

## NORTH CAROLINA REAL ESTATE COMMISSION

### Problem Topics on State Section of License Examination

June 2013

Candidates have had varying levels of difficulty with the specific topics on the State section of the license examination that are indicated below. The topics indicated by a number (e.g., 1) and a letter (e.g., A) are the general topic categories taken from the content outline for the State section of the license examination (see *Real Estate Licensing in North Carolina* booklet). The bulleted topics are the more specific topics or points with which candidates either had substantial difficulty or greater difficulty than Commission staff believes they should.

This information is based on performance for the one-year period March 1, 2012 – February 28, 2013. Remember that the current examination program is still relatively new. While the Commission has reliable performance information on questions about many specific topics/points, there are many other questions on specific topics/points that are now being used or that will be used in the future for which the Commission does not yet have performance information. Therefore, there may be additional specific problem topics/points that will be addressed in future problem topics lists.

This information is provided to assist instructors with their teaching and applicants with their study by understanding the topics where candidates' knowledge is relatively weak.

As used in this document:

- “*Comments*” refers to the Commission’s *License Law and Rule Comments*
- “*Prelicense text*” refers to the approved texts for prelicense courses
- “*Manual*” refers to the *North Carolina Real Estate Manual*

#### 1. N.C. Real Estate License Law and Commission Rules (21 Questions)

##### A. Requirement for Real Estate License

- **License required to receive compensation for referrals.** Only about half the candidates know that a person must have an active real estate license to be lawfully compensated by a broker for *referrals* of prospective homebuyers (or tenants or sellers, etc.) to the broker. *The form of compensation may not only be money, but also a gift of anything that has value* (e.g., free dinner coupons, free concert tickets, free swimming pool season pass, gift certificate, etc.). NC courts have ruled that referring business to a real estate broker for compensation in any form constitutes engaging in the real estate business and requires a license. *See Comments.*

- **Miscellaneous activities requiring a license and exempt activities.** A significant number of candidates don't know (1) that a real estate license is required to advertise and conduct an *auction* of real estate and (2) the statutory exemptions from the license requirement.

**Suggestion: See *Comments!*** Activities requiring a license, exemptions from licensing and permitted activities of unlicensed assistants are all well covered in the *Comments*. Teach using as many examples as possible! Candidates will be required to choose from described activities which one requires a license or which one is exempt from the license requirement.

## **B. License Categories and Status**

- **Limited Nonresident Commercial Broker License.** Fewer than 40% of candidates know the basic requirements for one to obtain this NC license and operate in the state. Though less important than other topics in this category, a question on this license may appear on some test forms. *See Rules Section 58A.1800.*

## **C. North Carolina Real Estate Commission (No problem topics)**

## **D. License Administrative/Maintenance Requirements**

- **Postlicensing education requirement.** Only half the candidates correctly answer questions about this requirement. Candidates need to know: What courses have to be taken? When must they be taken? What are the consequences of not taking the courses within the prescribed time frames? Note that there is no restriction on how quickly postlicensing courses may be completed and no prescribed sequence for completing the courses. *See Rule 58A.1902.*
- **License expiration and CE requirement.** Amazingly, a significant number of candidates don't know (1) that a license automatically expires on June 30 unless renewed within the preceding 45-day renewal period, and (2) when a provisional broker first has to complete CE. *See Rules 58A.0503 and 58A.1702.*

## **E. Agency Relationships, Contracts, Disclosure and Practices**

- **Dual Agency – or not?** Only about 50% of candidates understand when a dual agency situation exists and when it does NOT exist when working with more than one party and/or firm. Many candidates cannot apply the dual agency concept and rules to fact situations. *See prelicense text, Comments and Manual.*

- **Dual Agency – when must written consent of parties be obtained?** Fewer than half the candidates understand *when* the *written* consent to dual agency must be obtained in the context of fact situations. *See prelicense text, Comments and Rule 58A.0104(d).*

**Suggestions:** Instructors should use numerous examples of various fact situations (preferably enhanced with student role-playing) in their instruction about application of the dual agency rules. Pertinent study questions include:

- When does a **seller’s** agent become a dual agent? When is s/he NOT a dual agent when working with more than one party and/or firm on a transaction?
  - When does a **buyer’s** agent become a dual agent? When is s/he NOT a dual agent when working with more than one party and/or firm on a transaction?
  - What are the requirements and deadlines for obtaining written consent to dual agency?
- **Disclosure to buyer of seller agency.** A significant number of candidates thought that a broker proposing to work with a prospective buyer as a seller’s subagent must disclose his/her agency status *at initial contact with the buyer (rather than at “first substantial contact”)*. *See Comments and Rule 58A.0104(e).*
  - **Broker’s responsibility when buyer client asks a question that may be addressed in protective covenants.** Buyers often ask their broker questions about matters that are commonly addressed in protective covenants. A buyer’s question could relate to many issues, for example, fence, storage building, permission to expand, exterior paint color requirements, use of property for a home business, etc. When a question about land use in a subdivision likely to have protective covenants is raised by a buyer, what is the responsibility of a buyer’s agent in that situation? What if the broker is working with the buyer as a *seller’s* agent? What actions should the agent NOT take? When might the agent be guilty of a negligent misrepresentation or omission? *See Modern Real Estate Practice in North Carolina, Chapter 6 and Manual, Chapter 7, pages 176-8.*

## F. Selected Regulatory Practices

- **Handling Earnest Money – basic deposit rule.** Incredibly, only 44% of candidates know *when* an earnest money **check** received by a broker with an offer to purchase has to be deposited in the broker’s trust account. Also, when must a **cash** earnest money deposit be deposited in the broker’s trust account? *See Rule 58A.0116 (was 58A.0107 prior to April 1, 2013).*

- **Handling Rent Payments.** 31% of candidates answered incorrectly that if a broker deposits rent payments from tenants of several different properties in the same trust account, that would constitute “commingling.” *See Comments – Handling Trust Funds.*
- **Drafting Lease Provisions.** Many candidates are confused about whether a broker can ever *draft* additional provisions for a standard form contract or lease (as opposed to simply filling in the blanks of a form contract or lease). The answer is NO – a broker should never draft any contract provisions for a party with whom s/he is working. This is true even if the provision is dictated to the broker by the party requesting the provision to be added. In that case, the broker should allow the party to personally add the provision s/he desires in his/her own handwriting so that the party cannot later complain that the broker made a mistake when inserting the provision. A broker must avoid doing anything more than filling in the blanks of attorney-drafted forms and must refrain from giving any advice regarding the language a party may want to add to a contract. Drafting legal documents (or specific provisions) for others and giving advice about the legal effect of legal documents both constitute the practice of law, which is specifically prohibited by G.S. 93A-6(a)(11) and Rule 58A.0111.
- **Disclosure by Buyer’s Agent of Builder Bonus.** A substantial number of candidates do not understand a buyer agent’s disclosure requirements to his/her principal (the buyer) of any possible builder’s incentive for selling agents with regard to a property being shown to the buyer.

**Note:** *Disclosure of compensation or potential compensation (in any form) from a third party (such as a builder) must be made in a “timely” manner and if made orally, it must be confirmed in writing before the buyer makes an offer on the property in question. A disclosure is “timely” if it is made in sufficient time to aid a reasonable person’s decision-making (which, as a practical matter, means no later than the time the buyer is considering making an offer). See Rule 58A.0109.*

## G. Prohibited Practices

- **Duty to Disclose Material Facts (to Principal).** Fewer candidates than would be expected know that a seller’s agent working with a buyer should disclose to the seller the fact that the buyer making an offer is willing to pay more than the amount stated in the offer. *The only time an agent can legally withhold such information from his/her principal is when he/she is lawfully acting as a dual agent under an agreement that authorizes the agent to keep confidential such information about either principal. See G.S. 93A-6(a)(1) and Comments.*
- **Conflict of Interest.** Fewer candidates than would be expected know that it is a License Law violation for a broker working with a buyer as a seller’s agent to

seek to obtain the lowest possible price for the buyer. This is one of the most egregious examples of “conflict of interest” that violates the License Law as well as agency common law. *A broker representing a seller who acts in the best interest of the buyer is “acting for more than one party in a transaction [i.e., as a dual agent] without the knowledge [and written consent] of all parties for whom [the broker] acts [i.e, the broker’s principal(s)].” See G.S. 93A-6(a)(4) and Rule 58A.0104(d), as well as the Comments.*

- **Dishonored Payment for License Fee.** Only half the candidates knew that the Commission can commence proceedings to suspend or revoke a licensee’s license when the licensee’s payment for license renewal is dishonored by their bank. (Note also that if the dishonored payment is not made good by June 30, the licensee’s license will expire.) *See Rule 58A.0507.*

#### H. Time Shares (No problem topics)

## 2. Other North Carolina Laws and Practices (10 Questions)

### A. Property Taxation

- **Adjustment of Tax Rate and Assessed Value.** Fewer candidates than would be expected know how frequently NC counties and municipalities may adjust their property tax **rate** and assessed property **values.**) *See prelicense text.*
- **Assessed Value.** Fewer candidates than would be expected know the relationship of a property’s **assessed value** for *ad valorem* tax purposes in NC to the property’s **market value.** *See prelicense text.*

### B. Sales Contracts and Practices

- **Standard Offer to Purchase and Contract (OPC) form (1).** A substantial number of candidates do not know that the standard OPC form requires the seller to provide the buyer a *general warranty deed* and *legal access to a public right of way.* *See form in prelicense text or course materials.*
- **Standard OPC Form (2).** In a pretest question that was not scored and will be revised before being pretested again, when asked which of four statements is true regarding settlement under the OPC form, *only 17% chose the correct answer of: “A party who is acting in good faith with reasonable diligence in preparing for settlement is entitled to a delay in settlement of up to 14 days upon giving notice to the other party.” See form in prelicense text or course materials.*

### C. Closing Procedures

- **Preclosing Steps Relating to Prospect of Future Flooding.** 37% of candidates apparently don't understand that one reason lenders typically require a survey is to learn if the property is located in a FEMA designated flood hazard area. *See prelicense text and Manual.*
- **Responsibility of Brokers for HUD-1 Accuracy.** 43% of candidates think that brokers attending closing are expected to verify the accuracy of *every entry on the HUD-1 form, which is more than is required by the Commission under G.S. 93A-6(a)14*. Fortunately, 47% did know the correct answer which is clearly laid out in the *Comments*, but many more candidates should be choosing the correct answer!
- **Disbursement of Funds by Settlement Agent.** Only 59% of candidates know that disbursement under the Good Funds Settlement Act occurs upon verification by the settlement agent of all funds received from the buyer, lender and/or others and the recording of the deed and deed of trust, if any. Performance on a question about this matter should be much better. *See prelicense text and Manual.*

### D. Laws Governing Residential Tenancies

- **Statute of Frauds Related to Residential Leases.** 25% of candidates do not know the name of the statute (the Statute of Frauds) that makes an *oral* residential lease for more than three years unenforceable. *See prelicense text and Manual.*

### E. Residential Square Footage Guidelines

- Fewer candidates than would be expected know that under these Commission guidelines "heated living area" is usually determined based on *exterior measurements*. *See the Residential Square Footage Guidelines reprinted in the prelicense text or available to view or order through the Commission's website.*

### F. Miscellaneous Laws and Legal Concepts

- **NC Residential Property Disclosure Act.** Only 48% of candidates know that a seller may lawfully choose "No Representation" for each item on the disclosure form, even if the seller has actual knowledge of property defects. Other requirements of this law, and a broker's responsibility regarding disclosure of material facts not disclosed by a seller should also be studied carefully. *See prelicense text and Manual.*

### 3. General Real Estate Topics (9 Questions)

#### A. Basic Home Construction

- **Terminology.** 21% of candidates were unable to recognize the definition of a “sill.” See *prelicense text*.

#### B. Federal Income Taxation of Home Ownership/Sale

- **Terminology.** 38% of candidates do NOT know the definition of “basis.”

**NOTE: MATH QUESTIONS ARE NOT A PROBLEM!**

#### C. Calculations: Qualifying a Buyer and Performing a Comparative Market Analysis

Candidates are having no significant problem with math questions on qualifying a buyer (83% - 86% answer these questions correctly) or performing a CMA (83% - 89% answer these questions correctly).

#### D. Closing Statement Problem

Candidates had no significant problem with the four questions on each closing statement problem. Performance on all questions ranged from 77% to 85%.