REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Real Estate Commission

RULE CITATION: 21 NCAC 58A.1712

DEADLINE FOR RECEIPT: Friday, May 13, 2022

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

In (a), line 5: The “S” in “status” should not be capitalized to remain consistent with its use in the balance of Subchapter 58A.

In the History Note, 93A-4.1 has been repealed. Please delete, and if applicable, replace.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.
21 NCAC 58A .1712 is amended as published in 36:16 NCR 1409 as follows:

21 NCAC 58A .1712 BROKER-IN-CHARGE COURSE

(a) The Broker-in-Charge Course is a 12-hour educational course that is required for all brokers designating as broker-in-charge a broker to attain BIC Eligible Status under Rule .0110 of this Subchapter. The 12-hour course is divided into an 8-hour module and a 4-hour module. A broker shall complete the 8-hour module before beginning the 4-hour module.

(b) In order to receive credit for completing the Broker-in-Charge Course, a broker shall:

(1) attend at least 90 percent of the scheduled instructional hours for the course;
(2) provide his or her legal name and license number to the course provider;
(3) present his or her pocket card or photo identification card, if necessary;
(4) personally perform all work required to complete the course; and
(5) complete the 12-hour Broker-in-Charge Course no later than 120 days after the broker registers for the course, no later than the following June 10, whichever comes first.

(c) Upon completion of the 12-hour Broker-in-Charge Course, a broker shall receive four credit hours of elective continuing education. The four credit hours will be awarded in the license year in which the broker completes the 12-hour Broker-in-Charge Course.

History Note: Authority G.S. 93A-3(c); 93A-4.1; 93A-4.2;
Eff. January 1, 2020.;
REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Real Estate Commission

RULE CITATION: All Rules

DEADLINE FOR RECEIPT: Friday, May 13, 2022

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Please review your History Notes to ensure that all statutory references are updated after the amendments to Chapter 93A made as part of SL 2021-163.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.
REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Real Estate Commission

RULE CITATION: 21 NCAC 58B .0101

DEADLINE FOR RECEIPT: Friday, May 13, 2022

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

In (a)(2) and (a)(5), lines 5 and 11 respectively, are you requiring the same thing? It appears as if both provisions require documentation of the developer's past real estate experience.

In (a)(6)(a) and (c), lines 14 and 16, please add articles (a, an) at the beginning of each clause.

In (7)(c) and in (9), lines 22 and 24, respectively, you require an Affidavit, but do not state what you're asking the affiant to swear to.

In (b), line 25, please substitute “that” for “which”.

In your History Note, please cite to specific provisions from Chapters 47A and 47C, rather than to whole chapters.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman
Commission Counsel
Date submitted to agency: April 29, 2022
21 NCAC 58B .0101 is amended as published in 36:16 NCR 1409 as follows:

**SUBSECTION 58B – TIME SHARES – TIMESHARES**

**SECTION .0100 – TIME SHARE PROJECT TIMESHARE PROGRAM REGISTRATION**

21 NCAC 58B .0101  APPLICATION FOR REGISTRATION

(a) Every application for time share project registration shall be filed at the Commission's office upon a form prescribed by the Commission. Every such application shall contain or have appended thereto:

1. information concerning the developer's title or right to use the real property on which the project is located, including a title opinion provided by an independent attorney performed within 30 days preceding the date of application;

2. information concerning owners of time shares at the project other than the developer;

3. a description of the improvements and amenities located at the project, including a description of the number and type of time share units;

4. a description of the time share estate to be sold or conveyed to purchasers;

5. information concerning the developer and his or her financial ability to develop the project (including the developer's most recent audited financial statement, any loan commitments for completion of the proposed time share project, a projected budget for the construction, marketing and operation of the time share project until control by purchasers is asserted, and details of any source of funding for the time share project other than consumer sales proceeds), and information concerning the marketing and managing entities and their relationship to the developer;

6. the developer's name and address, past real estate development experience and such other information necessary to determine the moral character of those selling and managing the project;

7. copies of all documents to be distributed to time share purchasers at the point of sale or immediately thereafter;

8. such information as may be required by G.S. 93A-52.

The form shall also describe the standards for its proper completion and submission.

(b) In accordance with G.S. 93A-52, an application for time share registration shall be considered to be properly completed when it is wholly and accurately filled out and when all required documents are appended to it and appear to be in compliance with the provisions of the Time Share Act, and, where the project is a condominium, the Condominium Act or Unit Ownership Act.

(c) An entity which owns time shares at a time share project where there are one or more existing registered developers may also apply to the Commission for registration of its time shares, provided that the entity does not control a registered developer, is not controlled by a registered developer, and is not in common control of the project with a registered developer.
(a) A timeshare program seeking registration shall apply to the Commission on a form available on the Commission’s website and shall, in addition to the requirements set forth in G.S. 93A-52, set forth:

1. The timeshare program’s physical and mailing address and telephone number;
2. The developer’s name, address, telephone number, email address, type of business structure with supporting documentation, legal counsel’s contact information, if any, and previous real estate experience;
3. Information concerning the developer’s title or right to use the real property on which the project is located, including a title opinion provided by an independent attorney performed within 30 days preceding the date of application;
4. A description of the timeshare estate to be sold or conveyed to purchasers;
5. The developer’s past real estate development experience and any criminal, bankruptcy, and occupational licensing history;
6. The developer’s financial information including the following:
   (a) Audited financial statement within the previous six months;
   (b) Loan commitments for completion of the timeshare program; and
   (c) Projected budget for construction, marketing, and operations of the timeshare program;
7. The Registrar, Program Broker, marketing entity, and managing entity’s:
   (a) Name;
   (b) Business and email address;
   (c) Real estate license number, if applicable;
   (d) Telephone number; and
   (e) Executed affidavit, if applicable;
8. The names and real estate license number of brokers associated with the timeshare program; and
9. A signed affidavit by the developer.

(b) An entity which owns time shares at a timeshare program where there are one or more existing registered developers may also apply to the Commission for registration of its timeshares, provided that the entity does not control a registered developer, is not controlled by a registered developer, and is not in common control of the program with a registered developer.

History Note: Authority G.S. 47A; 47C; 93A-51; 93A-52(a); 93A-52;
Eff. March 1, 1984;
Amended Eff. July 1, 2000; August 2, 1993; February 1, 1989; April 1, 1987;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018;
May 1, 2018;
21 NCAC 58B .0102 is amended as published in 36:16 NCR 1410 as follows:

**21 NCAC 58B .0102 REGISTRATION FEE**

(a) For the initial registration or subsequent registration of a time share project by a developer proposing to sell or develop 16 or more time shares, the fee shall be one thousand dollars ($1,000). For an initial or subsequent registration of a time share project in which the developer proposes to sell 15 or fewer time shares, the fee shall be seven hundred dollars ($700.00). For any time share registration by a homeowner association for the purpose of re-selling time shares in its own project which it has acquired in satisfaction of unpaid assessments by prior owners, the fee shall be four hundred fifty dollars ($450.00).

(b) Payment of application fees for time share registration shall be made to the Commission by certified check, money order, debit card, or credit card. Applications for registration not accompanied by the appropriate fee shall not be considered by the Commission.

(c) In the event a properly completed application filed with the Commission is denied for any reason, or if an incomplete application is denied by the Commission or abandoned by the developer prior to a final decision by the Commission, the amount of two hundred fifty dollars ($250.00) shall be retained by the Commission from the application fee and the balance refunded to the applicant developer.

The timeshare program registration fee pursuant to Rule .0101 of this Subchapter shall be:

1. one thousand dollars ($1,000) for programs with 16 or more units;
2. seven hundred dollars ($700) for programs with 15 or fewer units; and
3. four hundred fifty dollars ($450) for programs offering to resell 51 or more units through a homeowner association which has acquired the units in satisfaction of unpaid assessments by prior owners.

**History Note:**
Authority G.S. 93A-51; 93A-52;
Eff. March 1, 1984;
Amended Eff. July 1, 2016; April 1, 2013; July 1, 2000;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018.
May 1, 2018;
REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Real Estate Commission

RULE CITATION: 21 NCAC 58B .0103

DEADLINE FOR RECEIPT: Friday, May 13, 2022

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

In (b), lines 25 and 28, consider omitting the parenthetical and merely using the numerals for the dollar amounts, rather than spelling out the amounts. If you choose to keep the parentheticals, please add “.00” to the parenthetical.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman
Commission Counsel
Date submitted to agency: April 29, 2022
21 NCAC 58B .0103 is amended as published in 36:16 NCR 1411 as follows:

21 NCAC 58B .0103  RENEWAL OF TIME SHARE PROJECT TIMESHARE PROGRAM REGISTRATION

(a) A developer seeking a renewal of a time share project timeshare program registration shall submit a complete renewal application form during the month of June. A renewal application form is available on the Commission’s website at www.ncrec.gov. In the renewal application form, the developer shall set forth: on a form available on the Commission’s website that sets forth the:

1. the time share project timeshare program’s name, registration number, and mailing address;
2. the developer's name, telephone number, and email address;
3. the full legal name of brokers that are associated with the time share project and their real estate license numbers; names and license numbers of brokers associated with the timeshare program;
4. the name of all exchange programs associated with the time share project timeshare program along with a current copy of the Exchange Disclosure Report pursuant to G.S. 93A-48;
5. the name, address, email address, telephone number, real estate broker license number if applicable, and the assignment date for each of the following: for the:
   (A) the managing entity;
   (B) the marketing entity;
   (C) the registrar, registrar pursuant to G.S. 93A-58(a);
   (D) the independent escrow agent, independent escrow agent pursuant to G.S. 93A-42(a); and
   (E) the project broker, program broker pursuant to 93A-58(c);
6. a certification that the information contained in the renewal registration filed with the Commission is accurate and current on the date of the renewal application; and
7. the developer’s attorney or project broker’s program broker’s signature.

(b) The developer shall submit a nonrefundable renewal registration fee of eight hundred dollars ($800.00) payable to the North Carolina Real Estate Commission by certified check, money order, debit card, or credit card, for timeshare programs not offered for resale by a homeowners association. A homeowners association shall submit a renewal registration fee of four hundred fifty dollars ($450).

(c) A complete renewal application shall be accompanied by the prescribed fee and shall be received at the Commission’s office prior to the expiration of the certificate of registration as described in G.S. 93A-52(d).

(d) Making a false certification on a time share project registration renewal application shall be grounds for disciplinary action by the Commission, pursuant to G.S. 93A-54(b)(13).

History Note:  Authority G.S. 93A-51; 93A-52(d);
Eff. March 1, 1984;
Temporary Amendment Eff. May 23, 1985;
Amended Eff. July 1, 2016; April 1, 2013; February 1, 1989; September 1, 1985;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018;

Amended Eff. July 1, 2022; July 1, 2018.
REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Real Estate Commission

RULE CITATION: 21 NCAC 58B .0104

DEADLINE FOR RECEIPT: Friday, May 13, 2022

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

In (a), line 5, it is ambiguous what you are actually requiring. Is the notification due immediately, or within 30 days of the change?

In (b), please add oxford commas following “quality” on line 8 and on line 10, and following “control” on line 11.

In (b)(4), line 13, please rephrase to avoid the word “therewith” as this language is disfavored.

In (b)(6), lines 16-17, please define “significant” and “reasonable”. As drafted, it is ambiguous what you are requiring the developer to provide.

In (c), line 21, with respect to the requirement of “red ink” does this apply to font in a digital document, or are you requiring a hard copy that is edited by hand?

In (c), line 23, please add “also” between “shall” and “state”, as this list is in addition to what is already required in lines 21-22.

In (c)(4), lines 27 and 28, please omit the spaces in “time share” to be consistent with the rest of your Rules and the Session Law.

In (d), line 32, can you provide some circumstances under which you would require the developer to submit a new application?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.
21 NCAC 58B .0104 is amended as published in 36:16 NCR 1411 as follows:

21 NCAC 58B .0104 AMENDMENTS TO TIME-SHARE PROJECT—TIMESHARE PROGRAM REGISTRATION

(a) A developer shall notify the Commission immediately, but in no event later than 30 days, after any material change in the information contained in the time share project timeshare program registration.

(b) A material change shall be any change which reflects a difference in:

1. the nature, quality or availability of the purchaser’s ownership or right to use the time share;
2. the nature, quality or availability of any amenity at the project;
3. the developer’s title, control or right to use the real property on which the project is located;
4. the information concerning the developer, the managing or marketing entities, or persons connected therewith, previously filed with the Commission;
5. the purchaser’s right to exchange his or her unit; however, a change in the information required to be disclosed to a purchaser by G.S. 93A-48 shall not be a material change; or
6. the project or time share timeshare as originally registered which would be significant to a reasonable purchaser.

(c) Amendments to time share project registrations shall be submitted in the form of substitute pages for material previously filed with the Commission. New or changed information shall be conspicuously indicated by underlining in red ink. A timeshare developer seeking to amend a program’s registration shall submit each document to be amended with new or changed information underlined in red ink. Every amendment submitted shall be accompanied by a cover letter signed by the developer or the developer's attorney containing a summary of the amendment and a statement of reasons for which the amendment has been made. The cover letter shall state:

1. the name and address of the project timeshare program and its registration number;
2. the name and address of the developer;
3. the document or documents to which the amendment applies;
4. whether or not the changes represented by the amendment required the assent of the time share owners and, if so, how the assent of the time share owners was obtained; and
5. the recording reference in the office of the register of deeds for the changes, if applicable.

Developers of multiple projects must submit separate amendments and cover letters for each project for which amendments are submitted.

(d) The Commission may, in its discretion, require the developer to file a new time share project timeshare program registration application in the place of an amendment form. Such refiling shall be without fee.

History Note: Authority G.S. 93A-51; 93A-52(a3);
Eff. March 1, 1984;
Amended Eff. October 1, 2000; February 1, 1989; April 1, 1987;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018.

May 1, 2018;

21 NCAC 58B .0105 is amended as published in 36:16 NCR 1412 as follows:

21 NCAC 58B .0105  
NOTICE OF TERMINATION

(a) A developer of a registered time share project which, for any reason, terminates its interest, rights, ownership or control of the project or any significant part thereof shall immediately notify the Commission in writing on a form prescribed by the Commission for that purpose. Notice of termination to the Commission shall include the date of termination, the reasons therefor, the identity of the developer's successor, if any, and a report on the status of time share sales to purchasers on the date of termination. A developer seeking to terminate its interest in a timeshare program shall file a Notice of Termination form available on the Commission’s website and shall set forth the timeshare program’s:

(1) name;
(2) physical, mailing, and email address;
(3) telephone number;
(4) reason the developer is terminating its interest;
(5) date of termination;
(6) new owner, if the developer’s interest will be sold or transferred; and
(7) the signature of the developer.

(b) Upon receipt of a properly executed notice of termination of the developer's interest in a time share project, the Commission shall enter a notation of cancellation of registration in the file of the project, and shall notify the developer of cancellation. A developer's failure to give notice of termination as provided herein shall not prevent cancellation of the project’s registration under G.S. 93A-52.

History Note: Authority G.S. 93A-51; 93A-52(a); 93A-52:

Eff. April 1, 1987;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018.
May 1, 2018;
REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Real Estate Commission

RULE CITATION: 21 NCAC 58B .0201

DEADLINE FOR RECEIPT: Friday, May 13, 2022

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

In your History Note, the citation to 93A-44(8) is outdated, please remove and update.

Also in the History Note, do you need a citation to 93A-44(b)?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.
21 NCAC 58B .0201 is amended as published in 36:16 NCR 1412 as follows:

SECTION .0200 - PUBLIC OFFERING STATEMENT

21 NCAC 58B .0201 GENERAL PROVISIONS

(a) Information contained in a public offering statement pursuant to N.C.G.S. 93A-44(b) shall be accurate on the day it is supplied to a purchaser. Before any public offering statement is supplied to a purchaser, the developer shall file a copy of the statement with the Commission.

(b) In addition to the information required to be contained in a public offering statement by G.S. 93A-44, every public offering statement shall disclose to the purchaser of a time share complete and accurate information concerning:

(1) the real property type of the time share program, whether tenancy in common, condominium or other, and a description of the estate the purchaser will own, the term of that estate and the remainder interest, if any, once the term has expired;

(2) the document creating the time share program, a statement that it is the document which governs the program and a reference to the location where the purchaser may obtain or examine a copy of the document;

(3) whether or not the property is being converted to a time share from some other use and, if so, a statement to that effect and disclosure of the prior use of the property;

(4) the maximum number of time shares in the project, each recreational and other commonly used facility offered, and who or what will own each facility, if the project is to be completed in one development or construction phase;

(5) if the project is planned in phased construction or development, the complete plan of phased offerings, including the maximum number of time shares which may be in the project, each recreational and other commonly used facility offered, and who or what will own each facility, and the developer's representations regarding his or her commitment to build out the project;

(6) the association of owners or other entity which will ultimately be responsible for managing the time share program, the first date or event when the entity will convene or commence to conduct business, each owner's voting right, if any, and whether and for how long the developer, as time share owner, will control the entity;

(7) the location where owners may inspect the articles and bylaws of the owners association, or other organizational documents of the entity and the books and records it produces;

(8) whether the entity has lien rights against time share owners for failure to pay assessments;

(9) whether or not the developer has entered into a management contract on behalf of the managing entity, the extent to which the managing entity's powers are delegated to the manager and the location where a copy of the management contract may be examined;
(10) whether or not the developer will pay assessments for time shares which it owns and a statement
that the amount of assessments due the managing entity from owners will change over time, as
circumstances may change;

(11) whether or not the developer sponsors or will sponsor a rental or resale program and, if so, a
summary of the program or programs; and

(12) the developer's role at the project, if the developer is a separate entity from any other registered
developer of the time share project.

(b) The inclusion of false or misleading statements in a public offering statement shall be grounds for disciplinary
action by the Commission.

History Note: Authority G.S. 93A-44(8); 93A-51;
Eff. March 1, 1984;
Amended Eff. October 1, 2000; August 2, 1993; February 1, 1989; April 1, 1987;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018.
May 1, 2018;
REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Real Estate Commission

RULE CITATION: 21 NCAC 58B .0202

DEADLINE FOR RECEIPT: Friday, May 13, 2022

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

It does not appear your template cover page complies with the requirements of G.S. 93-44(b)(1), which states that the cover page shall only have the name of the timeshare program and an explicit statement/warning, which does not appear in this Rule. As we don't want Rules to duplicate statutes, is the template and this Rule necessary?

On line 5, please omit “N.C.” from “N.C.G.S” and add a period after the “S” so that it reads: “N.C.G.S G.S. 93A-44...”

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman
Commission Counsel
Date submitted to agency: April 29, 2022
21 NCAC 58B .0202 is amended as published in 36:16 NCR 1412 as follows:

21 NCAC 58B .0202 PUBLIC OFFERING STATEMENT SUMMARY

Every In addition to the requirements in N.C.G.S 93A-44, a public offering statement shall contain a one page cover page prescribed by the Commission and completed by the developer entitled Public Offering Statement Summary. Summary in conspicuous type. The Public Offering Statement Summary shall read as follows:

PUBLIC OFFERING STATEMENT SUMMARY

NAME OF PROJECT:

NAME AND REAL ESTATE LICENSE NUMBER OF BROKER: BROKER (IF ANY):

This Public Offering Statement contains information which deserves your careful study, as you decide whether or not to purchase a time share.

The Public Offering Statement includes general information about the real estate type, the term, and the size of this time share project. It also includes a general description of the recreational and other facilities existing now, or to be provided in the future. The Public Offering Statement will tell you how maintenance and management of the project will be provided and how the costs of these services will be charged to purchasers. From the Public Offering Statement, you will also learn how the project will be governed and whether purchasers will have a voice in that government. You will also learn that a time share instrument will be recorded to protect your real estate interest in your time share.

The Public Offering Statement contains important information, but is not a substitute for the detailed information contained in the contract of purchase and the legal documents which create and affect the time share program at this project.

Please study this Public Offering Statement carefully. Satisfy yourself that any questions you may have are answered before you decide to purchase. If a salesperson or other representative of the developer has made a representation which concerns you, and you cannot find that representation in writing, ask that it be pointed out to you.

NOTICE

UNDER NORTH CAROLINA LAW, YOU MAY CANCEL YOUR TIME-SHARE TIMESHARE PURCHASE WITHOUT PENALTY WITHIN FIVE DAYS AFTER SIGNING YOUR CONTRACT. TO CANCEL YOUR TIME-SHARE TIMESHARE PURCHASE, YOU MUST MAIL OR HAND DELIVER WRITTEN NOTICE OF YOUR DESIRE TO CANCEL YOUR PURCHASE TO (name and address of project). IF YOU CHOOSE TO MAIL YOUR CANCELLATION NOTICE, THE NORTH CAROLINA REAL ESTATE COMMISSION RECOMMENDS THAT YOU USE REGISTERED OR CERTIFIED MAIL
AND THAT YOU RETAIN YOUR POSTAL RECEIPT AS PROOF OF THE DATE YOUR NOTICE WAS
MAILED. UPON CANCELLATION, ALL PAYMENTS WILL BE REFUNDED TO YOU.

History Note: Authority G.S. 93A-44; 93A-51;
Eff. March 1, 1984;
Amended Eff. April 1, 2006; October 1, 2000; February 1, 1989; April 1, 1987;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018.
May 1, 2018;
REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Real Estate Commission

RULE CITATION: 21 NCAC 58B .0203

DEADLINE FOR RECEIPT: Friday, May 13, 2022

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

   In your History Note, is the reference to 93A-45(a) correct? That statute discusses the right of a purchaser to cancel, rather than a receipt for a public offering statement. Please correct.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman
Commission Counsel
Date submitted to agency: April 29, 2022
21 NCAC 58B .0203 is amended as published in 36:16 NCR 1413 as follows:

21 NCAC 58B .0203 RECEIPT FOR PUBLIC OFFERING STATEMENT

(a) Prior to the execution of any contract to purchase a time share, timeshare, a time share developer or a time share timeshare salesperson shall obtain from the purchaser a written receipt for the public offering statement, which shall display, directly over the buyer signature line in type in all capital letters, no smaller than the largest type on the page on which it appears, the following statement: DO NOT SIGN THIS RECEIPT UNLESS YOU HAVE RECEIVED A COMPLETE COPY OF THE PUBLIC OFFERING STATEMENT TO TAKE WITH YOU.

(b) Receipts for public offering statements shall be maintained as part of the records of the sales transaction.

History Note: Authority G.S. 93A-45(a); 93A-51;
Eff. February 1, 1988;
Amended Eff. October 1, 2000;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018;
May 1, 2018;
REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Real Estate Commission

RULE CITATION: 21 NCAC 58B .0301

DEADLINE FOR RECEIPT: Friday, May 13, 2022

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

In (b), line 11, please replace “their” with “the Developer’s” for clarity as to whose agent is being referred to.

In (b), line 11, please add an oxford comma following “envelope”.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.
21 NCAC 58B .0301 is amended as published in 36:16 NCR 1413 as follows:

SECTION .0300 - CANCELLATION

21 NCAC 58B .0301  PROOF OF CANCELLATION

(a) The postmark date affixed to any written notice of a purchaser's intent to cancel his or her time share a timeshare purchase shall be presumed by the Commission to be the date the notice was mailed to the developer. Evidence tending to rebut this presumption shall be admissible at a hearing before the Commission.

(b) Upon receipt of a purchaser's written notice of his or her intent to cancel his or her time share a timeshare purchase, the developer, or his or her their agent or representative, shall retain the notice and any enclosure, envelope or other cover in the developer's files at the project, files, and shall produce the file upon the Commission's request.

(c) When there is more than one registered developer at a time share project timeshare program and a purchaser gives written notice of his or her intent to cancel his or her time share a timeshare purchase that is received by a developer or sales staff other than the one from whom his or her time share the timeshare was purchased, the developer or sales staff receiving such notice shall promptly deliver it to the proper developer who shall then honor the notice if it was timely sent by the purchaser.

History Note: Authority G.S. 93A-45; 93A-51; 93A-54(d); Eff. September 1, 1984; Amended Eff. October 1, 2000; August 2, 1993; February 1, 1989; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018; May 1, 2018; Amended Eff. July 1, 2022.
REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Real Estate Commission

RULE CITATION: 21 NCAC 58B .0401

DEADLINE FOR RECEIPT: Friday, May 13, 2022

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

In (a), line 13: G.S. 93A-54 (f) (as amended by S.L. 2021-163) states that “each developer” shall maintain records of every timeshare transaction. What is the authority for the Commission to expand this requirement to “a timeshare salesperson”? G.S. 93A-51 grants the Commission the authority to adopt rules “not inconsistent with the provisions” of the Article?

In (c), line 26: Was your intention to say that records “…shall be made available for inspection and reproduction to the Commission”? Or is it that the Commission will inspect the records and bear the responsibility for reproduction?

In the History Note, please update the citation to 93-54(d). As amended by the SL, the new citation is to 93-54(f). You may just cut the pincite to the particular section, and leave “G.S. 93-54”.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.
21 NCAC 58B .0401 is amended with changes as published in 36:16 NCR 1413 as follows:

SECTION .0400 - TIME SHARE TIMESHARE SALES OPERATION

21 NCAC 58B .0401 RETENTION OF TIME SHARE TIMESHARE RECORDS

A time share developer and a time share salesperson shall retain or cause to be retained for a period of three years complete records of every time share sale, rental, or exchange transaction made by or on behalf of the developer. Records required to be retained shall include but not be limited to offers, applications and contracts to purchase, rent or exchange time shares; records of the deposit, maintenance and disbursement of funds required to be held in trust; receipts; notices of cancellation and their covers if mailed; records regarding compensation of salespersons; public offering statements; and any other records pertaining to time share transactions. Such records shall be made available to the Commission and its representatives upon request.

(a) A developer and a timeshare salesperson shall retain or cause to be retained complete timeshare records for a period of not less than three years after the completion or termination of a timeshare sale, rental, or exchange.

(b) Timeshare records shall include, at a minimum, copies of the following:
   (1) offers to purchase;
   (2) applications and contracts to purchase;
   (3) rent or exchange timeshares;
   (4) records of deposits;
   (5) maintenance and disbursement of funds required to be held in trust;
   (6) receipts;
   (7) notices of cancellations;
   (8) compensation of timeshare salespersons;
   (9) public offering statement and summary; and
   (10) any other records pertaining to the timeshare transaction or termination.

(c) Timeshare records shall be made available for inspection and reproduction by the Commission or its authorized representatives without prior notice.

History Note: Authority G.S. 93A-51; 93A-54(d);
Eff. September 1, 1984;
Amended Eff. October 1, 2000;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018;
May 1, 2018;
21 NCAC 58B .0402 is amended as published in 36:16 NCR 1414 as follows:

21 NCAC 58B .0402 is proposed for amendment as follows:

**21 NCAC 58B .0402 TIME SHARE - TIMESHARE AGENCY AGREEMENTS AND DISCLOSURE**

Timeshare sales transactions conducted by licensees or brokers on behalf of a time share developer are subject to 21 NCAC 58A .0104.

**History Note:**
- Authority G.S. 93A-3(c); 93A-51;
- Eff. August 1, 1998;
- Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018.
- May 1, 2018;
REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Real Estate Commission

RULE CITATION: 21 NCAC 58B .0501

DEADLINE FOR RECEIPT: Friday, May 13, 2022

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

In (a), line 6: “93a” should be “93A”.

In (a), line 8: G.S. 93A-45(d) (as amended by S.L. 2021-163) states that any funds received prior to closing shall be deposited into a trust account “immediately” by the developer or salesperson. What is the authority of the Commission to expand the time in which a developer or timeshare salesperson must deposit the monies to three business days?

In the History Note, I think you need a reference to G.S. 93-45.

Also in the History Note, is the reference to 93A-42(c) still applicable after the amendment by the SL?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.
21 NCAC 58B .0501 is amended as published in 36:16 NCR 1414 as follows:

SECTION .0500 – HANDLING AND ACCOUNTING OF FUNDS

21 NCAC 58B .0501 TIME SHARE-TIMESHARE TRUST FUNDS

(a) Except as otherwise permitted by G.S. 93A-45(c), 93a-45(d), all monies received by a time share developer or a time share salesperson in connection with a time share sales transaction shall be deposited into a trust or escrow account not later than three banking days following receipt and shall remain in such account for ten days from the date of sale or until cancellation by the purchaser, whichever first occurs.

(b) All monies received by a person licensed as a broker in connection with a time share transaction shall be delivered immediately to his or her project broker.

(c) When a time share purchaser timely cancels his or her time share purchase, the developer shall refund to the purchaser all monies paid by the purchaser in connection with the purchase. The refund shall be made no later than 30 days following the date of execution of the contract. Amounts paid by the purchaser with a bankcard or a credit card shall be refunded by a cash payment or by issuing a credit voucher to the purchaser within the 30-day period.

(d) Every project broker shall obtain and keep a written representation from the developer as to whether or not lien-free or lien-subordinated time share instruments can be recorded within 45 days of the purchaser's execution of the time share purchase agreement. When a lien-free or lien-subordinated instrument cannot be recorded within said time period, on the business day following the expiration of the ten day time share payment escrow period, a project broker shall transfer from his or her trust account all purchase deposit funds or other payments received from a purchaser who has not cancelled his or her purchase agreement, to the independent escrow agent in a check made payable to the independent escrow agent. Alternatively, the check may be made payable to the developer with a restrictive endorsement placed on the back of the check providing "For deposit to the account of the independent escrow agent for the (name of time share project) only."

History Note: Authority G.S. 93A-42(c); 93A-51;
Eff. September 1, 1984;
Amended Eff. April 1, 2006; October 1, 2000; February 1, 1989; July 1, 1988; February 1, 1988;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018;
May 1, 2018;
REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Real Estate Commission

RULE CITATION: 21 NCAC 58B .0601

DEADLINE FOR RECEIPT: Friday, May 13, 2022

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

In (a), lines 11 through 16: How and to whom must the developer file the Affidavit?

In (b), line 17: Did you mean to say the developer “shall” submit the Affidavit?

Alternatively, if it does not change the intent of the Commission, consider: “(b) The developer shall file with the Commission a new Affidavit of Timeshare Program Broker within 10 days of any change in the Program Broker.”

In (c), line 20: Is a “provisional broker” defined in a statute or Rule?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.
21 NCAC 58B .0601 is amended as published in 36:16 NCR 1414 as follows:

SECTION .0600 - PROJECT PROGRAM BROKER

21 NCAC 58B .0601  DESIGNATION OF PROJECT PROGRAM BROKER

The developer of a registered timeshare project shall designate for each project subject to the developer's control a project broker by filing with the Commission an affidavit on the form prescribed. The developer may from time to time change the designated project broker by filing a new designation form with the Commission within 10 days following the change. A broker licensed under the provisions of Section .1800 of Subchapter 58A shall not be designated as a project broker. Provisional brokers shall not be designated as a project broker.

(a) The developer shall designate a program broker for each registered timeshare program. The developer shall file an Affidavit of Timeshare Program Broker available of the Commission’s website and shall set forth the timeshare program’s:

(1) name and registration number;

(2) program broker’s name, business and email address, real estate license number, telephone number, and notarized signature.

(b) A developer seeking to designate a new program broker may submit an Affidavit of Timeshare Program Broker pursuant to Paragraph (a) of this Rule. The developer must file the Affidavit of Timeshare Program Broker within 10 days of the change.

(c) Brokers licensed pursuant to Section .1800 of Subchapter 58A and provisional brokers shall not be designated as a program broker.

History Note: Authority G.S. 93A-41(7a); 93A-51; 93A-58(c); 93A-9;

Eff. February 1, 1998;
Amended Eff. April 1, 2006; July 1, 2004;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018;

May 1, 2018;
REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Real Estate Commission

RULE CITATION: 21 NCAC 58B .0602

DEADLINE FOR RECEIPT: Friday, May 13, 2022

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

In (b), line 25: Consider including a statutory reference to the “Time Share Act”.

On line 30: “(d)” needs to be changed to “(c)”.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman
Commission Counsel
Date submitted to agency: April 29, 2022
21 NCAC 58B .0602 DUTIES OF THE PROJECT PROGRAM BROKER

(a) The broker designated by the developer of a time share project to be project broker shall assume responsibility for the program broker shall:

1. The display of the time share project certificate, the timeshare program registration certificate and the license certificates of the real estate brokers associated with or engaged on behalf of the developer at the project;

2. The determination of whether each licensee employed has complied with Rules .0503 and .0506 of Subchapter 58A; ensure that each broker affiliated with the program has complied with Rules .0503 and .0504 of this Subchapter;

3. The notification to the commission of any change in the identity or address of the project or in the identity or address of the developer or marketing or managing entities at the project; notify the Commission of any change in the developer or material change pursuant to Rule .0104(b) of this Subchapter;

4. The proper maintenance of accurate records and maintain the timeshare program’s records at the project including all records relating to the handling of trust monies at the project, records relating to time share sales and rental transactions and the project registration and renewal; pursuant to Rule .0401 of this Subchapter.

(b) The project program broker shall review all contracts, public offering statements and other documents distributed to the timeshare program’s purchasers of time shares at the project to ensure that the documents comport with the requirements of the Time Share Act and the rules adopted by the commission, Commission, and to ensure that true and accurate documents have been given to the purchasers.

(c) The project broker shall not permit time share sales to be conducted by any person not licensed as a broker and shall not delegate or assign his or her supervisory responsibilities to any other person, nor accept control of his or her supervisory responsibilities by any other person.

(d) The project program broker shall notify the commission, Commission in writing of any change in his or her status as project broker within ten days following the change. program broker within 10 days.

History Note: Authority G.S. 93A-51; 93A-58(c);
Eff. February 1, 1988;
Amended Eff. April 1, 2006; October 1, 2000; February 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018.
REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Real Estate Commission

RULE CITATION: 21 NCAC 58H .0210

DEADLINE FOR RECEIPT: Friday, May 13, 2022

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Generally to the Rule: If an education provider is precluded from offering “prelicensing and post licensing courses”, what, if any, courses can the education provider provide? If there are no other courses, please explain the difference between a “suspension” and a “limitation”.

In (a)(10), line 27: Consider adding a comma between “examination” and “within”. In the alternative move the clause “within 30 days of the Commission’s request during an investigation or application process” to line 24, in between “Commission” and “a written plan”.

In (a)(12), lines 30 and 31: This is unclear. Was the Certificate of Authority revoked subject to a revenue suspension, or was the education provider subject to a revenue suspension? Are these three separate items? Does “subject to” mean there has been a revenue suspension or an administrative dissolution, or that there is an on-going process?

In (c), p.2, line 14: It is unclear what is intended by “during the year in which the certification was limited”. Does the agency mean during the period of limitation? Or the calendar year in which the limitation began?

If it does not change the intent of the Commission, consider: (c) and (d, p.2, lines 7 through 22):

“If an education provider’s annual License Examination Performance Record fails to exceed 40 percent in each of the previous two license years and the education provider was certified by the Commission during the entire two years, the Commission shall limit the education provider’s certification such that the education provider shall not offer prelicensing and post licensing courses. Said limitation shall be effective July 1st of the calendar year following the Commission’s determination.

Brian Liebman
Commission Counsel
Date submitted to agency: April 29, 2022
21 NCAC 58H .0210 LIMITATION, DENIAL, WITHDRAWAL, OR TERMINATION OF
EDUCATION PROVIDER CERTIFICATION
(a) The Commission may limit, deny, or withdraw certification of an education provider or suspend, revoke, or
deny renewal of the certification of an education provider upon finding that an education provider:
(1) was found by a court or government agency of competent jurisdiction to have violated any state or
federal law;
(2) made any false statements or presented any false, incomplete, or incorrect information in connection
with an application;
(3) failed to provide or provided false, incomplete, or incorrect information in connection with any
report the education provider is required to submit to the Commission;
(4) presented to its students or prospective students false or misleading information relating to its
instructional program, to the instructional programs of other institutions, or related to employment
opportunities;
(5) collected money from students but refused or failed to provide the promised instruction;
(6) failed to submit the per student fee as required by G.S. 93A-4(a2) or 93A-38.5(e);
(7) refused at any time to permit authorized representatives of the Commission to inspect the education
provider's facilities or audit its courses;
(8) or education director violated the rules of this Subchapter or was disciplined by the Commission
under G.S. 93A-6;
(9) obtained or used, or attempted to obtain or use, in any manner or form, North Carolina real estate
license examination questions;
(10) failed to provide to the Commission a written plan describing the changes the education provider
made or intends to make in its instructional program including instructors, course materials, methods
of student evaluation, and completion standards to improve the performance of the education
provider's students on the license examination within 30 days of the Commission's request during
an investigation or application process;
(11) provided the Commission a fee that was dishonored by a bank or returned for insufficient funds;
(12) Certificate of Authority was revoked, subject to a revenue suspension, or subject to administrative
dissolution by the NC Secretary of State;
(13) failed to utilize course materials pursuant to Rule .0205 of this Section;
(14) failed to submit reports pursuant to Rule .0207 of this Section;
(15) provided false, incomplete, or misleading information relating to real estate licensing, education
matters, or the broker's education needs or license status;
(16) discriminated in its admissions policy or practice against any person on the basis of age, sex, race,
color, national origin, familial status, handicap status, or religion; or
(17) refused or failed to comply with the provisions of this Subchapter.

(b) A broker shall be subject to discipline pursuant to G.S. 93A-6 if the broker engages in dishonest, fraudulent, or improper conduct in connection with the operations of an education provider if that broker:

(1) has an ownership interest in the education provider;

(2) is the education director; or

(3) is an instructor for an education provider.

(c) The Commission shall withdraw an education provider's certification when its License Examination Performance Record fails to exceed 40 percent in each of the previous two license years. Following withdrawal, the education provider shall be ineligible to apply for certification for a period of one year. If an education provider's annual License Examination Performance Record fails to exceed 40 percent in each of the previous two license years and the education provider was certified by the Commission during the entire two years, the Commission shall limit the education provider's certification such that the education provider shall not offer prelicensing or postlicensing courses for a period of one year effective July 1 of the following license year. At the expiration of the one year certification limitation, the limitation shall be removed from the education provider's certification if the education provider completes the following during the year in which the certification was limited:

(1) a written plan describing the changes the education provider has made or intends to make in its instructional program to improve the performance of the students on the license examination;

(2) a consultation with a designated Commission staff member to review the written plan and needs for improvement; and

(3) employed an instructor with no limitations to teach prelicensing and postlicensing courses.

(d) An education provider whose certification has been limited that fails to complete the requirements to remove its limitations under Paragraph (c) of this Rule may renew its certification but shall not offer prelicensing or postlicensing courses until the requirements to remove the limitations on its certification are completed.

(d)(e) When ownership of a certified education provider is transferred and the education provider ceases to operate as the certified entity, the certification is not transferable and shall terminate on the effective date of the transfer. All courses shall be completed by the effective date of the transfer. The transferring owner shall report course completion(s) to the Commission. The new entity shall obtain an original certification for each location where the education provider will conduct courses as required by G.S. 93A-34 and Rule .0202 of this Section prior to advertising courses, registering students, accepting tuition, conducting courses, or otherwise engaging in any education provider operations.

History Note: Authority G.S. 93A-4(d); 93A-34(c); 93A-35(c); 93A-38;

Eff. July 1, 2017;

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Real Estate Commission

RULE CITATION: 21 NCAC 58H .0303

DEADLINE FOR RECEIPT: Friday, May 13, 2022

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Generally to the Rule: If an instructor is precluded from teaching “prelicensing and post licensing courses”, what, if any, courses can the instructor teach? If there are no other courses, please explain the difference between a “suspension” and a “limitation”.

In (a)(1), line 9: What is the “approval period”? This is not defined in Subchapter H.

In (a)(5), lines 17 through 20: After teaching a prelicensing course, must every instructor file an improvement plan? What is meant by “during an investigation or application process”?

In (a)(8), line 25: This should be re-written. As written, anyone taking the examination would have “obtained” the license examination questions and withdraw the Commission’s approval.

In (b), p.2, line 14: It is unclear what is intended by “during the year in which the approval was limited”. Does the agency mean during the period of limitation? Or the calendar year in which the limitation began?

If it does not change the intent of the Commission, consider: (b) and (c), p.1, lines 35 through 37, and 2, lines 1 through 12):

“If an instructor’s annual License Examination Performance Record fails to exceed 40 percent in each of the previous two license years and the instructor was approved by the Commission during the entire two years, the Commission shall limit the instructor’s approval such that the instructor shall not teach prelicensing and post licensing courses. Said limitation shall be effective July 1st of the calendar year following the Commission’s determination.

The instructor shall be eligible to have the limitation removed 365 days after the limitation is imposed provided that the instructor has:

Brian Liebman
Commission Counsel
Date submitted to agency: April 29, 2022
(1) Provided a written plan ...
(2) Consulted with ...
(3) Attended the Commission's ...

(d) An instructor with limited authorization is eligible for a renewal of authorization; however, a renewal authorization shall not remove the limitations provided under Paragraph (c).”

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.
21 NCAC 58H .0303 DENIAL OR LIMITATION, DENIAL, OR WITHDRAWAL OF INSTRUCTOR APPROVAL

(a) The Commission may deny or limit, deny, or withdraw approval of any instructor applicant or approved instructor upon finding that the instructor or instructor applicant:

1. has failed to meet the criteria for approval described in Rule .0302 of this Section or the criteria for renewal of approval described in Rule .0306 of this Section at the time of application or at any time during an approval period;
2. made any false statements or presented any false, incomplete, or incorrect information in connection with an application for approval or renewal of approval or any report that is required to be submitted to the Commission;
3. has failed to submit to the Commission any report, course examination, or video recording required by these Rules;
4. has failed to demonstrate the ability to teach a Prelicensing, Postlicensing, or Update course in a manner consistent with the course materials;
5. taught a Prelicensing course and failed to provide to the Commission a written plan describing the changes the instructor has made or intends to make in his or her instructional program to improve the performance of the instructor's students on the license examination within 30 days of the Commission's request during an investigation or application process;
6. has been convicted of, pleaded guilty to, or pleaded no contest to, a misdemeanor or felony violation of state or federal law by a court of competent jurisdiction;
7. has been found by a court or government agency of competent jurisdiction to have violated any state or federal regulation prohibiting discrimination;
8. has obtained, used, or attempted to obtain or use, in any manner or form, North Carolina real estate license examination questions;
9. has failed to take steps to protect the security of end-of-course examinations;
10. failed to take any corrective action set out in the plan described in Subparagraph (a)(5) of this Rule or as otherwise requested by the Commission;
11. engaged in any other improper, fraudulent, or dishonest conduct;
12. failed to utilize course materials pursuant to Rule .0205 of this Subchapter;
13. has taught or conducted a course in any manner that discriminated against any person on the basis of age, sex, race, color, national origin, familial status, handicap status, or religion; or
14. failed to comply with any other provisions of this Subchapter.

(b) The Commission shall withdraw an instructor's approval when their Annual License Examination Performance Record fails to exceed 40 percent in each of the previous two license years and the instructor was approved by the Commission during the entire previous two years. Following withdrawal, the instructor shall be...
ineligible to apply for approval for a period of one year. The Commission shall limit the instructor’s approval such that the instructor shall not teach prelicensing or postlicensing courses for a period of one year effective July 1 of the following license year. At the expiration of the one year approval limitation, the limitation shall be removed if the instructor completes the following during the year in which the approval was limited:

1. A written plan describing the changes the instructor has made or intends to make in his or her instructional program to improve the performance of the students on the license examination;
2. A consultation with a designated Commission staff member to review the written plan and needs for improvement; and
3. The Commission’s New Instructor Seminar.

(c) An instructor whose approval has been limited that fails to complete the requirements to remove the limitations under Paragraph (b) of this Rule may renew his or her instructor approval but shall not teach prelicensing or postlicensing courses until the requirements to remove the limitations on his or her instructor approval are completed.

History Note: Authority G.S. 93A-4; 93A-33; 93A-34;
Eff. July 1, 2017;