

# **North Carolina Real Estate Broker Prelicensing Course Syllabus**

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# INTRODUCTION

## Course Description

The *Real Estate Broker Prelicensing Course* is an introductory level real estate principles and practices course with heavy emphasis on real estate **brokerage** law and practice. The primary objectives of this course are (1) to provide students with the basic knowledge and skills necessary to act as a licensed real estate broker in a manner that protects and serves the public interest and (2) to prepare students for the real estate license examination. Major topics addressed in this course include basic real property law, property taxation, land use controls, environmental hazards, brokerage relationships and practices, real estate contracts, real estate financing, closing a real estate sale transaction, real estate valuation, fair housing laws, landlord and tenant, property management, federal income taxation of real estate, basic house construction, basic real estate investment, the North Carolina Real Estate License Law and North Carolina Real Estate Commission Rules and Trust Account Guidelines.

## Required Course for Real Estate Licensure in North Carolina

Successful completion of the *Real Estate Broker Prelicensing Course* is generally required to qualify for the North Carolina real estate license examination and to obtain a North Carolina real estate broker license. This course may be offered only by schools and instructors approved by the North Carolina Real Estate Commission using this prescribed syllabus.

## Course Hours and Delivery Method

The *Real Estate Broker Prelicensing Course* must consist of a minimum of 75 classroom hours, although approved schools may, at their option, schedule the course for more than 75 hours. The course may only be offered using a live classroom presentation method.

## Course Scheduling

See Commission Rule 21 NCAC 58C.0305 for restrictions on course scheduling by schools.

## Textbooks and Other Instructional Materials

Approved texts and other required/recommended instructional/reference materials are described in the Bibliography that follows the Outline portion of this syllabus.

## Schools and Instructors

Any real estate school wishing to conduct this course must have a current Commission school approval or license prior to commencement of any advertising for the course. Prelicensing instructors must be actively approved by the Commission prior to commencement of the course. (Contact the Commission's Education & Licensing Division for detailed information.)

## Order of Subject Area Presentation

The order in which subject areas are presented in the Outline is the *recommended* order. Instructors and schools may make reasonable adjustments in the order of presentation, but should retain a logical order of presentation.

## Recommended Major Subject Area Emphasis

Recommended subject area emphasis *by major subject area* (i.e. preceded by a Roman numeral) has been provided in this syllabus in the form of recommended number of classroom hours to be devoted to each major subject area. Reasonable minor adjustments in subject area emphasis may be made to suit class schedules and instructional approach; however, caution is given against undue overemphasis or underemphasis of topics.

## Competency and Instructional Levels

Each *major topic* (i.e., *preceded by a capital letter*) in the Outline has been assigned a **competency and instructional level** of 1-3 in order to indicate the appropriate level of emphasis and instruction. In some instances where a subtopic should be afforded significantly greater or lesser emphasis than the major topic under which it is listed, such subtopic has been assigned a different level that applies to that subtopic only.

Competency and instructional levels have been assigned based on the relative importance of the topic and the degree of knowledge or skill needed by real estate brokers with regard to the topic. ***Schools and instructors are REQUIRED to comply with the assigned competency and instructional levels (and special notes to instructors) when teaching this course.***

Shown on the next page are the three competency and instructional levels used in the Course Outline and the meaning of each. The term *competency* refers to the cognitive level expected of students with regard to a particular topic, while the term *instruction* refers to the depth of instruction and the instructional methods that should be utilized. Level 1 is the lowest level and Level 3 is the highest level.

### Level 1 – Recall

**Competency:** Student should possess a *basic level of knowledge* of the topic that is sufficient to *recall, recognize, identify, list, describe, etc.* definitions of common terms, basic facts/concepts/principles and basic procedures/methods.

**Instruction:** Instructor should review and discuss the appropriate *basic* definitions, facts, concepts, procedures, etc. No in-depth instruction required.

### Level 2 -- Application

**Competency:** Student should possess a *moderately comprehensive level of knowledge and understanding* of the topic that is sufficient to *explain, discuss, interpret, restate, summarize, apply, etc.* facts, principles, procedures, etc. and how they relate to real estate brokerage practice.

**Instruction:** Instructor should review and discuss the topic *in moderate depth* sufficient to reasonably assure substantial comprehension, using examples (as appropriate) to illustrate and enhance understanding of facts, principles, procedures, etc. and their relevance to brokerage practice.

### Level 3 –Analysis

**Competency:** Student should possess a *substantial working knowledge and understanding* of the topic that is sufficient to *compare/contrast, analyze, etc.* relevant facts, principles, procedures, etc. in a variety of common fact situations likely be encountered in real estate practice.

**Instruction:** Instructor should review and discuss the topic *in substantial depth*, using examples (as appropriate) to reinforce understanding of ideas, principles and practices, and requiring students to complete *practical work assignments* (as appropriate) to demonstrate both their understanding of the topic and their ability to *apply their knowledge to common fact situations* that will be encountered in real estate practice.

## **Real Estate Mathematics Instruction**

Instruction on relevant mathematical functions are to be provided under the appropriate subject areas rather than as a separate arithmetic course section. To assist instructors, however, all required real estate mathematics instruction is listed in a separate section of the Outline (XXII). Consideration was given to the amount of mathematics involved in each subject area when establishing the recommended number of classroom hours for subject areas. This integrated approach is recommended because it helps assure that students understand how various mathematical functions relate to the various areas of real estate practice. *Instruction in basic mathematics concepts such as decimals, fractions, percentages, multiplication, division, etc. is not included in this course syllabus. Students deficient in basic math skills should be provided special assistance outside of class or directed to take a math refresher course.*

## **Course Completion Standards**

Course completion standards are described in Commission Rule 21 NCAC 58C.0304. ***It is especially important that school officials and instructors fully understand and strictly adhere to all the standards described in this Rule.*** Note especially the requirements for a 75% minimum passing score on the end-of-course examination and for at least 80% class attendance. Schools and instructors are held accountable by the Commission for the performance of their students on the real estate license examination. It is essential that schools and instructors establish and enforce course completion standards that are sufficiently high to assure that the performance of their students on the license examination is satisfactory. Suggestions for improving the performance of students on the license examination are available from the Commission.

## **Recommended Commission-Developed End-of-Course Examinations**

*The Commission strongly recommends that approved schools and instructors use the end-of-course examinations that have been developed by the Commission for use in this course.* The recommended passing score on these examinations is 75%, which is the minimum passing score required by rule. Note that the Commission-provided examinations are copyrighted and may only be used by schools and instructors as all-inclusive end-of-course examinations. They may not be used as “practice” examinations, nor may individual questions from these examinations be used for any other purposes. Schools that do not use the Commission-recommended end-of-course examinations may be required to submit their examinations for Commission review and approval.

## **Syllabus Copies**

Copies of this syllabus are provided free of charge by the N.C. Real Estate Commission to *licensed/approved schools* and to *approved instructors*. Schools/instructors may reproduce all or part of this syllabus for student use at their own expense, and may charge students for the cost of reproduction. The public may access this syllabus on the Commission website: [www.ncrec.gov](http://www.ncrec.gov)

## Real Estate Broker Prelicensing Course

### RECOMMENDED MAJOR SUBJECT AREA EMPHASIS

| Pages | Subject Area   | Number of<br>Classroom Hours |
|-------|--|------------------------------|
|       | Course Orientation and Overview                                    | 0.25                         |
| 1     | I. Basic Real Estate Concepts                                      | 0.25                         |
| 1-6   | II. Property Ownership and Interests                               | 4.5                          |
| 6-7   | III. Property Taxation and Assessment                              | 1.5                          |
| 7-9   | IV. Transfer of Title to Real Property                             | 2.0                          |
| 9-11  | V. Land Use Controls   | 2.0                          |
| 11-12 | VI. Environmental Issues in Real Estate                            | 0.5                          |
| 12-18 | VII. Brokerage Relationships: Laws and Practice                    | 6.5                          |
| 19-24 | VIII. Agency Contracts (Sales) and Related Practices               | 6.0                          |
| 24-26 | IX. Basic Contract Law   | 1.75                         |
| 26-28 | X. Sales Contracts and Related Procedures                          | 7.0                          |
| 28-34 | XI. Real Estate Financing  | 7.0                          |
| 34-38 | XII. Closing a Sales Transaction                                   | 7.0                          |
| 38-41 | XIII. Real Property Valuation                                      | 6.0                          |
| 41-42 | XIV. Landlord and Tenant   | 2.5                          |
| 43-44 | XV. Property Management  | 2.5                          |
| 44-45 | XVI. Fair Housing  | 1.5                          |
| 46    | XVII. Federal Income Taxation of Home Ownership/Sale               | 1.0                          |
| 47-49 | XVIII. Basic House Construction                                    | 1.0                          |
| 50    | XIX. Basic Real Estate Investment                                  | 2.0                          |
| 51-55 | XX. Real Estate License Law and Commission Rules                   | 8.0                          |
| 55    | XXI. Agent Safety  | 0.5                          |
| 56-58 | XXII. Real Estate Mathematics <i>[No separate time allocation]</i> | 0.0                          |
|       | Review (Instructor Discretionary Time)                             | 0.75                         |
|       | Final Examination  | 3.0                          |
|       | <b>TOTAL CLASSROOM HOURS</b>                                       | <b>75</b>                    |

# REAL ESTATE BROKER PRELICENSING

## COURSE OUTLINE

### I. BASIC REAL ESTATE CONCEPTS [0.25 hours]

#### A. General Characteristics of Real Estate [*Level 1*]

1. Basic Terminology and Definitions
  - a. Real Property – *Lands, Tenements and Hereditaments*
  - b. *Lands* includes: The soil, natural plant life, minerals and waters beneath the surface, air space above the surface and things affixed permanently to the soil (improvements).
  - c. The terms *real property, real estate, realty* and *lands* may be used interchangeably.
  - d. Personal Property – All property that is not real property.
2. Physical Characteristics of Land
3. Economic Characteristics of Land

#### B. General Concepts of Land Use and Investment [*Level 1*]

1. The Highest and Best Use Concept
2. Public and Private Land Use Restrictions [*Brief introduction here; in depth coverage in Section V. Land Use Controls*]
3. Real Estate as an Investment [*Brief introduction here; in depth coverage in Section XIX. Basic Real Estate Investment*]
4. Scope of the Real Estate Business
5. The Real Estate Market

### II. PROPERTY OWNERSHIP AND INTERESTS [4.5 hours]

#### A. The Concept of Property [*Level 2 except as noted below*]

1. **Real Property**
  - a. Basic Definition [*Covered in previous section*]

- b. The *Bundle of Rights* Concept
  - (1) Basic rights of real property owners
    - (a) Right to exclusive possession and use (enjoyment)
    - (b) Right to control (of property & profits)
    - (c) Right of disposition (right to transfer ownership or interests)
  - (2) Appurtenances (appurtenant rights)
    - (a) Subsurface rights
    - (b) Air rights
    - (c) Water rights (riparian and littoral rights), including the terms *accretion, reliction, erosion, and avulsion*
    - (d) Right to lateral support
    - (e) Right to subjacent support
    - (f) Benefit of any appurtenant easement [*Cover in depth under subsection D. Encumbrances to Real Property*]
    - (g) Benefit of any protective (restrictive) covenants [*Cover in depth under Section V. Land Use Controls*]

2. **Personal Property**

3. **Fruits of the Soil** [*Level 1*]

- a. *Fructus Naturales*
- b. *Fructus Industriales (emblements)*

4. **Fixtures** [*Level 3 – this subtopic*]

- a. Definition
- b. Criteria for Determining If Item Is a Fixture [*Students should be able to apply these criteria to common fact situations.*]
- c. Trade and Agricultural Fixtures
- d. Effect of Uniform Commercial Code (G.S. 25-9-313) concerning security interests in fixtures

5. **Improvements** (on or to land) – note that meaning depends on context; *Improved Land* or *Improved Lot* may also have dual meanings

**Note:** For the National exam section, consider an improvement as an appurtenance.

6. **Manufactured Homes**

- a. Definition
- b. Manufactured homes are personal property until converted to real property
- c. Requirements for conversion to real property



**B. Estates in Real Property [Level 1]**

**1. Freehold Estates**

- a. Estates of Inheritance
  - (1) Fee Simple Estate
  - (2) Defeasible Fee Estates
  - (3) Estate for Life of Another (*pur autre vie*)
- b. Estates Not of Inheritance (Life Estates)
  - (1) Estate for Tenant's Own Life (Conventional Life Estate)
  - (2) Marital Life Estates

**2. Nonfreehold (Leasehold) Estates [Mention only; cover under Section XIV. Landlord and Tenant]**

**C. Ownership of Real Property [Level 2 except as noted below]**

**1. Severalty (Sole) Ownership**

**2. Concurrent (Joint) Ownership** (Basic characteristics of each type, including effect of the death of or transfer of interest by one co-tenant)

- a. Tenancy in Common
- b. Joint Tenancy

*Note: Though used infrequently in NC, joint tenancy is widely used in many other states and is tested on the National exam section.*

- c. Tenancy by the Entirety

**3. Common Interest Community Ownership** (Basic characteristics)

- a. Condominium Ownership [*Note: Include coverage of limited common elements (e.g., assigned parking spaces or storage areas)*]
- b. Townhouse Ownership
- c. Cooperative Ownership [*Level 1 – this subtopic*]
- d. Time Share Ownership [*Mention only; cover in more depth under Section XX. Real Estate License Law and Commission Rules*]
- e. Planned Unit Development (PUD) [*Note how typical features compare to those of a typical residential subdivision.*]

**4. Trusts**

a. Definitions

- (1) Trust: a means by which one party transfers ownership of property to another party, or parties, to hold or manage for the benefit of a third party; used in recent decades as a major estate planning tool to limit the time and cost of probate.
- (2) Trustor: the individual who creates the trust; also called grantor or settler

- (3) Beneficiary: the person or entity that benefits from the trust
- (4) Trustee: the fiduciary who exercises control over the subject property to the instructions of the trustor in the trust agreement; can be the trustor.
- b. Terms
  - (1) Trustee's power and authority limited by the terms of the trust agreement and law.
    - (a) Typically includes care and investment of trust assets.
    - (b) After payment of trust expenses and trustee's fee, income may be paid to or used on behalf of the beneficiary.
    - (c) May be able to transfer assets into and out of the trust per trust agreement terms.
  - (2) Real property may be owned by trusts in most states.
  - (3) Legal and tax implications for trusts are complex and vary widely.
  - (4) Trust dissolution may occur when the beneficiary reaches a certain age, at the death of the beneficiary or the trustor, or when other conditions are met.
  - (5) Assets transfer to the beneficiary upon specified terms of the trust agreement.
- c. Types of Trusts that can Own/Hold Real Estate
  - (1) Living Trust: created during trustor's lifetime
  - (2) Testamentary Trust: created by property owner's will
  - (3) Land Trust: real estate is only asset
  - (4) Real Estate Investment Trust (REIT)
- d. Land Trust
  - (1) Beneficiary is usually the trustor.
  - (2) Can be used for secrecy since public records do not usually name the beneficiary.
  - (3) Beneficial interest in the trust is considered personal property that may be transferred by assignment vs a deed.
  - (4) Usually for a definite term (e.g., 20 years) which can be Extended.

**D. Encumbrances to Real Property** [*Level 2 except as noted below*]

1. **Liens**

a. Specific Liens

- (1) Mortgages (Deeds of Trust) [*Mention only; cover in depth under Section XI. B. Mortgages and Deeds of Trust*]
- (2) Real Estate Tax and Assessment Liens [*Mention only; cover in depth under Section III. Property Taxation and Assessment*]
- (3) Mechanics' Liens

*Note: NC statutes on mechanics' liens were amended effective April 1, 2013 to require that for all construction projects, residential or commercial, where the cost equals or exceeds \$30,000, except for owner-occupied single family residences, a lien agent must be appointed and any service provider must file a Notice to Lien Agent within 15 days of commencing work in order to be able to subsequently file a mechanics' lien (within 120 days of completing services) and have that lien have priority over another lien (e.g., a mortgage) that was recorded after the work had commenced but before the lien claim was filed. [See pages 41-2 of the **2015-2016 NC Real Estate Manual.**]*

- (4) Commercial Real Estate Broker Lien [*Level 1 – this subtopic*]

*Note: A NC law effective October 1, 2011 established a procedure by which a broker may protect his/her right to be paid his/her earned brokerage fee in the sale/lease of commercial real estate by obtaining a **commercial real estate broker lien** against the property being sold or leased. [See pages 706-8 of the **2015-2016 NC Real Estate Manual.**]*

- b. General Liens
  - (1) Judgment Liens
  - (2) Personal Property Tax Liens
  - (3) State Tax Liens
  - (4) Federal Tax Liens
- c. Lien Priority
- d. Homestead Exemption from Lien Enforcement -- NC Constitution, Article X and G.S. 1C-1601 [*Level 1 – this subtopic*]
- e. Writ of Attachment *Level 1 – this subtopic*

2. **Lis Pendens** (Notice of Pending Litigation)

3. **Restrictive Covenants** [*Mention only; cover in depth under Section V. Land Use Controls*]

4. **Easements**

- a. General Categories of Easements; Characteristics and Examples
  - (1) Easements in General
    - (a) Non-possessory interest in real estate
    - (b) Dominant and servient estates
  - (2) Appurtenant Easements
    - (a) Definition
    - (b) Appurtenance to both dominant and servient estate
  - (3) Easements in Gross
    - (a) Definition
    - (b) No dominant estate
    - (c) Personal easement in gross [*Distinguish from a license, which is not an encumbrance*]
    - (d) Commercial easement in gross

- b. Creation of Easements
    - (1) Express
    - (2) Implied
    - (3) Arising by Operation of Law
  - c. Recordation of Easements – An easement must be recorded to be binding against a purchaser of the servient estate.
  - d. Termination of Easements
  - e. Effect of Change in Ownership of Dominant or Servient Estate
  - f. Party Wall (*Cross Easements*)
5. **Encroachments**
- a. Examples
  - b. How Detected
  - c. Remedies

### III. PROPERTY TAXATION AND ASSESSMENT [1.5 hours]

#### A. Ad Valorem Property Tax [*Level 2 except as noted below*]

- 1. **Tax Rate and Calculations** [*Level 3 for Tax Calculations*]
  - a. NC rate expressed as \$xxx per \$100 of assessed value
  - b. Many other states express the tax rate as a *mill rate*. A mill is 1/10<sup>th</sup> of a cent. A mill rate is described as *mills per dollar*. [A NC tax rate of \$1.50 per \$100 (which is \$0.015 per dollar) is the same as a mill rate of 15 mills per dollar.]

*Note: Either of the above rates may be cited in National section questions and students must be able to perform calculations using either rate.*

- 2. **Property Subject to Taxation**
- 3. **Listing Property for Taxation**

#### 4. **Appraisal and Assessment**

*Note: NC law states that the assessed value of real property for property taxation purposes in NC must be, with a few exceptions, its market value or “...its true value in money” at the time of assessment. However, in other states, the assessed value for property taxation purposes may be a value that is less than market value – such as 50% of market value. National section questions might mention an assessed value that is less than market value and these questions should be answered based on the given information rather than on the NC practice. Also, the term true market value should be assumed to mean market value.*

- 5. **Timetable for Listing and Tax Collection**
- 6. **Property Tax Lien**

7. **Special Priority of Tax Liens**

**B. Special Assessments [Level 2]**

1. By Counties
2. By Cities and Towns
3. Special Assessment Liens

**IV. TRANSFER OF TITLE TO REAL PROPERTY [2.0 hours]**

**A. Property Description [Level 2]**

1. **Adequacy of Descriptions**
2. **Methods of Describing Real Estate**
  - a. Metes and Bounds
  - b. Government (Rectangular) Survey System *[This topic must be taught even though this system is not used in NC because it is used in a majority of states and will be tested on the license examination. Recommended maximum class time: 1 hour]*
  - c. Reference to Recorded Plat (Lot and Block)
  - d. Reference to Publicly Recorded Documents
  - e. Informal Reference (e.g., street address)
3. **Property Survey**

**B. Methods of Transferring Title [Level 1]**

1. By Descent (Intestate Succession; No will)
2. By Will

*Note: Formerly, the term devise referred to a **real** property transfer and bequest referred to a **personal** property transfer. Now, devise applies to both in NC, but both terms may still be encountered on the National exam section.*
3. By Voluntary Alienation (Deed) *[Deeds covered separately below]*
4. By Involuntary Alienation
  - a. Lien Foreclosure Sale *[Covered under Section IX. Real Estate Financing]*
  - b. Adverse Possession
    - (1) General Requirements
    - (2) Statutory Time Periods for Continuous Adverse Possession
  - c. Escheat

- d. Eminent Domain (Condemnation)
  - (1) Basic Procedures
  - (2) Effect of condemnation on a leasehold estate held by a tenant on the condemned property (or some portion thereof)

**C. Deeds** [*Level 2 except as noted below*]

- 1. **Essential Elements of a Valid Deed**
- 2. **Types of Deeds** (Purposes and characteristics of each)
  - a. Types Most Commonly Used in North Carolina and many other states [*Use sample deed forms for illustration if samples are not included in text*]
    - (1) General Warranty Deed (sometimes referred to in other states as a *Full Covenant and Warranty Deed* or just *Warranty Deed*)
    - (2) Special Warranty Deed
    - (3) Quitclaim Deed
  - b. Bargain and Sale Deed – Used in some states; very similar to a *Quitclaim Deed* [*Level 1 – this subtopic*]
  - c. Special Purpose Deeds [*Level 1 – this subtopic*]
- 3. **NC Excise Tax** (formerly called *Revenue Stamps* or *deed transfer tax*) on Property Transfers
  - a. Excise Tax Rate
  - b. Calculations [*Level 3 – this subtopic*]
- 4. Local **Transfer Tax** (imposed by some counties)

**D. Title Assurance** [*Level 1 except as noted below*]

- 1. **Title Examination**
  - a. Public Records Search (by attorney or paralegal in NC; by title company staff in many other states)
  - b. Chain of Title
  - c. Abstract of Title
  - d. Opinion on Title (by attorney in NC)
- 2. **Title Insurance**
  - a. Purpose
  - b. Types of Policies (Owner's and Lender's)
  - c. Basic Policy Coverage
  - d. Cost and Procurement
- 3. **Title Recordation** [*Level 2 – this subtopic*]
  - a. Purpose
  - b. The Conner Act

- c. Documents Required to be Recorded
  - d. Recording Contracts or Memoranda of Contract
  - e. Recordation Procedures (county Register of Deeds office in NC)  
*[Recordation of lien satisfaction (e.g., mortgage payoff) is needed to clear a title from being encumbered by the lien.]*
- 4. **Covenants of Title in Deeds** *[Mention only; covered earlier under Deeds]*
  - 5. **Marketable Title Act and Torrens System**
  - 6. **Action to Quiet Title** Lawsuit resolution of title disputes (e.g., due to adverse possession claim or some other conflict)

## V. LAND USE CONTROLS [2.0 hours]

### A. Public Land Use Controls *[Level 2 except as noted below]*

- 1. **Zoning** *[Use copies of actual local zoning ordinances, zoning maps, classification charts and tables of permitted uses for illustration.]*
  - a. Historical Development
  - b. NC Statutory Authority for Governmental Zoning
  - c. Zoning Purposes and General Guidelines
  - d. Zoning Districts (and Codes)
  - e. Zoning Ordinances, Systems (Districts and Codes) and Administration
  - f. Zoning Concepts, Terminology and Special Procedures
    - (1) Nonconforming use
    - (2) Illegal use
    - (3) Zoning amendments
    - (4) Variance
    - (5) Special use permit (or special exception)
    - (6) Overlay district
    - (7) Historic preservation zoning
    - (8) Aesthetic zoning
    - (9) Spot zoning
    - (10) Cluster zoning
    - (11) Buffer zone
- 2. **Urban and Regional Use Planning** *[Level 1 – this subtopic]*
- 3. **Subdivision Statutes and Regulations**
  - a. NC Definition of Subdivision
  - b. Typical Subdivision Approval Procedures (NC and elsewhere)

- c. NC Criminal Penalty for Selling Lots in Unapproved Subdivision  
*[G.S. 153A-330 et seq]*
- d. NC Subdivision Streets Disclosure Law *[G.S. 136-102.6]*
- 4. **NC Building Codes** *[Level 1 – this subtopic]*
  - a. Enforcement Authority (usually local building inspector)
  - b. Building Permit (including for additions/renovations)
  - c. Certificate of Occupancy
- 5. **Highway Access Restrictions** *[Level 1 – this subtopic]*
- 6. **Interstate Land Sales Full Disclosure Act** *[Level 1 – this subtopic]*
- 7. **Flood Hazard Area Regulations**
  - a. FEMA Administration/Maps
  - b. Requirement for Flood Insurance through National Flood Insurance Program
- 8. **Government Ownership** (e.g., National/State/Municipal Parks; Land acquired for preservation of natural resources) *[Level 1 – this subtopic]*

**B. Privately-Imposed Land Use Controls (Subdivision Restrictive/Protective Covenants)** *[Level 2; use typical set of subdivision covenants for illustration if none is available in text]*

- 1. Purpose
- 2. Typical Matters Addressed
- 3. Covenants *Run With the Land* (*Appurtenant*)
- 4. Enforcement
- 5. When covenants differ from zoning regulations on a particular matter, the more restrictive of the two will control.

**C. Licensees' Responsibilities Regarding Verification of Land Use and Recognition of Potential Land Use Problems** *[Level 3]*

*Note: Under the NC Real Estate License Law, a licensee has a duty to avoid any misrepresentation regarding permitted land use, to recognize potential land use problems, and an affirmative duty to discover and disclose any such problems.*

- 1. A broker must avoid any representation about a property's zoning or permitted land uses without verifying the property's zoning and, if appropriate, flood hazard area maps and any restrictive covenants affecting the property.



2. A broker is expected to be able to recognize *red flag* situations regarding land use issues and to advise the parties involved of the potential problem and recommend that the interested parties verify the permitted land uses. *Recognizing and taking appropriate action with regard to potential problems with restrictive covenants is particularly important.*
3. A broker is expected to be able to recognize patent signs of flooding on a property or when a property's location may make it susceptible to flooding (e.g., location near a river or creek). A broker should assist the parties with locating and reviewing the flood hazard area maps (FEMA maps) or checking with the local planning office to determine if there is any potential flooding problem.
4. A broker is expected to be aware of planned major highway or public transportation changes in the area where the agent works and to disclose such information when appropriate.

## VI. ENVIRONMENTAL ISSUES IN REAL ESTATE [0.5 hours]

### A. General Discussion of Significance of Environmental Issues for Real Estate Agents [Level 1]

*Note: The presence on a property of any of the environmental hazards covered below is a material fact that must be disclosed to all transactional parties including prospective purchasers or lessees.*

### B. Selected Specific Hazards Pertinent to Real Estate Brokerage and Relevant Laws and Regulations [Level 1 except as noted below]

1. **Lead** [Level 2 – this subtopic only]
  - a. Lead-based paint; residential use banned in 1978. Disclosure required by federal law since 1992 (see d. below).
  - b. Lead-contaminated dust or soil (e.g., on the floor or accumulated in water passing through lead plumbing)
  - c. Serious health risk, especially to children.
  - d. **Residential Lead-Based Paint Hazard Reduction Act of 1992** and implementing updated HUD and EPA rules.
    - (1) Disclosure requirement
    - (2) Application – *target* housing
    - (3) Agents' responsibilities (under federal rules and NC Real Estate License Law)
    - (4) Enforcement and penalties
  - e. N.C. Lead-Based Paint Hazard Management Program. Inspectors and firms/individuals performing renovation, repair and painting projects for compensation in homes and day-care facilities built before 1978 must be certified. Fines for violations up to \$750 per day

2. **Asbestos**
  - a. Widely used in building supplies prior to ban in 1978
  - b. Characteristics
  - c. Serious health risk
  - d. Remediation
  
3. **Radon**
  - a. Characteristics and where found
  - b. Health risk
  - c. Remediation
  
4. **Formaldehyde**
  - a. Characteristics
  - b. Found in pressed-wood products (e.g., particle board, some plywood paneling, some fiberboard, etc.) and in urea formaldehyde foam insulation (UFFI)
  - c. Health risk
  - d. Remediation
  
5. **Toxic Mold**
  - a. Characteristics and where found
  - b. Health risk
  - c. Potential problems with homeowner's insurance
  - d. Remediation
  
6. **Petroleum leaking from underground petroleum storage tanks**

Regulated by N.C. Leaking Petroleum Underground Storage Tank Cleanup Act. Note that an owner of a property with a problematic underground storage tank may be liable for cleanup even if a previous owner installed the tank or failed to properly maintain it.
  
7. **Hazardous substances** (e.g., chemicals, wastes, etc.) — Regulated by Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), a federal law. Note that a current owner of a property with hazardous waste present may be liable for cleanup even if the pollution was caused by a previous owner.

## **VII. BROKERAGE RELATIONSHIPS: LAW AND PRACTICE**

### **[6.5 hours]**

*Instructor Note: This critical subject area should be covered thoroughly in class. Instructors should use the Commission's current **North Carolina Real Estate Manual** as the primary information source for teaching this subject area. Emphasis should be placed on the Commission's Rule on Agency Agreements and Disclosure [Rule 58A.0104]. Portions of this Rule should be covered here and portions should be covered in Section*

VIII. Agency Contracts and Related Practices. *Note also that G.S. 93A-6(a)(1) on Misrepresentation and Omission as well as G.S. 93A-6(a)(4)&(6) dealing with Conflicts of Interest should be covered in depth here rather than in Section XX. Real Estate License Law and Commission Rules.*

**A. Overview of Laws and Regulations Governing Brokerage Relationships**  
*[Level 1]*

**B. Law of Agency — Basic Concepts** *[Level 2 except as noted below]*

1. **Basic Agency Terms** (*Agency, Principal, Agent, Subagent, Third Party*)
2. **The Real Estate Agent's Fiduciary Role**
3. **Classifications of Agency Relationships**
  - a. Universal Agency
  - b. General Agency
  - c. Special Agency
4. **Methods of Creating Real Estate Agency Relationships**
  - a. Relationships between Brokers/Firms and Transaction Parties (Formed by Agency Contracts) *[Mention only; cover these contracts in depth in Section VIII. Agency Contracts and Related Practices]*
    - (1) Listing Contract
    - (2) Buyer Agency Contract
    - (3) Dual Agency Contract
    - (4) Property Management Contract
    - (5) Tenant Representation Contract
  - b. Relationships between Brokers/Firms *[Level 1] [Mention only; cover these contracts in depth in Section VIII. Agency Contracts and Related Practices]*
    - (1) In-House Brokerage Employment Contracts
    - (2) Cooperation Agreements between Brokers/Firms
  - c. By Conduct of Parties (Implied Agency) *[Level 1]* – For example, cooperation between firms based on agents' actual conduct and custom rather than an explicit agreement.
5. **Scope of Agent's Authority**
  - a. Express Authority
  - b. Implied Authority
  - c. Apparent Authority

**C. Real Estate Agency Relationships** *[Level 3]*

1. **The Basic Agency Relationship**
  - a. Consumer Employs Sole Practitioner Broker
  - b. Consumer Employs a Real Estate Firm

2. **Agency Relationships in Real Estate Sales** (Relationships of Parties; Advantages and Disadvantages of Various Options)
  - a. Exclusive Seller Agency
  - b. Exclusive Buyer Agency
  - c. When Firms/Brokers Cooperate on a Sale
    - (1) Exclusive Agency
    - (2) Seller Subagency
  - d. Both Seller and Buyer Agency with Dual Agency for In-House Sales [*G.S. 93A-6(a)(4) & (5); Commission Rule 58A.0104(d) and (i) - (n)*]
    - (1) Unintentional, undisclosed dual agency prohibited
    - (2) Intentional, disclosed dual agency
    - (3) Dual agency with designated agents
  
3. **Agency Relationships in Real Estate Rentals** (Overview of Typical Agency Relationships When Licensees Handle Residential and Commercial Rentals)
  
4. **Disclosure of Agency Relationships** [*G.S. 93A-6(a)(4) and (5); Commission Rule 58A.0104 (c), (d), (e), (f), (g) and (h).*]
  - a. Requirement to Provide and Review the Commission's **Working with Real Estate Agents** Brochure to Every Prospective Buyer or Seller at First Substantial Contact and to Determine Agency Relationship with that Party. [*Rule A.0104(c); brochure is available on Commission's website at [www.ncrec.gov](http://www.ncrec.gov)*]
    - (1) **Review of the brochure with prospect is mandatory! Merely providing the brochure is insufficient!**
    - (2) Completion of acknowledgment section of brochure (include handling refusal by prospect to sign brochure)
  - b. Disclosure of Agency Status by Seller's Agent or Subagent to Prospective Buyer [*Rule A.0104(e)*]
    - (1) At *first substantial contact* and in writing (with a limited exception)
    - (2) Examples of *first substantial contact* in various situations
    - (3) Use of *Disclosure of Seller Subagency* portion of the acknowledgment panel on the **Working with Real Estate Agents** brochure
  - c. Disclosure of Agency Status by Buyer's Agent to Seller or Seller's Agent at Initial Contact [*Rule A.0104(f)*]
  - d. Disclosure of and Consent to Proposed Dual Agency [*G.S. 93A-6(a)(4) and (5); Rule A.0104(d) and (i)*]
  - e. Disclosure in Auction Sales Situations

**D. Agent's Duties to Principal [Level 3]**

1. Agent's Duties to Principal under the **Law of Agency**
  - a. Loyalty and obedience (*Note potential problems involved with self-dealing and conflict of interest situations*)
  - b. Confidentiality
  - c. Skill, care and diligence
  - d. Disclosure of Information
  - e. Accounting
  
2. Termination of Agency Relationship
  - a. How relationship may be terminated
  - b. When agent's duties to principal generally end
  
3. Agent's Duties to Principal under the **Real Estate License Law and Commission Rules**
  - a. Duty to avoid any willful or negligent misrepresentation of a material fact to the principal, and to disclose to the principal all material facts about which the agent has knowledge or should reasonably have acquired knowledge. [*G.S. 93A-6(a)(1) and (3)*]
  - b. Duty to avoid making any false promises to the principal. [*G.S. 93A-6(a)(2) and (3)*]
  - c. Duty to avoid any undisclosed conflict of interest. [*G.S. 93A-6(a)(4); Rule A.0104(d)-(f), (i) and (j)*]
  - d. Duty to properly account for funds held in trust for the principal. [*G.S. 93A-6(a)(7), (12) and (14); Rule A.0107*]
  - e. Duty to act competently in the performance of services required by the agency relationship. [*G.S. 93A-6(a)(8); various rules*]
  - f. Duty to avoid improper conduct and to be honest in all dealings with the principal (as well as in dealings with other parties). [*G.S. 93A-6(a)(10)*]
  - g. Duty to deliver all offers and contracts to the principal. [*G.S. 93A-6(a)(13); Rule A.0106*]
  - h. Duty to disclose any commissions, referral fees, kickbacks and similar payments from third parties. [*Rule A.0109*]

**E. Agent's Duties to Third Persons under the Real Estate License Law and Case law [Level 3]**

*Note: This topic involves a study of an agent's duties to third persons under NC Real Estate License Law and case law. Emphasis should be placed on conveying a proper understanding of misrepresentation and omission, and especially the affirmative duty to discover and disclose material facts.*

1. **Duty to avoid any willful or negligent misrepresentation of a material fact to a third party and to disclose to the third party all material facts relating to the property about which the agent has knowledge or should reasonably have acquired knowledge. [G.S. 93A-6(a)(1) and (3) and case law]**

*Note: Study fact situations to understand potential misrepresentation and omission problems and how to avoid them. Refer to the License Law and Rules Comments in the Commission's License Law booklet (also available on the Commission website at [www.ncrec.gov](http://www.ncrec.gov)) for additional explanations and examples concerning Misrepresentation and Omission. Special emphasis should be placed on the duty of a listing agent to present all property information accurately and to discover and disclose all material facts. Be sure to also emphasize the duty to disclose material facts to a third party applies to a buyer's agent working with a seller or seller's agent as well as to a seller's agent working with a buyer or buyer's agent.*

- a. Willful Misrepresentation
- b. Negligent Misrepresentation
- c. Willful Omission
- d. Negligent Omission

*Note: Explain how the prohibition against negligent omissions gives rise to the duty to discover and disclose material facts.*

**Important Note:** *Explain the difference in the standard for determining what is a material fact when disclosing information to a **principal** versus a **third party**.*

2. **General duty to treat any party honestly and fairly and to avoid conduct that constitutes improper, fraudulent or dishonest dealing. [G.S. 93A-6(a)(10) and case law]**
  
3. **Other duties arising from NC License Law and Commission Rules**
  - a. Duty to avoid making any false promises to a third party. [G.S. 93A-6(a)(2) and (3)]
  - b. Duty to properly account for any funds belonging to others which come into the broker's possession. [G.S. 93A-6(a)(7), (12) and (14); Rule A.0107]
  - c. General duty to act competently in handling real estate transactions. [G.S. 93A-6(a)(8); various rules]
  - d. Duty to deliver principal's offers and contracts involving principal to affected third parties. [G.S. 93A-6(a)(13); Rule A.0106]
  - e. Duty to disclose to third parties any referral fees or kickbacks received for services recommended or procured on third parties' behalf. [Rule A.0109]

**F. Other Laws Governing the Disclosure of Information in Real Estate Transactions**  
*[Level 3 except as noted below]*

1. **Stigmatized/Psychologically Impacted Properties** – Death, Illness or Conviction of Certain Crimes NOT a Material Fact in NC  
*[G.S. 39-50; 42-14.2]*
  - a. Property was occupied previously by a person who died or had a serious illness while occupying the property.
  - b. Fact that a sex offender required to register with law enforcement authorities occupies, occupied, or resides near a property.
2. **Unfair or Deceptive Trade Practices Act** *[G.S. 75-1.1][Level 1 – this subtopic]*
  - a. Applies to real estate agents
  - b. Possibility of treble damages
3. Sellers’ and Buyers’ Responsibilities under the **Common Law**
  - a. Doctrine of *caveat emptor*
  - b. Fraud or misrepresentation by seller
  - c. Agent's responsibilities under Real Estate License Law not affected by doctrine of *caveat emptor*
4. **NC Residential Property Disclosure Act**
  - a. Requirement for seller to provide disclosure forms
  - b. Applicability of and exemptions to the law
  - c. Real estate agents’ responsibilities to advise seller of disclosure requirement and assure timely delivery of disclosure forms *[Note: agent must NOT complete the forms for the seller]*
  - d. Review of *Residential Property and Owners’ Association Disclosure Statement* form *[The text of the form is included in Commission Rule 58A.0114; Form REC 4.22 is also available on the Commission website at [www.ncrec.gov](http://www.ncrec.gov)]*
  - e. Review of *Mineral and Oil and Gas Rights Mandatory Disclosure Statement* form *[Form REC 4.25 is available on the Commission website at [www.ncrec.gov](http://www.ncrec.gov)]*
5. **Sale of Property “As Is”**
6. **Residential Lead-Based Paint Hazard Reduction Act** (implementing HUD and EPA rules) *[Reminder: topic should have been covered in depth under Section VI. Environmental Issues in Real Estate]*

**G. Liabilities and Consequences of Agent’s Breach of Duties** *[Level 3]*

1. Disciplinary Action by NC Real Estate Commission Against Agent
2. Civil Liability of Agent
3. Criminal Liability of Agent

4. Civil Liability of Principal (for Agent's Misconduct)

## **H. Dual Agency [Level 3]**

### **1. Dual Agency Basics**

- a. Inherent potential conflict of interest – major practical problem centers around agent's common law duty to disclose all material facts to his/her principal.
- b. Unintentional, undisclosed dual agency
- c. Intentional, disclosed dual agency
  - (1) Informed, written consent of both principals required [G.S. 93A-6(a)(4) and Commission Rule 58A.0104]

### **2. Current Approaches to Handling Dual Agency in North Carolina**

- a. Limiting dual agent's duties by contract [*See the North Carolina Association of REALTORS® Standard Forms #101 Exclusive Right to Sell Listing Agreement and #201 Exclusive Buyer Agency Agreement*]
  - (1) Limiting disclosure of certain information to principals
  - (2) Limiting the duties of loyalty and skill, care and diligence
  - (3) Effectually eliminates agent's role as an *advocate* for either client
- b. Designated dual agency [*Commission Rule 58A.0104(i)-(n)*]
  - (1) Concept
  - (2) Duties of a designated agent
  - (3) Other provisions of Rule
  - (4) Practical considerations with practicing dual agency
- c. Individual broker dual agent under *Commission Rule 58A.0104(n)*

## **I. Duties and Liabilities of Principals [Level 3]**

1. Principal's Duties to Agent
  - a. Good Faith
  - b. Compensation
2. Principal's Duties to Third Persons
3. Liabilities and Consequences of Principal's Breach of Duties
  - a. Possible Criminal Liability
  - b. Civil Liability



## VIII. AGENCY CONTRACTS (SALES) AND RELATED PRACTICES [6.0 hours]

### A. Earning a Real Estate Brokerage Fee (Sales) [Level 3]

#### 1. Earning a Fee as a Listing Broker

- a. Legal Requirements for Establishing Claim to a Fee
  - (1) Active License in Good Standing
  - (2) Valid Listing Contract
  - (3) Procurement of *Ready, Willing and Able Buyer*
- b. Sharing of the Listing Broker's Fee
  - (1) The *In-House Sale*
  - (2) The Co-brokered Sale [*Note: MLS arrangements to be discussed in detail later in this section.*]
  - (3) Co-brokerage with Broker Licensed in Another State

#### 2. Earning a Fee as a Buyer's Broker

- a. *Retainer Fee and Success Fee*
- b. Sharing in the Listing Broker's Fee

### B. General Requirements for Agency Contracts (Sales and Rental Transactions) [Level 3]

#### 1. Requirement for Written Agency Agreement [Rule A.0104(a)]

- a. Basic requirement including signatures of all parties
- b. Exception permitting non-exclusive oral buyer or tenant agency contracts for an unspecified period of time

#### 2. Employment of Broker/Firm Must Be for a Stated Definite Period of Time

#### 3. Agreement Must Contain Prescribed Nondiscriminatory Language

### C. Listing Contracts [Level 3]

#### 1. Types of Listing Contracts [Detailed coverage follows this introduction to the basic types]

- a. *Full Service Listing Contracts*

*Note: Focus on the characteristics that make the three types different.*

- (1) Open
  - (2) Exclusive Agency
  - (3) Exclusive Right to Sell
- b. Limited Service Listing Contracts
  - c. Protection Agreements

2. **Typical Full Service Listing Contract Provisions and Practice Preparation of Listing Contracts** [*Use the NCAR Exclusive Right to Sell Listing Agreement form for illustration*]
  - a. Property Description (including fixtures and personal property)
  - b. Listing Price and Terms of Sale
  - c. Term of Agreement
  - d. Firm's Compensation (including *protection period* provision)
    - (1) Percentage of Sale Price (Commission)
    - (2) Flat Fee
    - (3) Net Listing
  - e. Cooperation with and Compensation to Other Firms
  - f. Firm's Duties
  - g. Seller's Representations and Duties
  - h. Dual/Designated Agency Authorization
  - i. Earnest Money
  - j. Names and Signatures of Parties
3. **Limited Service Listing Contracts**
  - a. Services commonly provided and typical provisions
  - b. Limits services but not duties, especially duties under the Real Estate License Law and Commission Rules
  - c. Typical fee arrangements
4. **Protection Agreement**
  - a. Purpose – agreement with seller for a single transaction, usually when dealing with a FSBO situation
  - b. See NCAR *Unrepresented Seller Disclosure and Fee Arrangement* Standard Form 150
5. **Co-listing by More than One Broker/Firm**
6. **Termination of Listing Contracts** [*See Discharge of Contracts under Section IX. Basic Contract Law*]

**D. Cooperation Among Brokers** [*Level 3 except as noted below*]

1. **Multiple or Cooperative Listing Services** [*Instructor Note: Use sample MLS print-out for illustration of how the MLS lists properties*]
  - a. Basic Operations
  - b. Broker Relationships in MLS/CLS
  - c. Advantage of an MLS/CLS
2. **Antitrust Law** [*Level 2 – this subtopic*]
  - a. Price fixing [any broker collaboration in setting fees]
  - b. Boycotting [Examples: (1) Any group of brokers joining to boycott certain service providers, such as certain appraisers, attorneys, home inspectors, etc. (2) An MLS excluding certain categories of brokers, such as limited service listing brokers, from membership.]

**E. Laws Affecting Solicitation of Clients/Customers [Level 1]**

1. **Solicitation of Active Clients of Other Firms/Brokers**
  - a. Violates the Code of Ethics of the National Association of REALTORS® (which governs members of that association)
  - b. May constitute *tortious interference with contractual relations*, which may be a basis for a civil lawsuit.
2. **Do Not Call Laws/Rules** (Federal and NC)
  - a. Basic restriction – the Do Not Call Registry
  - b. Primary exemptions
    - (1) Express permission or invitation
    - (2) Established business relationship (Note: 18-month limit)
    - (3) Personal relationship
  - c. Penalties
3. **Junk Fax Laws/Rules**
  - a. Restricts unsolicited fax transmissions without recipient's permission
  - b. Requires prominent *opt out* notice on fax cover sheet
  - c. Business relationship exemption (no time limit)
4. **CAN-SPAM Act**
  - a. Restricts spamming by email
  - b. *Opt out* option required
  - c. Minor effect on real estate brokerage practices

**F. Listing Practices (Working with Sellers) [Level 3]**

1. **Prelisting Activities** – Gather documents needed for prelisting meeting and advise seller to gather the following information:
  - a. Copy of Seller's Deed
  - b. Copy of Survey (if available)
  - c. Copy of Protective Covenants, Homeowners' Association Information (including dues and assessments)
  - d. Balance Due on Seller's Mortgage(s) and Status of Mortgage(s)
2. **Prelisting Meeting**
  - a. Agency Disclosure: Explain agency brochure (covered previously under Section VII. Brokerage Relationships) and company policies/services taking care to caution about sharing confidential information until agency is established
  - b. Inspect prospective seller's property and prepare listing data sheet
    - (1) Note all significant features *and defects*
    - (2) Identify personal property to be sold and fixtures not to be conveyed

- (3) Suggest needed repairs, improvements, staging, etc.
- (4) Make sure listing data is accurate and complete
- c. Inquire as to construction/alteration/repair permits
- d. Inquire as to septic system capacity (if property has septic system)
- e. Discuss marketing plan and brokerage fee
- f. Determine if a potential *short sale* situation exists
- g. Verify acreage of lot/parcel from seller's deed and/or survey
- h. Verify and properly report building square footage
  - (1) Conversion of acreage to square footage and vice-versa
  - (2) Square footage of variously shaped buildings and parcels of land with straight-line sides (Apply formulas for calculating the area of squares, rectangles, trapezoids and right triangles.)
  - (3) Square yards
  - (4) Volume (cubic feet)
  - (5) Cost/price per square foot/acre/square yard/cubic foot/front foot
  - (6) Acreage of a portion of a section of land (Government Survey System)

***Residential Square Footage Guidelines***

- (1) Terminology
- (2) Living Area Criteria – Note especially the treatment of stairs, rooms with low, sloped ceilings, and rooms that are open from the floor of one level to the ceiling of the next higher level.
- (3) Measuring and calculating square footage
- (4) Broker's responsibility

**3. Determine an Appropriate Listing Price**

- a. **Perform a Comparative Market Analysis** – Critical first step!  
*[Mention only here; cover in depth in Section XIII. Real Property Valuation]*
- b. **Calculate the Sale Price Needed to Net “X” Amount to Seller OR Estimating Net to Seller with Various Sale Prices**
- c. **Calculate Net Profit/Loss to Seller on Sale**
- d. **Review with Seller all Factors that Should Be Considered**

**4. Complete Listing Contract Form**

**Note:** *Listing price must be determined before seller signs listing contract!*

- 5. Comply with **North Carolina Residential Property Disclosure Act** including Mineral and Oil and Gas Disclosure if applicable *[Mention only; covered in depth previously in Section VII. Brokerage Relationships]*
- 6. Comply with **Residential Lead-Based Paint Hazard Reduction Act**, if applicable *[Mention only; covered in depth previously in Section VI. Environmental Issues in Real Estate]*

7. **Market listed property** per contract and customary marketing practices

**G. Buyer Agency Contracts** [*Level 3*]

1. **Types of Buyer Agency Contracts**
  - a. Nonexclusive
  - b. Exclusive
2. **Typical Provisions and Practice Preparation of Buyer Agency Contracts** [*Use NCAR buyer agency agreements: Standard Forms 201 and 203*]
3. **Termination** [*See Discharge of Contracts under Section IX. Basic Contract Law*]

**H. Working with Buyers** [*Level 3*]

1. **Provide and Review Working with Real Estate Agents Brochure; Explain Agency Relationship; Determine and Create the Agency Relationship** (Obtaining an Agreement)
  - a. Working with Buyers as a Seller's Subagent
  - b. Working with Buyers as a Buyer's Agent
    - (1) Option of Acting under an Oral Buyer Agency Agreement When Permitted
    - (2) Exclusive vs. Nonexclusive Agreement
    - (3) Option of Limiting Duration of an Exclusive Agreement
    - (4) Option of Limiting Exclusive Agreement to Specific Properties
  - c. Switching from a Seller's Subagent to a Buyer's Agent
  - d. Working with an Unrepresented Seller (e.g., FSBO) as a Buyer's Agent
2. **Prequalify the Buyer** (Preferable approach is to have buyer prequalified by a mortgage loan officer.) [*Note: qualification of buyers using expense to income formulas utilized by lenders is covered in depth in Section XI. Real Estate Financing*]
3. **Select Properties for Showing**
  - a. Consider buyer's desires and financial qualifications
  - b. Comply with Fair Housing laws
  - c. Do not limit selections to properties listed by the agent's firm and do not exclude from consideration properties listed by a limited services broker!

4. **Schedule Properties for Showing**
  - a. Disclose agency status to listing agent (or seller if a FSBO).
  - b. Request compensation by seller or listing firm if applicable.
5. **Show Properties**
6. **Discover and Disclose Material Facts to Buyer** [*Brief reminder here; covered previously* Section VII. Brokerage Relationships]
7. **Obtain or Verify Information for Buyer** (e.g., Property Disclosure Statements, HOA info, protective covenants, other info requested by buyer)
8. **Perform a CMA** (to assist buyer in determining an appropriate offer price) [*How to perform a CMA is covered in depth in* Section XIII. Real Property Valuation]
9. **Assist Buyer with Preparation of Offers; Present and Negotiate Offers** [*Mention only here; cover in depth under* Sales Contract Procedures in Section X. Sales Contracts and Related Procedures]
10. **Assist the Buyer with Preparations for Closing** [*Mention only here; cover in depth in* Section XII. Closing a Sales Transaction]

**I. Broker/Firm Employment Contracts with Affiliated Licensees** [*Level 1*]

1. Typical Provisions
2. Employee vs. Independent Contractor under IRS Rules

**IX. BASIC CONTRACT LAW [1.75 hours]**

**A. Basic Contract Concepts, Terminology and Classifications** [*Level 2*]

1. Definition of a Contract
2. Express/Implied
3. Bilateral/Unilateral
4. Executed/Executory
5. Valid (Enforceable)/Void (Unenforceable)/Voidable
6. Addenda/Amendments

**B. Essential Elements of a Contract** *[Level 2 except as noted below]*

1. Mutual Assent (Offer and Acceptance) *[Level 3 – this subtopic]*
  - a. The Offer
  - b. Acceptance
  - c. Counteroffers
  - d. Termination of Offers
2. Consideration
3. Capacity of the Parties
4. Lawful Objective

**C. Requirement for Reality of Consent** *[Level 2]*

1. Mistake
2. Fraud and Misrepresentation
3. Duress
4. Undue Influence

**D. Contract Law and Auction Sales** *[Level 1]*

1. Basic procedures
2. With Reserve vs. Without Reserve

**E. Statute of Frauds (applied to Real Estate Contracts)** *[Level 2]*

1. Contracts to Sell or Convey any Interest in Real Property
2. Leases of Real Property Exceeding 3 Years in Duration

**F. Other Concepts** *[Level 2]*

1. Uniform Electronic Transaction Act (UETA)
2. Discharge of Contracts
  - a. Agreement of the Parties
  - b. Full Performance
  - c. Impossibility of Performance
  - d. Operation of Law

3. Assignment of Contracts
4. Novation
5. General Rules for Interpretation of Contracts
6. Contract Remedies
  - a. Money Damages
  - b. Rescission
  - c. Specific Performance (Typically limited by the courts to being a remedy for a buyer upon breach by the seller, but may be permitted in some instances as a seller's remedy in some states.)

## **X. SALES CONTRACTS AND RELATED PROCEDURES [7.0 hours]**

### **A. Introduction [Level 2]**

1. Importance of the Sales Contract
2. Drafting of Sales Contracts by Agents Prohibited [*See G.S. 93A-6(a)(12); Commission Rule 58A.0111; and G.S. 84-2.1.*]
3. Importance of Using the Appropriate Standard Sales Contract Form
4. Sources of Contract Forms

### **B. The Offer to Purchase and Contract** (May be referred to as *Sales Contract*, *Purchase Contract*, *Earnest Money Contract* or some similar name in other states) [Level 3]

1. Requirements of Commission Rule 58A.0112 Regarding Sales Contract Forms
2. The *Offer to Purchase and Contract* (OPC) Standard Form 2-T and standard addenda forms jointly approved by the North Carolina Association of REALTORS® (NCAR) and the North Carolina Bar Association (NCBA). Also, the *Vacant Lot/Land Offer to Purchase and Contract* Standard Form 12-T and the standard addenda forms listed below.
  - a. Proper Use of the OPC Form and the Vacant Lot/Land OPC Form
  - b. Item-by-Item Review of all OPC Contract Provisions and Instructions on Proper Form Completion Using the *Guidelines*.
  - c. Review and Proper Use and Completion of Commonly Used Standard Addenda Forms (provided by NCAR and NCBA for use with the standard Offer to Purchase and Contract form) and listed below.



- (1) Additional Provisions Addendum (2A11-T)
- (2) Back-Up Contract Addendum (2A1-T)
- (3) Contingent Sale Addendum (2A2-T)
- (4) FHA/VA Financing Addendum (2A4-T)
- (5) Lead-Based Paint or Lead-Based Paint Hazard Addendum (2A9-T)
- (6) Short Sale Addendum (2A14-T)
- (7) Buyer Possession Before Closing Agreement (2A7-T)
- (8) Seller Possession After Closing Agreement (2A8-T)
- (9) Vacation Rental Addendum (2A13-T)

***Note:** Advise students that if, after licensure, they become a member of the NC Association of REALTORS®, the association has numerous other contract-related forms that deal with matters such as repair requests, negotiations, termination of contract, etc. If a licensee is not a REALTOR®, an attorney must prepare any contract-related forms provided by the licensee to the parties if the content of the document will affect the parties' legal rights.*

### **C. Sales Contract Procedures [Level 3]**

1. Offer and Acceptance
  - a. Offer and acceptance using traditional methods (direct personal dealing, delivery through agents, mail, phone communication, etc.)
  - b. Offer and acceptance by electronic means (e-mail, DocuSign, etc.)
2. Submitting Offers to Sellers (including back-up offers)
3. Handling Contract Modifications and Counteroffers
4. Handling Earnest Money and Due Diligence Fee *[Also covered subsequently in Section XX. Real Estate License Law and Commission Rules; instructors may choose where to cover this topic]*
5. Handling Option Money (with Option to Purchase Contracts)
6. Furnishing Copies of Offers and Contracts to Buyer and Seller

### **D. Installment Land Contract (Also referred to as a Contract for Deed or Land Contract) [Level 1]**

1. Definition and Purpose
2. Typical Provisions (Note: the **buyer** is typically responsible for property taxes, assessments, homeowner dues and property insurance during the contract period.)
3. Rights of Parties

4. Advantages and Disadvantages from Viewpoint of Both Buyer and Seller

**E. Option to Purchase Real Estate [Level 2]**

1. Definition and Purpose
2. Rights of Parties
3. Requirements of Options

**F. Agreements for Preemptive Rights [Level 1]**

1. Right of First Refusal (Distinguish from *option* and *right of first opportunity to purchase*.)
2. Right of First Opportunity to Purchase (Distinguish from *option* and *right of first refusal*.)

**Important Note:** *Buyers and sellers should be referred to an attorney for preparation of an installment land contract, option contract, right of first refusal, or right of first opportunity to purchase and advice regarding these documents. Drafting of such documents by a broker constitutes the unlawful practice of law.*

## **XI. REAL ESTATE FINANCING [7.0 hours]**

**A. Basic Finance Concepts, Terminology and Calculations [Levels as indicated]**

1. **Basic Concepts and Terminology [Level 2]**
  - a. Principal and Interest
  - b. Amortization and Debt Service (including PITI)
  - c. Equity
  - d. Usury
  - e. Points, Discount, and Yield
  - f. Loan Fees, Loan Value and Loan-to-Value Ratio
2. **Calculations [Level 3]**

**B. Mortgages and Deeds of Trust [Levels as indicated]**

1. **Basic Mortgage Terminology and Concepts [Level 1 except as noted below]**
  - a. Mortgage, Mortgagor and Mortgagee
  - b. Promissory Note (Mortgage Note)
  - c. Deed of Trust, Grantor, Trustee and Beneficiary
  - d. Lien Theory/Title Theory
  - e. Default
  - f. Foreclosure and Statutory Redemption Period [Level 2 – *this subtopic*]
  - g. Equity of Redemption

2. **The Mortgage Note** [*Level 1 – this subtopic*]
  - a. Essential Elements of a Valid Note

*Note: A promissory note is a form of contract.*

  - b. Special Note Provisions
    - (1) Acceleration Clause
    - (2) Prepayment Penalty Clause
    - (3) Due-On-Sale Clause
  - c. Negotiable Note vs. Nonnegotiable Note
  - d. Some states use a *bond* in lieu of a promissory note.
  
3. **The Mortgage (or Deed of Trust) Instrument** [*Level 1 – this subtopic*]
  - a. Distinction between a Mortgage and Deed of Trust
  - b. Essential Elements (Note: a mortgage or deed of trust is a form of contract)
  - c. Parties to Mortgages/Deeds of Trust
  - d. Rights and Obligations of Parties – Note: the mortgagor (borrower) is responsible for maintaining the pledged property to avoid the possibility of foreclosure due to *deferred maintenance*.
  - d. Signature of Spouse – Note: if husband and wife are buying as tenants by the entirety (joint tenants in many other states) and only one spouse signs the mortgage note, both spouses must still sign the mortgage or deed of trust.
  
4. **Rights of Borrowers** [*Level 2 – this subtopic*]
  - a. Right to Possession
  - b. Right (Equity) of Redemption
  
5. **Rights of Mortgage Lenders** [*Level 2 – this subtopic*]
  - a. Right to Foreclose
    - (1) Foreclosure Methods
      - (a) Judicial
      - (b) Power of Sale (*nonjudicial*)
      - (c) Strict
    - (2) Deficiency Judgment
  - b. Right to Transfer (Assign) the Mortgage
  
6. **Short Sale** [*Level 1 – this subtopic*]
  - a. Definition
  - b. Procedures
  - c. Rights of Parties
  - d. Broker's Role

**C. Sale of Mortgaged Property** [*Level 2*]

*Note: Explain briefly the legal effect on seller and buyer in each of the following sales.*

1. Cash Sale – Seller’s Existing Mortgage Paid Off
2. Sale with Assumption of Seller’s Existing Mortgage
3. Purchase Subject to Seller’s Existing Mortgage [*Level 1 – this subtopic*]  
*Note: Assumptions of mortgages and purchases subject to a mortgage occur very infrequently because of due on sale clauses in most modern mortgages.*
4. Short Sale [*Covered previously in this section*]

**D. General Categories of Residential First Mortgage Loans** [*Level 2 except as noted below*]

1. **Conventional Mortgage Loan**
  - a. General Characteristics
  - b. Conforming and Nonconforming
  - c. Insured [Private Mortgage Insurance (PMI)] vs. Noninsured (including loan-to-value requirement for no PMI)
  - d. Home Equity Loan and Home Equity Line of Credit (HELOC)
2. **FHA-insured Mortgage Loan**
  - a. Loan program operated by HUD
  - b. Title II, Section 203(b) Program – most widely used program
    - (1) Applies to residential 1-4 unit property loans
    - (2) General Characteristics
      - (a) Fixed-rate loans with up to 30-year terms made by lenders under FHA guidelines and FHA provides mortgage insurance
      - (b) Owner (borrower) occupancy required
      - (c) Maximum loan amount (minimum down payment) varies by region
      - (d) Interest rates set by lender, not the FHA
      - (e) Appraisal must be by FHA-approved appraiser
      - (f) No prepayment penalty
      - (g) Assumption restricted for post-1989 loans
  - c. Other FHA loan programs are available for condominium loans, graduated payment mortgages (GPM) and adjustable rate mortgages (ARM). [*It is only necessary that students be aware that other programs exist*]
3. **VA-guaranteed Mortgage Loan**
  - a. Loan program operated by the Veterans Administration
  - b. Generally residential 1-4 family dwellings loans made to qualified veterans by lenders under VA guidelines. The VA *guarantees* a portion of the loan amount (the amount of the veteran’s *guarantee* or *entitlement* stated in a *certificate of eligibility*) in lieu of mortgage insurance.

- c. General Characteristics
  - (1) Most significant feature – possibility of no down payment
  - (2) Lender sets interest rate, not the VA
  - (3) Requires a funding fee, which is similar to a mortgage insurance premium
  - (4) Veteran-borrower must be allowed to terminate sales contract if sales price exceeds appraised value stated in a *certificate of reasonable value (CRV)*
  - (5) Available to most veterans and unremarried widows/widowers of veterans
  - (6) No prepayment penalty
  - (7) Assumption restricted for post-1988 loans
  - (8) VA makes direct loans in some exceptional situations

4. **U. S. Department of Agriculture Rural Development Loan** [*Level 1 – this subtopic*]

- a. Operated through the Rural Development Housing and Community Facilities Programs of the U.S. Department of Agriculture.
- b. Both direct and guaranteed single-family housing loans (as well as various other mortgage loans) are available.
- c. Eligibility Requirements (Restricted to low- income residents of rural areas or very small towns.)
- d. Characteristics (Longer than normal repayment period, low down payment and subsidized interest rates.)
- e. Contact the NC state office at [www.rurdev.usda.gov/nc](http://www.rurdev.usda.gov/nc) to obtain loan and area office information.

5. **Purchase Money Mortgage** (Seller-financed loan)

**E. Types of Mortgage Loans** [*Level 1*]

1. **Types by Repayment Terms** (including basic characteristics of each)

- a. Fixed Rate - Level Payment (fully amortized)
- b. Adjustable Rate
- c. Graduated Payment
- d. Term (Interest Only)
- e. Growing Equity
- f. Buydown
- g. Balloon (partially amortized)

2. **Types by Purpose or Special Feature** (including basic characteristics of each)

- a. Purchase Money [Note: dual meaning of this term – (1) any loan obtained to purchase a property and (2) a loan financed by seller.]
- b. Construction
- c. Open End
- d. Blanket
- e. Package

3. **Types by Mortgage Priority**
  - a. First (or Senior)
  - b. Second, Third, etc. (Junior)

**F. Mortgage Priorities [Level 2]**

1. Effect and Importance of Recordation of Mortgages (Deeds of Trust) AND the Cancellation or Release of a Mortgage/Deed of Trust
2. Subordination of Mortgages

**G. U. S. Monetary Policy [Level 1]**

1. Role of the Federal Reserve — Control of Money Supply; Interest Rate on Loans to Member Banks (Called *Discount Rate*)
2. Effect on Mortgage Interest Rates
3. Effect on Availability of Mortgage Funds

**H. The Primary Mortgage Market [Level 1]**

1. Purpose – Origination of Mortgage Loans
2. Various Sources of Mortgage Loans
  - a. Direct lenders (e.g., banks, savings associations, credit unions, etc.)
  - b. Mortgage banking companies
  - c. Mortgage brokers
  - d. Others

**I. The Secondary Mortgage Market [Level 1]**

*Note: Explain the concepts of loan pooling and mortgage-backed securities as well as how the secondary market functions generally and the role of each of its major participants.*

1. General Concept and Operation
2. The Various Government-Sponsored Enterprises (GSE) and Their Roles
  - a. Federal National Mortgage Association (FNMA - Fannie Mae)
  - b. Government National Mortgage Association (GNMA-Ginnie Mae)
  - c. Federal Home Loan Mortgage Corporation (FHLMC-Freddie Mac)

**J. Residential Lending Practices and Procedures in Transactions Subject to TRID** [*Level 2 except for calculations*]

1. **Loan Application Procedures**

- a. Information and Documentation Typically Required
- b. Lender's Loan Estimate (LE) [*Cover subsequently under RESPA in Section XII. Closing a Sales Transaction*]
- c. *Rate Lock*
- d. Lender denial must be in writing

2. **Loan Underwriting Practices**

- a. Borrower Analysis (Qualifying a Buyer/Borrower)
  - (1) Credit Characteristics
  - (2) Adequacy of Assets to Close the Transaction
  - (3) Stability of Income
  - (4) Types of Acceptable Income
  - (5) Adequacy of Income (Factors Considered and Expense-to-Income Ratios)
    - (a) Conventional loan
    - (b) FHA Loan (Ratios are now 31/43)
    - (c) VA Loan
  - (6) Adequacy of Income [*Level 3 – this subtopic*] (*Calculations using typical expense-to-income ratios for conventional loans.*)
- b. Property Analysis
  - (1) Appraisal
  - (2) Title Opinion and Title Insurance
- c. Loan Analysis
  - (1) Yield (Interest Rate and Discount Points)
  - (2) Loan Term
  - (3) Loan-to-Value Ratio
  - (4) Mortgage Insurance
- d. Loan Commitment and Closing

**K. Financing Legislation (Federal)** [*Levels as noted below*]

1. **Truth-in-Lending Laws/Regulations** [*Level 2*]*—The Truth-in-Lending Act (as amended), and Regulation Z as administered by the Consumer Financial Protection Bureau (CFPB)*

- a. Basic Purpose and Applicability
- b. Disclosure of Credit Information to Borrowers
  - (1) Early Truth-in-Lending Disclosure Form was replaced by Loan Estimate (LE) and addresses four (4) chief disclosures: APR, finance charges, number and amount of payments, total amount financed.
  - (2) What APR includes
  - (3) What *finance charge* includes

- c. Applicability to *Arrangers of Credit*
  - d. Disclosure of Credit Terms in Advertising the Sale of Real Estate (by brokers or others)
    - (1) *Trigger Terms* (e.g., down payment, monthly payment, dollar amount of finance charge, number of payments or repayment period)
2. **Fair Credit Reporting Act** (and Regulation B) — Basic Purpose and Requirements [*Level 1*]
  3. **Equal Credit Opportunity Act** (and Regulation V) — Basic Purpose and Requirements [*Level 1*]

**Important Note:** Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (aka: **Dodd-Frank Act**) effective July 12, 2010, a new federal agency called the **Consumer Financial Protection Bureau (CFPB)** was assigned the **consumer protection** responsibilities of seven (7) different federal agencies (including the Federal Reserve Board, HUD and the FTC). The CFPB now is responsible for promulgating rules for the **Truth-in-Lending Act, RESPA, the Fair Credit Reporting Act, and the Equal Credit Opportunity Act**. One express mandate of the Dodd-Frank Act was that the CFPB consolidate the duplicate lender disclosures under TILA and RESPA, yielding the **TRID rules (TILA/RESPA Integrated Disclosures)** effective October 3, 2015.

## **XII. CLOSING A SALES TRANSACTION [7.0 hours]**

### **A. Pre-Closing Procedures [*Level 3*]**

1. **Selecting and Providing Information to Closing Attorney and Lender**
2. **Buyer's Due Diligence Process** (See NCAR/NCBA Offer to Purchase and Contract Standard Form 2-T for buyer's responsibilities under the contract)
  - a. Buyer's Loan
  - b. Appraisal
  - c. Property Survey
  - d. Property Insurance

**Note:** It is extremely important for the buyer **and seller** to have appropriate insurance coverage in situations when the closing is delayed, when the buyer will occupy the property before closing, or when the seller will occupy the property after closing. Failure to have proper coverage in these situations may result in the property being uninsured for some period of time.

- e. Property Inspections
  - (1) Wood-Destroying Pest (Termite) Inspection
  - (2) Home Inspection by Qualified Professional



- (3) Physical Inspection by Buyer (and Agent Working with Buyer) – Check for:
  - (a) Tenants
  - (b) Easements and Encroachments
  - (c) Recent Construction (Building Permit Obtained? Mechanic Liens?)
  - (d) Violations of Zoning or Restrictive Covenants
  - (e) Sewer Service or Septic System?
- (4) Septic System (if appropriate)
  - (a) Soil Suitability Test for Unimproved Land
  - (b) Functionality and Capacity of Septic System for Improved Land
- (5) Others (if needed or desired) – Lead-Based Paint Inspection; Radon Inspection; Asbestos Inspection; Mold Inspection, Well Water Inspection
- f. Resolution of Repair Issues
- g. Review of Restrictive Covenants and Homeowner’s Association Documents
- h. Other Matters of Interest to Buyer (e.g., whether planned property use is permitted; plans for adjacent undeveloped property; public or private status of subdivision streets, etc.)

*Note: Students will encounter the term percolation test on the National exam section. The term is technically obsolete in NC but still widely utilized.*

**3. Other Pre-Closing Matters**

- a. Title Examination by attorney (including personal property lien search and mechanic’s lien inquiry)
- b. Clearing of Title Defects by seller (if needed)
- c. Loan closing package provided to closing attorney by lender
- d. Broker holding earnest money transfers earnest money to closing attorney no more than 10 days prior to settlement (or notifies attorney that EM will be retained by escrow agent firm as credit toward brokerage fee)
- e. *Brokers working with seller and buyer perform advance review of settlement statement, if available*
- f. Buyer notified as to amount of guaranteed funds needed to close
- g. Closing attorney arranges for title insurance

**B. Closing Procedures [Level 3 except as noted below]**

- 1. Definitions of *Settlement*, *Settlement Meeting*, and *Closing*
- 2. Closing Methods
  - a. Escrow Closing [Level 1 – this subtopic]
  - b. Settlement Meeting Method (including role of attorneys and non-attorneys)

3. Settlement Meeting Procedures
  - a. Location where meeting is conducted
  - b. Parties attending settlement meeting
  - c. Final settlement statement review
  - d. Review and signing of documents
  - e. Collection of funds due from buyer
  
4. Procedures after the Settlement Meeting
  - a. Title Update and Recording of Deed and Deed of Trust
  - b. Disbursement of Proceeds and Brokerage Commission (Note the effect of the **Good Funds Settlement Act**)
  - c. Cancellation of seller's liens that were paid at closing (sometimes 30-60 days post-closing)
  - d. Income Tax Reporting Requirements

**C. Real Estate Settlement Procedures Act (RESPA) [Level 2]**

1. **Purpose and Applicability**
  
2. **Law is enforced by the Consumer Financial Protection Bureau (CFPB) and is implemented by rules referred to as *Regulation X*.**
  
3. **Major RESPA Requirements and Consumer Protections**
  - a. Information Booklet – must be provided to borrowers within three days of loan application.
  - b. Loan Estimate (LE) [formerly known as Good Faith Estimate (GFE)] disclosure must be provided by loan originators to borrowers within three business days following loan application.
  - c. Borrower Credit for “Yield Spread Premiums”
  - d. Buyer Closing Disclosure (BCD) form must be used by settlement agents in all transactions subject to TRID.
  - e. RESPA prohibits the payment of a *kickback* or referral fee **to any settlement service provider** for referring consumers.

*Note: Real estate agents may neither **pay** nor **accept** any referral fee from a settlement service provider, such as an appraiser, home inspector, etc.*

- Only real estate brokers are permitted to receive referral fees from each other. The law/rules also regulate *controlled or affiliated business arrangements* that provide multiple real estate services (e.g., brokerage, mortgage loan, home inspections, attorney services, etc.) under a *one-stop shopping* approach.
- f. Regulates reserve (impound or escrow) accounts for payment of property taxes and insurance premiums by limiting the amounts that lenders or loan servicers may require a borrower to pay into and maintain in the account.

- g. Loan servicers must (1) disclose to borrowers whether they can transfer the right to service the borrower's loan and (2) disclose to borrowers if the servicing is transferred.

4. **Loan Estimate (LE)**

- a. Purposes of form
- b. Relationship to BCD form
- c. Review of completed sample form

5. **Borrower Closing Disclosure (BCD) Form**

- a. Format and Features
- b. Correlation to LE
- c. Review of the complete 5-page sample form

**D. The Settlement Statement [Level 3]**

1. **Basic Settlement Statement Concepts**

- a. Debits (Charges) and Credits
- b. Prorations

*Note: Students should understand how to calculate prorations using both the methods listed below.*

- (1) 365-Day Year Method  
(Most commonly used method in practice)
- (2) 360-Day Year/30-Day Month Method  
(Method used on prelicensing course end-of-course examination and real estate license examination)
- (3) Items Commonly Prorated
  - (a) Real Estate Taxes
  - (b) Homeowner's Dues
  - (c) Rents (on rented properties being sold)

2. **Settlement Statement Entries and Calculations**

*Note: Students are expected to (1) be able to perform all basic settlement statement calculations, and (2) fully understand the Settlement Statement forms (BCD and Seller Closing Disclosure) and be able to perform their responsibilities with regard to verifying the accuracy of settlement statements prepared on the settlement statement form. Students should be afforded extensive practice with performing various settlement statement calculations.*

3. **Broker's Responsibilities Relating to Settlement Statements [Review pages 20-22 of the TRID article from the 2015-2016 General Update manual.]**

- a. Brokers should possess a thorough understanding of settlement statements in order to help protect the interests of transaction parties.
- b. For settlement statements prepared by an attorney, the broker is to confirm completion in accordance with the sales contract and to

*verify the accuracy of those entries about which s/he has direct knowledge* (such as sale price, earnest money, due diligence fee, brokerage commission, etc.) For amounts due to or from third parties, the broker may assume the amounts entered by the attorney are correct (in the absence of a red flag); however, the broker is expected to assure that: (1) all relevant charges and credits are properly charged or credited and (2) all calculations for prorated items, escrow reserves, interim interest, excise tax and *bottom-line* figures are correct.

- c. G.S. §93A-6(a)(14) requires brokers to furnish the seller and buyer a detailed and accurate settlement statement. A broker may adopt a settlement statement prepared by an attorney for this purpose, but must verify its accuracy as described in b. above.

### **XIII. REAL PROPERTY VALUATION [6.0 hours]**

#### **A. Introduction [Level 1]**

1. **Key Definitions and Law Changes** [*See Real Estate Valuation chapter in current NC Real Estate Manual.*]
  - a. Real Estate Appraisal
  - b. Broker Price Opinion (BPO) and Comparative Market Analysis (CMA) have exactly the same meaning under NC law.
  - c. NC law now permits an actively licensed non-provisional broker to perform a BPO/CMA outside of a transaction **for a fee**.
  - d. A broker's BPO/CMA may only estimate the **probable selling price** or **probable leasing price** of a property, not the *value* or *worth* of a property. Any estimate of a property's value is considered to be an appraisal and must be performed by a licensed or certified real estate appraiser.
  - e. A BPO/CMA provided by a non-provisional broker for a fee must be performed in accordance with Article 6 of the NC Real Estate License Law and Commission Rules.
2. **Regulation of Appraisers**
  - a. Federal Agencies
  - b. State Licensing/Certification by NC Appraisers Board

#### **B. Basic Valuation Concepts [Level 2]**

1. Definitions: *Appraisal, Value, Cost, Price* and *Market Value*
2. Forces and Factors Influencing Property Value
3. Basic Economic Principles of Value

**C. The Valuation Process (General Overview) [Level 1]**

1. Define of the Problem (Task)
2. Determine and Perform Appropriate Scope of Work
3. Collect and Analyze Data
4. Analyze to Determine Highest and Best Use
5. Apply Approaches to Value
6. Reconcile Approaches and Estimate Final Value
7. Complete Appraisal Report

**D. Approaches to Value (Appraisal Methods) [Levels as Noted Below]**

**1. Sales Comparison Approach [Level 3]**

*Note: Because the theory and methodology involved in this appraisal approach mirrors that used when a broker performs a BPO/CMA on a residential property, students should practice its use, with a focus on estimating the probable sales price of residential properties.*

- a. Definition and General Use; Terminology
- b. Procedures (Including Calculations)
  - (1) Data collection and analysis
  - (2) Selection of *comparables*
  - (3) Adjustments to sale prices of comparables
  - (4) Reconciliation and determination of value estimate
- c. Sales Comparison Approach Calculations

**2. Cost Approach [Level 2 except as noted below]**

- a. Definition and General Use; Terminology
- b. Estimate of Land (Lot) Value
- c. Estimating Building Costs
  - (1) Reproduction Cost vs. Replacement Cost
  - (2) Estimating Reproduction or Replacement Cost Using the Square Foot Method
- d. Estimating Depreciation
  - (1) Definition and Basic Concepts (e.g., effective age and economic life)
  - (2) Depreciation Methods
    - (a) Age/Life (Straight-Line) Method
    - (b) Market Abstraction Method [Level 1 – this subtopic]

- (c) Breakdown Method [*Level 1 – this subtopic*]
      - (i) Physical Deterioration (curable and incurable)
      - (ii) Functional Obsolescence (curable and incurable)
      - (iii) Economic Obsolescence (incurable only)
    - e. Formulating the Opinion of Value
    - f. Cost Approach Calculations [*Level 3 – this subtopic*]
- 3. **Income Approaches** (Direct Capitalization and GRM Methods Only) [*Level 2 except as noted below*]
  - a. Definition and General Use
  - b. Direct Capitalization Method
    - (1) Estimate gross potential income
    - (2) Derive net operating income estimate
    - (3) Derive capitalization rate by Market Abstraction Method
    - (4) Derive estimate of property value
  - c. **Gross Rent Multiplier (GRM) Method**
    - (1) Obtain sales price and gross income (rent) data on recently-sold similar (comparable) properties (Also record property and other sales data for comparative purposes)
    - (2) Derive GRM for each comparable
    - (3) Reconcile data to determine appropriate GRM
    - (4) Derive estimate of subject property's value
  - d. Calculations Related to Income Approach [*Level 3 – this subtopic*]
- 4. **Reconciliation of the Three Approaches to Value and Derivation of Estimate of Value** [*Level 1*]

**E. Broker Price Opinion (BPO)/Comparative Market Analysis (CMA)**

- 1. NC Real Estate License Law and Appraisers Act permit a **non-provisional** broker to perform a BPO/CMA **for a fee** for anyone without the need for an actual or prospective brokerage relationship with that person/entity, subject to certain restrictions:
  - a. The BPO/CMA may NOT serve as the basis for determining the **value** of property for the purpose of making a mortgage loan (e.g., first, second, refinance or equity line of credit).
  - b. The BPO/CMA must estimate only the **probable sales price** or **probable lease price** and may NOT estimate the *value* or *worth* of a property.
  - c. The BPO/CMA must be provided **in writing**.
  - d. The BPO/CMA must be performed in accordance with the provisions of Article 6 of the Real Estate License Law and Section 58A.2200 of the Commission's Rules.

2. Review of Standards for BPOs/CMAs under Article 6 of the Real Estate License Law and Section 58A.2200 of the Commission Rules
3. Requirements for BPOs/CMAs Performed for NO FEE
4. Real Estate Agent's Duty with Regard to Providing a CMA/BPO
5. The BPO/CMA Process

#### **XIV. LANDLORD AND TENANT [2.5 hours]**

##### **A. Relationship of Landlord and Tenant [Level 2]**

1. Definitions: Landlord (Lessor), Tenant (Lessee), Lease
2. Privity of Estate and Privity of Contract Concepts

##### **B. Laws Protecting Residential Tenants [Level 2]**

1. The NC Residential Rental Agreements Act
  - a. Obligations of Landlord and Tenant Are Mutually Dependent
  - b. Landlord's Statutory Duties
  - c. Tenant's Statutory Duties
  - d. Tenant Remedies for Breach by Landlord
2. Common Law
  - a. Concept of *Constructive Eviction*
  - b. Landlord's Liability under the Law of Negligence
3. Residential Eviction Laws/Procedures
  - a. *Self-help* eviction is prohibited in NC
  - b. Act Prohibiting Retaliatory Eviction
  - c. Statutory eviction procedures initiated in small claims court utilizing the court system must be followed
4. NC Tenant Security Deposit Act
  - a. Permitted Uses of Security Deposit
  - b. Accounting to the Tenant
  - c. Security Deposit Limits
  - d. Pet Deposits Permitted
5. Fair Housing Laws [*Briefly mention here – see Section XVI. Fair Housing*] and Law Prohibiting Sexual Harassment
6. Laws Protecting Public Housing Tenants
7. Laws Protecting Tenants in Foreclosure Situations

8. North Carolina Vacation Rental Act
  - a. Purpose, Applicability and Basic Definitions
  - b. Requirement for Vacation Rental Agreements to Be in Writing
  - c. Procedures for Handling Rents and Security Deposits
  - d. Tenant Protection When Rental Property is Sold
  - e. Expedited Eviction Proceedings
  - f. Landlord/Tenant Duties
  - g. Mandatory Evacuations: Refunds and Insurance

**C. Nonfreehold Estates [Level 2]**

*Note: Explain characteristics of each type of estate.*

1. Tenancy for Years
2. Tenancy from Period to Period (Periodic Tenancies)
3. Tenancy at Will
4. Tenancy at Sufferance

**D. Leases [Level 2 except as noted below]**

1. Types of Leases *[Explain use and characteristics of each type of lease]*
  - a. Fixed Rental (Flat or Gross) Lease
  - b. Percentage Lease (including *calculation* of rent) *[Level 3 – this subtopic]*
  - c. Other Lease Types *[Level 1 – this subtopic]*
    - i. Net Lease
    - ii. Graduated Lease
    - iii. Index Lease
    - iv. Full Service Lease
    - v. Ground Lease
2. Selected Common Residential Lease Provisions
  - a. Essential Provisions (Basically the same as any contract.)
  - b. Other Common Provisions
    - (1) Tenant's Use of Premises
    - (2) Assignments and Subleases
    - (3) Renewal and Termination
3. Landlord's Implied Covenant of Quiet Enjoyment
4. Review of Major Provisions in NCAR's Residential Rental Contract Standard Form 410-T.
5. Application of Statute of Frauds
6. Recordation of Leases



## **XV. PROPERTY MANAGEMENT [2.5 hours]**

### **A. The Owner-Property Manager Relationship** *[Level 2 except as noted below]*

1. Authority of Property Manager (Agent) Established by Property Management Contract
2. Duties of Property Manager (Agent) to Property Owner (Principal) and to Third Persons (Tenants and Prospective Tenants) *[Refer to Section IV: Brokerage Relationships: Law and Practice]*
3. Property Management Fee (Typical Fee Arrangements and Fee Calculations) *[Level 3 for calculations]*

### **B. Property Management Contracts (Typical Provisions)** *[Level 2]*

1. Property Description
2. Contract Period
3. Agent - Property Manager's Fee
4. Agent's Authority (Powers)
5. Agent's Responsibilities (Specific Duties)

### **C. Typical Property Management Duties** *[Level 2 except for calculations, which are Level 3]*

1. Preparing Management Plan (including a Rental Schedule and an Operating Budget) *[Include calculations.]*
2. Marketing the Property
3. Qualifying and Selecting Tenants  
*Note: Discuss factors that may/may not be considered.*
4. Executing Leases for Owner
5. Collecting Rents and Security Deposits
6. Handling Collected Monies According to Laws/Rules
7. Maintaining the Property
8. Preparing/Enforcing Rules and Regulations

9. Maintaining Property Insurance
10. Maintaining Accurate Records
11. Preparing Income/Expense Reports and Accounting to Owner [*Include calculations.*]
12. Performing Landlord's Legal Duties
13. Instituting Legal Actions (e.g., Tenant Eviction)
14. Complying with *Americans with Disabilities Act* and Fair Housing Laws

## **XVI. FAIR HOUSING [1.5 hours]**

### **A. Federal Fair Housing Act (Title VIII of 1968 Civil Rights Act) [*Level 3*]**

1. **Discrimination in the Sale or Rental of Housing Based on Race, Color, Religion, Sex, National Origin, Handicap or Familial Status**
  - a. *Blockbusting* (or *Panic Peddling*)
  - b. *Steering*
  - c. Discriminatory Advertising [**Note:** includes any Internet or social media posting]
  - d. Refusing to Sell, Rent, or Negotiate Based on Membership in a Protected Class
  - e. Discrimination in Terms, Conditions, or Privileges
  - f. Discrimination in the Financing of Housing (e.g., *Redlining* and related practices)
  - g. Discrimination in Provision of Brokerage Services
2. **Exemptions**
3. **Equal Opportunity Housing poster** must be displayed at real estate brokerage offices, model homes, lenders' offices and related places. Failure to display the poster is considered *prima facie* evidence of discrimination by HUD.
4. **Design and Construction of Multi-Family Housing**  
*Note: All buildings with four or more residential units constructed after March 13, 1991 must allow access and use by handicapped persons.*
5. **Enforcement and Penalties**
  - a. By administrative procedure through the Office of Fair Housing and Equal Opportunity (OFHEO) of the Department of Housing and Urban Development (HUD). Complaint must be filed within one year.

- b. By Private Lawsuit in Federal Court. Complaint must be filed within one year.
- c. *Criminal* penalties are provided for persons who coerce, intimidate, threaten or interfere with (1) a person's buying, renting or selling housing, (2) a person making a complaint of discrimination; or (3) a person exercising any rights under the fair housing law.
- d. Note that a NC complaint filed with HUD will actually be referred to the NC Human Relations Council for investigation because NC has an equivalent state fair housing law.

**B. NC State Fair Housing Act [Level 2]**

1. Unlawful Discriminatory Housing Practices

*Note: Provisions of the State Act are virtually identical to those of the Federal Act. Thus, a violation of either act is generally also a violation of the other act.*

2. Exemptions

*Note: Exemptions under the NC State Act are substantially different from those under the Federal Act.*

3. Enforcement and Penalties

- a. By administrative procedure through the N.C. Human Relations Council; complaints must be filed within one year
- b. By private lawsuit in state court; complaints must be filed within one year

**C. Federal Civil Rights Act of 1866 [Level 2]**

- 1. Basic Provisions (Law only addresses discrimination based on **race**, without exemptions.)
- 2. Enforcement by private lawsuit in federal court only.

**D. Americans with Disabilities Act (ADA) — Facility Accessibility and Use Requirements for *Commercial Facilities* or *Places of Public Accommodation* [Level 1]**

*Note: A real estate office is a place of public accommodation.*

**E. NC Law Prohibiting Sexual Harassment by Residential Lessors or Their Agents [Level 1]**

## XVII. FEDERAL INCOME TAXATION OF HOME OWNERSHIP/SALE

### [1.0 hour]

*Note: Licensees should **never** attempt to provide tax advice to clients or customers unless they possess special knowledge and expertise in the tax field that qualifies them to provide such advice. The limited instruction provided in this course in no way qualifies the student to provide tax advice and is merely intended to enable agents to recognize situations where a consumer might benefit from professional tax advice so that the agent might then refer the consumer to a qualified tax accountant or attorney.*

#### A. Tax Deductions from Income for Owners of Personal Residences [Level 2]

1. **Real Property Taxes** (Principal and Second Homes) – deduction taken in year(s) paid.
2. **Loan Expenses** (Principal and Second Homes)
  - a. **Mortgage interest** – includes *regular interest* plus any *late payment charges* or *prepayment penalty*); deduction taken in year(s) paid.
  - b. **Points** – includes loan *discount points* paid as *prepaid interest* at the time of loan origination to reduce the interest rate and *may* include some *loan origination fees* (consult tax advisor); generally must be deducted ratably over the life of the loan, but in some circumstances may be deducted in the year paid for a principal home.

#### B. Taxation of Gain on Sale of Principal Residence [Level 2]

1. Eligible Property (Principal Residence Only)
2. Terminology
  - a. *Basis* and *Adjusted Basis*
  - b. *Capital Improvement*
  - c. *Gain* and *Loss*
3. Rules for Taxation of Capital Gain (Note the major exemptions that exempt gains from taxation in a majority of residential transactions.)

#### C. Special Rules That May Apply to Some Residential Transactions [Level 1]

1. Installment Sales (or Contract for Deed in NC) — Basic concept
2. Like-Kind Exchange — Basic concept
3. Vacation Homes — Basic rule for owner use
4. Office in Home — Basic concept

## **XVIII. BASIC HOUSE CONSTRUCTION [1.0 hours]**

*Note: The purpose of this section is to provide the student with an **elementary** knowledge of basic house construction principles, techniques and terminology which will assist the student in listing/showing/selling such properties. Study is limited to the wood-frame (including brick veneer) construction because of its predominant use in NC.*

### **A. Architectural Types and Styles [Level 1]**

1. Basic Types
  - a. One story (ranch) – generally the most expensive to build per square foot
  - b. 1½ story
  - c. Multi-story (two, 2½ or three levels)
  - d. Split-level

2. Common Styles

*Note: House styles are numerous and vary greatly. Some styles even have different names depending on location. **This topic is not tested on the license examination.** Suggest instructors refer students to websites with illustrations of house styles, such as [www.architecture.about.com](http://www.architecture.about.com)*

### **B. Foundations [Level 1]**

1. Basic Components: Footings, slab, foundation wall, piers
2. Major Types
  - a. Concrete Slab
    1. Monolithic
    2. Floating
  - b. Basement
  - c. Crawl Space
3. Termite Protection
  - a. Chemical treatment of ground near foundation walls and piers
  - b. Pressure-treated wood
4. Ventilation
5. Waterproofing

### **C. Framing [Level 1]**

1. Framing Systems: Platform (most common), balloon, post and beam
2. Floors — Major Components: sill (or sill plate or mud sill), floor joists, girders, bridging, subfloor

3. Walls – Basic Components: studs, headers, top plate, sole plate
4. Roof and Ceiling Framing
  - a. Major Roof Designs (e.g., gable, hip, shed, flat, mansard, and gambrel)
  - b. Basic Components: ceiling joists, rafters, ridge board, eaves

**D. Exterior Walls [Level 1]**

1. Sheathing – plywood, particleboard, or comparable product
2. *Tar paper* (asphalt treated paper or felt) or *House Wrap* that has become the material of choice instead of tar paper.  
*Note: A product that combines the sheathing and house wrap is also available.*
3. Siding – wood, manufactured wood, fiber cement, brick veneer, vinyl, stucco, synthetic stucco (EIFS)

**E. Windows and Exterior Doors [Level 1]**

1. Windows
  - a. Types
    - (1) Sliding Windows: Double-hung and horizontal sliding
    - (2) Swinging Windows: Casement, jalousie, hopper, and awning
    - (3) Fixed Windows: Picture, bay and bow
  - b. Major Components: sill, header, jamb, sash, muntins & mullions
2. Doors — Major Types include: Flush, panel, sliding glass and French

**F. Roofing Components [Level 1]**

1. Roof Sheathing (Decking) – plywood or material similar to wall sheathing
2. Roofing Felt
3. Outer Roof Covering: asphalt & fiberglass composition shingles, wood shingles or shakes, tile
4. Eaves (including fascia board, soffit & frieze board)

**G. Insulation [Level 1]**

1. Insulation Materials (e.g., fiberglass batts or blankets, loose fill insulation, foam)

2. Required insulation under North Carolina Uniform Residential Building Code:
  - a. Walls R-13
  - b. Ceilings R-30
  - c. Floors R-19

*Note: Higher Values are required in the colder, mountainous counties of northwestern North Carolina.*

3. Weatherstripping
4. Moisture Control (vapor barriers and attic ventilation)

#### **H. Interior Finishes for Walls, Ceilings and Floors [Level 1]**

*Note: These are well known and should not need to be taught in class.*

#### **I. Heating/Air Conditioning Systems [Level 1]**

1. Heating Systems
  - a. Power Sources: The sun, gas, oil, electricity, coal, wood, etc.
  - b. Methods of Heating: Solar, warm air, hot water, steam, electric wire
  - c. Types of Heating Systems
    - (1) Gravity Warm Air (e.g., central furnace with no duct distribution system and fan)
    - (2) Central Forced Warm Air (the common system in homes built in the last half-century that use heat pumps or gas furnaces with fan and duct distribution system)
    - (3) Electric Baseboard
    - (4) Space Heating Systems (e.g., wood stoves, gas heaters, kerosene heaters, electric heaters, radiators, fireplaces, etc.)
    - (5) Solar Heating Systems (Active, Passive)
2. Air Conditioning Systems
  - a. Central Forced-Air (may be powered by electricity, gas or oil)
  - b. Room Air Conditioners
3. Combination Systems — Heat Pump

#### **J. Government Regulation [Level 1]**

1. North Carolina Uniform Residential Building Code
2. HUD Minimum Standards
3. Contractor Licensing

#### **K. Modular Homes – General Description [Level 1]**

## **XIX. BASIC REAL ESTATE INVESTMENT [2.0 hours]**

### **A. Selected Basic Real Estate Investment Concepts and Calculations [Level 1 for concepts; Level 3 for calculations.]**

1. Basic Concepts (and calculations for each)
  - a. Equity and equity buildup
  - b. Leverage
  - c. Cash flow after debt service (also referred to as *before tax cash flow* or *cash throwoff*)
  - d. Appreciation
2. Using a capitalization rate to evaluate a potential investment:
  - a. Determine estimated value to investor using known/projected *net operating income* (NOI) and known/projected *capitalization rate*
  - b. Determine the projected capitalization rate using a known purchase price and known/projected NOI
  - c. Determine the amount of NOI needed to produce a particular capitalization rate using a known/projected capitalization rate and known/projected value/purchase price

*Note: The investment calculations using a capitalization rate are the same calculations used in the income approach to value (previously covered in Syllabus Section XIII. Real Property Valuation), approached from an investment perspective rather than a valuation perspective.*

3. Using an equity dividend rate (*cash on cash* rate of return) to evaluate a potential investment:
  - a. Determine amount of equity needed to produce a particular rate of return on equity invested using a known/projected amount of cash flow and known/projected rate of return
  - b. Determine the rate of return on equity invested using known/projected cash flow and known/projected investor equity
  - c. Determine the amount of cash flow needed to produce a particular rate of return on equity invested using a known/projected rate of return and known/projected equity

### **B. Forms of Business Ownership (from investment perspective) [Level 2]**

1. Basic characteristics of the following forms of business ownership:
  - a. Sole Proprietorship
  - b. General or Limited Partnership
  - c. Limited Liability Company
  - d. Corporation
2. Advantages/disadvantages of each form of ownership for owning investment property



## **XX. REAL ESTATE LICENSE LAW AND COMMISSION RULES** **[8.0 hours]**

*Use the LICENSE LAW AND RULE COMMENTS as your basic instructional guide for this subject! The sequence of topics in this section is consistent with the topic sequence in the License Law and Rule Comments to facilitate instructor use of the Comments in presenting this material. The Comments explain many selected statutory and rule provisions, but they do not include the text of such provisions, nor do they address every provision. Thus, it is not sufficient to merely teach from the License Law and Rule Comments. Instructors will need to teach the actual text of many law and rule provisions in order for students to properly understand them.*

### **A. Requirement for a License [Level 2]**

1. Basic Licensing Requirement [G.S. 93A-1]
2. Definitions (License Categories)
  - a. Provisional Broker, Broker & Broker-In-Charge [G.S. 93A-2(a), 2(a1) and 2(a2)]
  - b. Limited Nonresident Commercial Broker [G.S. 93A-9(b); Rules A.1801, A.1803(a), A.1806, A.1807(a)-(c), A.1808]
  - c. Licensing of Business Entities (Firms) [G.S. 93A-1 and 2; Rule A.0502]
3. Activities Requiring a License [G.S. 93A-2(a)]
4. Activities of Unlicensed Assistants/Employees (Permitted and Not Permitted)
5. Exempt Activities [G.S. 93A-2(c)]

### **B. The Real Estate Commission [Level 1]**

1. Composition [G.S. 93A-3(a)]
2. Purpose and Powers [G.S. 93A-3(a), (c) and (f); G.S. 93A-6; G.S. 93A-4(d), 4A and 4.1, 4.2 & 4.3; G.S. 93A-9]
3. Disciplinary Authority [G.S. 93A-6(a)-(c)]

### **C. General Licensing Provisions [Level 2]**

*Note: This section is not discussed in the License Law and Rule Comments but is highly testable.*

1. Licensing of Individual Persons [G.S. 93A-4(a) and (a1); Rules Section A.1900]

- a. Provisional Brokers – Prelicensing and Postlicensing Education Requirements
  - b. Termination of “Provisional” Status and Consequence of Not Satisfying Postlicensing Education Requirement
2. Business Entity (Firm) Licensing [G.S. 93A-1 and 2; Rule A.0502] *[Covered previously in outline.]*
  3. License Expiration and Renewal [G.S. 93A-4(c); Rule A.0503]
  4. Continuing Education [G.S. 93A-4.1; Rules Section A.1700]
  5. Active and Inactive License Status [Rule A. 0504]
  6. License Reinstatement [G.S. 93A-4(c); Rule A.0505]
  7. Broker Supervision of Provisional Brokers [G.S. 93A-2(b); Rule A.0506]
  8. Payment of License Fees [G.S. 93A-4(a); Rule A.0507]
  9. Proof of Licensure [Rule A.0101(a)-(d)]
  10. Change of Name or Address [Rule A.0103]
  11. Reporting Criminal Convictions [Rule A.0113]

**D. Prohibited Acts/Conduct** *[Level 3]*

***Important Note:*** *Topics relating to G.S. 93A-6(a)(1), Misrepresentation and Omission of Material Fact, as well as G.S. 93A-6(a)(4) and (6) and Rule A.0104(d), Conflicts of Interest, are covered in Section VII. Brokerage Relationships: Law and Practice.*

1. Making False Promises [G.S. 93A-6(a)(2) and (3)]
2. Improper Brokerage Commissions [G.S. 93A-6(a)(5),(6) and (9)]
3. Unworthiness and Incompetence [G.S.93A-6(a)(8)]
4. Improper, Fraudulent or Dishonest Dealing [G.S. 93A-6(a)(10)]
5. Discriminatory Practices [G.S. 93A-6(a)(10); Rule A.1601]
6. Practice of Law [G.S. 93A-4(e); G.S. 93A-6(a)(11); Rule A.0111]
7. Violation of Any Rule [G.S. 93A-6(a)(15)]

8. Other Prohibited Acts (Other Grounds for Disciplinary Action) [G.S. 93A-6(b)]
9. Injunctive Relief for Unlicensed Activity [G.S. 93A-6(c)]
10. License Surrender [G.S. 93A-6(e)]
11. Imposition of Restrictions on License or Approval [G.S. 93A-6(f)]
12. Commingling trust money with personal funds [G.S. 93A-6(a)(12)]

**E. General Brokerage Provisions [Level 3]**

**Important Note:** Topics relating to **Rules 58A.0104 Agency Agreements and Disclosure and 58A.0112 Offers and Sales Contracts** are covered in Section VII. Brokerage Relationships: Law and Practice, Section VIII. Agency Contracts and Related Practices, and Section X. Sales Contracts and Related Procedures. A Broker's Responsibility for Settlement Statements is covered in Section XII. Closing a Sales Transaction.

1. Advertising [Rule A.0105]
2. Delivery of Instruments [G.S. 93A-6(a)(13) and (14); Rules A.0106 and A.0107(c)]
3. Retention of Records [Rule A.0108]
4. Brokerage Fees and Compensation [Rule A.0109]
5. Drafting Legal Instruments [Rule A.0111]
6. Disclosure of Offers [Rule A.0115]

**F. Broker-in-Charge [Level 2] [G.S. 93A-2(a1) and 93A-4.2; Rule A.0110]**

1. Requirement for a Broker-in-Charge; Sole Proprietors
2. Broker-in-Charge Qualification Requirements
3. Broker-in-Charge Duties/Responsibilities

**G. Handling Trust Funds [Level 2]**

**Important Note:** Syllabus calls for covering **basics of trust accounts and handling of trust money**. Detailed accounting/recordkeeping procedures for brokerage trust accounts are **NOT** covered in this course and are **NOT** tested on the license examination. Instructors and students are strongly urged to use the coverage of this topic in the **License Law and Rule Comments** to study/ teach this topic.

1. **Definition of Trust Money** [G.S. 93A-6(a)(12); Rule A.0116 (a)]  
*Trust money* is all money received by a broker acting in his/her fiduciary capacity as a broker (including money received as an escrow agent or as the custodian or manager of the funds of another person or entity which relate to or concern that person's or entity's interest or investment in real property). Most common examples: earnest money, down payments, tenant security deposits and rents.
  
2. **Trust Account Basics** (Other than Accounting and Recordkeeping Procedures)[G.S. 93A-6(a)(12) and (g); 93A-45(c); Rule A. 0116(c),(d),(e) and (f); Rule A.0117(b) and (c)(4)(B); *License Law and Rule Comments on Handling Trust Funds*]
  - a. Basic Required Features of Trust Account [G.S. 93A-6(g)]
  - b. Requirements of Tenant Security Deposit Act Regarding Location of Trust Account Holding Residential Tenant Security Deposits on Properties Located in NC [See LL&R Comments]
  - c. Proper Designation of Trust Account and FDIC Insurance [See LL&R Comments]
  - d. When a Trust Account Is Required [See LL&R Comments]
  - e. Number of Trust Accounts Required/Permitted [See LL&R Comments]
  - f. "Commingling" of Funds Prohibited [G.S. 93A-6(a)(12)]
  - g. Limited Exception to Commingling Prohibition Allowed to Cover Bank Service Charges on Trust Accounts [Rule A.0117(c)(4)(B)]
  - h. Requirements for Interest-Bearing Trust Account [G.S. 93A-6(a)(12); Rule A.0116(c)]
  - i. Broker-In-Charge Is Responsible for Trust Account [Rule A.0110(g)(4)]
  - j. Trust Account Custodian Other than BIC [See LL&R Comments]
  - k. Disbursement of Earnest Money to Settlement Agent; Use of Earnest Money in Trust Account [Rule A.0116(e)]
  - l. Handling Disputed Trust Funds [Rule A.0116(d)]
  
3. **Handling of Trust Money** [G.S. 93A-6(a)(12); G.S. 93A-45(c); *primarily* Rule A.0116]
  - a. Basic Deposit Rule – Deposit in trust account within 3 banking days following receipt [A.0116(a)]
  - b. Exceptions to Basic Deposit Rule [A.0116(b)]
    - (1) Trust Money Received by Provisional Broker – must be delivered upon receipt to the supervising broker with whom PB is affiliated
    - (2) Trust Money Received by a Limited Nonresident Commercial Broker [See Rule A.1808]
    - (3) Earnest Money or Tenant Security Deposits Paid by *Other than Currency* – must be deposited in trust account within 3 days following acceptance of offer or lease

- (4) Check or other negotiable instrument payable to seller for an option or due diligence fee [See Rule.]
- (5) Check or other negotiable instrument payable to third party escrow agent in sales transaction for trust monies [See Rule.]
- c. General Responsibility of Licensees to Safeguard Trust Monies and Prohibitions Against Misuse of Trust Monies [A.0116(g)]

**H. North Carolina Time Share Act [Level 1]**

- 1. Definitions [G.S. 93A-41(2), (7a), (9), (9a), (12) and (13)]
- 2. Registration of Time Share Projects [G.S. 93A-40]
- 3. License Requirement [G.S. 93A-40]
- 4. Developer's Obligation to Record Time Share Instruments [G.S. 93A-42]
- 5. Escrow Requirements [G.S. 93A-42(c) and (d)]
- 6. Developer's Public Offering Statement [G.S. 93A-44]
- 7. Purchaser's Right to Cancel [G.S. 93A-45]
- 8. Commission's Disciplinary Authority [G.S. 93A-54]
- 9. Penalties [G.S. 93A-56]
- 10. Requirements for Registrar and Project Broker [G.S. 93A-58]
- 11. Time Share Sales Operations [Rules Section B.0400]
- 12. Handling and Accounting of Funds [Rules Section B.0500]
- 13. Project Broker [Rules Section B.0600]

**XXI. AGENT SAFETY [0.5 hours]**

*Note: A video on agent safety is available on the Commission's website.*

## **XXII. REAL ESTATE MATHEMATICS [No separate time allocation]**

*Note: Due to classroom time limitations, instructors will need to utilize assigned homework to adequately teach real estate math.*

- A. Brokerage Commissions** (Sales and Property Management transactions)
- B. Estimating Net to Seller** after Brokerage Fee and other Closing Expenses are Paid (when setting listing price or considering an offer) [Also, sale price needed to net \$X to seller]
- C. Profit/Loss on Sale of Real Estate** (including percentages); Equity (including percentages)
- D. Area and Related Calculations**
  - 1. Conversion of acreage to square footage and vice-versa
  - 2. Square footage of variously-shaped buildings and parcels of land with straight-line sides, including irregular shaped parcels/buildings. (Use formulas for calculating the area of squares, rectangles, trapezoids and right triangles.)
  - 3. Square yards
  - 4. Volume (cubic feet)
  - 5. Cost/price per square foot/acre/front foot
  - 6. Acreage of a portion of a section of land (Government Survey System)
- E. Ad Valorem Property Taxes** (amount of tax using a given rate and assessed value; students should be able to perform calculations using either a rate in dollars per \$100 [NC method] or a mill rate [National exam section math].)
- F. Excise Tax on Property Transfers**
- G. Finance Calculations**
  - 1. Simple Interest (How to compute monthly interest, and amount of interest paid over life of a fixed-rate loan.)
  - 2. Monthly Principal & Interest Payment (How to compute monthly P & I payment using *factors*, if given the loan amount, interest rate, term and factor.)

3. Mortgage Debt Reduction (How to compute principal balance after **one** monthly payment, given previous principal balance, monthly P & I payment and interest rate, without using amortization tables.)
4. Loan Origination Fees and Discount Points
5. Loan Value (applying loan-to-value ratios)
6. Yield (on mortgage loans involving discount points using *rule of thumb* value)
7. Qualifying a Buyer [Using given maximum expense/income ratio and other relevant data, determining either: (1) the maximum PITI payment for which a buyer can qualify; (2) the maximum loan amount for which a buyer can qualify; (3) the minimum income required for buyer to qualify for a loan of “X” amount; (4) the maximum expenses buyer can have to qualify for a loan of “X” amount; or (5) whether or not buyer is qualified for a particular loan. Also, computing *housing expenses* and *long-term debts (recurring obligations)* using given data.]

#### **H. Settlement Statements**

1. Calculation of amounts to be entered on settlement statement when the licensee has the data necessary to perform the needed calculation [Examples: Prorations (real estate taxes, rent, HOA dues); interim interest; escrow deposits; etc.]
2. Calculation of bottom-line figures given all relevant needed information: Total settlement charges to buyer-borrower and seller; net due seller (cash to seller); cash from buyer-borrower.

#### **I. Valuation (Appraisal) Calculations**

1. Sales Comparison Approach and Comparative Market Analysis
2. Cost Approach
3. Income Approach
  - a. Income Capitalization
  - b. Gross Rent Multiplier

#### **J. Property Management Calculations**

1. Rent
2. Effective Gross Income
3. Operating Expenses

4. Net Operating Income
5. Before Tax Cash Flow (Cash Throwoff)
6. Percentage Lease (solving for amount of rent, amount of income or percentage of income)

**K. Investment Calculations**

1. Basic Calculations
  - a. Equity
  - b. Before Tax Cash Flow (Cash Throwoff)
  - c. Appreciation
2. Calculations using a capitalization rate to evaluate a potential investment
  - a. Determine estimated value to investor using known/projected *net operating income* (NOI) and known/projected *capitalization rate*
  - b. Determine the projected capitalization rate using a known purchase price and known/projected NOI
  - c. Determine the amount of NOI needed to produce a particular capitalization rate using a known/projected capitalization rate and known/projected value/purchase price
3. Calculations using an equity dividend rate (*cash on cash rate of return*) to evaluate a potential investment



# REAL ESTATE BROKER PRELICENSING COURSE

## BIBLIOGRAPHY

This Bibliography lists: (1) required student materials; (2) currently approved textbooks; (3) special instructor resources; (4) reference books and resource/study materials that may be helpful to instructors and students; (5) required NCAR Standard Forms; and (6) **publisher ordering information**.

### **Required Student Materials**

- (1) An approved textbook (see list below).
- (2) *North Carolina Real Estate License Law and Commission Rules (Also including the License Law and Rule Comments)*: Available for download or as published booklet for purchase on [www.ncrec.gov](http://www.ncrec.gov)
- (3) *Residential Square Footage Guidelines*: Available for download or as published booklet for purchase on [www.ncrec.gov](http://www.ncrec.gov)
- (4) *North Carolina Real Estate Agent Safety Guide* brochure published by the North Carolina Real Estate Commission and the North Carolina Association of REALTORS® Real Estate Safety Council: Available for download or as published booklet for purchase on [www.ncrec.gov](http://www.ncrec.gov)
- (5) **Standard NCAR Contract Forms** (as indicated in the outline): Available via Sharefile.

### **Currently Approved North Carolina Textbooks**

*Use of the most current edition is required.*

**Galaty, Allaway, and Kyle, *Modern Real Estate Practice in North Carolina***, 8th ed. Update (2014) Dearborn Publishing Company. Deborah Carpenter, DREI is a contributing author. Instructor Materials with test bank questions, Power Point slides, and *North Carolina Exam Guide* software also available.

**Mangum and Keck, *North Carolina Real Estate Principles and Practices***, Revised 7<sup>th</sup> ed. (2014) OnCourse Learning. Instructor's Manual with lecture outlines and PowerPoint slides available.

### **Special Instructor Resource**

**Hetrick, Moylan and Outlaw, *North Carolina Real Estate Manual***, (2015-2016 Edition), North Carolina Real Estate Commission. *To order, select the "Publications" tab on the Commission's website ([www.ncrec.gov](http://www.ncrec.gov)).*

## **Reference Books and Resource/Study Materials**

The materials listed below are not endorsed by the Commission but may be useful to instructors and/or students.

### **Real Estate Mathematics**

Armbrust, Bradley and Armbrust, *Practical Real Estate Math*, OnCourse Learning.

Crawford, Linda L., *Real Estate Math: What You Need to Know*, Dearborn.

Tamper, *Mastering Real Estate Math*, Dearborn.

### **Real Estate Reference Materials (Dictionary/Encyclopedia Style)**

Reilly, *The Language of Real Estate*, Dearborn.

### **Preparing for the Examination Books and Software**

*These resources primarily contain questions and sample examinations.*

Chandler, Gallagher, Reilly & Vitousek, *Exam Guide North Carolina: Interactive Software to Help You Pass the Real Estate Licensing Exam*, Dearborn.

Lawson, Virginia L., *AMP Real Estate Exam Prep*, OnCourse Learning.

Morgan, John, *Real Estate Exam Prep (AMP)*, On-The-Test Publishing.

Reilly and Vitousek, *Questions and Answers to Help You Pass the Real Estate Exam*, Dearborn.

Spada, Maria Darvin, *Real Estate National Licensing Exam Prep*, OnCourse Learning.

Sterling, Joyce Bea, *Guide to Passing the AMP Real Estate Exam*, Dearborn.

### **PSI Self-Assessment Examination (Online)**

PSI has available online self-assessment examinations that are similar to the National section of the NC license examination and that may be taken *online only for a fee*.

To access these examinations:

- Go to PSI's website at [www.psiexams.com](http://www.psiexams.com); Under *More PSI Services*, click on *Online Practice Test*, then click on *North Carolina on the side bar*, then click on *North Carolina Real Estate Practice Exam*.

- Purchase the *National Real Estate **Broker** Multiple-Choice **Self-Assessment** Examination* (with detailed explanations for each item) *Suitable for Broker candidates in IL, NC, SD and WA.*

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