and the broker’s access to publications on the subject matter to determine what the broker should have reasonably known.

During an investigation, the Commission may ask Sam whether or not he was involved in the transaction or had information pertaining to Jake’s alleged conduct. If Sam had knowledge and did intervene upon receiving notice of an issue, propose a remedy and implement corrective action, the Commission may not investigate Sam. However, if Sam was aware of Jake’s alleged conduct and did not investigate the issue, propose a remedy, and implement corrective action(s), Sam may be in violation of Commission rules.

Conversely, it is quite possible that Sam did not have knowledge of Jake’s alleged conduct. Therefore, the Commission will evaluate the facts to determine whether or not Sam should have reasonably known about the issue to determine his responsibility.

A generalization cannot be made that a BIC will or will not be responsible for the conduct of a full broker. However, to reduce their responsibility, BICs should ensure that all affiliated brokers are supervised appropriately in adherence with License Law and Commission rules, they develop written office policies for the brokerage, and provide consistent communication with affiliated brokers.

NOTE: If a broker engages in conduct that violates License Law and Commission rules, the Commission expects BICs to investigate the issue, intervene and propose a remedy, and provide corrective action(s).

Remember the Garage with Feet?



KEY POINTS:

- Jessica is a buyer agent and she represents Sue.
- Sue would like to purchase a property in an older, established neighborhood.
- Jessica and Sue view a property.
- Rachelle, the listing agent, uses the tax records for the property and describes the property in the MLS as having 3264 square feet.
- Tom is Rachelle's BIC.
- Jessica measures the property and determines the square footage incorrectly includes 576 square feet from the garage.
- Jessica notifies Rachelle of the inaccuracy.
- Rachelle does not update the square footage measurements in the MLS.

QUESTIONS FOR DISCUSSION: Remember the Garage with Feet?

1. What if Rachelle is a PB? Will the Commission investigate Tom, the BIC?

Answer: Yes. If a complaint is filed against Rachelle, a PB, the Commission will automatically investigate Tom. The Commission will investigate Tom because he is responsible for supervising all the brokerage activities of Rachelle.

Rule 58A .0506(d) specifically states:

A broker-in-charge shall supervise the provisional broker in a manner that assures that the provisional broker performs all acts for which a real estate license is required in accordance with the Real Estate License Law and Commission rules.

2. If Rachelle is a PB, will Tom, the BIC, be responsible for her actions?

Answer: It depends. Although Commission rules do not require the square footage measurements to be included in a listing, if a broker does include the square footage of a property, the broker must accurately represent this information. Further, once a broker includes the square footage measurements in a listing, this is considered advertising.

The Commission will automatically investigate Tom, the BIC, since a complaint has been filed against Rachelle, the PB; however, the Commission will not **automatically** hold him responsible for Rachelle's actions. During the investigation, the Commission will review Rule 58A .0110.

Specifically, Rule 58A .0110(g)(3) states the BIC is responsible for all advertisements conducted on behalf of the firm. Since Rachelle included the square footage measurements for the property in the listing and the listing is considered advertising, Tom may be responsible for Rachelle's misrepresentation of the square footage of the property.

Also, according to Rule 58A .0506(d), Tom must supervise Rachelle, and during this supervision, ensure she adheres to License Law and Commission rules. To determine the responsibility of Tom, the Commission will utilize the **Criteria for**

Assessing Proper Supervision of a Provisional Broker while reviewing the facts of the complaint.

For example, the Commission will evaluate whether or not Tom:

- assisted, advised, and reviewed Rachelle's practices during the transaction and whether Rachelle was available to be supervised;
- established written office policies and procedures for the firm/company relating to the accurate representation of square footage;
- conducted regular office meetings and ensured that the office policies and procedures that were established were in fact implemented and followed by the affiliated brokers;
- provided ongoing quality training programs and materials to affiliated brokers and disseminated this information and regulatory information in a timely manner;
- considered the experience level of Rachelle when determining her supervision level;
- delegated supervisory duties for Rachelle to another broker in the office and if so, what was their level of brokerage and training experience;
- evaluated the types of activities Rachelle was engaged in while conducting brokerage;
- had the appropriate ratio of PBs, full brokers, and appropriately supervised all of them;
- investigated and intervened when he learned of Rachelle's misrepresentation of square footage; and
- provided a corrective action to ensure Rachelle accurately reported square footage in the future.

The Commission will use the findings from the investigation along with the criteria mentioned above to determine whether or not this incident by Rachelle is an isolated event, whether Tom appropriately supervised Rachelle, and if he will be held responsible.

If the Commission finds that Tom has:

- developed written office policies and procedures about how to effectively measure the square footage of a property and advertise square footage;
- advised Rachelle during the transaction,
- conducted quality training programs, and
- intervened and corrected the issue,

Tom may not be responsible for Rachelle's actions.

However, if during the investigation it is evident that Tom did not appropriately supervise Rachelle based on the criteria established by the Commission or have written office policies that were also enforced regarding square footage calculations, Tom may be held responsible for Rachelle's conduct.

3. What if Rachelle is a full broker? Will the Commission investigate Tom, the BIC?

Answer: *It depends.* If a complaint is filed against Rachelle, a full broker, Tom may or may not be the subject of an investigation. In an effort to determine whether or not Tom may be investigated, the Commission will ask the following questions during the course of the initial investigation:

- Does the alleged conduct of the affiliated broker fall within the standard categories of a BICs supervisory responsibilities as specified in Rule 58A .0110?
- If the alleged conduct does not fall within the standard categories of a BICs supervisory responsibilities, did the BIC have knowledge?

Specifically, a BIC is responsible for:

- ensuring all affiliated brokers adhere to agency agreements and disclosure requirements;
- assuring that each broker affiliated at the office has an active, current license;
- the conduct of advertising;
- retaining and maintaining records relating to transactions conducted by or on behalf of the firm; and
- maintaining the trust or escrow account of the firm and the records thereto.

If Rachelle is a full broker, her alleged conduct of misrepresenting the square footage of a property does fall within the standard categories of supervisory responsibilities for Tom under Rule 58A .0110. As the BIC, Tom is responsible for all advertisements on behalf of the brokerage which includes advertising the square footage of a property.

During the investigation, the Commission will determine if Rachelle's misrepresentation of square footage is an isolated incident. Therefore, the Commission may ask Tom whether or not he was involved in Rachelle's transaction or had knowledge of her miscalculations of square footage for this listing. Further, the Commission may request to review Tom's written office policies and procedures regarding square footage measurements, specifically,

how to measure a property and/or the process for selecting vendors to measure properties.

After conducting the investigation, the Commission will evaluate the facts of the case, transaction files, and the existence of policies and procedures to determine whether or not Tom should be responsible for Rachelle's conduct. For instance, if the Commission determines that Tom had procedures and policies for square footage calculations for the brokerage company but Rachelle disregarded this information, Tom may not be responsible. However, if the Commission notices a lack of policies and procedures regarding square footage calculations and a pattern of brokers in the company misrepresenting square footage calculations, Tom may be responsible for Rachelle's conduct.

A generalization cannot be made that a BIC will or will not be responsible for the conduct of a full broker. However, to reduce their responsibility, BICs should ensure that all affiliated brokers are supervised appropriately in adherence with License Law and Commission rules, they develop written office policies for the brokerage, and provide consistent communication with affiliated brokers.

NOTE: If a broker engages in conduct that violates License Law and Commission rules, the Commission expects BICs to investigate the issue, intervene and propose a remedy, and provide corrective action(s).

WRITTEN OFFICE POLICIES

BICs should carefully consider creating written office policies to assist them with procedures for supervising affiliated brokers.

Written office policies are considered essential by many experts. Policies and procedures can assist BICs with standardizing operational tasks, establishing expectations, and providing guidance for all affiliated brokers, employees, and other individuals who perform duties on behalf of the brokerage. Also, policies should be uniformly applied and enforced.

A BIC's written office policies should address:

- communication with the BIC, or BIC delegate,
- training requirements,
- meeting schedules,
- transaction/document review process,
- client/consumer interaction,
- current regulatory information, and
- how to handle issues that may arise while practicing brokerage.

NOTE: During an investigation, the Commission may review the written office policies of the brokerage. If a BIC has written office policies, it may reduce the brokerage's responsibility and risk if a complaint is filed with the Commission. Also, the BIC may want to consider having all affiliated brokers sign a dated statement acknowledging receipt of and agreement to abide by the company's policies.

BROKER-IN-CHARGE BEST PRACTICES GUIDE

The Commission has created a [“Broker-in-Charge Best Practices Guide”](#) to provide brokers-in-charge with guidance regarding written office policies, records management, and trust account maintenance.

The Guide is posted on the Commission's website (ncrec.gov) under *Resources*.

SUMMARY OF IMPORTANT POINTS

- **Broker:** This is the primary license status for a broker license and includes any licensee, other than the BIC, who is affiliated with the firm.
- **Broker-in-Charge (BIC):** The broker who has been designated as the primary person having sole responsibility for the supervision and management of an office.
- **Provisional Broker (PB):** This is the entry-level license status for an individual broker license and includes any licensee who has not completed 90-hours of the Postlicensing education program.
- A PB must be under the supervision of a BIC to be on active status AND legally provide brokerage services.
- In order for a broker to be designated as a BIC for a sole proprietorship, real estate firm or branch office, a broker must *first* attain BIC Eligible status by submitting an application on a form available on the Commission's website.
- When a broker submits the [Request for BIC Eligible Status and/or BIC Designation \(Form 2.25\)](#), they are certifying that:
 - their broker license is on active status but NOT on provisional status;
 - they have at least two years of full-time or 4 years of part-time real estate brokerage experience within the previous 5 years or are a North Carolina licensed attorney with a practice that consists primarily of handling real estate closings and related matters in North Carolina for 3 years immediately preceding application; and
 - they have completed the 12-hour Broker-in-Charge Course within one year prior to application or within 120 days of designation.
- A broker who wishes to serve as the BIC of an office must be designated as a BIC with the Commission.
- According to Rule 58A .0110(f), once a broker holds BIC Eligible status, they must submit [the Request for BIC Eligible Status and/or BIC Designation \(REC 2.25\)](#) to become the designated BIC for a sole proprietor, real estate firm, or branch office.
- A broker must maintain their BIC Eligible status and/or BIC Designation by:
 - renewing their license in a timely manner each license year,
 - keeping their license on active status at all times, and
 - completing the 4-hour mandatory BICUP and approved 4-hour continuing education elective.
- Rule 58A .0110(a) requires every real estate firm to have a broker designated by the Commission who meets the qualification requirements to serve as BIC of the firm's principal office and a different broker to serve in the same capacity at each branch office.
- A BIC may not be the BIC of more than one office location at a time and no office of a firm shall have more than one designated BIC.

- In addition to each office having a BIC, most broker-sole proprietors (including sole practitioners) must also be a BIC.
- A broker who is a sole proprietor must designate themselves as a BIC if the broker:
 - engages in any transaction where the broker is required to deposit and maintain monies belonging to others in a trust account;
 - engages in advertising or promoting his or her services as a broker in any manner; or
 - has one or more other brokers affiliated with them in the real estate business.
- The designated BIC is the primary person the Commission will hold responsible for the supervision and management of an office.
- The BIC has the responsibility to supervise affiliated brokers, employees, and others who perform duties on behalf of the brokerage.
- Rule 58A .0110(g) lists the specific responsibilities of a broker-in-charge as follows:
 - assure that each broker affiliated at the office has complied with Rules .0503, .0504, and .0506 of this Subchapter;
 - notify the Commission of any change of firm's business address or trade name and the registration of any assumed business name adopted by the firm for its use;
 - be responsible for the conduct of advertising by or in the name of the firm at such office;
 - maintain the trust or escrow account of the firm and the record pertaining thereto;
 - retain and maintain records relating to transactions conducted by or on behalf of the firm, including those required to be retained pursuant to Rule .0108 of this Section;
 - supervise provisional brokers associated with or engaged on behalf of the firm at such office in accordance with the requirements of Rule .0506 of this Subchapter;
 - supervise all brokers affiliated at the office with respect to adherence to agency agreement and disclosure requirements;
 - notify the Commission in writing that he or she is no longer serving as a BIC of a particular office within 10 days following any such change;
 - complete the Commission's Basic Trust Account Procedures Course within 120 days of assuming responsibility for a trust account in accordance with G.S. 93A-6(g), however, the BIC shall not be required to complete the course more than once in three years; and
 - supervise all unlicensed individuals employed at the office and ensure that unlicensed individuals comply with G.S. 93A-2(c)(6).
- A BIC's responsibility for full brokers under Commission rules is limited to 5 things. The BIC has to ensure full brokers:

- comply with **agency agreements and disclosures**,
- have **current, active licenses**,
- comply with **advertising laws** and regulations,
- create, maintain, and **retain transaction files**, and
- properly handle **trust money**.
- A BIC should establish some best practices to assist them with their supervisory responsibilities. A BIC may consider:
 - creating a reminder to check for active and current licensure;
 - developing a plan for reviewing all advertisements;
 - developing policies for using social media for brokerage activity;
 - reviewing all transaction files periodically for accuracy; and
 - implementing and following strict policies for the handling of all trust monies.
- The BIC must supervise all PBs affiliated with the office.
- Generally, a PB may perform the same acts as a broker whose license is not on provisional status as long as they are supervised by a BIC.
- A PB may not operate ***independently*** in any way.
- The BIC has more supervisory responsibilities with a PB than a *full* broker.
- A PB may engage in real estate brokerage activities immediately once the BIC has sent in the *License Activation and Broker Affiliation Form (REC 2.08)*.
- If the PB and BIC do not receive written acknowledgement from the Commission confirming the PB's active status within 30 days of the date shown on the form, the BIC must immediately terminate the PB's real estate brokerage activities pending receipt of the written acknowledgement of license activation from the Commission.
- A BIC may be held accountable for all of a PBs brokerage conduct, because the PB cannot have an active license or engage in brokerage activity without a supervising BIC.
- If a PB is affiliated with two BICs, as permitted by Rule 58A .0506(a), BOTH BICs will share responsibility and are accountable for the PB.
- The Commission has developed criteria to guide in assessing how a BIC supervises a PB. The guiding criteria are:
 - Is the BIC available to assist, advise, and review the PBs practices and is the PB available to be supervised?
 - Has the BIC established written office policies and procedures under which all affiliated brokers are expected to operate?
 - Does the BIC review and monitor the brokerage activities of PBs?
 - Does the BIC hold regular meetings and otherwise assure proper implementation of and adherence to office policies and procedures?
 - Does the BIC provide ongoing quality training programs and materials to affiliated brokers and disseminate in a timely manner all regulatory information they receive pertaining to real estate brokerage practice?
 - What is the experience level of the PB?

- Has the BIC delegated supervisory duties to another broker in the office and, if so, what is the level of training and experience of that supervisory broker?
- In what types of activities is the PB engaged?
- How many PBs does the BIC supervise and what is the ratio of supervisors to PBs?
- What, if any, corrective or remedial action does the BIC take upon learning of a violation of the License Law or Commission rules by a PB for whom the BIC is responsible?
- A BIC incurs more responsibility while supervising PBs. Therefore, it is essential that BICs consider adopting best practices such as:
 - limiting activities of PBs (e.g., no short sales, no dual agency, etc.) until established criteria (e.g., # of successfully closed transactions; education completed, etc.) is met;
 - being available and maintaining regular office hours for supervision of PBs;
 - sharing best contact information & procedure for PBs needing consultation;
 - assigning a competent experienced broker as a mentor for PBs;
 - establishing expectations of when PBs will physically be in the office or available virtually;
 - scheduling periodic meetings and training with PBs; and
 - reviewing transaction files of the PBs.
- 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 broker misconduct.
- According to the 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.
- Further, Rule 58A .0601 requires a broker/firm to submit a written response within 14 days of receipt of a *Letter of Inquiry*. The response must include:
 - a full disclosure of requested information; and
 - copies of all requested documents.
- The Commission may also conduct field investigations.
- Field investigations are conducted when cases require witness interviews, trust account audits, or the examination of evidence that cannot be easily identified/obtained through written correspondence.

- Most investigations conducted by Commission staff are handled via *correspondence*, meaning the CPO first sends a *Letter of Inquiry* to the broker/firm against whom the complaint was filed.
- BICs are responsible for the supervision of affiliated brokers; however, they will not always receive a *Letter of Inquiry* or become the subject of a Commission investigation due to the alleged conduct of an affiliated broker.
- To determine whether or not the BIC is investigated, the Commission will ask the following questions:
 - Does the alleged conduct of the affiliated broker fall within the standard categories of a BICs supervisory responsibilities as specified in Rule 58A .0110?
 - If the alleged conduct does not fall within the standard categories of a BICs supervisory responsibilities, did the BIC have knowledge?
- The Commission CPO will determine whether or not the BIC was aware of or participated in the transaction, and reasonably knew or should have known about the affiliated broker's alleged actions.
- To assist with determining a BIC's knowledge, the Commission will review the transaction files, the written correspondence of parties involved in the transaction, the BIC's communication with the affiliated broker, and written office policies.
- The Commission will take into consideration whether or not a BIC has an office policy manual (preferably written) and/or provides regular, need-based training about the correct way to handle and address various issues that may arise in the company's brokerage practice.
- The existence of written office policies and documented trainings may help to shift more of the responsibility and liability for inappropriate brokerage activity directly to the individual broker-respondent.
- The BIC is automatically included in any inquiry involving a PB. The BIC is included because the PB cannot be on active status or be able to engage in brokerage without a supervising BIC.
- Even though the BIC may be included in the investigation, the BIC may not *automatically* be responsible for the actions of the affiliated full broker. A BIC's responsibility is contingent upon the findings after a thorough review of the facts of each case.
- BICs are likely to face disciplinary action when:
 - an issue exists for an extended period of time without their knowledge, and/or
 - they attempt to conceal an issue rather than intervene and correct it.
- If a PB receives a *Letter of Inquiry* from the Commission, the PB's supervising BIC will also receive a *Letter of Inquiry*.
- A BIC incurs more responsibility while supervising PBs affiliated with their firm/company.

- Although the Commission may not hold the BIC responsible for the alleged conduct of an affiliated broker, the firm/company may still be liable for the acts of brokerage misconduct because the affiliated brokers are agents authorized to act on behalf of the firm/company.
- Written office policies are important for every brokerage.
- Written office policies can assist the BIC with standardizing operational tasks, establishing expectations, and providing guidance for all affiliated brokers, employees, and other individuals who perform duties on behalf of the brokerage.

ANSWERS TO DISCUSSION QUESTIONS

For Discussion on Page 91

“Part of the Time”

1. Hong is the BIC of ABC Realty. He has several full brokers under his supervision and one provisional broker, Lisa. Lisa has been practicing brokerage for seven months. During this time, Lisa has represented several clients without supervision.

Lisa has submitted all transaction documents to the firm within three days of receipt and has asked Hong to review the files with her for accuracy. Hong informs Lisa that since she is a former mortgage loan officer, he knows that she pays attention to detail, and he trusts that her files are accurate.

Lisa has assisted five buyer-clients with purchasing a home. Hong has not reviewed any of her transaction files.

Has Hong adhered to his BIC supervisory responsibilities for Lisa? YES/NO
Why or not?

Answer: No. Hong has not adhered to his supervisory responsibilities for Lisa. According to 58A .0506(d), Hong is responsible for ensuring that Lisa practices brokerage activities in accordance to License Law and Commission rules. Also, it may be questionable under 58A .0110(g)(7) whether Hong is supervising Lisa and ensuring she is adhering to agency agreements and disclosure requirements in each transaction if he is not reviewing her files. Further, it may also be difficult for Hong to show appropriate supervision of Lisa according to Rule 58A .0506(a), if he is not:

- *having regularly scheduled meetings with Lisa,*
- *providing consistent communication,*
- *reviewing Lisa’s transaction files, and/or*
- *conducting workshops/trainings on how to complete proper documentation.*

2. Are there different requirements for the supervision of provisional brokers and full brokers?

Answer: Yes. According to Rule 58A .0110, a BIC is required to supervise all affiliated brokers of the firm/company. Specifically, a BIC is responsible for ensuring all affiliated brokers, including full brokers, are:

- *adhering to agency agreements and disclosure requirements,*
- *possessing active, current licenses;*
- *conducting advertising,*
- *retaining and maintaining records, and*
- *maintaining the trust or escrow account of the firm and the records thereto.*

However, Rule 58A. 0506, indicates that a BIC must supervise the PB to a higher level, in a manner that assures that the PB performs all acts for which a real estate license is required in accordance with the Real Estate License Law and Commission rules. A supervising broker who fails to supervise a PB as prescribed in the Rule may be subject to disciplinary action pursuant to Rule 58A .0110(g)(6) and Rule 58A .0506, respectively. Further, BICs should utilize the criteria that the Commission established to assess whether or not they are appropriately supervising provisional brokers.

21 NCAC 58A .0110 BROKER-IN-CHARGE

(a) Every real estate firm shall designate one BIC for its principal office and one BIC for each of its branch offices. No office of a firm shall have more than one designated BIC. A BIC shall not serve as BIC for more than one office unless each of those offices share the same physical office space and delivery address.

(b) Every sole proprietorship shall designate a BIC if the sole proprietorship:

- (1) engages in any transaction where a broker is required to deposit and maintain monies belonging to others in a trust account;
- (2) engages in advertising or promoting services as a broker in any manner; or
- (3) has one or more other brokers affiliated with the sole proprietorship in the real estate business.

(c) A licensed real estate firm shall not be required to have a BIC if it:

- (1) is organized for the sole purpose of receiving compensation for brokerage services furnished by its qualifying broker through another firm or broker;
- (2) is treated for tax purposes as a pass-through business by the United States Internal Revenue Service;
- (3) has no principal or branch office; and
- (4) has no licensed person associated with it other than its qualifying broker.

(d) A broker who maintains a trust or escrow account for the sole purpose of holding residential tenant security deposits received by the broker on properties owned by the broker in compliance with G.S. 42-50 shall not be required to be a BIC.

(e) In order for a broker to designate as a BIC for a sole proprietor, real estate firm, or branch office, a broker shall apply for BIC Eligible status by submitting an application on a form available on the Commission's website. The BIC Eligible status form shall include the broker's:

- (1) name;
- (2) license number;
- (3) telephone number;
- (4) email address;
- (5) criminal history and history of occupational license disciplinary actions;
- (6) certification of compliance with G.S. 93A-4.2, including that:
 - (A) his or her broker license is on active status;
 - (B) the broker has obtained at least two years of real estate brokerage experience equivalent to 40 hours per week within the previous five years or shall be a North Carolina licensed attorney with a practice that consisted primarily of handling real estate closings and related matters in North Carolina for three years immediately preceding application; and
 - (C) the broker completed the 12-hour Broker-in-Charge Course no earlier than one year prior to application and no later than 120 days after application; and
- (7) signature.

(f) A broker who holds BIC Eligible status shall submit a form to become the designated BIC for a sole proprietor, real estate firm, or branch office. The BIC designation form shall include:

- (1) the broker's:
 - (A) name;
 - (B) license number;
 - (C) telephone number;
 - (D) email address; and
 - (E) criminal history and history of occupational license disciplinary actions; and
- (2) the firm's:
 - (A) name; and

(B) license number, if applicable;

(g) A designated BIC shall:

- (1) assure that each broker affiliated at the office has complied with Rules .0503, .0504, and .0506 of this Subchapter;
- (2) notify the Commission of any change of firm's business address or trade name and the registration of any assumed business name adopted by the firm for its use;
- (3) be responsible for the conduct of advertising by or in the name of the firm at such office;
- (4) maintain the trust or escrow account of the firm and the records pertaining thereto;
- (5) retain and maintain records relating to transactions conducted by or on behalf of the firm, including those required to be retained pursuant to Rule .0108 of this Section;
- (6) supervise provisional brokers associated with or engaged on behalf of the firm at such office in accordance with the requirements of Rule .0506 of this Subchapter;
- (7) supervise all brokers affiliated at the office with respect to adherence to agency agreement and disclosure requirements;
- (8) notify the Commission in writing that he or she is no longer serving as BIC of a particular office within 10 days following any such change;
- (9) complete the Commission's Basic Trust Account Procedures Course within 120 days of assuming responsibility for a trust account in accordance with G.S. 93A-6(g), however the BIC shall not be required to complete the course more than once in three years; and
- (10) supervise all unlicensed individuals employed at the office and ensure that unlicensed individuals comply with G.S. 93A-2(c)(6).

(h) A broker holding BIC Eligible status shall take the Broker-in-Charge Update Course during the license year of designation, unless the broker has satisfied the requirements of Rule .1702 of this Subchapter prior to designation.

(i) A broker's BIC Eligible status shall terminate if the broker:

- (1) made any false statements or presented any false, incomplete, or incorrect information in connection with an application;
- (2) fails to complete the 12-hour Broker-in-Charge Course pursuant to Paragraph (e) of this Rule;
- (3) fails to renew his or her broker license pursuant to Rule .0503 of this Subchapter, or the broker's license has been suspended, revoked, or surrendered; or
- (4) fails to complete the Broker-in-Charge Update Course and a four credit hour elective course pursuant to Rules .1702 and .1711 of this Subchapter, if applicable.

(j) In order to regain BIC Eligible status after a broker's BIC Eligible status terminates, the broker shall complete the 12-hour Broker-in-Charge Course prior to application and then submit a BIC Eligible status form pursuant to Paragraph (e) of this Rule.

(k) A nonresident commercial real estate broker licensed under the provisions of Section .1800 of this Subchapter shall not act as or serve in the capacity of a broker-in-charge of a firm or office in North Carolina.

(l) A broker shall not be granted BIC Eligible status or designated as BIC of a firm if there is a pending Commission investigation against the broker.

History Note: Authority G.S. 93A-2; 93A-3(c); 93A-4; 93A-4.2; 93A-9; 93A-38.5; Eff. September 1, 1983; Amended Eff. July 1, 2014; May 1, 2013; July 1, 2010; July 1, 2009; January 1, 2008; April 1, 2006; July 1, 2005; July 1, 2004; April 1, 2004; September 1, 2002; July 1, 2001; October 1, 2000; August 1, 1998; April 1, 1997; July 1, 1995; July 1, 1994; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018; Amended Eff. July 1, 2021; July 1, 2020; July 1, 2018.

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