

Critical HOT Topics for the NC Licensing Exam The North Carolina Real Estate Commission (NCREC) closely monitors and tracks candidate performance on the NC broker licensing examination. While individual test scores are confidential and specific test questions are not publicized or shared in order to protect the integrity of the examination process, NCREC does share the issues that candidates have had with specific sections and content on the exam. Here are the problem areas noted by the NCREC:

- License Is Required to Receive Compensation You cannot receive any referrals, fees, gifts, coupons or items of value for the referral of a real estate client if you do not have a real estate license.
- A Real Estate License Is Required to Conduct an Auction Auctioneers **need both** a real estate license and an auctioneer license.
- There Are Exemptions From Licensure Not everyone must have a real estate license. The following people are exempt:
 - o Selling your own property, including entities and their employees
 - o Attorneys o Designated as an attorney-in-fact
 - o Salaried employees of property managers
 - o Trustees and others acting under order of court
- Unlicensed Assistants Are Permitted, but **Limited** in What They Can Do Salaried, unlicensed employees MAY, if not paid per transaction:
 - o Receive and forward phone calls
 - o Submit MLS information
 - o Secure public records
 - o Put up signs and install lock boxes
 - o Order and supervise minor property repairs
 - o Act as a courier
 - o Communicate and coordinate appointments
 - o Show rental properties and execute pre-printed forms
 - o Type offers, contracts and forms
 - o Record and deposit earnest money, rent and maintain records
 - o Assemble documents
 - o Compute commission checks, conduct bookkeeping

- Limited Non-Resident Commercial Broker's License
 - o Only for non-resident o Requires application and proper renewal
 - o Limited to commercial activity
 - o Supervised by a NC BIC/broker
 - o All trust monies stay in NC

- Post licensing Education Requirement (NOT CE) o 90 hours (three 30-hour courses)
 - o Must complete within 18 months of licensure
 - o Can complete earlier, if desired

- Renewal, CE and Expiration
 - o Mandatory 8 hours
 - o Renewal deadline is June 30
 - o Education deadline is June 10
 - o Failure to renew = expiration of license
 - o Renew, but fail to complete CE = inactive license

- Existence of Dual Agency
 - o Occurs in a single firm
 - o Created by single firm or existence of single agent
 - o When designated agency exists, the other agents in the firm are dual agents

- Agency Agreement Requirements
 - o Property owner agreements (listings and property management) in writing from time agreement initially made
 - o Express oral agency with buyers permitted until the time an offer is submitted
 - o First substantial contact requires use of Working With Agents disclosure
 - o Seller's agent or subagent must disclose status to a prospective buyer at first substantial contact

- o Buyer's agent discloses status to seller or seller's agent at initial contact
- Deadline for Written Consent to Dual Agency
 - o Dual agency must be disclosed at the formation of the relationship
 - o The written disclosure must exist prior to the submission of any offer
- Broker Responsibility When Asked Protective Covenant Questions
 - o Seller is required to provide an addendum with basic information
 - o Inform buyer to complete due diligence and request the form
 - o Due diligence includes name of association, services, contact person and dues
- Handling Earnest Money
 - o Provisional broker delivers earnest money to BIC immediately
 - o Cash gets deposited immediately
 - o Earnest money goes into trust account within 3 days
 - o BICs may count 3 days from acceptance of offer (except CASH)
- Disclosure of Builder Bonus
 - o Compensation receipt must be disclosed in writing
 - o Must disclose receipt of bonus before making or accepting offer
- Duty to Disclose Material Facts
 - o Agents must always disclose material facts
 - o Anything that may affect the decision to sell or to buy
 - o Sex offender location, death, serious illness not material facts
- Duty to Disclose Conflicts of Interest
 - o Must disclose interests in the property
 - o Must disclose relationships to parties
- Dishonored Payment of License Fees
 - o Results in expired license (not an inactive one)

- o May result in denial, suspension or revocation
- Adjustment of Tax Rates
 - o Tax rates may be adjusted annually
 - o Tax values can be adjusted horizontally every 4 years
 - o Property must be reappraised every 8 years (octennial appraisal)
- Assessed Value
 - o The official evaluation of a property's value is an assessment
 - o Based on comps at 100% of market value
- 7-Day Settlements Delay in Purchase Contract
 - o Settlement date is not a "time is of the essence" provision
 - o Good faith effort creates a 7-day extension
- Flood Certifications
 - o Flood certifications are required by lenders
 - o Not necessary on cash transactions
 - o Flood certifications come from FEMA based on Army Corp of Engineers maps
- Closing Disclosure Accuracy
 - o Agent has obligation for accuracy and delivery of Closing Disclosure
 - o Borrower has right under RESPA to see Closing Disclosure 3 days prior to closing
 - o Final Closing Disclosure must be delivered immediately, never later than 3 days after closing
- Disbursement of Funds by Settlement Agents
 - o Can't disburse funds prior to recordation
 - o We don't disperse funds at settlement or closing
- Statute of Frauds Related to Leases
 - o Leases longer than 3 years must be in writing

- NC Residential Property Disclosure Act
 - o Seller required to complete the property disclosure
 - o Agents inform clients of their rights and obligations
 - o Agent responsible for explaining and assisting
 - o Seller may check “no representation” and choose not to disclose
 - o Agent must still disclose all they knew and should have known
 - o Failure to provide form creates 3-day right to cancel

- Home Construction Definition of a Sill
 - o Floor framing sill or mud sill is the lowest horizontal wooden part of the framing
 - o The window sill is the lowest horizontal frame of the window

- Definition of Basis
 - o Cost basis is the owner’s original acquisition cost (price + closing costs)
 - o Adjusted basis is the owner’s cost basis + the cost of any capital improvements

- Effect of Death in Joint Tenancy, Tenancy in Common
 - o Joint tenancy has right of survivorship and transfers automatically and immediately at time of death to remaining joint tenants
 - o Tenancy in common interests go to heirs, different percentages

- Features of a PUD
 - o Mixed use and cluster zoning
 - o Creates open space

- Types of Easements and Examples
 - o Prescriptive easement is one attained by adverse possession

- o Easement appurtenant benefits an adjacent parcel
 - o Easement in gross benefits third party
 - o Easements are permanent, licenses are temporary
 - o Government can get easement by condemnation (eminent domain)
- Requirements for Adverse Possession
 - o OCEAN: Open, Continuous, Exclusive, Adverse, Notorious
- Benefits and Disadvantages of Business Entities
 - o Sole proprietorship is most risky with least protection
 - o General partnerships do not protect from liability
 - o Most protection is a corporation or S Corp
- Elements of a Contract
 - o All contracts require mutual consent, competency of parties, consideration, legal purpose
 - o Those subject to statute of frauds must be in writing
- Mutual Consent, Reality of Consent in Contracts
 - o Contracts require a meeting of the minds
 - o Free from duress or undue influence
- Remedies for Breach of Contracts
 - o Compensatory damages – for compensation
 - o Punitive damages – to deter future conduct
 - o Liquidated damages – to receive a specified amount
- Types of Listing Contracts
 - o Open listing – paid only if you find the buyer
 - o Exclusive agency – paid if you or any other agent finds the buyer
 - o Exclusive right to sell – paid under all circumstances

- Characteristics of Listing Contracts
 - o Be signed by all parties
 - o Include licensee's license number
 - o Contain definite termination date
 - o Be in writing
- Employment Contracts
 - o Independent contractor agreement exists between brokers and firms
 - o Only place you find the fee splits between brokers and their firms
- Options
 - o Options are contracts and must be in writing
 - o 3 days to deliver an option
 - o Enforceable by the optionee
 - o Enforceable on the optionor
- Contracts for Deeds
 - o Vendor retains legal title to the property
 - o Vendee has an equitable interest in the property
 - o Deed and transfer occur with last payment
- Offers and Contracts
 - o Offerors give and offerees receive
 - o All offers must be communicated
 - o Counteroffer voids the original offer
- Mortgage and Trust Deed Timeframes and Terminology
 - o Who is the mortgagor and mortgagee?
 - o Who are the trustor, beneficiary and trustee?
 - o What are the payoff documents called?
 - o Who holds legal and equitable title?

- o How long are the time periods?
- o How does each process begin and end?

- Truth in Lending Act (TILA) Reg Z

- o Regulates the disclosure of costs consumer will pay after they have the loan
- o Must disclose amount of payment, terms of payment, length of loan, rate of interest and the APR
- o Advertisements with any “trigger term” must disclose the APR
- o Enforced by CFPB • RESPA (Real Estate Settlement & Procedures Act)
- o Both disclosure and anti-kickback statute
- o Requires LE and booklet within 3 days of loan application
- o Requires use of Closing Disclosure at closing/settlement
- o Settlement service providers cannot receive anything of value for the referral of business

- Sale of Property With a Lease

- o Sale of a property does not terminate a lease
- o May also require transfer of security deposits

- Types of Leases

- o Gross leases are all inclusive (owner pays expenses)
- o Net leases the tenant pays the expenses plus fixed amount
- o Retail businesses use percentage leases
- o Sale leasebacks free up capital

- Constructive vs. Actual Eviction

- o Landlord’s breach (habitability and repairs) is constructive eviction
- o Tenant’s breach (usually failure to pay) is actual eviction

- Operating Budget Terminology

- o Effective gross income – operating expenses = net operating income
- o Operating expenses does not include debt service

- Fair Housing & ADA in Property Management

- o ADA applies to commercial/public accommodations
- o Multi-family must comply with accessibility requirements
- o More than 15 employees must make accommodations
- o Residential properties require reasonable modifications paid for by the tenant
- o No deposits on service animal

- Scope of BIC Responsibility

- o Supervise all provisional brokers
- o Responsible for all agency, monetary, legal and disclosure compliance
- o Keep firm pocket card o Display firm license and BIC certification
- o Maintain the trust account

- Independent Broker Who Is Not a BIC Restrictions

- o Advertising or promoting services
- o Handling money of another
- o Employs one or more licensees

- What's on a Pocket Card/What's Not

- o Contains name, license number, type and expiration date
- o Does not contain firm, status (active or inactive) or discipline

- Duty of Licensee to Report to Commission
 - o 10 days any change of address
 - o 60 days of any conviction/adverse judgments
 - o 10 days BIC notification of severance

- Delivery of Documents Rule (106b for leases)
 - o Immediately, never more than 3 days o 45 days to provide owner with leases

- Compensation Disclosure (A109) When Not Disclosed
 - o Licensee can share compensation with principal – not engaging in real estate
 - o Must disclose all compensation to principal
 - o Don't need to disclose commission splits

- Disclosure of Offers
 - o Can't disclose terms of offers without consent of the offerors
 - o Not the seller's consent, it's the buyer's consent

- Payment of Referral Fees 93A-6(a)(9)
 - o Payment of referral fees to unlicensed person is prohibited

- License Status to Receive a Referral
 - o License must be active to receive a referral fee
 - o Active at the time commission earned, not received

- Date Ad Valorem Taxes Attach
 - o Ad valorem taxes attach as a lien on January 1 for the coming year

- Factors for Amount of Earnest Money & Due Diligence
 - o Market, demand, desire of client all affect amounts

- Refunds of Earnest Money Deposits & Due Diligence Fees
 - o Both earnest money deposit and due diligence fee are credits to buyer at closing
 - o Earnest money does not appear on the seller's side of the Closing Disclosure
 - o Due diligence fee appears on the seller's side of the Closing Disclosure as a debit
 - o Earnest money only gets released with mutual agreement or court order
 - o Earnest money refunded if contract cancelled during due diligence period
 - o Due diligence fees do not get refunded
 - o Buyer controls due diligence fee until broker delivers to seller
 - o Due diligence fee goes to seller
 - o Earnest money goes to the trust account

- Landlords & Smoke Detectors
 - o Operational with fresh batteries at time of lease
 - o Replacement of batteries responsibility of tenant

- Rules for Return of Security Deposits
 - o 30 days for initial accounting (document amounts held)
 - o 60 days to final accounting

- Below-Grade Living Area
 - o Basement with adjacent earth and full flight of stairs

- Stairway Measurement Rules
 - o Include with the square footage of floor from which it descends
 - o Include space beneath with lower level regardless of ceiling height

- Whose Square Footage Can an Agent Rely on
 - o Rely on other professionals, other agents (i.e., current MLS)
 - o Cannot rely on the owner or measurements from past transaction

- Subdivision Street Disclosure Law
 - o Must disclose whether streets are public or private
 - o Must disclose who maintains the streets

- Who Regulates Residential Subdivisions
 - o Local municipalities or authorities

- Drafting Legal Documents
 - o Cannot draft contracts, deeds, legal documents
 - o Can fill in the blanks on preprinted forms

- Active & Inactive Status
 - o Active = current (fees and education are current)
 - o Inactive

- Provisional broker not supervised by BIC
- Failed to complete education by June 10
- Failed to complete post licensing
- Chose to be on inactive status

- To Activate a License (Move from Inactive Status)
 - o Correct educational deficiency
 - o Reaffiliate with a BIC
 - o File activation form with NCREC

- To Reinstate a License (Expired, Revoked or Surrendered)
 - o Pay \$90 reinstatement fee

- o Correct educational deficit
- o Less than 6 months – no application necessary
- o More than 6 months – reapply, reestablish character, reestablish knowledge (may require testing)

North Carolina Specific Statutes & Laws

A. Statute of Intestate Succession

- Governs the distribution of estates out of probate
- Utilized when someone dies intestate (without a will)

B. Condominiums Act

- Requires public offering statement prior to sale
- Public offering statement contains disclosures to be made to consumers
- Consumers have a 7-day right of rescission

C. NC Time Share Act

- Applies to 5 or more time periods over period longer than 5 years
- Must get certificate of registration for the project
- Requires a real estate license
- Developer must register purchase within 6 to 45 days (purchaser may register)
- Must have an independent escrow agent with bank located in this state

- Borrower gets a public offering statement
- o Obligations of the purchaser
 - o Dates of availability of amenities o Specific terms of agreement
 - o Notice of right to cancel
- Purchaser has 5-day right to cancel (cannot be waived)
- Must refund all money within 30 days
- Commission may fine developer \$500
- Additional securities license required

D. Mechanic's Lien Statute

- Grants priority to contractors, subcontractors, suppliers
- Must record within 120 days of work completion
- Must file lawsuit to foreclose within 180 days of work completion
- Effective date of the lien is the date work started

E. Machinery Act

- Governs real estate taxes
- Sets an octennial appraisal requirement (eight years)
- Horizontal adjustments can occur every four years
- Rates may adjust every year

F. Homestead Exemption

- Protects home equity from general judgment creditors
- Requires 2 years of residency
- Doesn't apply to mortgages or taxes (judgment creditors)

- Protects \$35,000 per person/over 65 protects \$60,000

G. North Carolina Subdivision Statute

- Governs a division of land into parcels of two or more • Exempts lots of 10 acres or more
- Exempts a single owner when dividing a lot of up to 2 acres into 3 lots

H. Mandatory Street Disclosure Law

- Must disclose whether streets are public or private
- Must disclose who maintains the streets I. Excise Tax Statute
- Transfer tax on real estate transfers
- Round up to the nearest \$500
- Tax is \$1 for each \$500 of value

J. Conner Act

- Requires recording of certain documents
- DREAMOIL: deeds, restrictive covenants, easements, assignments, mortgages, options, installment land contracts, leases longer than 3 years

K. Statute of Frauds

- Requires contracts for the exchange of real estate to be in writing
- DREAMOILS: deeds, restrictive covenants, easements, mortgages, options, installment land contracts, leases for longer than 3 years, sales contracts

L. Enabling Act

- Confers zoning power on municipalities and local authorities

M. North Carolina Land Installment Contracts

- Seller must record within 5 days of execution
- Buyer has 3-day cancellation period • Buyer must be given 30 days to cure default prior to foreclosure

N. NC Landlord Tenant Act & Property Management

- Fresh batteries at start of tenancy/tenant replaces during the lease
- Maximum security deposits
 - o Week to week – 2 weeks
 - o Monthly – 1½ months
 - o Annual – 2 months o Return deposit (30 days interim account/60 days for final)
- No deposits on assistive animals
- No self-help – landlord's breach is constructive eviction

O. NC Vacation Rental Act of 2000

- Property utilized for vacation purposes
- Anything less than 90 days must:
 - o Be in writing o Applies to all landlords, not just licensees
- Travel agent fee allowed

P. Good Funds Act

- Attorney may not distribute any funds until recording
- Recording is not the same as settlement
- All monies in excess of \$5,000 must be verified
- Brokers responsible for accuracy of Closing Disclosure
- Brokers must deliver Closing Disclosure within 3 days of closing

Q. Residential Square Footage Guidelines

- Living area is heated with a conventional source and finished
- Measure exterior walls or measure interior and add 6" for each wall
- For dwellings sharing a wall – measure interior and add 6" for shared wall
- May reasonably rely (absent red flags) on the measurements of:
 - o Listing agents
 - o Other professionals, including an appraiser
 - o Don't rely on owner, tax records, documents from earlier transaction

- Don't include external chimney space
- Count stairs as part of square footage for both floors
- One-half of the room must have at least 7' ceiling to count the room
- In sloped ceiling rooms, start counting at the 5' height
- Pipes and ductwork must provide height of at least 6'4" to count area
- Include "bonus" rooms if accessible through living area
- Include furnace room if accessible through living area
- Include storage if accessible through living area and heated
- Condominiums do not include wall thickness of common wall