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Objectives:

- Name the different types of real estate licenses
- Learn requirements of licensure
- Define the terms current, expired, active and inactive
- Describe the purpose of an escrow account
- Know the role of NCREC and its composition

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There is only 1 Type of License with Different Status Levels – North Carolina is a BROKER only state

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**DIFFERENT TYPES OF LICENSE STATUS**

- **Provisional Broker** – a new licensee
- **Broker** – (referred to as a full broker) broker that has satisfied all post licensing requirements
- **Broker-in-Charge/BIC Eligible** – full broker who has an active license and at least 2 of the last 5 years in full time brokerage experience or equivalent part time.

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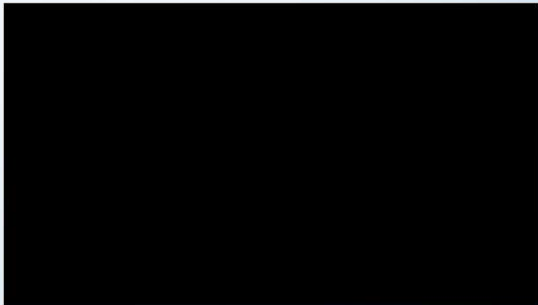
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**Real Estate Licensing Requirements**



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**PROVISIONAL BROKER**

**Provisional broker – entry level – temporary status**

- Took 75 hour class & passed class exam then passed commission's national/state exam with 75% or higher
- Must work under a Broker-in-Charge to be active for at least *TWO* years
- May not operate independently in **any** way
- Must complete 90 hours of post licensing within 18 months

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**Broker**

- Full broker – has taken all required post classes
- Must take 8 hours of Continuing Education per year to remain ACTIVE
- 4 hours General Update and 4 hours of any elective approved by NCREC

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To work independently must designate self as **Broker-in-Charge**

**Broker-in-Charge or BIC Eligible**

- Full broker
- Active status
- (2) Years full-time or part time equivalent ACTUAL brokerage experience in last 5 years
- Complete 12 hours Broker-in-Charge course with 120 days after designation or one year prior to designation
- File form 2.25 with RE commission declaring their BIC status

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**Limited Nonresident Commercial Broker**

- Active broker from another state may receive compensation for COMMERCIAL PROPERTY ONLY
- Must affiliate with active NC nonprovisional broker
- File for status with NCREC

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Any business entity  
(except a sole proprietorship)  
must have a FIRM license



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Brokerage Activities that Require a License:

**LLBEANS**

- **L**isting (or offering to list)
- **L**easing or Renting (or offering)
- **B**uying (or offering to buy)
- **E**xchanging Real Estate (1031 Tax exchange)
- **A**uction - Conducting an Auction
- **N**egotiating to Sell, buy, leasing any interest (including leasehold interest) of a business
- **S**elling – or offering to sell for compensation

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**Unlicensed Employees May Perform Certain Duties**

Page 604



Must be paid hourly not on a per-transaction basis

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**Exemptions from Licensure**

- A business entity selling/leasing its own property
- Attorney-in-fact by power of attorney from the owner when final completion has already commenced
- Attorney-at-law, member of NC bar, in practicing law, but may not engage in real estate brokerage w/o real estate license
- A person acting as receiver/guardian/trustee under a court order

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**Exemptions from Licensure**

- A trustee under written trust agreement, deed of trust or will or the trustee's regular salaried employees
- Certain salaried employees of broker-property managers
- Individual selling/leasing own property
- Housing Authority under Chapter 157 and regular salaried employees

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**Composition of the Real Estate Commission?**

**973211**

- (9) Members - serve 3 year terms
- (7) Members appointed by the Governor
- (3) Members must be licensed real estate brokers
- (2) Members must have no involvement in real estate or appraisal business
- (1) Member appointed by Speaker of the House of Representatives
- (1) Member appointed by President Pro Tempore of the Senate

*The commission is funded by license application and renewal fees*

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**Purpose of the NC Real Estate Commission – Chapter 93A**

"to protect the interests of the general public in their dealings with real estate brokers"

- Licensing real estate brokers and brokerage firms, registering time share projects
- Establish and administer pre-licensing programs for prospective licensees, post-licensing and continuing education for licensees.
- License and regulate Real Estate Schools and Instructors

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**Purpose of the NC Real Estate Commission – Chapter 93A**

"to protect the interests of the general public in their dealings with real estate brokers"

- Provide education and information to brokers and general public
- Regulate activities of brokers and firms who violate License Law

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**What May the Commission NOT Do?**

1. Practice Law
2. Fine licensee for violations of license law or NCREC rules
3. Declare contracts void
4. Determine compensation for licensees or brokerage firms
5. Draft or prescribe real estate contract forms
6. Act as board of arbitration
7. Order brokers to reimburse trust funds to reimburse buyers or sellers for losses

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### Disciplinary Actions for Violation of License Law

NCREC will investigate all verified written complaints (may also randomly investigate a licensee upon its violations)

**Reprimand    Censure    Suspension    Revoke**

Violation is a misdemeanor that can be prosecuted in court fine or imprison a licensee.

Courts can NOT revoke re license, but recommend action to NCREC

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### Disciplinary Authority when Licensee violates License Law

- Reprimand
- Censure
- License suspension
- License revocation
- Also allow for a person to surrender license with consent of Commission
- Publish disciplines in local and regional newspapers
- Violation can be while selling real estate for themselves as well as others

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**Real Estate Commission can also file for Injunctive Relief** in Superior court to prevent any person from violating License Law or Commission Rules (i.e., practicing without a license or practicing while license is suspended, revoked or expired).

Violations of License Law or Commission Rules is a criminal offense (misdemeanor) and may be prosecuted in court of law.

Finding by NCREC of a violation does not constitute a criminal conviction



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**Prohibited Acts by Licensees**

Misrepresentation or Omission (willful and negligent) of material facts

**What is a MATERIAL FACT?**

- 1. Facts about the property itself (structure)
- 2. Facts relating directly to the property (zoning)
- 3. Facts relating directly to the ability of the agent's principal to complete the transaction (foreclosure, failure to get loan)

Must be disclosed to both agent's principal and 3<sup>rd</sup> parties

Death or serious illness of previous owner OR Convicted sex offender  
- NOT A MATERIAL FACT...answer or don't answer, but be correct if answering

AIDS or HIV - If the person had AIDS - *prohibited* from answering

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**Prohibited Acts by Licensees**

Willful Misrepresentation - speaking without regard to the truth

Negligent Misrepresentation - unintentionally misinforms, because of incorrect information, not have actual knowledge

Willful Omission - has actual knowledge but fails to disclose

Negligent Omission - does not have actual knowledge, but not disclose the fact, but a prudent licensee should have known

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**Prohibited Acts by Licensees**

➤ Making False Promises - on any matter than might influence someone to perform some act - failure to honor a promise is a violation

➤ Conflict of Interest

➤ Undisclosed dual agency

➤ Self-dealing

➤ Representing another Broker without Consent

➤ Violating any Commission Rule

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### Prohibited Acts by Licensees

- Improper Brokerage Commission
- Unworthiness and Incompetence
- Improper Dealing
- Discriminatory practices
- Practice of Law
- Other Prohibited acts

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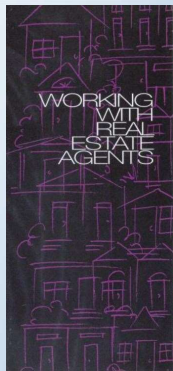
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### Brokers

- Always provide the "Working With Real Estate Agents" brochure at first substantial contact.
- Disclose agency status
- Have written agency agreements
- All FIRMS must disclose if they will practice dual or designated dual agency



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### Change of Name

- **Notify the Commission in writing of each change of personal name, firm name, trade name, residence address, firm address, telephone number, and email address within 10 days**



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### Advertising

- A must always have the name of the Brokerage or BIC
- No Blind Ads allowed
- Must always indicate you are a Broker



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### Delivery or Instruments

- Immediately but no later than **3 Days** deliver copies of ALL documents to the principal
- Immediately present all offers. If multiple offers deliver together or as soon as received.

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### Record Retention

- Retain records for **3 years** from successful or unsuccessful conclusion of a transaction or disbursement of all trust monies, whichever comes first.



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### Compensation

- All commissions must be disclosed to all parties
- Broker does not have to disclose to anyone what they will personally receive from their brokerage for their share of the commission received by the firm.



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### Compensation

- The commission does NOT arbitrate commission disputes!
- Brokers may NEVER pay anyone a commission who is not an active licensee
- This includes referral fees!!



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### Broker In Charge

- A sole proprietor must designate himself as a Broker in Charge if:
  - Expects to do sales
  - Has other brokers affiliated with them
  - Expects to handle trust money

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### Broker in Charge

- Without BIC status a sole proprietor (broker) on active status may only receive referrals.
- No office may have more than one Broker in Charge
- BIC may not be in charge of more than one office at a time.
- BIC is held responsible for all supervision and management of the office.

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### How do you become a Broker – In Charge?

1. Be a full broker on Active Status
2. Have 2 years full time or 5 years part time experience in brokerage
3. Take the 12 hour BIC Course
4. Apply with form 2.25

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### To Retain BIC Status you must...

1. Take appropriate CE ( 4 hrs BICUP & 4 hrs elective) annually by June 10th

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Rule A.0111 – do not draft legal instruments

Rule A. 0112 – Use appropriate forms as prescribed by NCREC

Rule A. 0113 – Report all criminal CONVICTIONS within 60 days of final judgement

Rule A. 0114 – Residential Property Disclosure Act  
Licensee must have these filled out by clients – we can only assist

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G.S. 93A-6(a) 14

Responsibility for Closing Statements

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**Do I Need a Trust Account?**



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### Trust Accounts



**Definition of Trust Money**

In the context of real estate transactions, "**trust money**" is most easily defined as money *belonging to others* received by a real estate broker who is acting **as an agent** in a real estate transaction. It is also any money held by a licensee who acts as the temporary custodian of funds belonging to others.

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### Trust Account Basics

- The three primary features of a trust or escrow account are that it is:
  - 1) **separate**, containing only monies belonging to others,
  - 2) **custodial**, meaning *only the broker or the broker's designated employees have access to the account*, but no one who has funds in the account has access, **and**
  - 3) **available on demand**, that is, the funds may be withdrawn at any time without prior notice.

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### Trust Account Basics

- **Type and Location of Trust Account.** A broker's trust account or escrow account must be:
  - 1) a demand deposit account
  - 2) in a federally insured depository institution
  - 3) lawfully doing business in North Carolina
  - 4) that agrees to make the account records available for inspection by Commission representatives. [G.S. 93A-6(g)]
- Thus, for the purpose of holding *most* trust money, the bank can be located outside North Carolina if the foregoing conditions are met.

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### Trust Account Basics

- License Laws regulating **timeshare** sales also require the developer and timeshare salespersons (who must have broker licenses) to immediately deposit all payments received in connection with a timeshare sale into "... a trust or escrow account in an insured bank or savings and loan association in North Carolina ..." and such payments must remain in the escrow account during the purchaser's ten day cancellation period. [G.S. 93A-45(c).]
- **Where two laws conflict, generally the more restrictive law controls**

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### Trust Accounts – proper designation

#### 21 NCAC 58A .0117 ACCOUNTING FOR TRUST MONEY

- (a) A broker shall create, maintain and retain records sufficient to identify the ownership of all funds belonging to others. Such records shall be sufficient to show proper deposit and disbursement of such funds into and from a trust or escrow account and to verify the accuracy and proper use of the trust or escrow account.

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### Trust Accounts – proper designation

#### 21 NCAC 58A .0117 ACCOUNTING FOR TRUST MONEY

- (b) A trust or escrow account shall satisfy the requirements of G.S. 93A-6(g) and shall be designated as a "Trust Account" or "Escrow Account." **All bank statements, deposit tickets and checks drawn on said account shall bear the words "Trust Account" or "Escrow Account."** A trust account shall provide for the full withdrawal of funds on demand without prior notice and without penalty or deduction to the funds.

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### HOA

- However, **Rule A.0118(a)** requires brokers who handle homeowner or property owner association funds to ***maintain a separate trust account for each property owner association or homeowner association they manage.*** The funds of one homeowner association are not to be commingled with funds from any other association nor with any general trust monies.

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### Commingling

- **“Commingling” Prohibited.** [G.S. 93A-6(a)(12)]  
The basic statutory provision relating to a licensee's handling of the money or property of others states that a broker may not “commingle” his or her own money or property with the money or property of others.

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### Commingling

The Commission will permit a broker to deposit and maintain in his trust account a maximum of \$100.00 of his personal funds (or such other amount as may be required) to cover (not avoid) such charges.

So, if a broker's monthly service charges and other fees typically are \$100, then the broker may deposit up to \$200 of his/her own money to cover these charges.

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### Interest Bearing Account

**Interest-Bearing Trust Account.** Both G. S. 93A-6(a) (12) and Rule A.0116(c) permit a broker to deposit trust money into an interest-bearing trust account so long as the broker first obtains written authorization for deposit in an interest-bearing account from all parties having an interest in the monies being held. Such authorization must specify how and to whom the interest will be paid. If the authorization is contained in an offer, contract, lease or other transaction instrument, it must be set forth in a conspicuous manner that distinguishes it from other provisions of the instrument.

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### BIC Is Responsible

- **Broker-In-Charge Responsible for Trust Accounts.**
- **Must maintain complete records**
- **Commission may inspect trust account records**
- **BIC may employ a custodian for trust accounts**



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### Disbursement of Trust Money

- [Rule A0116(e)] **This rule permits a broker-in-charge to transfer an earnest money deposit from his/her trust account to the closing attorney or other settlement agent not more than ten (10) days prior to the anticipated settlement date.** Earnest money may **not** be disbursed prior to settlement for any other purpose without the written consent of the parties.

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### Disputes of Trust Money

- Rule A.0116(d) addresses disputed trust funds as follows: "In the event of a dispute between buyer and seller or landlord and tenant over the return or forfeiture of any deposit other than a residential tenant security deposit held by a broker, the broker shall retain said deposit in a trust or escrow account until the broker has obtained a written release from the parties consenting to its disposition or until disbursement is ordered by a court of competent jurisdiction."

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### Depositing Trust Money

- All trust monies received by licensees must be in a trust account within 3 banking DAYS
- Provisional Brokers may not hold Earnest Money must take to the BIC immediately
- Non Resident Limited Commercial Brokers must take money to the NC Broker they are working under immediately

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### Option Money & DD Money

- A Broker may accept monies written to the seller ONLY for the purpose of delivering said monies to seller or optionor
- May not hold for longer than 3 DAYS after receipt
- IF given cash must deposit immediately into Trust Account pending contract formation and no later than 3 days after

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### CMA/BPO rules

- A non-provisional broker may prepare CMA or a BPO for a fee.
- A provisional broker may prepare one but **cannot** be paid to do so
- A BPO or CMA must be in writing and is an **estimate of probable sales price**.
- A BPO can never serve as the basis to determine value of a property for the purpose of a mortgage or refinance.



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### Active vs Inactive License

**ACTIVE** = Up-to-date on CE and/or Postlicensing Education

**INACTIVE** = Education Deficiency (or a PB with no BIC affiliation)



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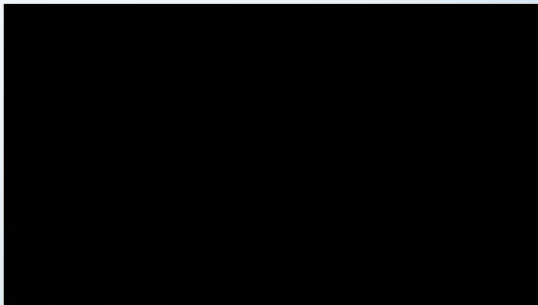
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### Continuing Education Requirements



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**Continuing Education**

**EVERY BROKER MUST TAKE (1) UPDATE**

Non-BIC Brokers & Provisional Brokers take **GenUp**  
 BICs or BIC-Eligible Brokers take **BICUP**

**AND**

**(1) ELECTIVE**

**EVERY LICENSE YEAR**

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Continuing education



- **All** CE must be completed by **June 10**.
- If you miss the June 10 deadline...
- Your license will be **INACTIVE** on **July 1** **AND** you **must cease** all brokerage activities!

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Postlicensing Education

- Required for PB to transition to Broker
- Must complete all 3 classes in first 18 months to remain ACTIVE

90  
 Training  
 Hours

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p75

### Post-licensing Education

THREE 30-hour courses within 18 months of license, one per year minimum.

- Post 301: Broker Relationships & Responsibilities
- Post 302: Contracts & Closings
- Post 303: Selected Topics

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p76

### Post-licensing Education

- **Plan ahead.** Don't wait until the last minute.
- **Reminder notice** is sent **90 days** in advance of PB's anniversary date.

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### Post-licensing Education

**What happens if you don't complete a course on time??**

**Your license will be placed on inactive status until such a time as you complete the requirement and any continuing education needs.**

**Then you must apply to reactivate your license and designate a Broker in Charge that will supervise you.**

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### Examples of Postlicensing Education Deadline Dates

License Issuance Date	Anniversary Dates / Postlicensing Education Deadlines
August 3, 2016	August 3, 2017; August 3, 2018, and August 3, 2019
February 25, 2017	February 25, 2018; February 25, 2019; and February 25, 2020
July 2, 2017	July 2, 2018; July 2, 2019; and July 2, 2020

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Provisional Brokers	"Full" Brokers (non-BIC)	Brokers-in-Charge AND Brokers with BIC Eligible Status
<ol style="list-style-type: none"> <li>1. Renew license each year between May 15-June 30</li> <li>2. Complete GenUP + 1 Elective by June 10 each year (after first renewal)</li> <li>3. Complete one (1) 30-hour postlicensing course by license anniversary date each of the first 3 years</li> <li>4. Maintain affiliation with a broker-in-charge</li> </ol>	<ol style="list-style-type: none"> <li>1. Renew license each year between May 15-June 30</li> <li>2. Complete GenUP + 1 Elective by June 10 each year</li> </ol>	<ol style="list-style-type: none"> <li>1. Renew license each year between May 15-June 30</li> <li>2. Complete BICUP + 1 Elective by June 10 each year</li> </ol>

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**Expired or Inactive =  
NO BROKERAGE ALLOWED!  
(including referral fees)**

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### Current vs. Expired License

**CURRENT:** \$45 renewal fee was  
**RECEIVED** by the Commission  
**ON OR BEFORE JUNE 30**



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### Current vs. Expired License

**EXPIRED:**  
Renewal fee was not  
received on time



**EXPIRED = NO LICENSE**

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If you do not complete CE by the  
June 10 deadline...



Your license will be **INACTIVE** on July 1 AND  
you must  
**cease all brokerage activities.**

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### Reinstatement for Expired License

**On or before  
December 31** of  
expiration year: **Pay  
\$90** (online)



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### Reinstatement - Expired

**Expired <6 months...**  
Submit license activation  
request with fee (\$90).  
PB's must also affiliate with  
a BIC



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### Reinstatement - Expired

**Expired 6+ months...**  
Submit license application  
with fee & criminal  
background check  
**PLUS...**



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### Reinstatement - Expired

**Expired 6+ months...  
PLUS...  
Take one or more post  
licensing classes or  
Prelicensing exam**



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### Reinstatement - Inactive

**Take the CE for current  
year – 8 hours plus  
One additional 4 hour  
elective.**



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Make sure you remember the dates or  
you will look like this!



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### More Status Issues

- Suspended, Revoked or Canceled –
- Are a result of a violation of some type and are imposed by the Real Estate Commission.
- Reactivation is determined by what the commission imposes

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### REALTOR® Code of Ethics Training now required every 2 years

- Applies to REALTOR® members only
- Not a Commission requirement



Contact your local board or association or visit [www.realtor.org](http://www.realtor.org) for information

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Licensees are real estate agents.

Not a Realtor® unless you join the private trade association, National Association of Realtors



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