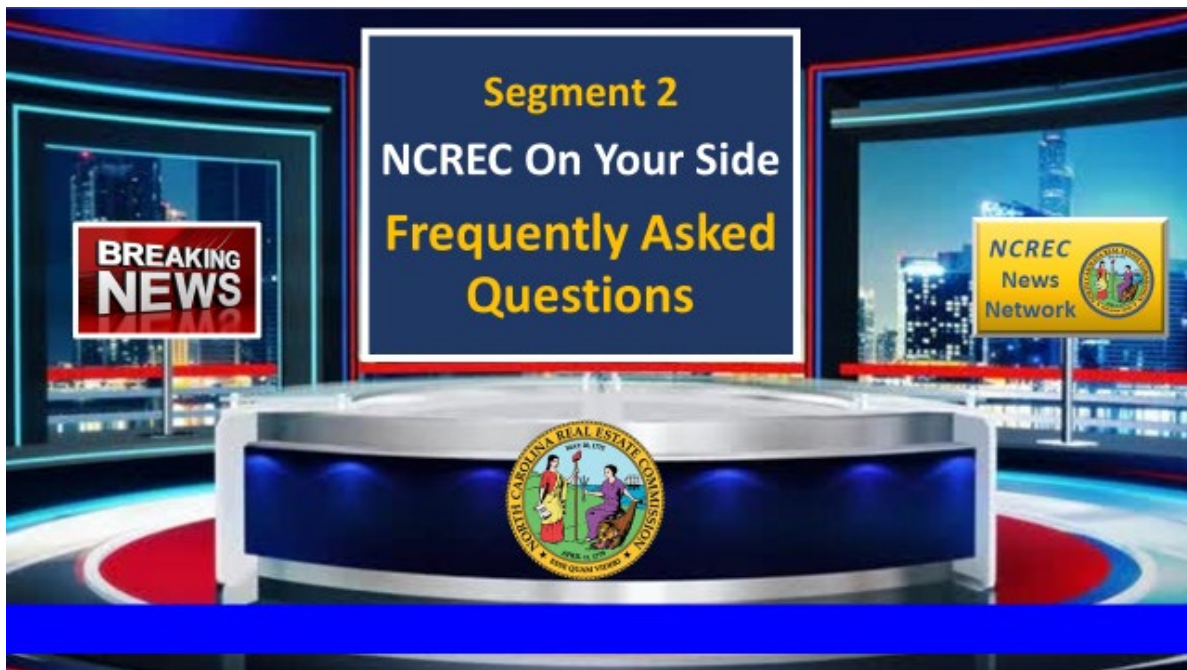


# 2023-2024 General Update Course

## Segment 2

# NCREC ON YOUR SIDE Frequently Asked Questions



### *Newsroom Roundtable Discussion*

Do my social media posts about a property have to comply with Commission rules?

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If a consumer has to click on an image or link in a post to get the name of the brokerage, is this in compliance with Commission rules?

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## LEARNING OBJECTIVES

After completing this section, you should be able to:

- explain how advertisements on social media must comply with Rule 58A .0105;
- identify when an assumed business name must be registered with the Commission; and
- define broker obligations when dealing with their personally owned property.

## TERMINOLOGY

**Assumed Business Name:** A name other than the real legal name of the person, sole proprietorship, partnership, corporation, or limited liability company (LLC) in which they are conducting business.

**Firm:** A license issued to a business entity, such as a corporation, limited liability company, limited partnership, general partnership, association, or joint business venture. A sole proprietorship does not need a firm license because no entity has been created.

**Limited Nonresident Commercial License (LNCL):** A license issued to a person who:

- does not live or have any home, business, or delivery address in North Carolina (NC);
- has an active real estate broker or salesperson license in another state;
- wants to enter NC to engage in a commercial transaction as an affiliated agent with their out-of-state brokerage company; and
- must enter into a Declaration of Affiliation and a Brokerage Cooperation Agreement with a resident NC broker who will be responsible for supervising the nonresident.

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## INTERACTING WITH THE COMMISSION

Every day the staff at the Commission receives on average approximately 500 phone calls and 1,000 emails. Most of the communication are requests for information, explanations on processes or forms, and inquiries regarding a wide variety of topics.

**Main number: (919) 875-3700**

**Regulatory Affairs (919) 719-9180**



Incoming calls are mostly sent to one of two different divisions, either License Services or Regulatory Affairs.

Just over 60 people work at the Commission, and the primary responsibility of many of them is to respond and answer questions and concerns from brokers. There is a high probability that when you call the Commission you will be routed to the individual who is highly trained at dealing with your specific issue. That means that you may have to wait a few minutes for answers to your particular question, but the specialist you have been routed to can see that you are waiting and they will be with you as soon as they complete an existing call. Sometimes, you are asked to leave your phone number, describe the nature of your question, and a call ticket is assigned to an individual specialist to call you back. NCREC tracks those calls by the broker's license number.

## ***Interactive News Reporting***

Why are brokers asked to provide their license number when they call the Commission?

- a) NCREC uses what brokers say against them.
- b) A certain number of calls will result in an audit of that broker.
- c) So that staff can provide accurate information based on the broker's records.
- d) In order to send notification to the BIC that a broker has contacted NCREC.



NCREC receives many calls that are not within the scope of the Commission's authority. Here are some other helpful phone numbers that will be of value to you.

## **Other Sources for News & Information**



- **NC Dept. of Revenue**  
877-252-3052
- **NC Association of REALTORS®**  
336-294-1415
- **NC Secretary of State**  
919-814-5400
- **NC Banking Commission**  
919-733-3016
- **NC Appraisal Board**  
919-870-4854

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## ADVERTISING CONCERNS

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



*Sally, a real estate broker with ABC Realty, practices residential brokerage. Sally is friends with Mary, who recently bought two investment properties. Mary offers to pay Sally to assist her with locating two tenants for her properties. ABC Realty does not allow affiliated brokers to practice property management; therefore, she would have to do it independently and use social*

*media to locate prospective tenants. Sally places an ad on her personal Facebook page that states:*

Are you looking for a nice, relaxing place to call home? Have you ever experienced a sunrise while being at the lake? Look no further, I have the perfect 4-bedroom, 3-bath lake house for you that is available as a long-term rental.



Nice, isn't it?! If you are interested, call Sally Wholesome at 555-555-5555 or email [sally@wholesome.com](mailto:sally@wholesome.com).

Is Sally's Facebook post considered an advertisement? If so, is she in compliance with License Law and Commission rules?

### **Rule 58A .0105: Advertising**

If a broker posts a property on their social media page for sale or lease, is this considered a form of advertising? **Yes.** According to *License Law and Rules Comments*, the Commission includes any offer to sell, buy, exchange, rent or lease real property by a broker, advertising.



**Social Media**

**Do I have to get the consent of my BIC before I post an advertisement on social media?** **Yes.** The Commission views posts by brokers on social media as a form of advertisement under Rule 58A .0105. Rule 58A .0105(a)(1) indicates a broker must have the authority to advertise. A broker derives their authority by receiving consent from their BIC and including the name of the brokerage or sole proprietorship in the advertisement with which they are affiliated.

Further, according to subsection (a)(2), brokers are also required to obtain the written consent of the owner or owner's authorized agent prior to displaying a "for sale" or "for rent" sign on or otherwise advertising any real estate.

The Rule also prohibits blind advertisements in subsection (b). A broker "blindly" advertises a property they do not own when they fail to identify their brokerage company in the ad and thereby gives the false impression that the broker owns the advertised property. In an effort to prevent blind advertisements, every advertisement shall include the name of the firm or sole proprietorship.

**NOTE:** The BIC does not have to issue "permission" every single time an affiliated broker creates an advertisement. However, the BIC does need to give consent, which coincides with their policies and procedures in the brokerage's written office manual.

**Can I use a logo to display the name of my brokerage in the advertisement?**

Yes. Rule 58A .0105(b) prohibits blind advertisements and requires the name of the sole proprietorship/brokerage in the advertisement. However, the Rule does not specify the manner in which the broker posting the advertisement must comply with this requirement. Therefore, a broker may use a logo to identify the name of the sole proprietorship/brokerage in which they are affiliated as long as it is readable.

In addition, since a BIC is responsible for all advertising by or in the name of the brokerage, the BIC must take any step necessary to ensure that all advertising is truthful and complies with Commission rules.

**NOTE:** A generic franchise logo or personal logo is not sufficient to comply with the Rule because it is not the name of the brokerage.

**Is it okay for the name of my sole proprietorship/brokerage to be displayed after the consumer clicks on my advertisement?** No. The Rule specifically states in subsection (b) that every advertisement must indicate that it is the advertisement of a broker or firm. Therefore, if a broker posts a picture on their social media page advertising a property without the name of the sole proprietorship/brokerage in the post or on the picture, the broker may be in violation of Rule 58A .0105.

The Commission is also aware that brokers have mistakenly believed that as long as a consumer can get to the name of the sole proprietorship/brokerage within “one-click” on the post, they are adhering to the advertising rule.

For clarification, the Commission **does not** have a “one-click” rule. Therefore, when a broker uses social media to advertise property, they should include the name of the sole proprietorship/brokerage:

- in their social media name/handle;
- in the caption of their post;
- on the image of the property; and/or
- in their videos (e.g. stories, reels).

Once an advertisement is viewed on social media, a consumer should be able to identify the name of the affiliated sole proprietorship/brokerage upon sight. Consumers should not have to “click” on a link in an advertisement in order to identify the name of the sole proprietorship/brokerage.

**Does the Commission prescribe the language that brokers must include in the advertisement?** No. Although the Commission’s advertising rule does not regulate content, if an advertisement is discriminatory in nature and violates federal/state fair housing laws, the broker may be in violation of Commission Rules 58A .0120(d) and .1601. Therefore, brokers are expected to comply with federal and state laws regarding advertising content; specifically, federal and state fair housing laws. In plain words, to

ensure compliance with federal and state fair housing laws, brokers should advertise the property and *not* who they would want in the property. Also, brokers should ensure that advertisements are truthful and accurate. Basically, the ads must not contain misleading statements or misrepresentations regarding the property.

**Am I responsible if my advertisement is sent to multiple platforms?** Yes. If a broker posts an advertisement on a website and authorizes the website to send the information to multiple platforms, the brokers are essentially agreeing to adhere to the websites' terms of use. Therefore, brokers are impliedly consenting to the information being released to undisclosed websites, which increases the possibility that property information and content may be altered during dissemination.



Further, brokers mistakenly believe they cannot be held liable for property information distributed to third party websites. This is incorrect. The Commission may hold a broker responsible for all information that they create for any form of advertising or distribution of property information, regardless of the platform. Additionally, brokers are expected to

immediately update property information as it changes in any platform in which the broker placed the advertisement.



## *Takin' it to the Streets:*



*Rock Town, NC - Friday, Broker April visited the Commission regarding brokers sharing the Facebook posts of other brokers. Apparently, April's seller saw their property advertised on social media by a broker who did not have their permission to advertise their property.*

The seller, who wishes to remain anonymous, is irate and wants to know if this is against Commission rules.

Is it permissible for a cooperating broker to share an advertisement on social media of the listing broker's advertisement without the seller's consent?

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**Do I have to get the permission of the broker who posted a property on social media before I share their advertisement?** Yes. Pursuant to License Law and Commission Rule 58A .0105(a)(1) and (2), a broker must have consent of the BIC, indicate the name of the brokerage, and obtain the written consent of the owner or owner's authorized agent to advertise the property. Essentially, if a broker shares a post on social media without the consent of the BIC, name of the sole proprietorship/brokerage, or owner of the property (e.g. owner's authorized agent), they may be in violation of Rule 58A .0105.

Also, brokers who are REALTORS® have additional requirements they must adhere to under the Code of Ethics. NAR® considers the copying and publishing of another broker's listing information advertising. Since this is considered advertising, it requires specific authority from the listing broker/brokerage prior to sharing a post on social media because they have the written listing agreement with the seller.

Specifically, in the [Code of Ethics and Standards of Practice of the National Association of REALTORS® Article 12](#), NAR states:

*REALTORS® shall not offer for sale/lease or advertise property without authority...*



For clarity, sharing a social media post (e.g. story, reel, or video) without the permission of the listing broker may violate the Code of Ethics and Standards of Practice of the National Association of REALTORS®. Therefore, brokers should obtain permission, preferably in writing before they click “share” or repost an advertisement.



the Code of Ethics.

Further, NC REALTORS® published a *Legal Questions & Answer Update* on August 27, 2020, entitled, [“Can I advertise another firm’s property on social media?”](#) Basically, the article clarifies that a REALTOR® may be in violation of Article 12 in the Code of Ethics if they do not have the authority to share an advertisement. Therefore, if a REALTOR® is trying to share an advertisement on social media, they should obtain the permission of the listing agent *first* to ensure compliance with

### ***Best Practices for Brokers Advertising on Social Media***

The Commission will hold a broker/brokerage responsible for the property information that is posted on social media, authorized websites, or other advertising media. Therefore, brokers should consider implementing the following best practices prior to advertising on any media platform:

- obtain consent of supervising BIC;
- include name of sole proprietorship/brokerage;
- receive written consent from the property owner or their authorized agent;
- verify the accuracy of all information;
- research websites and third party platforms prior to advertising;
- consistently monitor the advertisement to ensure the accuracy of the property information; and
- create an “alert” so that you are notified when information is posted about the property.

Advertising, especially advertising on social media, can create some unexpected challenges. Therefore, brokerages should specify policies regarding the advertising platforms that will be permissible for their affiliated brokers.

**NOTE:** Rule 58A .0108(a) requires brokers to keep records of all sale, rental, and other transactions whether the transaction is pending, completed, or terminated. Specifically, subsection (a)(14) includes advertisements for marketing a property as a record that must be retained by brokers. In plain words, advertisements, including social media posts, regarding a property are considered records under Commission rules. Therefore, brokers should place a copy of each advertisement in the transaction file; this includes a copy of each variation of a published ad.

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## A POINT OF CLARITY



An individual licensee may choose to create a business entity under which to conduct real estate brokerage activity. The Commission does not mandate or advocate the creation of one business entity type over the other. However, in order to make an informed decision regarding an entity, it is imperative that brokers know the difference between an entity and a sole proprietorship. Regardless of the business structure selected for brokerage activity, each will have its own advantages and consequences. Therefore, brokers should seek the advice of legal counsel, a business consultant, and/or a tax expert to make an informed decision.

### ***Entities***

The Commission regularly receives inquiries regarding the distinction between entities and sole proprietorships. G.S. 59-73.1 defines a business entity as:

*... a domestic corporation (including a professional corporation as defined in G.S. 55-B-2), a foreign corporation (including a foreign professional corporation as defined in G.S. 55B-16), a domestic or foreign nonprofit corporation, a domestic or foreign limited liability company, a domestic or foreign limited partnership, a domestic partnership, or any other partnership.*

**NOTE:** In this case, “domestic” and “foreign” only indicates whether an entity was created in North Carolina or somewhere outside our state.

Commission staff does not advise individuals on how to structure their real estate business. However, if the business is a partnership, corporation, limited liability company, association, or other business entity that conducts real estate brokerage activity, then the entity must be licensed. Prior to the submission of a firm license application, the entity must be created and registered in North Carolina. Most existing entities created outside of North Carolina must be registered as a foreign entity with the NC Secretary of State before conducting brokerage activity in NC.

An entity is created by written agreement (e.g. Articles of Corporation, Operating Agreement, etc.), and registration with the North Carolina Secretary of State, if necessary. Once the entity is registered with the North Carolina Secretary of State, they must be licensed pursuant to G.S. 93A-1 and 2.

Further, License Law and Commission rules specify that any corporation, partnership, limited liability company, association, or other business entity (other than a sole proprietorship) must obtain a separate firm license. Therefore, a firm license must be obtained prior to the entity **engaging** in brokerage activity and/or **receiving** compensation for brokerage activity in NC. A broker may submit a firm license application by:

- going to [www.ncrec.gov](http://www.ncrec.gov)
- clicking on *Forms*;
- clicking on *Application Forms*;
- clicking on *Firm Application (Form REC 1.72)*; and
- completing the form.



Additionally, an entity must have a qualifying broker (QB). The QB must be a principal of the entity, such as an officer, manager, general partner, or person/entity owning 10 percent or more of the business entity. Also, the QB must possess an active NC broker license that is not on provisional status.

Further, an entity **cannot** practice brokerage in NC without having a designated BIC for each office. Therefore, one of the many responsibilities per Rule 58A .0502(g) is for a QB to designate a BIC for each office. A QB may designate themselves as BIC as long as they meet the requirements.

An entity can also be created specifically for the receipt of compensation earned as an affiliate of another licensed brokerage. If an entity is created solely to receive compensation, a QB is still required pursuant to Rule 58A .0502; however, a BIC is not required if the exception provided for in Rule 58A .0110(c) is met.

The Commission has several resources available regarding firm licensure. The following resources may provide some clarity for brokers:



[Do I Need a Firm License](#)



[Business Entity FAQs.](#)

### ***Sole Proprietorships***

A sole proprietorship is a business that is owned by an individual who is personally liable for all the debts/obligations of the company. If a broker is a sole proprietor, a firm license is not required because a sole proprietorship is not considered a business entity. However, to legally practice brokerage, a sole proprietor must have an active license because the business and the broker are one and the same.

**Can I work as a sole proprietor without being a BIC? *Only in limited situations.*** If a prospective buyer/tenant already knows that a broker is licensed and contacts the actively licensed broker, who does not advertise properties or brokerage services, then the broker can represent the buyer/tenant or refer the buyer/tenant to another broker for compensation without being a BIC.

Under Rule 58A .0110(b), a sole proprietor must designate a BIC if they:

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

Therefore, brokers who will be conducting brokerage activity as a sole practitioner must also designate themselves as BIC. In a less common scenario, if the owner of the sole proprietorship allows other brokers to affiliate with the company, one of those affiliated brokers could serve as BIC instead of the owner if they meet the requirements of Rule 58A .0110.

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## FIRM LICENSING CONCERNS

Do I need a firm license if I only use my LLC to receive compensation?

Yes. Rule 58A .0502(a) requires:

*...every business entity other than a sole proprietorship to apply for and obtain from the Commission a firm license prior to engaging in business as a real estate broker.*

Subsection(c) of the aforementioned Rule indicates the required information to be included in the firm license application and that the ***firm license application form*** is available on the Commission's website.

The firm license application process requires the accurate completion of the [Firm Application Form \(Rec 1.72\)](#) and the appropriate submission of supporting documentation (e.g. documentation from the North Carolina Secretary of State).



If brokers need assistance with completing the firm license application, the Commission has provided a [“Firm Licensing”](#) video under Resources to assist brokers with navigating through this process.

Entities that are created for compensation only must have a QB according to Rule 58A .0502. However, Rule 58A .0110(c) indicates a BIC is not needed for the entity as long as the entity:

- (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.*

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## ASSUMED BUSINESS NAMES



What do I need to do if I want to conduct business in a name different from what's on my real estate license?

The Commission allows sole proprietorships/brokerages to conduct real estate activity using an assumed business name pursuant to Rule 58A .0103(c). However, in order to use an assumed business name, the sole proprietorship/brokerage must first register the assumed business name by submitting an [Assumed Business Name Certificate](#) to the North Carolina Secretary of State/County Register of Deeds Office.



Once the certificate has been filed, the sole proprietorship/brokerage must notify the Commission in writing of their use of an assumed business name pursuant to Rule 58A .0103(c).



A sole proprietorship/brokerage notifies the Commission by submitting a [Request Firm Name Change and/or Request to Replace Firm License Certificate or Pocket Card \(Form 1.47\)](#) on the Commission's website.

### ***Interactive News Reporting***

I am a broker with 123 Realty and I don't like my legal name. Can I file an Assumed Business Name Certificate so I can conduct brokerage activity under an assumed name?



- Yes, just register, record, and notify the Commission using Form 1.47.
- Yes, simply notify the Commission using Form 1.47.
- No, since you are a sole proprietor and not an entity, you cannot use an assumed name.
- No, since you are an individual broker, you cannot use an assumed name.

In adherence to the Rule, the Commission recognizes assumed business names for licensed firms and sole proprietorships, not individual brokers. Specifically, subsection (c) of the aforementioned Rule indicates:

*...individual broker shall not advertise or operate in any manner that would mislead a consumer as to the broker's actual identity or as to the identity of the firm with which he or she is affiliated.*

For example, if a broker is affiliated with a brokerage and their real estate license has their legal name as *Stickena Desktop*, then they must conduct brokerage activity using their legal name as shown on their North Carolina real estate license. So if *Stickena Desktop* advertised her real estate services as “*The Real Estate Angel*,” she would be in violation of Commission rules because she cannot use an assumed business name since she is not conducting brokerage activity as a sole proprietor.

In contrast, a sole proprietor may use an assumed business name that is different from their legal name as long as they have filed an Assumed Business Name Certificate and notified the Commission per Rule 58A .0103(c). For instance, if John Doe is a sole proprietor and wants to conduct business under the name “*Prince Realty*,” he must first search to ensure the name is not in use, complete and file the Assumed Business Name Certificate with the NC Secretary of State/County Register of Deeds office, and notify the Commission of the assumed business name using the [Request Firm Name Change and/or Request to Replace Firm License Certificate or Pocket Card \(Form 1.47\)](#).

However, a sole proprietor does not have to file an Assumed Business Name Certificate if they are using their legal surname or last name while conducting business. For clarity, if John Doe would like to conduct brokerage activity as Doe Realty, he does not need to file an Assumed Business Name Certificate because “Doe” is his surname.

Similarly, a licensed entity that conducts business using a name other than its legal name must file a Certificate of Assumed Business Name and notify the Commission as well. The rationale behind this requirement is to assist consumers with identifying the actual entity/sole proprietorship with whom they are dealing in real estate transactions.



## Nicknames

Rule 58A .0103 requires a licensee to use the name printed on their license certificate when engaging in brokerage activities. If a broker who is licensed under the name, William Robert Smith, uses the name, Robert Smith, then, when his name appears in writing, it should indicate W. Robert Smith. If Mr. Smith uses the nickname, ‘Rusty,’ then, when identifying his name in writing, he must write, William ‘Rusty’ Smith. Simply writing Rusty Smith is prohibited. If a licensee changes their name and wishes to use the new name in their real estate business, they should submit the [Request for Broker Name Change and/or Request to Replace Broker License/Pocket Card \(Form REC 1.22\)](#) to the Commission on the website [www.ncrec.gov](http://www.ncrec.gov).



On December 1, 2017, the NC legislature repealed Chapter 66, Article 14 and enacted Article 14A, the ‘Assumed Business Name Act.’



Article 14A, the ‘Assumed Business Name Act.’

N.C.G.S. §66-71.2, specifies that the purpose of the Assumed Business Name Act is to:

*...afford the public the means to ascertain the real name of persons engaging in business in this State under an assumed name by requiring those persons to register the assumed business name...*

The change modernized the assumed business name process to make it easier to register, find, and maintain assumed business name information for businesses. The Act altered the requirements for the assumed business name certificate and created the means by which a single registration in one Register of Deeds office can be effective for multiple counties. In the article, [‘Assumed Business Name Filing Deadline Coming December 1, 2022,’](#) the Commission informs brokers about the modernization of the assumed business name registration process.

The change modernized the assumed business





Also, the article, [“A Rose by Any Other Name- Names, Name Changes, and Assumed Names,”](#) clarifies the proper usage of names in advertising and informs brokers about the modernization of the assumed business name process.

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## AFFILIATION

**Do I need to be affiliated with a BIC in order to practice real estate?** *It depends.*

**Are you a full broker or a provisional broker?** According to Rule 58A .0506(a), a provisional broker may only engage and hold themselves out as a real estate broker when their license is active and they are supervised by the BIC of the brokerage in which they are affiliated.

A full broker may hold a license on active status while not being affiliated with a BIC.

**Can I work as a sole proprietor without being a BIC?** *It depends.* A sole proprietor who is not a BIC can:

- make referrals and
- represent unsolicited buyers.

A broker who is operating as a sole proprietor without being a BIC **cannot**:

- maintain a trust account;
- advertise; and/or
- affiliate other brokers.

So if a full broker wants to maintain a trust account, advertise their services, or affiliate other brokers, they must designate themselves as a BIC and meet the requirements under Rule 58A .0110. As mentioned previously, if the owner of the sole proprietorship allows other brokers to affiliate with the company, one of those affiliated brokers could serve as BIC instead of the owner if they meet the requirements of Rule 58A .0110.

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## SELLING OR LEASING COMMERCIAL REAL ESTATE



Do I need a separate license to sell or lease commercial properties in North Carolina?

*If you have a North Carolina real estate license, you have achieved minimal competency to practice any form of real estate brokerage in NC. Therefore, a separate license is not required prior to conducting commercial real estate transactions.*

*North Carolina's broker license authorizes the practice of all brokerage activity including commercial, residential, land, and property management.*

However, a broker is strongly encouraged to speak with their BIC to ensure they have the requisite competence and the permission of their brokerage company to practice this specialty area of brokerage *prior* to engaging in it.

**Can I get a Limited Nonresident Commercial Brokers license if I live in North Carolina?** *No.* A Limited Nonresident Commercial license is only available if you are a nonresident broker licensed in another jurisdiction. If you wish to conduct commercial brokerage activity in North Carolina, you will need to obtain a Limited Nonresident Commercial License (LNCL) pursuant to Rule 58A .1801.

Rule 58A .1801(a) states:

*Any person resident in a state or territory of the United States other than North Carolina may perform the acts or services of a real estate broker in North Carolina in transactions involving commercial real estate if said person first applies for and obtains a limited nonresident commercial real estate broker license as provided in this Section.*

The LNCL is a license issued to a person who:

- does NOT live or have any home, business, or delivery address in NC;
- has an active real estate broker or salesperson license in another state;
- wants to enter NC to engage in commercial transactions as an affiliated agent with their out-of-state brokerage company; and
- must enter into a Declaration of Affiliation and a Brokerage Cooperation Agreement with a resident NC broker who will be responsible for supervising the nonresident.

The LNCL is a restricted license that permits the nonresident to enter NC to engage **only** in commercial real estate transactions as defined in Rule 58A .1802(1). If the LNCL broker obtains any home, business, or delivery address in North Carolina, the individual must apply for and obtain an unrestricted NC broker license in order to engage in any brokerage activity within NC.

The application for the LNCL can be found on the Commission's website here: [Limited Nonresident Commercial Real Estate License \(Form REC 1.78\)](#).



Also, the Declaration of Affiliation of Limited Commercial License is here: [Declaration of Affiliation Between a Limited Nonresident Commercial Real Estate Licensee and a Resident Broker \(Form REC 1.79\)](#)

**NOTE:** Corporations, business associations, and other entities are ineligible for licensure under Rule 58A .1802.

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## CODE OF ETHICS TRAINING

**Do Commission rules require Code of Ethics training?**

*No.* The Commission does not require Code of Ethics training. Code of Ethics requirements are set by the National Association of REALTORS® (NAR).

Not all licensees are members of NAR. Brokers who are members of NAR are required to complete Code of Ethics Training periodically in order to remain in good standing as a REALTOR®.



NATIONAL  
ASSOCIATION *of*  
REALTORS®

Members are required to complete Code of Ethics training every 3 years. The course must include at least 2.5 hours of instructional time and is offered in distance format, in synchronous courses, or in-person. These courses are offered through local REALTOR® associations. Some of these courses, if they are at least 4 hours long, may also provide Commission CE elective credit, but only if the course was submitted and approved for CE elective credit with the North Carolina Real Estate Commission.

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## CONTRACT SIGNATURES

What if a property has two owners and both have the legal right to sell the property or their interest in the property, but only one of them signs a listing agreement? *A listing agreement is generally enforceable against the person(s) who signed the agreement. However, the best practice is to obtain the signature of every owner on a listing agreement.*

Do all owners of the property have to sign the offer to purchase? *It is preferred/recommended.* Every owner whose name is on the title to the property should sign the offer to purchase. However, if there are multiple owners of a property, one or more of the owners may sign the offer to purchase. Although all of the owners did not sign the offer to purchase, clear title to the property may still be conveyed as long as all owners agree to sign the deed. Furthermore, the signature of all owners on the offer to purchase would make it more likely that they will cooperate because they are legally bound to the contract terms. Now if one of the owners does not want to sell the property, they may file a partition in court or sale in lieu of partition pursuant to N.C.G.S. §46A-75. Therefore, if one or more of the owners refuses to sign the offer to purchase, clear title cannot be passed to the prospective buyer unless that owner signs the deed.

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



*Miss Smith, a property owner states: My significant other and I own a property together. We are breaking up and my significant other told the broker that we were both in agreement on selling the property. I didn't even know the property had been listed. Now it's under contract and they are telling me that I*

*have to sign. Well, I am not going to do it. I want more money than they are telling me that I will get from this property. This isn't right. I am going to file a complaint with the North Carolina Real Estate Commission.*

If signatures cannot be obtained, will this result in a breach of contract? \_\_\_\_\_

Could the buyer be entitled to damages? \_\_\_\_\_

Is there a probable violation of License Law and Commission rules? \_\_\_\_\_

**What if the property is an estate property?** If the real property is part of an estate that has not yet been settled, then an executor will probably need to sign the listing agreement and deed to convey clear title to the property to the prospective purchaser. However, executors are not automatically given permission to sell an estate property. An executor is given permission to sell the real property by the Last Will in Testament or by petitioning the Court to hold a Special Proceeding. The petition must contain a description of the property to be sold, names and contact information of the heirs of the property, and a statement as to why selling the property is in the best interest of the estate.

If there are multiple heirs for an inherited property, all heirs (and possibly any spouses) must sign the deed to convey clear title. If all heirs do not agree for the property to be sold, they may petition the Court for the property/land to be partitioned.

Potential listing agents should always consult an attorney about what is required to successfully list and sell properties that are in an estate or owned by multiple heirs.

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## **BROKER-OWNED PROPERTIES**

**Do I have to comply with License Law and Commission rules when I am selling my own property?** Yes. Per N.C.G.S. 93A-6(b)(3), a broker must comply with License Law and Commission rules when selling their personally owned property. Quite frankly, the Commission does not require the broker to disclose they have a real estate license; however, the Commission strongly recommends this disclosure because having a license may enhance the negotiating position of the broker if/when working with an unrepresented buyer.

Additionally, a broker still must comply with N.C.G.S. 47E, Residential Property Disclosure Act, when selling their own property. The broker-seller may check “Yes,” “No,” or “No Representation” on the *Residential Property Owners’ Association Disclosure Statement* (hereafter known as “*RPOADS*”) but the broker-seller still has a mandatory obligation under N.C.G.S. §93A-6 to discover and disclose material facts in a timely matter, no later than the point in which the prospective buyer makes an offer on the property. The Commission does have the authority to discipline a broker who does not affirmatively and timely discover and disclose material facts when selling their own property.

Because a broker may be disciplined for failing to discover and disclose material facts, it is imperative that the broker exercise reasonable effort to ascertain any material fact about the property that may affect the reasonable buyer’s decision to purchase the property. Further, Rule 58A .0104(o) indicates:

*...a broker who is selling property in which the broker has an ownership interest shall not undertake to represent a buyer of that property except that a broker who is selling commercial real estate as defined in Rule .1802 of this Subchapter in which the broker has less than 25% ownership interest may represent a buyer of that property if the buyer consents to the representation after full written disclosure of the broker's ownership interest.*

If a broker attempts to represent a buyer for the broker's personal property this would create a conflict of interest. This is the reason it is a violation of Commission rules. However, if the broker-seller lists the property with their brokerage, another broker in the firm without an ownership interest may represent the prospective buyer as long as the buyer consents to the representation after full written disclosure of the affiliated broker's ownership interest.

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



*Broker Daniel states: I don't know what the North Carolina Real Estate Commission thinks they are doing. I have a broker's license, but I don't use it to represent other people. I only manage residential rental properties that I own.*

*I have the right to create my own lease. What I charge for a security deposit and the requirements I put in my lease agreements are my personal business. The tenants agreed to everything and I have everything in writing. Frankly, that is all that is required. The Commission should mind their own business.*

What rules and statutes apply? \_\_\_\_\_

Do all property owners have to follow provisions of the Tenant Security Deposit Act?  
\_\_\_\_\_

Is there a probable violation of License Law and Commission rules?  
\_\_\_\_\_

Although a real estate license is not required when an individual is managing their own property; an unlicensed individual and a broker must both comply with the Tenant Security Deposit Act and the Residential Rental Agreements Act.

The Tenant Security Deposit Act can be found in N.C.G.S. §42-50. This Act specifies that a tenant security deposit must be placed in a trust/escrow account or the owner may post a bond. The Act does allow a broker to post a bond when managing their own property. However, it is recommended that the broker place the tenant security deposit in a trust account and adhere to other requirements of the Act such as:

- informing the tenant of the location of the security deposit;
- submitting interim accounting with an itemized list of deductions or the full tenant security deposit within 30 days of the termination of tenancy; and
- submitting a final accounting within 60 days of termination of tenancy.

Additionally, a broker must comply with the Residential Rental Agreements Act as well. N.C.G.S. §42-42 essentially states that a landlord must:

- comply with building and housing codes unless the structure is specifically exempt;
- make all repairs and maintain fit and habitable premises;
- maintain common areas in safe condition;
- maintain and repair all plumbing, heating, ventilating, air conditioning, and sanitary systems including any appliances supplied or required to be supplied by the landlord; and
- install battery operated or electrical smoke detectors according to the standards of the National Fire Protection Association, etc.

Even while managing their own property, it is recommended that a broker inform the tenant that they have a real estate license. Most importantly, a broker must follow the Residential Rental Agreements Act and the Tenant Security Deposit Act while managing their own properties.



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## YOU BE THE CONSUMER PROTECTION OFFICER

**Yes or No.** Indicate whether the following scenarios violate License Law and Commission rules.

1. Sam and Julie are brokers with Z Realty and co-own a residential property. They list the property for sale with Z Realty; Sam is the listing agent. Z Realty practices dual agency. Tuck, a prospective buyer, is interested in Sam and Julie's property. Sam informs Tuck that he cannot assist him with the transaction because he has an 80% ownership interest in the property. However, Sam informs Tuck that Julie can represent his interest because she only has a 20% ownership interest in the property. Therefore, Julie represented Tuck in the purchase of the residential property she co-owned with Sam.

Did Julie violate License Law and Commission rules?

2. John Rock, a licensed broker affiliated with 123 Realty, advertises his brokerage services as "The Rock Realty."

Is John allowed to advertise using the name "The Rock Realty?" Why or why not?

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## SUMMARY OF IMPORTANT POINTS

- Commission Rule 58A .0105(a)(1) indicates a broker must have the authority to advertise.
- A broker derives their authority to advertise by receiving consent from their BIC.
- A broker must include the name of the brokerage/sole proprietorship with which they are affiliated in the advertisement.
- The Commission views posts by brokers on social media as a form of advertising under Rule 58A .0105.
- The Commission *does not* have a “one-click” rule to reach broker identifying information.
- Brokers are expected to comply with federal/state laws regarding advertising content.
- Although the Commission’s advertising rule does not regulate content, if an advertisement is discriminatory in nature and violates federal/state fair housing laws, the broker may be in violation of Commission Rule 58A .1601.
- The Commission may hold a broker responsible for all information that they create for any form of advertising or distribution of property information, regardless of the platform.
- NAR® considers the copying and publishing of another broker’s listing information advertising.
- If a REALTOR® is trying to share an advertisement on social media, they should obtain the written permission of the listing agent first to ensure compliance with the Code of Ethics.
- Rule 58A .0108(a) requires brokers to keep records of all sale, rental, and other transactions whether the transaction is pending, completed, or terminated. This includes all versions of all advertisements.
- Brokers should consider implementing the following best practices prior to advertising on social media or any media platform:
  - obtain consent of supervising BIC;
  - include name of brokerage;
  - receive written consent of owner or their authorized agent;
  - research websites and third party platforms prior to advertising;
  - consistently monitor the advertisement to ensure the accuracy of the property information; and
  - create an alert to be notified when the property is posted on websites.
- The Commission allows sole proprietorships/brokerages to conduct real estate activity using an assumed business name pursuant to Rule 58A .0103(c). An individual licensee cannot use an assumed business name.

- In order to use an assumed business name, the sole proprietorship/brokerage must first register the assumed business name by submitting an Assumed Business Name Certificate to the North Carolina Secretary of State/County Register of Deeds Office.
- A sole proprietor does not have to file an Assumed Business Name Certificate if they are using their surname or last name while conducting business.
- A provisional broker may only engage and hold themselves out as a real estate broker when their license is active and they are supervised by the BIC of the brokerage with which they are affiliated.
- A full broker may hold a license on active status while not being affiliated with a BIC. However, their brokerage activities will be limited.
- If you have a North Carolina real estate license, you have achieved minimal competency to practice real estate brokerage. Therefore, a separate license is not required prior to conducting commercial real estate transactions.
- If you are a nonresident broker licensed in another jurisdiction and wish to conduct commercial brokerage activity in North Carolina, you will need to first obtain a Limited Nonresident Commercial License (LNCL) pursuant to Rule 58A .1801.
- If you are a broker, but not a member of the local REALTOR® association, you are *not* required to take Ethics training. However, if you are a member of the National Association of REALTORS®, you are required to take periodic Code of Ethics training.
- Every owner whose name is on the title to the property should sign the listing agreement with the brokerage in order for the brokerage to be sure to have the agreement of all the owners to list the property for sale.
- Every owner whose name is on the title to the property should sign the offer to purchase. However, if there are multiple owners of a property, one or more of the owners may sign the offer to purchase. Although all of the owners did not sign the offer to purchase, clear title to the property may still be conveyed as long as all owners agree to sign the deed.
- A broker must comply with License Law and Commission rules when selling their personally owned property.
- The Commission does not require the broker to disclose they have a real estate license when handling their personally owned property; however, the Commission strongly recommends this disclosure because having a license may enhance the negotiating position of the broker if/when working with an unrepresented buyer.
- Although a real estate license is not required when an individual is managing their own property; an unlicensed individual and a broker must both comply with the Tenant Security Deposit Act and the Residential Rental Agreements Act.

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## ANSWERS TO DISCUSSION QUESTIONS

### *Newsroom Roundtable Discussion on page 35*

Do my social media posts about a property have to comply with Commission rules?

*Answer: Yes. Social media is considered a form of advertising. Therefore, if a broker advertises a property on social media, the broker must ensure they are complying with Rule 58A .0105 and indicating the name of their brokerage company so the advertisement will not be considered a “blind advertisement.”*

If a consumer has to click on an image or link in a post to get the name of the brokerage, is this in compliance with Commission rules?

*Answer: No. The Commission does not have a “one-click” rule. Therefore, brokers should ensure that the name of their affiliated sole proprietorship/brokerage is in the handle of their social media posts or is displayed on the image upon first sight.*

### *Interactive News Reporting on page 38*

Why are brokers asked to provide their license number when they call the Commission?

- a) NCREC uses what brokers say against them.
- b) A certain number of calls will result in an audit of that broker.
- c) ***So that staff can provide accurate information based on the broker’s records.***

*Answer: Commission staff will analyze a broker’s license record to ensure that an accurate response is received based upon the broker’s license status and educational history.*

- d) In order to send notification to the BIC that a broker has contacted NCREC.

### *Takin’ it to the Streets on page 39*

Sally, a real estate broker with ABC Realty, practices residential brokerage. Sally is friends with Mary, who recently bought two investment properties. Mary offers to pay Sally to assist her with locating two tenants for her properties. ABC Realty does not allow affiliated brokers to practice property management; therefore, she would have to do it independently and use social media to locate prospective tenants. Sally places an ad on her personal Facebook page that states:

Are you looking for a nice, relaxing place to call home? Have you ever experienced a sunrise while being at the lake? Look no further, I have the perfect 4-bedroom, 3-bath lake house for you that is available as a long-term rental.

Nice, isn't it?! If you are interested, call Sally Wholesome at 555-555-5555 or email [sally@wholesome.com](mailto:sally@wholesome.com).

Is Sally's Facebook post considered an advertisement?

*Answer: Yes. The Commission considers Sally's Facebook post an advertisement because she is offering to lease a property on behalf of Mary.*

If so, is she in compliance with License Law and Commission rules?

*Answer: No. Sally may not be in compliance with License Law and Commission rules. According to Rule 58A .0105(a), Sally must have the consent of her BIC and indicate the name of the brokerage leasing the property in the advertisement. Sally is affiliated with ABC Realty and this brokerage does not allow affiliated brokers to practice property management. Sally knew this activity was not permissible so she did not obtain the consent of her BIC or include the name of the brokerage. Although Sally included her name and telephone number, she is not practicing brokerage as a sole proprietor and possibly may be in violation of Rule 58A .0105(a).*

### ***Takin' it to the Streets on page 43***

**Rock Town, NC** - Friday, Broker April visited the Commission regarding brokers sharing the Facebook posts of other brokers. Apparently, April's seller saw their property advertised on social media by a broker who did not have their permission to advertise their property.

The seller, who wishes to remain anonymous, is irate and wants to know if this is against Commission rules.

Is it permissible for a cooperating broker to share an advertisement on social media of the listing broker's advertisement without the seller's consent?

*Answer: Pursuant to License Law and Commission Rule 58A .0105(a)(1) and (2), a broker must have consent of the BIC, indicate the name of the brokerage, and obtain the written consent of the owner or owner's authorized agent to advertise the property. Essentially, if a broker shares a post on social media without the consent of the BIC, name of the sole proprietorship/brokerage, or owner of the property (e.g. owner's authorized agent), they may be in violation of Rule 58A .0105.*

### **Interactive News Reporting on page 49**

I am a broker with 123 Realty and I don't like my legal name. Can I file an Assumed Business Name Certificate so I can conduct brokerage activity under an assumed name?

- a. Yes, just register, record and notify the Commission using Form 1.47.
- b. Yes, simply notify the Commission using Form 1.47.
- c. No, since you are a sole proprietor and not an entity, you cannot use an assumed name.
- d. **No, since you are an individual broker, you cannot use an assumed name.**

*Answer: The Commission recognizes assumed business names for sole proprietorships and licensed firms, not individual brokers according to Rule 58A .0103(c).*

### **Takin' it to the Streets on page 55**

Miss Smith, a property owner states: My significant other and I own a property together. We are breaking up and my significant other told the broker that we were both in agreement on selling the property. I didn't even know the property had been listed. Now it's under contract and they are telling me that I have to sign. Well, I am not going to do it. I want more money than they are telling me that I will get from this property. This isn't right. I am going to file a complaint with the North Carolina Real Estate Commission.

If signatures cannot be obtained, will this result in a breach of contract?

*Answer: Yes. According to Rule 58A .0104(a), every agreement for brokerage services between a broker and an owner of the property to be the subject of the transaction shall be in writing and signed by the parties at the time of formation. Therefore, if the broker did not get the signature of all of the respective owners of the property to list the property or accept the offer, this may cause a breach of any future sales contract by the seller who signed if any owner who didn't sign does not wish to transfer title.*

Could the buyer be entitled to damages?

*Answer: Maybe. If the broker fails to get all of the owners to sign the listing agreement and offer, this could cause a breach of contract. Therefore, the owner(s) who did sign may have to compensate the buyer for any due diligence fees, earnest money deposit, and/or the cost of the buyer's due diligence process, per provisions in the standard 2-T sales contract.*

Is there a probable violation of License Law and Commission rules?

**Answer:** *Yes. There is a possible violation of Rule 58A .0104(a) when the broker listed the property but did not disclose that they were unable to obtain the signature of all of the owners in the written listing agreement prior to listing the property.*

### **Takin' it to the Streets on page 57**

Broker Daniel states: I don't know what the North Carolina Real Estate Commission thinks they are doing. I have a broker's license, but I don't use it to represent other people. I only manage residential rental properties that I own.

I have the right to create my own lease. What I charge for a security deposit and the requirements I put in my lease agreements are my personal business. The tenants agreed to everything and I have everything in writing. Frankly, that is all that is required. The Commission should mind their own business.

What rules and statutes apply?

**Answer:** *Answers will vary.*

Do all residential property owners have to follow provisions of the Tenant Security Deposit Act?

**Answer:** *Yes. A real estate license is not required to manage your personally owned property. However, all residential landlords must follow the Tenant Security Deposit Act in N.C.G.S. §42-50. The requirements of the Act include informing the tenant of the location of the tenant security deposit, submitting interim accounting with an itemized list of deductions or the full tenant security deposit within 30 days of the termination of tenancy, and submitting a final accounting within 60 days of the termination of tenancy.*

Is there a probable violation of License Law and Commission rules?

**Answer:** *Yes. If a broker fails to adhere to the Tenant Security Deposit Act or Residential Rental Agreements Act, the landlord/broker may be found liable for violating License Law and Commission rules under N.C.G.S. §93A-6(a)(10).*

**You Be the Consumer Protection Officer on page 59**

1. Sam and Julie are brokers with Z Realty and co-own a residential property. They list the property for sale with Z Realty; Sam is the listing agent. Z Realty practices dual agency. Tuck, a prospective buyer, is interested in Sam and Julie's property. Sam informs Tuck that he cannot assist him with the transaction because he has an 80% ownership interest in the property. However, Sam informs Tuck that Julie can represent his interest because she only has a 20% ownership interest in the property. Therefore, Julie represented Tuck in the purchase of the residential property she co-owned with Sam.

Did Julie violate License Law and Commission rules?

*Answer: Yes. Rule 58A .0104(o) indicates that a broker with an ownership interest in a residential property cannot represent a prospective buyer. The rule carves out an exception to allow brokers who have less than a 25% ownership interest in commercial property to represent a buyer as long as they have full written disclosure of the broker's interest and consent to representation. Sam and Julie both own residential property; therefore, this exception is not applicable and Julie could not legally represent Tuck in the transaction. However, another affiliated broker with Z Realty that did not have any ownership interest in the property could have represented Tuck if Tuck consented to the broker representing him after full written disclosure that Sam and Julie owned the property.*

2. John Rock, a licensed broker affiliated with 123 Realty, advertises his brokerage services as "The Rock Realty."

Is John allowed to advertise using the name "The Rock Realty?" Why or why not?

*Answer: No. The Commission recognizes assumed business names for sole proprietorships and licensed firms, not individual brokers. Specifically, Rule 58A .0103(c) states:*

*...individual broker shall not advertise or operate in any manner that would mislead a consumer as to the broker's actual identity or as to the identity of the firm with which he or she is affiliated.*

*Therefore, John must use his legal name in the advertisements because he is an affiliated broker and not operating as a sole proprietorship.*