

North Carolina Real Estate Commission

# Broker-in-Charge Best Practices Guide



1313 Navaho Dr., Raleigh, NC 27609

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## SECTION 1: DEFINITIONS

**Regulatory Authority** – The North Carolina Real Estate Commission (NCREC/ Commission). Voluntary regulatory authorities include, among other entities, the local Boards/Associations of Realtors, North Carolina Realtors, and the National Association of Realtors.

**Broker-in-Charge (BIC)** – The Broker who has been designated as the primary person having sole responsibility for the supervision and management of an office.

**Broker** – Any licensee, other than BIC, who is affiliated with the firm; aka associate broker.

**Employee** – Salaried employee as defined by the NC Department of Revenue.

**Independent Contractor** – Individual who contracts for a specific task or job and is responsible for all expenses per the contract. (This may also be defined by the NC Department of Revenue.)

**Licensee** – Broker, agent, sales associate, broker associate, provisional broker, etc. In North Carolina, a licensee is any person or firm who/which holds a North Carolina real estate license.

### **Assistant**

- **Licensed Assistant** – A person who is licensed under the supervision of the BIC, who works and exclusively assists the BIC or a team, group, or individual licensee also licensed under the BIC. The BIC, in conjunction with the employing licensed individual, group, or team, is responsible for all acts of the assistant.
- **Unlicensed Assistant** – A person who is unlicensed and assists the BIC or a team, group, or individual licensee, and who is prohibited from performing activities that require a license. The BIC, in conjunction with the employing licensed individual, group, or team, is responsible for all acts of the unlicensed assistant.

**Firm** – Corporation, Partnership, Limited Liability Company, Sole Proprietorship. Note that in NC, any business entity (other than a sole proprietorship) must obtain a firm license prior to conducting brokerage activity.

**Office** – Any place of business where acts are performed for which a real estate license is required or where monies received by a broker acting in a fiduciary capacity are handled or records for such trust monies are maintained.

**Branch Office** – An extension of a main firm location (additional operating location). Any office other than the firm's principal office.

**Branch Office BIC** – An affiliated broker designated as the primary person having sole responsibility for the supervision and management of a branch office location. In North Carolina, the principal office and each branch must have its own BIC. A broker may serve as the BIC for only one office location of a firm.

**Team or Group Members** – A group of licensees who form a workgroup to assist each other and work as a team in all transactions.

## **SECTION 2: WRITTEN OFFICE POLICIES**

Written office policies are useful for standardizing operational tasks and expectations, which in turn is an important component of a brokerage's enterprise risk management. The content will obviously vary with the size and complexity of the brokerage, and it may be started in a small way and grow in content as the BIC considers it necessary to augment procedures. The whole purpose is to provide guidance for all affiliated licensees, for employees, and any others who perform duties on behalf of the brokerage. It is a combination of instructions and procedures to be followed, and the documents or forms that should be utilized. The following section outlines the typical recommended subject matter that should be included in a written office policy manual. While the majority of this guide presumes the BIC's written policies are for affiliated brokers or employees, even a solo practitioner may find having written policies in place helpful for managing their own activities, planning for sudden challenges, and/or as their business grows.

1. **Orientation for New Licensees to the Company.** Orientation is the process of informing new employees about the nature of the organization, its policies, procedures, rules, and the duties and responsibilities of the job. Orientation is the employee's first step in the process of learning the norms, values, attitudes, and behaviors that are expected in the organization. It provides new employees with basic information about the duties of the job; working conditions; compensation and benefits; policies; procedures, and rules; and will also serve to correct any erroneous impressions which may have been created in the recruitment and selection process. *A firm's character begins at the top of the organizational chart. A BIC who wants his/her broker associates to conduct themselves with honesty and integrity and to strive for service excellence must model such behaviors himself or herself.*

Formal orientation programs are usually conducted within the first week of a broker joining an organization. Examples of the items to be included in an orientation program are listed below:

- A. Office Policy Manual
  - Read, date, sign agreement/acknowledgement page
  - Revision/Renewal of policy manual and acknowledgement page
  - Personal copy of manual
- B. Scheduled Meetings Attendance Requirements
- C. Training Session Attendance Requirements
- D. Licensing Requirements
  - Timely Payment of Renewal Fee
  - Compliance with education requirements (CE and Postlicensing)

- E. Accounting Duties/Requirements (broker policy and regulatory requirements)
    - Submission of Deposits to the Brokerage
    - Cash policy, including whether such payments accepted, identification of party making payment, purpose, receipts
    - Other
  - F. Transaction Flow Process/Requirements
    - Create a checklist of documents for each type of transaction (i.e., for sales – buyer agency agreements, listing agreements, Working with Real Estate Agents brochure, inspection reports; for property management – property management agreements, invoices, work orders, etc.) to ensure that licensees review the proper documents with clients and customers, and obtain signatures when required
  - G. Identification of Go-To Person(s) for Questions/Problems
  - H. Sexual Harassment
  - I. Discrimination
  - J. Personal Safety Procedures/Requirements
    - Review the Commission’s “North Carolina Real Estate Agent Safety Guide.”
  - K. Other
2. **Employment (or Work) Contract.** The BIC should have a written agreement with all licensees affiliated with the BIC whether that relationship is as an employee or an independent contractor. The agreement should spell out various terms of the relationship – it should be reviewed and/or renewed periodically. Following are some of the items that should be addressed in the agreement:
- A. **Terms.** This will establish the type of relationship that will exist between the BIC and the licensee, as well as define the extent of BIC supervision of the licensee and any assistant(s) (licensed or unlicensed). In general, the BIC is ultimately responsible for the actions of anyone in the firm and the BIC may want to have the authority to terminate anyone in the firm. All listings, contracts, service agreements, etc., are the property of the BIC or firm. Items to address:
- Independent contractor or employee
  - Personal assistants (licensed or unlicensed). An unlicensed assistant is prohibited from performing licensed activities. The BIC (and/or licensee) who engages any assistant to work for the firm is responsible for the acts of the assistant and should confirm what activities the assistant performs comply with license law
  - Teams or groups
  - Ownership of listings, contracts, management agreements, etc. (firm vs. individual licensee or team)
  - Licensee’s personally owned real property – sale or lease thereof
  - License renewals
  - Continuing education and/or postlicensing education
  - Other

- B. Compensation to Licensee.** All compensation received by licensees for performing licensed activities should be paid to them through the licensee's BIC. Under NC License Law, the BIC can agree that a full broker be paid directly and not through the BIC. Note that while a BIC may ask a closing attorney to issue commission checks directly to the BIC's full broker affiliate, it is up to the closing attorney whether to honor the request. Firms should not attempt to compel closing attorneys to pay their affiliated brokers nor threaten to boycott a settlement agent who refuses to pay compensation directly to individual brokers in addition to the listing and selling firms.

A BIC's written policy should address how compensation is to be paid to affiliated brokers, team members, and unlicensed assistants. The BIC should be sure to review related rules and regulations to make sure compensation disbursement is in compliance with Commission rules.

Items to address:

- Compensation schedule
- Compensation following termination
- Compensation to team members including unlicensed assistants
- Splits between licensees within office (referrals, members of a team) and co-brokerage referrals
- Withholdings, garnishment, remuneration assignment, etc.
- Annual income reporting – IRS 1099, etc.
- Communications with the closing attorney about disbursement
- Commission disputes
- Other

- C. Termination.** Termination of licensees could occur for many reasons, including: for cause, licensee's desire to transfer to another firm, death, or disability. Therefore, a BIC may have slightly different procedures regarding each type of termination and how it relates to the disposition of unfinished transactions, compensation, etc. Following are a few examples to consider:

- Disposition of agency agreements and contracts
- Unpaid expenses
- Licensee requested release to transfer to another firm versus firm decision to terminate licensee
- Communications with clients
- BIC review of agreements/contracts before a planned termination;
- Computer/Email access
- Process if a broker's license goes on inactive status temporarily
- Other

- D. Licensee Selling, Purchasing or Leasing Personally-Owned Real Property.**

The BIC should be very clear as to the requirements that will apply when a licensee sells, purchases, or leases personally-owned real property as both the BIC's policies

and North Carolina regulations should be followed. This includes any fee or commission that should be paid to the brokerage. The BIC's policy might address, among other things, required prior authorization by BIC, use of company tools and facilities, compensation, compliance with regulatory disclosures, etc. From a regulatory point of view, if a complaint is filed against a licensee involving the licensee's personal transaction, the BIC/firm may be included in the complaint if the transaction was advertised through the BIC/firm – thus the reason for licensees to keep their personal and real estate license business separate and clearly identified. Items to address:

- Broker/Firm policy
- Required Agency Agreements, if applicable
- Compliance with Commission Rule A .0104
- Required disclosures including disclosure of license status
- Errors & Omissions insurance coverage for personal transactions
- Personal residence vs. investment property
- Specific requirements when a broker proposes to purchase property for which they are listing agent
- Other

E. **Board/Association Membership.** The BIC should outline any requirements for maintaining membership in boards/associations. If the BIC is a member of a voluntary association, all licensees affiliated with the BIC may also be required to belong to the association. Most associations have a strict Code of Ethics and violations of the Code are met with consequences jeopardizing membership. Membership in the association may also include additional requirements, i.e., if a licensee is a member of REALTOR® organization, the licensee must also be a member of the Multiple Listing Service (MLS).

F. **Errors and Omissions (E&O) Insurance.** While the Commission does not require its licensees to obtain E&O insurance, a prudent BIC should consider such insurance as a means for managing the firm's risk. This is especially true in firms which recruit inexperienced brokers. The BIC should address any requirements related to such insurance in the employment or independent contractor agreement.

#### G. Other

3. **BIC Delegation of Duties (Multiple Responsible Brokers).** A BIC cannot delegate his duties under the license law/Commission rules and eliminate responsibility and liability. A BIC may appoint an alternate person, on a temporary basis, who may be in charge in the absence of the BIC, however, the BIC is fully responsible at all times. The BIC may be assisted by other licensees or unlicensed assistants in carrying out the duties of the BIC, but the BIC is ultimately responsible for all of those duties. See Commission Rule A.0110 for BIC duties.

Items to address:

- Communication with BIC, or BIC substitute(s)
- Mentoring Program
- Training Programs
- Team supervision
- Other

**4. Licensee Compliance with Regulatory License Requirements**

- A. The importance of maintaining an active real estate license is paramount. If regulatory requirements are not met on a timely basis, the license could be placed on inactive status or revoked or suspended. In order for a licensee to legally operate and attempt to limit their liability and risks, the licensee should timely meet all renewal requirements including paying the renewal fee and successfully completing continuing and/or postlicensing education, prior to each active license renewal term.
- B. The BIC should consider requiring brokers to immediately inform him/her if they receive notice of any inquiry or investigation by the Commission (or other governmental agency), notice of a possible claim from an E&O insurance carrier, or any demand letter from an attorney.
- C. In North Carolina, an active broker must also obtain a privilege license from the NC Dept. of Revenue and renew it annually.
- D. If the licensee is a member of a professional association, i.e., real estate boards/associations, multiple listing service, etc., the professional association may require the member to pay regular membership dues and complete additional training in specified content areas.
- E. In addition, if the licensee maintains certain professional designations, such designations may have certain yearly requirements that must be met in order to maintain the professional designation.
- F. The BIC should address these requirements with all licenses and have a system designed to consistently remind the licensees of the yearly requirements.
- G. If a licensee is placed on inactive status for not completing license renewal requirements, the BIC may also be included in the investigation for failure to supervise, unlicensed activity, false advertising, etc.
- H. In North Carolina, each office must have a BIC. If a licensee affiliated with the BIC proposed to conduct brokerage activity in a location other than the designated office, the BIC must determine whether a separately designated BIC is required. See Section 15 below for a discussion of determining when a location qualifies as an office.

**5. Additional Regulatory Compliance.** The BIC is responsible for performing the duties imposed on the brokerage and controlling the brokerage's real estate business, which includes the services and activities performed by licensees and others on behalf of the brokerage. The written office policies should reflect any applicable legal requirements, such as:

- A. License Law and Rules
- B. Related Laws (federal, state, county, city, etc.):
  - NC Residential Rental Agreements Act (NCGS 42-38 et seq.)
  - NC Tenant Security Deposit Act (NCGS 42-50 et seq.)

- NC Vacation Rental Act (NCGS 42A-1 et seq.)
- Other landlord-tenant laws
- NC Uniform Electronic Transactions Act (NCGS 66-311 et seq.)
- Fair-Housing Acts (federal and state)
- Tax laws (federal and state)
- Do Not Call Implementation Act
- Fair Credit Reporting Act
- Antitrust laws
- Sexual Harassment laws
- Real Estate Settlement and Procedures Act (RESPA)
- Truth in Lending Act (TILA)
- Foreign Investment in Real Property Tax Act (FIRPTA)
- Interstate Land Sales Act (ILS)
- Electronic Communications Privacy Act
- Reporting Cash Payments of Over \$10,000
- Other

6. **Establishing Competence.** Upon entering the real estate profession, a real estate licensee generally has only been exposed to basic real estate terminology, land descriptions, basic real estate facts, and instructor-formed scenarios. The licensee successfully passed an examination; however, most prelicensing education does not delve into the process of how to assist customers, how to obtain a listing, how to show a property, how to navigate a transaction, etc.

A. It is the BIC's responsibility to inform and educate the licensee with real estate knowledge and expertise necessary to adequately and professionally assist consumers through the real estate transaction process. The BIC may require that each licensee complete this process and could assign other mentors (within the office) to assist the newly affiliated licensee through the process. The BIC may wish to address:

- New Licensee Training Program(s)
- Mentoring Program
- Regular Office Meetings
- Forms/Contracts and Annual Changes
- Annual Rule/Law Changes
- CE/postlicensing requirements
- Other

B. A licensee should only work in the area of their expertise, i.e., residential sales, property management, commercial, land transactions, etc. As indicated previously, most prelicensing education is directed toward the basics of real estate, which is geared toward residential sales transactions. If licensees are to provide services in other specialty areas like commercial, property management or land transactions, additional education and certifications should be obtained by the licensee prior to providing services to the consumer. Other suitable options would be for the licensee to partner with another broker who is experienced in a specialty area or to refer the

prospect to another experienced broker in exchange for a referral fee. The BIC may wish to address:

- Specialization Training
- Mentoring or Shadowing
- Referrals
- Other

7. **Brokers' Relationships with Consumers.** The BIC should make clear all office policies related to the affiliated broker's relationship with customers and clients.

- A. Permitted Brokerage Relationship with Consumer / Permitted Services
  - Dual Agency
  - Designated Dual Agency
  - Property Management "on the side"
- B. Agency Disclosure – use of WWREA Disclosure Form, Q&A Brochure and agency agreements
- C. Fiduciary vs. Non-Fiduciary Duties
- D. Protecting Confidential Client Data
  - Email Safety
  - Material Facts
- E. Conflict of Interest Issues
  - Transactions where a licensee is a party
    - The licensee is an owner of a listed or rental property
    - The licensee is potential buyer of a client's property
  - Transactions where a licensee represents multiple buyers for the same property
- F. Mandatory Duties/Responsibilities
- G. Change in Agency Relationship
  - Buyer agent becomes dual agent/designated agent
  - Listing agent becomes dual/designated agent
  - Seller subagent wants to become buyer's agent
  - Termination of Agency
  - Replacement of Individual Broker
- H. Fair Housing Issues
- I. Other

8. **Organization and Administrative Procedures.** BICs must be actively engaged in the management of their related brokerage, ensuring that the business of the brokerage is carried out competently and in accordance with applicable regulations. The BIC should ensure that there are adequate resources and training available for licensees, employees and others who perform duties on behalf of the brokerage.

The written office policies may assist in this regard, and should address the following:

A. Process and Procedures:

1. Residential Sales:
  - Contract Usage and Resources
  - Listing – Obtaining and Servicing
  - Buyer Representation Agreement
  - Showings, Open House Prospects
  - Obtaining and Presenting the Offer to Purchase
  - Counter-Offer, Back-up Offers
  - Inspections and Surveys
  - Title and abstract
  - Appraisal
  - Closing Procedures
  - Commission/compensation/referral fee, etc.
  - Other (appointment scheduling, key security)
2. Lease Purchase (must be drafted by attorneys)
3. Procedures for Receipt and Disbursement of Checks for Third Party Escrow Agents and Due Diligence
4. Property Management
  - Written property management agreement with terms compliant to Rule A.0104.
  - Written lease with terms compliant with NCGS 42
  - Tenant Screening
  - Application Fees/ Tenant Security Deposits
  - Move-in/Move-out inspections
  - Repair requests
  - Eviction Process
5. Commercial
  - Contract usage and resources
  - Representation/agency agreements
  - Letters of intent; offer and acceptance
  - Due diligence practices
  - Appraisal
  - Closing Procedures
  - Commission/compensation/referral fees
  - Other

B. Disclosures: (including how and when)

1. Agency or broker relationship
2. Material facts or defects
3. Property Condition (Residential Property & Owners Association Disclosure) including when updating is necessary
4. Mineral, Oil, and Gas Rights Disclosure (MOGRD)
5. Beneficial Interest
6. Referral/Other compensation

- 7. Lead-Based Paint
- 8. Radon
- 9. Meth labs
- 10. Mold
- 11. Floodplain Certificate
- 12. Landlord and Tenant
- 13. Other

- C. Forfeiture of earnest money or items
- D. Return of earnest money or items
- E. Closing
- F. File reconciliation – timely delivery of transaction documents to firm/BIC
- G. Out of state referrals
- H. Other

9. **Advertising and Solicitation.** The rules applying to advertising and other solicitations generally restrict licensees from knowingly publishing real estate advertising containing any false statement or misrepresentation concerning real estate, a trade in real estate or the provision of real estate services. They also prohibit advertising information a broker reasonably should know is false. In addition, licensees are generally prohibited from publishing real estate advertising concerning real estate sales or other disposition unless the owner of the real estate, or an authorized agent of the owner, has consented to the advertising. These provisions would include pamphlets, letters and electronic communication, and would also cover press releases about real estate deals and even references in letters to matters pertaining to properties. A BIC is responsible for all advertising by a firm and its broker associates. Therefore, associate brokers should submit all new advertisements to the BIC for review prior to publication. The brokerage's written policies should address the following:

- A. Definition of advertising (as per License Law and Commission rules)
- B. Forms of advertising (newspaper, internet, social media, billboards, etc., including use of personal versus professional social media accounts)
- C. Distribution methods for advertising
- D. General mandated rules for advertising (federal, state, county, city, etc.)
- E. Brokerage approval process
- F. Client solicitation and consent
- G. Joint advertising
- H. Special promotions
- I. Self-promotion and marketing
- J. Marketing licensee's separate brokerage or non-brokerage activities
- K. Teams and Groups
- L. Advertising personal offices as branch offices
- M. Unlicensed assistants
- N. Personally owned property
- O. Responsibility for costs related to advertising
- P. Other

10. **Teams and Groups.** The BIC must ensure that there is an adequate level of supervision for related licensees, including groups of licensees who work together (possibly referred to as a “team or group”). As for any other licensees, employees, and others who perform duties on behalf of the brokerage, the BIC is responsible for ensuring that such groups are supervised accordingly and that they are conducted in such a way as to avoid misleading the public (e.g. that they do not give the impression of being a separate real estate brokerage). Written office policies may assist in this regard and should include direction on the following:

- A. BIC authorization
- B. BIC and team identification in advertising
- C. Advertising of team must meet local statutes and regulations
- D. Supervision of team members including provisional brokers
- E. Unlicensed persons
- F. Compensation
- G. Other

There are a number of resources relating to Teams on the Commission’s website, [ncrec.gov](http://ncrec.gov).

11. **Safety Procedures.** Real estate licensees routinely find themselves in situations in which they are alone with clients or customers about whom they very little information. The very nature of showing real estate to prospective buyers and tenants who are virtual strangers can make licensees, both men and women, susceptible to becoming victim of violent crimes.

- A. The BIC should develop and implement safety procedures to be utilized by licensees and office staff on a daily basis
- B. There are a number of personal safety guides and tips available for view, including the Commission’s North Carolina Real Estate Agent Safety guide <https://www.ncrec.gov/Brochures/Safetyguide.pdf> and the National Association of Realtor’s North Carolina Real Estate Agent Safety Guide; [www.nar.realtor](http://www.nar.realtor) (search “safety”), etc. Many guides contain common sense safety tips that have been compiled from crime victims and real estate associations across the country
- C. Additionally, several software applications (apps) have been developed to facilitate broker safety in various situations

12. **Professional Conduct.** The Commission expects its licensees to conduct themselves in a professional manner at all times. The BIC may wish to address in the written office policies:

- A. Communication (with customers, other licensees, the public)
- B. Dress Code
- C. Etiquette and Professionalism
- D. Equal Opportunity/Fair Housing
- E. Other

13. **Associations' Code of Ethics and Multiple Listing Service (MLS).** The responsibilities of a BIC can be complex and are required to be performed with an increasingly high degree of professionalism. For this reason, knowledge of the law and business standards is crucial to maintaining good standing as a real estate licensee. The most important source of standards is the applicable license law and Commission rules; however, the law and rules only set a minimum standard of legal conduct. Therefore, nearly all professional bodies establish a Code of Ethics in order to raise general business standards to a higher level and also to provide guidelines for interaction between professional members. The written office policies should address professional ethics in general, and professional association rules specifically, as applicable.

14. **Unlicensed Activity.** A broker must ensure that no unlicensed person connected to the brokerage engages in brokerage activities. The BIC must provide an adequate level of supervision for licensees, licensee assistants, employees, and others who perform duties on behalf of the brokerage. The BIC must take steps to deal with any conduct that may constitute a breach of the licensing requirements or applicable Code of Ethics. The written office policies may assist in this regard, and should include the following information:

- A. Identify which activities require a license (and which do not) and develop office policy. Include identification of permitted activities of unlicensed assistants
- B. Require brokers to have an active license prior to performing licensed activity
- C. Prohibit splitting a fee with an unlicensed person
- D. Develop a policy on reporting individuals who perform licensed activity without a license to the Commission
- E. Require any licensee who creates an entity other than a sole proprietorship to apply for a firm license from the NC Real Estate Commission
- F. Other

15. **Office and Branch Offices.** The BIC should be aware of where affiliated brokers are working and whether their activities would require the brokerage to inform the Commission of the existence of a branch office and a designated BIC of that branch office. Key Points:

- Every office must have a BIC
- An individual may be BIC only ONE office (per entity)
- Lone Exception: if two companies each have an office at the same physical location, then one person may serve as BIC of each firm at that one location

A. What Is An Office?

Commission rules define an office as “any place of business where acts are performed for which a real estate license is required or where monies received by a broker acting in a fiduciary capacity are handled or records for such trust monies are maintained.” To determine whether a location is an office, the first step is to determine what activity occurs there and if those acts require a real estate license. What acts require a real estate license? 1) managing

property and /or advertising and negotiating the purchase, sale or exchange of property, 2) for others, 3) for consideration. If a location is deemed an “office,” then there must be a BIC designated with the Commission for that location.

#### B. Where the Trust Monies are Handled or Records Maintained

While the test most commonly applied is “a place where acts occur that require a license,” the second prong of the definition was added to address the following situation.

Example: A real estate company operates ten offices where real estate brokerage activities are performed. Additionally, the company has an administrative center at an eleventh location where there are no affiliated brokers, because the company doesn’t represent the public or engage in “acts that require a license” at that location. However, all the trust monies and trust account-related records for all ten office locations are funneled through the administrative center, since all book-keeping is done at this location, i.e., paying the operating expenses for each office, issuing commission checks, paying salaried employees, etc. Even though no brokerage activity occurs at this administrative center, the company still must designate a broker- in-charge for that location because trust monies and trust records are maintained at this location, rather than each office managing funds it receives. The BIC’s primary, if not sole, responsibility at this administrative center will be to supervise all employees handling trust monies and maintain the trust account records.

The other ten offices must each have a BIC because agents at those locations are actively engaged in real estate brokerage, i.e., meeting the public and discussing available properties for lease, sale, purchase or exchange.

#### C. Factors in Determining if a Location is an Office:

- Does the location’s address appear in advertising, on business cards or letterhead, or in the Commission’s records?
- Do licensees use the location on an ongoing basis to meet the public to perform some aspect of customary brokerage service?
- Does the location operate on a permanent, or at least indefinite, basis with regular hours?
- Is the location regularly staffed by licensees?
- Are files and records, such as trust account records and transaction files, maintained there?
- Is the location designed and furnished to facilitate the regular conduct of brokerage business, e.g., desks, computers, copiers, telephones, conference rooms, etc.?

NOTE: Not all of these factors must be present before a location will be deemed an office and some factors may be given greater weight than others. For example, the following factors generally demonstrate that a location is an “office” under Commission rules:

- if a physical address is printed on the company’s letterhead, its agents’ business cards or appears in the company’s advertising,

and

- when the public goes to that address, one or more licensees are available to discuss current properties for lease or sale,  
and
  - the company's transaction files and, if applicable, trust account records are maintained at that address/location.
- Must a company, whether an entity or a sole proprietorship, have a brick-and-mortar office?

Regardless of whether the broker chooses to create an entity and obtain a firm license, or operate as a sole proprietorship, if that company is offering to represent others in real estate brokerage transactions, then it must have an office somewhere, even if it's in the broker-owner's home. This does not mean that the office must be a public meeting space. The Commission has never required a licensee to have a public meeting space. Within the bounds established by License Law, Commission rules, and other applicable law, how a broker chooses to engage in brokerage is up to the broker. The majority of offices currently designated with the Real Estate Commission (i.e., having a BIC) are the only office that the company maintains, and most of those companies only have 1-3 licensees affiliated with the company.

While a broker is not required to publish any physical office address in advertisements or on business cards or letterhead, the broker nonetheless will have an office somewhere — a base of operations where s/he keeps transaction files, does research, contacts clients, updates websites, etc., and the Commission needs to know where that space is if it wishes to visit. Understand that you cannot have an “office” without having an officially designated BIC for that location on Commission records!

Know too that a broker who chooses to have his/her office in the home and not publicize that address, must still request designation as a BIC at the home address on Commission records. However, the broker may provide the Real Estate Commission with an additional “delivery address” that is a post office box and instruct the Real Estate Commission to publish only the delivery address on the Commission's website, rather than the physical address.

#### D. Virtual Office (VO)

Understand that an independent broker who offers to provide real estate brokerage services to consumers must be a BIC, if they are not affiliated with a company where there is a BIC. A sole practitioner may very well have their office in their home, since so much of real estate brokerage is meeting consumers at outside locations or public places. Nonetheless, there are times when a conference room or office may be needed to meet clients or customers, but not on a full-time office lease basis. One option might be to have a “virtual office.” This term refers to an arrangement where the broker leases conference or meeting room space on an occasional or as-needed basis in a furnished office environment where the broker may meet clients or customers when not meeting them in their homes or other public place.

If a broker works primarily from home, but also occasionally leases conference

room/office space, where is their office? The broker can't declare themselves BIC at both locations, as one broker may only be a BIC at one location. Each case is reviewed on its own facts, but generally, the broker's true office is their home. Factors that might influence the analysis include:

- How frequently does the broker use the meeting/office space?
- Is the meeting space used as the address on business cards and in advertising?
- If the public visits that location are they greeted by a receptionist who may take messages?
- Where does the broker receive postal mail?
- Does a telephone number provided on business cards or advertising (in addition to the broker's cell phone) ring into the meeting space location?
- Where does the broker maintain their transaction files and trust account records?

The more these factors are present, the more it would appear that the broker is attempting to hold out to the public that the meeting space is their office.

#### E. Virtual Office Websites

Unlike a virtual office that is a physical place, a virtual office website is a presence on the internet that may or may not allow interaction with consumers. Whether the site is an Internet Data Exchange (IDX) website or a virtual office website (VOW), both are ethereal — there is no physical brick-and-mortar location to visit. In such a case, the independent broker who is actively representing consumers will have their office in their home unless they lease office space elsewhere.

The point for this discussion is that while an independent broker may conduct the majority of their real estate brokerage online, interacting with consumers and providing all required disclosures and agreements electronically, that broker must be designated as a BIC at their home, unless they have a brick-and-mortar office elsewhere.

#### F. Other Scenarios:

- A mall kiosk:  
A real estate company rents a small kiosk in the main aisle of a shopping mall where the company displays photos of its listings and other available properties. The company's name appears at the top of the kiosk and its affiliated brokers share rotating shifts at the kiosk that is staffed most afternoons and some weekends for a few hours each day at different times, depending on the agents' availability. During these shifts, the licensees hand out their business cards, greet the public, answer questions and promote their and the company's listings and services. The kiosk is minimally furnished and has no private meeting rooms. The mall kiosk is not an office. Although the company is promoting its services and its agents at that location, there are no transaction files maintained at the kiosk nor is there a physical address or telephone number for the kiosk.
- A model home:  
#1: A real estate company is hired by a builder/developer to market a

subdivision twenty miles away from the company's office. There is a model home at the subdivision that is used principally to display floor plans and quality of construction, but generally is not staffed by agents. The advertising for the subdivision gives the company's address and telephone number and all files relating to the subdivision lots are kept at the main office location, not at the model home. The model home has not become a branch office that requires a BIC.

#2: If the advertising for the subdivision gives the company's name and phone number but the address of the model home, agents staff the model home from 10am-7:00pm daily, and copies of information regarding available lots and homes and working files are kept at the model home, but the original files are at the main office and are regularly updated by agents after each shift at the model home

#3: If: the advertising for the subdivision has the company's name, but the address of the model home and the advertised telephone number rings directly into the model home, the model home is always staffed by agents whenever it is open, all the original records and files related to properties in that subdivision are kept at the model home, and, in addition to the model home being furnished, the company, for agents' convenience, installs a dedicated secure wireless modem, a desk, and a combined printer/copier/scanner.

Model Home #2 & #3: In the second and third examples, the model home comes increasingly closer to being a branch office. In both cases, the company in its advertising is directing the public to the model home address, rather than the original office location, and when the public visits the model home there is always a broker onsite to discuss various lots for sale and building options. However, in the second example, the public is calling the original office for information, the files and information at the model home are duplicate files with the originals regularly updated at the original office, and the model home has not been furnished with a wireless modem or other equipment to facilitate brokerage activity. Nonetheless, it is a close call.

In the third example, the model home has crossed most of the lines. The advertising is directing the public to the model home exclusively with no mention of the original office. There are agents onsite whenever the model home is open, the records and files for the properties are kept in the model home, and the model home has been equipped to facilitate brokerage activities. In this instance, the model home most likely is a branch office for which a BIC should be designated. Each situation is evaluated on a case by case basis.

The need to have a BIC for the model home increases if the model home is staffed primarily by provisional brokers. Why? Because provisional brokers won't be on active status and can't engage in brokerage activity unless they have a BIC and the BIC is responsible for directly and actively supervising provisional brokers in all brokerage activity. (See Commission Rule A.0506.)

Thus, provisional brokers have considerably less autonomy and ability to work independently than brokers not on provisional status.

If no BIC is required/designated at the model home/branch office, then the BIC of any licensees rotating through or staffing the remote location will remain responsible for supervising all affiliated agents in all brokerage activity wherever conducted.

- **A Rental Office in an Apartment Complex:**  
North Carolina License Law provides a limited exception for brokers who are managing property for others; the broker or firm may hire unlicensed salaried (W-2) employees to assist the broker in leasing and managing that property (commercial or residential) so long as the employee stays within the parameters of NCGS 93A-2(c)(6); they may show units, accept rental applications, accept security deposits or monthly rent payments, complete and sign preprinted form leases, but can't negotiate any lease terms or amounts of deposits, etc. This is legal unlicensed activity. While the broker must be a BIC at some location, the broker-employer is not required to have a BIC physically at the apartment complex (or office building or retail center) because no acts are being performed there that require a real estate license. (NOTE: the major question and liability is how does the BIC-broker-employer ensure that all monies received by his/her onsite unlicensed W-2 employees make it into the trust account?)

## 16. Other

### SECTION 3: RECORDS MANAGEMENT

Proper records management is vital to a well-run and efficient brokerage business. Ensuring that the files, accounts, records, and information are maintained and secured are fundamental steps toward limiting a broker's risk and providing public protection.

1. **Records Retention Schedule** (that complies with relevant laws). The Commission has specific laws and rules pertaining to record retention that must be followed. In North Carolina, brokers must retain all transaction records and trust account records for three (3) years from the conclusion of a transaction. Upon expiration of the time period, the records are to be destroyed in a secure manner. The BIC is responsible for assuring the appropriate maintenance and destruction of such records. Some examples of records that must be retained are service agreements, transaction file (consummated or not), trust or escrow account records, bookkeeping systems, i.e., canceled checks, expenditures, deposits, general account ledgers, etc., that pertain to a real estate transaction in which the broker provided services(s). Refer to Commission rules 21, NCGS 58A .0108 and A .0117 for more specific lists of documents to be retained.

Whether the retained records are hard copy documents or electronic images of documents, a reference log or filing system should be developed so that the records can be easily found and accessed. There should also be a notation on each file indicating when the records can be destroyed based on applicable retention time periods required.

**2. Personal Information Protection** (breach of consumer's personal information). If a licensee maintains a consumer's name along with personal identification numbers, i.e., SSN, driver's license, or credit card or financial information, the information should be encrypted or redacted so that in the event of a breach, the information cannot be obtained and used by a third party. Any paper records containing the aforementioned personal information should be kept in a locked cabinet or room to prevent theft.

**3. Disaster Recovery.** The brokerage should outline recovery procedures to be taken in the event of a disaster, i.e., fire, water damage, natural disaster, computer hardware crash, etc. Normally, these incidents occur without prior notice, thus the reason for an advance procedure plan. If possible, the brokerage should have a plan in place for minor incidents like a roof leak that damages IT equipment and transaction files versus a major natural disaster destroying the entire office contents. Of utmost importance is the following:

A. Ensure that data information is backed up nightly and stored at a remote location or taken off site. If all of the information that is kept by a brokerage is stored on a personal computer's hard drive, and the personal computer is destroyed in a disaster, or for that matter the hard drive crashed, all information will be lost – this is the reason for taking the backed-up information off site or backing the information to a remote location.

B. Transaction files that are in hard copy form should be maintained in one location within the office. Once a transaction file is closed, if at all possible, it should be scanned and made into an image that can be stored by a computer. Once the transaction file becomes a range of images, a file can be created and it can be included in the nightly backup of information.

C. Other

**4. Company Acquisition – Continuity of Record Retention.** The office policy should include a plan for storage and/or transfer of records in the event the brokerage is sold, merged into another company or otherwise discontinued business.

**5. Other**

## SECTION 4: TRUST ACCOUNTS

Trust accounts are regulated by the Commission and subject to audit. If a broker accepts funds or items of others, the broker must maintain a trust account that is styled in the name of the broker, firm, or registered trade name and the broker must be a signor on the account. Only designated BICs are authorized to hold trust monies in North Carolina. Upon annual renewal beginning in 2018, the banks in which a BIC holds trust accounts must be registered

with the Commission. The funds held in a trust account must never be commingled with funds of the broker. Monies or items of others shall not be placed in the broker's operating account. North Carolina brokers who perform property management should also review the North Carolina Tenant Security Deposit Act, which starts at NCGS 42-50.

1. **Account responsibility and authorized signor(s).** The BIC is ultimately responsible for the trust account but may authorize additional persons to have signature authority on the account.
2. **Names, numbers, and banks.** The BIC may maintain several accounts in the same bank or in different banks; however, the BIC shall ensure that all accounts are registered with the Commission and updated annually (during license renewal). BICs holding substantial sums of money for one client should be mindful of FDIC limits.
3. **Bank fees.** Bank fees are not to be deducted from monies of others that are held in trust by the broker, but rather must be paid for by the broker. If bank fees are required to be paid, the bank should deduct the fees from the brokerage's operating account, or the broker must place an amount of money into the trust account to cover customary administrative account fees; however, the amount of funds should be minimal and routinely (at least monthly) accounted for on a separate ledger.
4. **Interest on trust account(s).** The BIC must ensure that the client/consumers have consented in writing to the BIC keeping any interest payment. When the BIC's account bears interest, the BIC shall account for said interest as interest is earned. If the BIC does not keep the interest payments and it instead accrues to the client, the BIC shall keep detailed records pertaining to the interest earned and should disburse such accrued funds regularly. If the interest belongs to the brokerage, the BIC shall routinely sweep the interest from the account so as to not be considered as commingling funds.
5. **Proper handling of trust account(s).** See Commission rules 21, NCGS 58A .0116, .0117, and .0118 for a specific outline of these requirements.
6. **Handling of option fees and earnest money.** Individual contracts and/or contract addenda should address these to include the disposition of these funds in the event of default.
7. **Deposits received by broker and placed in a trust account.** The Commission requires that funds or items held by a broker shall be placed in a trust account within a certain time period. See Commission rule 21, NCGS 58A .0116. In general, if the brokerage agrees to hold earnest money, checks should be deposited within three banking days of acceptance of the offer to purchase; cash must be deposited within three days of receipt.
8. **Property management accounts.** In addition to the Commission's requirements pertaining to trust accounts, there are additional laws governing accounts holding a tenant's security deposit which can be found under the NC Tenant Security Deposit Act and Vacation Rental Act. All funds received by the broker in connection with the

management of property must be placed in the trust account (rents, security deposits, pet deposits, advance funds for repair, etc.). Funds belonging to others may not be placed in the broker's operating account. North Carolina brokers should review Commission rules 21, NCGS 58A .0116, .0117 and .0118 regarding trust account requirements.

9. **Adequate controls for maintaining trust accounts.** Ultimately, the BIC is responsible for all funds held in the trust account. Even if day to day account maintenance is performed by another individual, the BIC should do periodic reviews on a routine basis verifying that accounting procedures are being followed, including bank reconciliations. Property management accounts have proven to be very vulnerable and subject to abuse by both licensed and unlicensed individuals, since the accounts and receivables are in constant flux.
10. **Audit requirements.** The Commission conducts periodic audits that may or may not be scheduled in advance with the broker. Either way, the BIC should always maintain the accounts and files in accordance with the License Law and Commission rules. Maintaining accounts and records in an organized manner allows audits to be performed efficiently.
11. **Other.** The Commission offers a Basic Trust Account Procedures course to give brokers, BICs, and their staff training on the proper handling and accounting for trust monies. This course is delivered in a self-paced online format and provides credit as a CE elective course. The BIC might consider a requirement for periodic attendance at this course for licensees and unlicensed individuals who assist in trust account maintenance.

## **SECTION 5: CRISIS MANAGEMENT & DISPUTE RESOLUTION**

When people cannot agree or unexpected circumstances occur, the BIC should be ready to assist with a resolution. Most disputes can be handled by allowing the parties to voice their concerns. Sometimes, there is a ready solution at hand. Other disputes may require the use of a trained mediator or even an attorney to bring clarity to the facts at hand. Either way, the BIC should have a process outlined so that the licensees know the standard protocol when disputes occur. At a minimum, licensees should be strongly encouraged to involve the BIC when situations heat up.

Crisis management situations often occur quickly and without any advanced notice. For example, situations may range from a licensee being charged with a crime or a licensee's sudden death, to destruction of the office location and/or transaction records as a result of a disaster. The BIC should immediately evaluate the circumstances and consider damage control. Sometimes, bringing in outside assistance is helpful. The BIC should expect that, in some cases, the news media may contact the office to request a statement, so the BIC should ensure the person answering the phone knows the policy regarding speaking to the media. If the BIC has a policy setting out some simple steps that must be followed during crisis situations, the BIC will

reduce the brokerage's liability and risk. It is helpful to think about these hypothetical situations in advance and to have a plan in place.

## **SECTION 6: ADDITIONAL INFORMATION & RESOURCES**

The BIC should find ways to motivate those they supervise to comply with all applicable laws, rules, and ethics requirements. To assist with the challenges of broker supervision, the BIC may wish to consider the following:

- 1. Create a “List of Reminders” like the following:**
  - A. You are required to work under the BIC's supervision.
  - B. All funds or items of value are to be turned over to BIC promptly
  - C. Seek approval prior to placing any advertising or promotions not previously approved.
  - D. Do not procrastinate in paying your license renewal fee or completing other license renewal requirements (education) for an active license
  - E. If you have questions, never hesitate to ask.
  - F. Never ask an unlicensed person to perform a licensed activity.
  - G. Safety first.
  - H. Follow through with what you say you will do.
  - I. Always return a customer's call or communication.
  - J. Remember to treat other brokers and co-workers with the same courtesy as customers and clients.
  - K. If a conflict arises with a client, customer, or another broker, or if you find yourself in a situation you have not encountered before, consult your BIC immediately. If your BIC does not have an answer, then you or the BIC may contact the Commission (for Licensing and Education questions call 919-875-3700 or email [LS@ncrec.gov](mailto:LS@ncrec.gov), for Laws and Rules questions call 919-719-9180 or email [RA@ncrec.gov](mailto:RA@ncrec.gov)).
  - L. Other
  
- 2. Create a list of activities that do not require a license** (so that unlicensed individuals stay in compliance). For example:
  - A. Receiving/Forwarding phone calls to BIC or other active licensees in the firm.
  - B. Assisting a broker in assembling documents for closing.
  - C. Having keys made for the firm's listings.
  - D. Placing “for sale” or “for rent” signs on properties at the direction of a broker.
  - E. Etc.
  
- 3. Create a List of Resources.** See BIC Toolkit-Reference Material below

# BROKER-IN-CHARGE TOOLKIT

**Commission Website: [www.ncrec.gov](http://www.ncrec.gov)**

**For Access to Licensee Records, Forms, and Information**

## **Annual Calendar Reminders**

- May 15<sup>th</sup>: First day to renew licenses
- June 10<sup>th</sup>: Last day to complete Continuing Education
- June 30<sup>th</sup>: Last day to renew licenses
- December 31<sup>st</sup>: Last day to reinstate license after 6 months expiration

## **Real Estate Commission Prescribed Forms (all available at [www.ncrec.gov/forms](http://www.ncrec.gov/forms))**

- BIC Eligible Status and/or BIC Designation
- Request for License Activation/Broker Affiliation
- Firm License Application
- Limited Non-Resident Commercial Affiliation Form
- Deposit of Disputed Trust Monies Affidavit
- Request to Remove Licensee from Broker Supervision
- Notification of Change in Qualifying Broker
- Firm Office Address Change Request Form

## **Reference Material**

- Broker-in-Charge Best Practices Guide
- NC Real Estate License Law and Commission Rules
  - (from website or \$4.00 per booklet- order from Commissioner's distributor)
- Real Estate Commission eBulletin
- North Carolina Real Estate Manual
- Q& A Brochures
- NCREC Video Library