(Commercial)

Student Manual

Written By Steve Robinson & Brian Pate

A continuing education elective course approved by the North Carolina Real Estate Commission

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North Carolina Real Estate Commission

Continuing Education
Student Information Sheet

READ IMMEDIATELY UPON CHECKING IN

Basic CE Requirement (21 NCAC 58A.1702)

The CE requirement to maintain a license on active status is **eight (8) classroom hours per year** (each license period) consisting of the four General Update or BICUP and a four (4) hour elective. The content of the Update course changes each year.

Important Points to Note

- Newly licensed licensees do NOT need to take any CE prior to their **first license renewal**, but must satisfy the CE requirement prior to their **second license renewal**.
- A course may not be taken for CE credit twice in the same license period. Make sure you have not already taken this course during the current license period.
- If your license is **inactive,** you should check with the Commission to ascertain the amount of CE you need to activate your license.

Attendance Requirement

In order to receive CE credit for a course, students must attend the entire scheduled class session. Education Providers and instructors may, on an individual basis, excuse a student for good reason for up to 10% of the scheduled class session (20 minutes for a 4 hours class session); however, a student must attend a minimum of 90% of the scheduled class session in order to receive a course completion certificate and CE credit. No exceptions to the 90% attendance requirement are permitted for any reason.

Student Participation Requirement

To help assure that the mandatory continuing education program will be one of high quality, the Commission requires that students comply with the following student participation standards:

> A student shall direct his active attention to the instruction being provided and refrain from engaging in activities unrelated to the instruction which are distracting to other students or the instructor, or which otherwise disrupt the orderly conduct of a class. **Examples of Prohibited Conduct**: Sleeping; reading a newspaper or book; performing office work; carrying on a conversation with another student; making or receiving a phone call on a cellular phone; receiving a page on a pager that makes a noise; loudly rattling or shifting papers; or repeatedly interrupting and/or challenging the instructor in a manner that disrupts the teaching of the course.

Education Providers and instructors are required to enforce the student participation standards. Education Providers have been directed to NOT issue a course completion certificate to a licensee who violates the standards and Education Providers must report inappropriate behavior to the Commission.

Course Completion Reporting

Education Providers are responsible for reporting course completion information to the Commission via the Internet within **7 days of course completion.** Licensees are responsible for assuring that the real estate license number that they provide to the course sponsor is correct.

Licensees may address comments/complaints about courses, instructors, and/or sponsors to:

North Carolina Real Estate Commission
P.O. Box 17100
Raleigh, North Carolina 27619-7100

Certificates of Course Completion

Education Providers will provide each licensee who satisfactorily completes an approved CE course a Certificate of Completion at the conclusion of the course. The certificate should be retained as the licensee's personal record of course completion. **It should not be submitted to the Commission unless the Commission specifically requests it.**

Please avoid calling the Commission office to verify the crediting of continuing education credit hours to your license record unless you believe that an error has been made.

About The Authors

Brian Pate – Realtor®, Real Estate Instructor

Email: brian@paterealty.com Phone: 919-669-4575

Brian Pate has been a well-respected real estate professional for 30 years. During his time in the business, he has served as an agent, manager, instructor, coach and trainer for over 20,000 real estate students. In addition, the teams he has managed and coached have produced over $2 billion in real estate sales under his leadership.

Since 1993, Brian Pate has been an integral part of the real estate scene in central North Carolina. Based in Wake Forest for over 25 years, he has seen massive growth in the area and experienced three recessions, as well as rate fluctuations from 16%, down to less than 3% and back up to 7%. He also continued to sell real estate and teach during the Covid-19 pandemic from March of 2020 through 2022 as lock down and masking orders were eliminated.

His early days of real estate sales began on August 2, 1993 when he joined Fonville Morisey, at the time the #1 independent real estate firm in the Triangle region and one of the top 50 independent real estate companies in the United States.

Other than a 2.5-year stint at Coldwell Banker, Pate was with Fonville Morisey from 1993-2012 when he left management to get back into sales. In 2012, he established Brian Pate Seminars to continue teaching in addition to selling real estate. In 2014, he set a goal to create one of the top 100 teams in the Triangle Multiple Listing Service (TMLS) within 5 years. In 2017 and 2018, that goal was reached with the help of some fantastic teammates that averaged over $35 million per year in real estate sales. Also, during those two years, Brian taught over 5,000 students in real estate classes and began coaching other agents to help grow their business.

Brian served two stints as CEO/Team Leader at Keller Williams Preferred in Raleigh, NC and during that time, the office became the #1 listing office in the Triangle MLS.

Today, Brian continues to sell real estate, write classes and teach on a regular basis. He also runs a coaching program for new, experienced and top producing agents in addition to teaching regulatory and training classes.

He lives in Wake Forest, North Carolina with his wife Kirke. Together they have four children between the ages of 18 and 23. They also have three dogs; a coonhound, a black lab and a yellow lab. They love to travel and have a slight obsession with baseball, with a goal of seeing a game at every Major League Baseball stadium in the next 10 years. Kirke and Brian also love to shag dance and spend their non-baseball weekends practicing their steps.

Steve Robinson – Realtor®, GRI, DREI

Email : Steve@newriverbrokerage.com Phone: 704-400-1358

Steve Robinson has been a builder, broker and instructor for over 35 years in the real estate industry. With a wealth of knowledge and a spry sense of humor that he brings to the classroom, he is a sought after instructor and speaker for many events. He is currently the owner of New River Brokerage in Charlotte, North Carolina.

From the age of 10, Steve spent many years with his father's real estate company, eventually building homes as a licensed General Contractor while also practicing full time as a real estate broker and property manager in North Carolina and Virginia.

Steve has been responsible for building and developing many commercial and residential properties including site-built, modular and value-appreciating manufactured dwellings.

Licensed as a broker since 1987, Steve wrote his first CE course in 2001, a title he was fortunate to have published nationally, co-authoring Dearborn's "Manufactured and Modular Housing" with Marie Spodek.

The North Carolina Real Estate Commission approved his certification as CE, Pre-License and Post-Licensing instructor in 2001. Continuing his pursuit of growth and expertise, he earned the GRI designation in 2004 and was awarded the Distinguished Real Estate Instructor (DREI) designation in 2017.

Steve continues to administer and develop impactful and relevant course materials in a fast-paced and lighthearted learning environment while managing his Charlotte based construction and commercial brokerage firm.

TABLE OF CONTENTS / COURSE OUTLINE

If You List, You Last (Commercial)

A 4 hour Continuing Education Elective

Outline/Syllabus:

I. Introduction (Lecture, PowerPoint) — 5 minutes

II. Pre-Listing Process (Lecture, PowerPoint)

NCREC Video 5 minutes

a. New WWREA Disclosure (Lecture, PowerPoint) — 6 minutes
   i. Mandatory Sales, Optional Lease
   ii. Crucial Delivery Method Tips

b. Paperwork (Lecture, PowerPoint) — 20 minutes
   i. WWREA
   ii. Exclusive Right To Sell, Lease or Both
      1. NCAR Forms Optional
      2. Company or counsel-drafted docs
   iii. Lead Based Paint
      1. Sales vs. Leases
      2. Acknowledgement indemnification
   iv. Internet Advertising
   v. CMA
      1. Sources
      2. Reliability
         a. Sales
         b. The Lease Conundrum
   vi. Professional Services Disclosure
   vii. Land Information Worksheet
   viii. The TRUTH about YOUR Agreement

c. Square Footage (Lecture, PowerPoint) — 14 minutes
   i. Residential v. Commercial
   ii. Allowances & Liabilities

BREAK (10 Minutes)

NAR Video 5 minutes

d. Discovery of Material Facts (Lecture, PowerPoint) — 23 minutes

i. Listing Agent walk-through
ii. Reasonable discovery & disclosure
iii. Walk the lot
iv. Find well head
v. Find Septic if possible
vi. Using GIS layers — 7 minutes GIS Review
vii. The Land problem
viii. Reasonable follow up w/authorities (keep it local)

5 minute group forum

e. Listing Presentation (Lecture, PowerPoint) — 5 minutes
i. Show your system to the seller
ii. Don't bash other Realtors®
iii. Discuss Pricing Strategy — 5 minute breakout
iv. Competing w/Goliath

BREAK (10 Minutes)

f. Tricks of the trade (Lecture, PowerPoint) — 12 minutes
i. Josh
1. Relationships
2. Audacity & Confidence
3. Hyper Organization
4. The Leasing Issue
ii. Patty
1. Be real, be engaged. You still deal w/humans
2. Be consistent, be consistent.
3. Set realistic mining goals (capturing the segment, sector)
4. Don't cold call if you're uncomfortable with it
5. Networking Works - be in the community w/peers, etc.
6. Be competent, take time, be precise, be accurate, be nice
iii. James
1. New licensees should seek out Industry veterans early on
2. Specialize
3. It's okay to work the "low hanging fruit"
4. Farm your likely locations and ask for the listing
5. Deals breed deals
iv. Cindy

1. You're Mistaken If You Think You Can Do It All
2. "Get Your Posse Together"
3. Market Contacts
4. Limit Your Market

5 minute breakout

III. Active Phase (Lecture, PowerPoint)

a. Marketing (Lecture, PowerPoint) 7 minutes

i. NCREC Rules for Advertising
ii. Signage?
iii. Social Media
iv. Print Ads
v. Mailings

3 minute breakout

b. Customer Service (Lecture, PowerPoint)

2 minute forum

i. Systematic Communication with sellers
ii. Listing Preview
iii. Ad Previews
iv. Video previews

1 minute drone video

c. Communication with Buyer Agents (Lecture, PowerPoint)

i. More Bees with Honey
ii. When a showing takes place, follow up with buyer agent
iii. Reasonable & proactive BA availability

IV. Offers/Contracts (Lecture, PowerPoint) 8 minutes

a. When does an offer become a contract?

i. "Accept, Reject, Counter, IGNORE?"
ii. Case scenario 2 minute forum
iii. Communication of offers/acceptance

b. Handling Multiple Offers (Lecture, PowerPoint) 5 minutes

5 minute NAR video

i. NCREC Rules
ii. NAR Standards of Practice
iii. COMMUNICATION
1. Permission Permission

2. Are you shilling?
3. Rules of a counteroffer

3 minute forum

BREAK (10 Minutes)

c. Escalation Clauses (Lecture, PowerPoint) — 5 minutes
   i. Common in multiple offer scenarios
   ii. Automatic increase provisions
   iii. The legality & questionable utility
   iv. The 340-T

d. Retention of records (Lecture, PowerPoint) — 3 minutes
   i. NCREC Rule
   ii. What must be retained
   iii. 3 year period starts when?
   iv. How long, … really?

5 minute breakout

2 minute forum

V. Contract To Close (Lecture, PowerPoint)

a. Copy of paperwork to seller, firm (Lecture, PowerPoint) — 2 minutes
   i. 3 days to deliver copy of paperwork to sellers, EVERYTHING to firm
   ii. Validity of electronic transactions
   iii. Impact of Docusign/Dotloop, etc.

b. Dealing with inspections (Lecture, PowerPoint) — 2 minutes
   i. Prepare the seller mentally for some repairs
   ii. Discuss whether they prefer to do the work or give money.
   iii. If giving money, will need an estimate
   iv. Small circles

c. Staying proactive (Lecture, PowerPoint) — 5 minutes
   i. w/a loan process, inspections, etc.
   ii. With purchasers, tenants & the inevitable
      1. Inspections
      2. Planning & Zoning

1 minute review

      3. DOT - Local & State
      4. TI procedure, CAM & Caps — 10 minutes
         a. Prepare Seller for variables of negotiation

b. Retail example, exercise — 7 minute whiteboard

c. Lease types

d. CAM better defined

3 minutes case review

d. Deferring to counsel (Lecture, PowerPoint) — 2 minutes

i. Contract amendments and how to react

ii. Heavier decisions warrant a timely response

e. Closing (Lecture, PowerPoint)

i. Is there an actual settlement event?

ii. Will the seller/landlord even attend?

iii. Utilities and turnover

f. Post closing follow up (Lecture, PowerPoint)

i. Set up a system for follow up with the seller

ii. Add the buyer to your database

VI. Wrap Up & Quick Hits (Lecture, PowerPoint)

a. TAKE NOTES & KEEP ‘EM — 3 minutes

b. Get Paid

Why was this course written?

Steve and I have been friends for years and fellow instructors. We met as members of the North Carolina Real Estate Educators Association and both of us served terms on the organizations Board of Directors.

We have always talked about collaborating on a class and just needed the right topic to get us both motivated in the same circle to make that happen.

When we began talking in spring of 2022, I had an idea to do a course all about listings and creating an elective course for it. Steve liked the idea and said, “I wish I could take that course and do it with a focus on commercial brokers.” There it was, our idea!

Working with many Zoom calls and brainstorming, then phone calls to discuss details while I was having a cigar and a bourbon and Steve driving his daughters all over the place, we developed an in depth concept.

A meeting halfway between us in Greensboro to sit down and iron out the small details In October of 2022 and here is the class.

The goal of the class is to help students refocus on the quality of service in listings. During the Covid-19 Pandemic of 2020-2021, real estate agents had it easy. Prices in North Carolina increased by almost 20% annually and many people who left the real estate business previously came back and jumped in for the money grab.

The National Association of Realtors reported an increase of membership to over 1.8 million Realtors® in the United States. Normally, that number is between 1.2 million and 1.5 million. As a result, the quality of service provided to home sellers diminished as agents could put a house on the market with years of deferred maintenance and at $25,000 to $50,000 over the actual value of the property and sell it in a weekend.

Learning to sell real estate in a down market, like both Steve and I did, made us better real estate agents. Now, facing a similar market as interest rates and inventories rise across the country, we thought it was a good time to create class that focused on the quality of the process and the art of listing homes.

We hope that you enjoy the class and it gives you actionable techniques to make your listing business better as soon as you walk out the door.

Brian M. Pate, Co-Author

INTRODUCTION - *5 minutes*

In collaboration with Brian Pate Seminars, New River Education presents the 4-Hour, North Carolina Real Estate Commission-approved Continuing Education Elective *If You List, You Last: (Commercial)*.

From the moment a licensee embarks in their real estate career, it is impressed upon them the importance of being able to list property and expose it to the open market. A multitude of things result when this is performed, not the least of which is the experience associated with the process itself. The other aspect that is accomplished is a regular and habitual marketing of your brand, i.e. your company's name your own name in the real estate marketplace.

As with any North Carolina Broker continuing education course, this subject matter must adhere to and observe all of the North Carolina Real Estate Commission Law and Rules associated with the proper manner in which a licensee should list a piece of real estate on the open market on behalf of another party, for compensation. These Laws and Rules will be noted throughout the course and emphasized.

While many existing residential practitioners find themselves interested in commercial real estate, new practitioners also become immediately curious about the processes and procedures associated with listing commercial property. The following subject matter will attempt to simplify and explain the process in a manner understandable to most who already possess a basic knowledge of listing real property.

LEARNING OBJECTIVES - By the end of this section, licensees should be able to - explain the documentation required for the listing transaction to sellers and how each form affects the closing including a practical commercial real estate application, define the rules & requirements for measuring commercial real estate square footage in North Carolina, and identify material facts for disclosure to prospective buyers.

Student Notes:

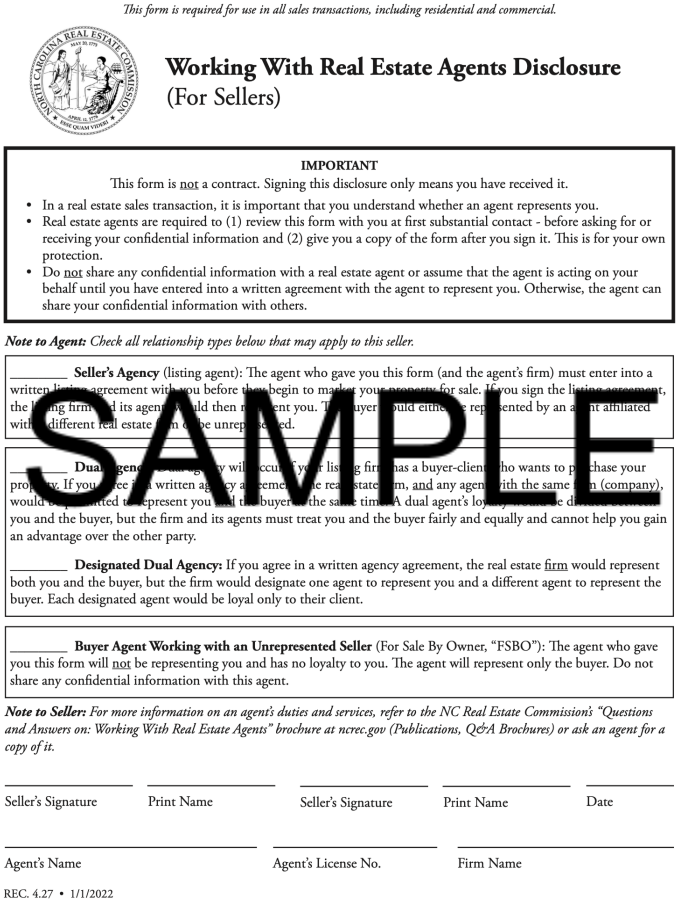
The Pre-Listing Process

- **NCREC Video on the Working With Real Estate Agents Disclosure (*5.5 minutes*)**

The Working With Real Estate Agents Disclosure - *5 minutes*

A consistent aspect of a broker listing real property in North Carolina starts with the presentation of the Working With Real Estate Agents Disclosure. The NC Real Estate Commission has made it very clear that this document shall be utilized when the subject matter is residential property and when the subject matter is commercial real property being contemplated for purchase or sale.

Licensees may note the significance associated with the commercial utility of this document being limited to commercial dispositions. While the NC Real Estate Commission is clear about the requirement of using this document for commercial sales, it does still leave the option to firms and licensees to utilize this document when it comes to lease-based transactions. A firm and broker in charge should determine if their company guidelines should call for the use of the working with real estate agents disclosure when the subject matter is a property management or lease-based transaction.



This form is required for use in all sales transactions, including residential and commercial.

Working With Real Estate Agents Disclosure
(For Sellers)

IMPORTANT

This form is not a contract. Signing this disclosure only means you have received it.

- In a real estate sales transaction, it is important that you understand whether an agent represents you.
- Real estate agents are required to (1) review this form with you at first substantial contact - before asking for or receiving your confidential information and (2) give you a copy of the form after you sign it. This is for your own protection.
- Do not share any confidential information with a real estate agent or assume that the agent is acting on your behalf until you have entered into a written agreement with the agent to represent you. Otherwise, the agent can share your confidential information with others.

Note to Agent: *Check all relationship types below that may apply to this seller.*

_____ **Seller's Agency** (listing agent): The agent who gave you this form (and the agent's firm) must enter into a written listing agreement with you before they begin to market your property for sale. If you sign the listing agreement, the listing firm and its agents would then represent you. The buyer would either be represented by an agent affiliated with a different real estate firm or be unrepresented.

_____ **Dual Agency:** Dual agency will occur if your listing firm has a buyer-client who wants to purchase your property. If you agree in a written agency agreement, the real estate firm, and any agent with the same firm (company), would be permitted to represent you and the buyer at the same time. A dual agent's loyalty would be divided between you and the buyer, but the firm and its agents must treat you and the buyer fairly and equally and cannot help you gain an advantage over the other party.

_____ **Designated Dual Agency:** If you agree in a written agency agreement, the real estate firm would represent both you and the buyer, but the firm would designate one agent to represent you and a different agent to represent the buyer. Each designated agent would be loyal only to their client.

_____ **Buyer Agent Working with an Unrepresented Seller** (For Sale By Owner, "FSBO"): The agent who gave you this form will not be representing you and has no loyalty to you. The agent will represent only the buyer. Do not share any confidential information with this agent.

Note to Seller: *For more information on an agent's duties and services, refer to the NC Real Estate Commission's "Questions and Answers on: Working With Real Estate Agents" brochure at ncrec.gov (Publications, Q&A Brochures) or ask an agent for a copy of it.*

Seller's Signature | Print Name | Seller's Signature | Print Name | Date

Agent's Name | Agent's License No. | Firm Name

REC. 4.27 • 1/1/2022

Student Notes:

While not an indictment of commercial brokers, it should be noted as well that some of these licensees are of the opinion that the delivery of this disclosure is burdensome. As a result, such a licensee might deliver a link to the document in some portion of a signature line of their company email account. This method of delivery is incomplete to the NC Real Estate Commission based on the lack of compliance with the NCREC rule to review with parties. Asking a client or customer to click a link in order to gain access to the WWREA does not qualify as reviewing the document with the respective party. The agent cannot be assured that the party will open the link or take any opportunity to review it.

As was mentioned in the 2021/2022 NCREC mandatory update, the requirement is that a licensee shall deliver and review the WWREA with a prospective client or customer when it becomes apparent that the parties are experiencing first substantial contact. Merely providing a link or placing that link as part of your email signature does not qualify as reviewing the document. Therefore, a licensee has an obligation to make a personal review of this document at the point when the parties have achieved first substantial contact. In other words, the parties have begun to discuss items that are personal, motivational, confidential or financial in nature.

An agent should remember that the WWREA is a one-page document and as a result, in PDF form, it is only a single page that should immediately display in full if properly attached to an email to a client or customer. What *proof* does an agent have that they have reviewed the WWREA with the parties, thereby complying with the NCREC rule to review with parties? That email and/or a return receipt provision might help better support the agent's assertion that the review had taken place and the disclosure received by the parties. You cannot require the parties to sign the disclosure acknowledging receipt, but setting up a clickable email provision could establish the same without signature.

Student Notes:

Lastly, remember that many transactions begin and process mostly in an electronic format. As a result, the correspondence that takes place with a client or customer could witness that party divulging critical

information to a licensee *prior* to the discussion of agency found in the Working With Real Estate Agents disclosure. Due to this possibility, the agent should be having the discussion about the document as early as possible in the beginning of the process with the prospective client or customer.

Paperwork - *20 minutes*

While there is no mandate that a licensee become a Realtor® in the state of North Carolina in order to practice brokerage, there are many that will choose to become a Realtor®. As a result, those brokers have available to them a copious amount of standardized forms and documents that are enormously beneficial in assisting a licensee in their effort to perform brokerage.

The NC Association of Realtors® and the NC Bar Association, (with the remarkable assistance of the Forms Committee) have collaborated for decades in the creation of very nearly every document a practicing real estate professional in NC might need to help them perform acts of brokerage. While the standardized documents allow licensees to “fill in the blanks” and assist them in the formation of various agreements, addenda and scenarios, the use of them is *not mandated* by the NC Real Estate Commission.

Many commercial brokers in North Carolina use their own company-crafted agreements in order to facilitate the creation of a listing. Some Realtor® licensees will still use the NCAR & NCBAR-authored commercial documents when it suits their company and/or client needs. For example, commercial documents currently in use by Realtors® that help create listing agreements are the “Exclusive Right to Sell”, “Exclusive Right to Lease”, & the “Exclusive Right to Sell or Lease”.

Prudent firms and their brokers will also have legal counsel draft lead-based paint amendments when the subject property/properties have been built prior to 1978. Remember, the Federal Government mandate for

Student Notes:

use of the Lead-Based Paint Addendum is for the sale or rental of 1-4 unit family dwellings. The Department of **Housing** and Urban Development was the first agency to effect this mandatory disclosure. That said, the

importance of a full disclosure of the possible or active presence of lead-based paint on a structure(s) cannot be overstated. It is critical to the formation of the most comprehensive and effective establishment of a commercial brokerage relationship. A seller or landlord client and their representative brokerage firm could be seemingly better indemnified through such counsel-drafted disclosures when the acknowledgement of interested or executing purchasing or leasing parties is secured.

While most standardized forms will include language regarding the seller or landlord's consent to internet advertising, commercial firms will hire counsel to prepare their listing agreements and also require this information to be included. The importance of this lies in the fact that the exposure of some information to the internet can, in rare cases, result in liability for the seller or landlord and the firm and its agents. All involved parties must understand not just the benefit of internet marketing but also the jeopardy that could result from it.

Many real estate brokers in North Carolina believe that the commercial real estate practice is, "for some reason", exclusionary. One of the characteristics that give rise to this belief is the manner in which pricing is established for commercial properties. Whether for the sale or the lease of the property, there can be tangible difficulty for commercial practitioners in establishing accurate pricing data. There are certainly expensive and effective sources for a precise and reasonably accurate Comparative Market Analysis (CMA) such as CoStar or LoopNet. These companies spend tens of millions of dollars each year gathering data to create a commercial "listing database". Many commercial firms will pay handsomely for these services, but ultimately, they will also utilize their own local market knowledge to validate and cross reference either the values of recently sold or recently leased comparable properties.

Aside from local and regional residential MLS databases, there are some commercial brokerage sources that operate somewhat independently from residential real estate Realtor® associations. For example, the Charlotte Regional Commercial Board of Realtors® is one of the oldest such associations in the United

Student Notes:

States. It also provides its members with a functioning listing database and other advocacy practices that assist the industry in coordination and tandem operations with local and state government agencies. Established firms in larger NC markets will utilize their regional associations and the private database systems

to gain greater exposure for their listings. Local, residential-based associations still maintain a modicum of commercial property listings, but these seem to be more conducive to residential firms that have an occasional need to get exposure for smaller market or even rural commercial properties.

Perhaps the greatest challenge for commercial firms related to pricing is related to leasing. Larger and established firms might maintain their own, private database of recently executed leased commercial properties. Over time, the relationships between different, established commercial firms can give rise to a somewhat regular pipeline of shared information as licensees endeavor to achieve the most accurate and marketable leasing rates for their respective listings. Private companies such as CoStar will admit that their lease rate information is limited, at best. Many companies will close a lease transaction and assure that contract information is not made available to the general public. Even when such information is placed in the public record, it can become counterproductive to pursue the voluminous detail and research necessary to glean what historically amounts to limited data. A somewhat newer approach is made by companies like CompStak, who use a model reliant upon firms and licensees sharing the data of their closed transactions with this platform. With each property the agent might close that is shared with the platform, the agent/firm will “earn credits” toward limited research that could be conducted on the provider’s database. The more “credits” earned by the agent/firm, the more detail might be accessed for a more accurate report to assist with pricing and terms.

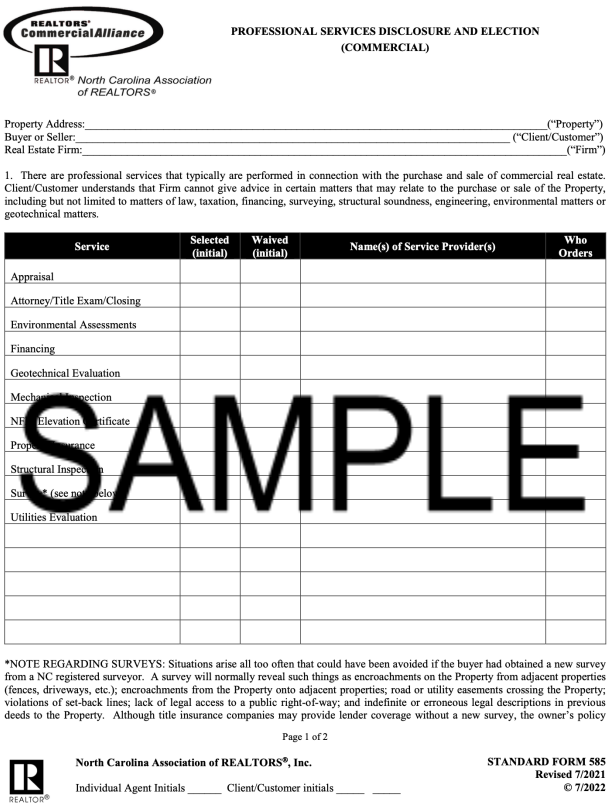
Lastly, when establishing a reasonably accurate range of possible listing prices for commercial properties, the latitude for comparables is slightly extended as well. For example, the distance from the subject property to a dependable comparable can be somewhat greater than the distance residential practitioners should observe. While residential agents want to find dependable comparables within the same neighborhood, but no more than 2-3 miles from the subject, (further can be permissible when in rural areas), a commercial

Student Notes:

agent faces a greater challenge of reliable comparables being nearby OR having been leased or sold in the past 6 months. A residential broker will make every effort to maintain the settlement date of residential properties within 6 months of the execution of a CMA for a dwelling. Commercial brokers may find

comparables that settled within 12-16 or even 18 months and those comparables that could be miles from the subject property, but within a similar commerce zone. When pricing for commercial listings, a broker must make every effort to find nearby comparables that have settled within a handful of months. If this isn't possible, the agent should bear this in mind and assign the appropriate "weight" to respective comparables and their adjusted numbers. Finally, a rather simplistic approach to expound on providing accurate ranges of commercial property values also contemplates that while loans can be secured for properties, the purchasers may simply close in cash and have no need for appraisals, nor loan dependency. Such scenarios never alleviate or remove the requirement of licensees to be diligent, competent & accurate when it comes to establishing reasonable ranges of possible listing prices when placing properties on the open market for their clients.

Another document from NCAR and the NCBAR is Standard Form 585, Professional Services Disclosure and Election (Commercial). This form is suitable for use with Seller or Buyer clients when the subject property is to be listed for sale or pursuant to a purchase agreement. Another optional document, when Realtors® utilize this, it not only helps better guide the client regarding some of the circumstances that might need to be addressed during due diligence or marketing phases, but it can also assist the agent and firm to be thorough and have verifiable information regarding the party's decisions during such time periods. For example, a purchaser might waive the right to perform a Geotechnical inspection and then subsequently close on the purchase of a subject property. 18 months after settlement, the company could realize the necessity to expand its rural septic field with additional lines and then discover that the governing authority will not allow for this due to recently disqualified



REALTORS® CommercialAlliance
REALTOR® North Carolina Association of REALTORS®

PROFESSIONAL SERVICES DISCLOSURE AND ELECTION (COMMERCIAL)

Property Address:_____("Property")
Buyer or Seller:_____ ("Client/Customer")
Real Estate Firm:_____("Firm")

1. There are professional services that typically are performed in connection with the purchase and sale of commercial real estate. Client/Customer understands that Firm cannot give advice in certain matters that may relate to the purchase or sale of the Property, including but not limited to matters of law, taxation, financing, surveying, structural soundness, engineering, environmental matters or geotechnical matters.

Service	Selected (initial)	Waived (initial)	Name(s) of Service Provider(s)	Who Orders
Appraisal				
Attorney/Title Exam/Closing				
Environmental Assessments				
Financing				
Geotechnical Evaluation				
Mechanical Inspection				
NFIP Elevation Certificate				
Property Insurance				
Structural Inspection				
Survey* (see note below)				
Utilities Evaluation				

SAMPLE

*NOTE REGARDING SURVEYS: Situations arise all too often that could have been avoided if the buyer had obtained a new survey from a NC registered surveyor. A survey will normally reveal such things as encroachments on the Property from adjacent properties (fences, driveways, etc.); encroachments from the Property onto adjacent properties; road or utility easements crossing the Property; violations of set-back lines; lack of legal access to a public right-of-way; and indefinite or erroneous legal descriptions in previous deeds to the Property. Although title insurance companies may provide lender coverage without a new survey, the owner's policy

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North Carolina Association of REALTORS®, Inc.
Individual Agent Initials _____ Client/Customer initials _____ _____

STANDARD FORM 585
Revised 7/2021
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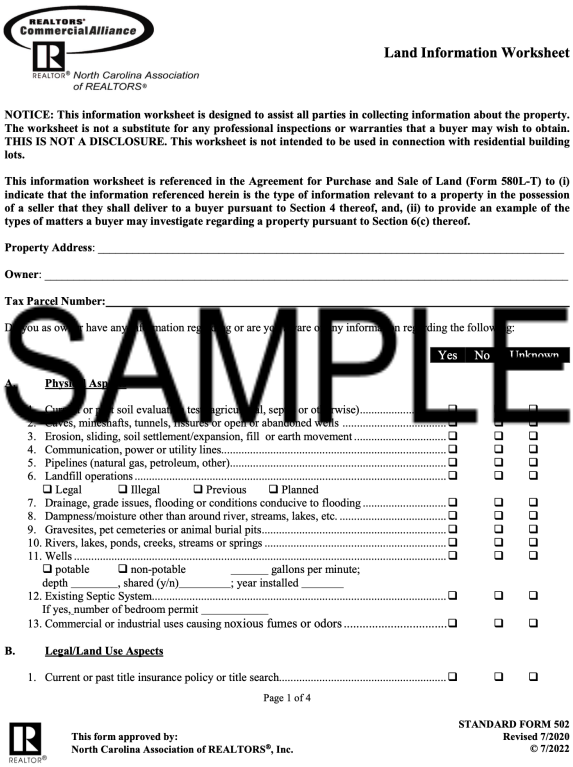
aggregates. The assisting broker and firm have the initials on file from the responsible company representative indicating that they do not wish to perform this inspection and should be reasonably indemnified from action by the affected purchaser. While this form is again, optional, a non-Realtor® firm is well-advised to have a counsel drawn embodiment of this document available for use by its agents for all of the aforementioned reasons and more.



REALTORS® Commercial Alliance
REALTOR® North Carolina Association of REALTORS®

Land Information Worksheet

NOTICE: This information worksheet is designed to assist all parties in collecting information about the property. The worksheet is not a substitute for any professional inspections or warranties that a buyer may wish to obtain. THIS IS NOT A DISCLOSURE. This worksheet is not intended to be used in connection with residential building lots.

This information worksheet is referenced in the Agreement for Purchase and Sale of Land (Form 580L-T) to (i) indicate that the information referenced herein is the type of information relevant to a property in the possession of a seller that they shall deliver to a buyer pursuant to Section 4 thereof, and, (ii) to provide an example of the types of matters a buyer may investigate regarding a property pursuant to Section 6(c) thereof.

Property Address: _____

Owner: _____

Tax Parcel Number: _____

SAMPLE

Do you as owner have any information regarding or are you aware of any information regarding the following:

	Yes	No	Unknown
A. Physical Aspects			
1. Current or past soil evaluation tests (agricultural, septic or otherwise)	❑	❑	❑
2. Caves, mineshafts, tunnels, fissures or open or abandoned wells	❑	❑	❑
3. Erosion, sliding, soil settlement/expansion, fill or earth movement	❑	❑	❑
4. Communication, power or utility lines	❑	❑	❑
5. Pipelines (natural gas, petroleum, other)	❑	❑	❑
6. Landfill operations	❑	❑	❑
❑ Legal ❑ Illegal ❑ Previous ❑ Planned			
7. Drainage, grade issues, flooding or conditions conducive to flooding	❑	❑	❑
8. Dampness/moisture other than around river, streams, lakes, etc.	❑	❑	❑
9. Gravesites, pet cemeteries or animal burial pits	❑	❑	❑
10. Rivers, lakes, ponds, creeks, streams or springs	❑	❑	❑
11. Wells	❑	❑	❑
❑ potable ❑ non-potable _____ gallons per minute; depth _____, shared (y/n)_____; year installed _____			
12. Existing Septic System	❑	❑	❑
If yes, number of bedroom permit _____			
13. Commercial or industrial uses causing noxious fumes or odors	❑	❑	❑
B. Legal/Land Use Aspects			
1. Current or past title insurance policy or title search	❑	❑	❑

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This form approved by: North Carolina Association of REALTORS®, Inc.

STANDARD FORM 502
Revised 7/2020
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Another document from the Realtors® Commercial Alliance & NCAR is Form 502, the Land Information Worksheet. Referenced from Form 580L-T, (the Agreement for Purchase and Sale of Land), the Worksheet is designed to indicate that the information referenced on it is the type of information relevant to the seller's property, and to provide an example of the types of matters a buyer might investigate regarding the contracted property. A type of questionnaire, the seller is asked to express if they possess any information about the following aspects: Physical, Legal/Land Use, Survey/Boundary, Agricultural, Timber & Mineral, Environmental and Utilities. The seller responds Yes, No, or Unknown regarding the various cited items. This multi-page document is inundated with a wealth of pertinent information about the subject property. It is also an optional form, but non-Realtors should strongly consider also having a variation of this Worksheet crafted for them by legal counsel.

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The final details regarding commercial brokerage paperwork in North Carolina, is that it can be summed up in one word: "OPTIONAL". In truth, generally new licensees worked so hard to get past a remarkably difficult NC Broker State Licensing Exam, (soon followed by 90 final hours of mandatory instruction delving deeper into NC

Real Estate Commission License Law & Rules), that when the dust settles and a licensee is prepared to try to earn a living in real estate, they are abundantly “seasoned” with these necessities of North Carolina Rule & Law. As such, the basic, (and understandable) conclusion reached by a new licensee is that these standardized forms are the “only” way to successfully craft and conclude a transaction. Such a conclusion is erroneous.

Many commercial brokerage practitioners either have staff counsel or lawyers on retainer upon whom they can call. Smaller commercial brokerage firms may also regularly refer “the conclusion” to attorneys as well; meaning, they will have agency templates or standard documents in place to establish agency, but when it is apparent that the parties are converging to a contract, all of the data and details will be forwarded to the respective principal’s legal representation. Again, not a slight to the strength of standardized forms, but many commercial brokers will utilize only the requisite forms in any given transaction, e.g. the WWREA for the establishment of agency in a commercial sales transaction.

A broker licensee at their core is just that - a broker. They are a party hired to generally help two principals position themselves to better transact business. NC state law is explicit and clear about the need for a license when the hired party expects compensation for putting the principals together via the licensee’s provision of brokerage services.

Knowing this law, a broker also understands the necessity to establish a working relationship in writing with their respective client prior to listing the property for sale or lease on behalf of their client, OR assisting the client in the preparation and presentation of an offer to purchase or lease the property. What document(s) must be used to establish this agency relationship? I mean, the WWREA is a reasonable conclusion for a licensee to to begin with when commencing the discussions of a hopeful and subsequent written agency

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agreement. But what about the relationship itself? There are certainly standardized forms for that. It truly is quite helpful to fill in blanks and, essentially, have “all of your bases covered”. But, what if there is an unusual scenario? What if the parties (firm and client), wish to change the language used by them to establish the

agency relationship? Interestingly, standardized docs have always had some location on them to effect such changes, be they “Other Provisions” or “Special Provisions”, it’s an invitation to the firm to make alterations provided that both parties agree to them and the provision doesn’t violate the law.

In theory, a firm could author an agency agreement entirely on their own. They might elect to craft their own agency document(s) without the advice or assistance of counsel. Wait, what? Many remember NCREC test questions that are very explicit about how **non-lawyer real estate agents cannot draft legal instruments**. This is absolutely true, … when the document is for the use of two opposing principals when represented by a firm or sole proprietor. When/If a firm is engaging in the preparation of an agency agreement document between themselves and a client, the FIRM is a principal. The client is the other principal.

Could a licensee that owns their own residential or commercial real estate choose to draft an offer of purchase and sale or lease for use in selling or leasing their property? Could a licensee as buyer or lessee choose to draft their own contract in pursuit of someone else’s property? In short, yes. If the opposing party agrees to the terms and conditions in that contract and the language within it doesn’t violate the law. You might be a licensed real estate broker, but you can still be the seller, buyer, landlord or tenant in a transaction with another party. Remember, no individual licensee acting as principal in a transaction can represent the interests of any principal opposing them in that transaction. Their FIRM? Yes, there are methods by which, provided that all parties have given informed consent, the firm and OTHER affiliates with the firm can represent the interests of such an opposing principal.

North Carolina is an Attorney State. As such, all of its citizens are strongly advised to utilize the services of legal counsel whenever the circumstances indicate the necessity. Remember, you know NC License Law and NCREC Rule. Unless a broker is an attorney, they cannot draft legal documents that are to be used by

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two opposing parties. While the aforementioned is also true, *anyone* in NC is still risking significant jeopardy when they, as principal, elect to author legal instruments to be used by themselves and another party.

A former associate of mine once put it best: “Go ahead and draft a Letter of Intent to help your parties get an idea of how their final contract might look. But if you fail to use the words ‘non-binding’ when referencing the LOI, you could be found guilty of practicing law without a license”. LOIs are a phenomenal tool used by commercial practitioners. LOIs are essentially bullet point summaries of the primary points of a negotiation discussion historically presented by a buyer/tenant or their representative. Once the parties agree in principle to the general terms of the Non-Binding Letter of Intent, the respective agents will likely forward the detail to the legal representative of each party. The resulting contract is typically “tailor made” to the satisfaction of the principals.

Could residential brokers use a Non-Binding LOI to effect negotiations between principals? Yes they could. Some factors could make such a concept grievously inadvisable: 1) ANY such pursuits as explained in the preceding paragraphs MUST first have the permission of the firm’s Broker-In-Charge and not be counter to company policy. 2) While possible to start negotiations between parties with a Non-Binding LOI, a residential transaction anticipates a generally broader interest. Therefore, there will likely be more competition to challenge buyers or lessees in pursuit of a specific property and most will not be using this approach. 3) A standardized form, e.g. Standard Form No. 2-T Offer to Purchase and Contract, has the ability to witness the formation of a legally binding document between two parties within minutes or hours. Lawyers will historically continue negotiating with the opposing counsel after general LOI agreement. This can take a great deal of time and cost the parties what could be a substantial amount of additional money. 4) Many opposing residential firm representatives will have little or no experience with residential LOIs. An offering party could be “tossed aside” in favor of a “more familiar” approach.

Interestingly, the (primarily but not exclusively) residential form 340-T, Response to Buyer’s Offer can create a type of non-binding LOI reply from a seller to a buyer. So, if the four approaches a seller (or any party in

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receipt of a contract offer) might take in response to a buyer’s offer might be 1) accept it 2) ignore it 3) reject it or 4) counteroffer, the 340-T itself is a “softer” rejection. No bindable circumstance is created or is left after presentation of this form. BUT, the buyer will be left with a much better idea of what the seller generally expects

in an offer and that buyer could 1) abandon the entire process or 2) rewrite their offer to more closely agree with the seller's recently expressed reply. Footnote: A buyer's agent in receipt of a 340-T now possesses the detail necessary to retain in their file to establish the conclusion of an offering process with that client. Any offer that follows is understood to be a totally new series of offering.

Square Footage - *14 minutes*

Those licensees that currently possess an innate fear of square footage measuring and reporting as a broker in North Carolina should simply remember the name of the guidelines provided by the NCREC, *The Residential Square Footage Guidelines*. The details and rules associated with this publication apply to Residential property listed by brokers. A reasonable conclusion by an agent might then be, "So if I'm in commercial real estate, I don't have to measure or report square footage?" Umm, ... not so fast.

The quickest answer for a commercial broker is to note that the NC Real Estate Commission expects a licensee to be reasonably competent when it comes to the knowledge necessary to determine the square footage of the improvements on a property. If one is considering that such a statement is too vague to be understandable, one might be well, reasonably accurate. The remaining question is then, "what is reasonable?" A defeatist approach might be that only a judge can determine what is reasonable. An optimistic approach might be that a commercial broker need not be terrified of the prospect of an audit by the NCREC that might reveal that the commercial listing of a firm does not either report the square footage of the subject property. Neither might it contain any indication that a measurement by the listing agent was ever performed. It's the second one that should make a commercial broker pause and listen.

NC Real Estate Commission Rule 21 NCAC 58A .0108 states that "(a) Brokers shall retain records of all sales, rental, and other transactions conducted in such capacity, whether the transaction is pending,

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completed, or terminated." And "(b) Records shall include copies of the following: … (13) sketches, calculations, photos, and other documentation used or relied upon to determine square footage."

While the Residential Square Footage Guidelines publication makes direct reference to a residential agent's personal responsibility to this end (provided reporting square footage is the prevailing practice in that firm's surrounding market), there are no references to commercial brokers or any personal responsibility for them to measure and report. This fact and the cited NCREC rule above would seem to indicate that the general public assumes that part of the "essence" of being a licensed real estate broker in North Carolina includes the ability to *determine* the square footage of improvements on property.

With all of this established, and remembering that each licensee was trained and tested in Pre and Post-Licensing on the Residential Square Footage Guidelines publication, it is reasonable to conclude that each practicing licensee with a NC real estate broker's license understands the importance to the general public of the dimensions and area of property improvements.

The commercial brokerage practice observes a variety of different square footage determinations for leases and acquisitions. From one party to the next, a broker is responsible to determine the method used and acceptable to the parties. For example, the "floorplate" determination method references the general shape and gross leasable area of a given floor of a building. While a prospective tenant client will ultimately determine many other factors, including the net leasable area, common areas, service areas, etc., a licensee is well advised to secure as much information as is feasible at the time of listing. This is anticipating that from one buyer or tenant representative to the next, one client might be satisfied w/tax records, the next is just fine knowing rentable/usable, and the other could be agreeable w/floorplate info. How thorough should your square footage listing information be? Many commercial agents might shrug and think to themselves, "Their agent will figure it out anyway. Tax records should get the firm covered."

Two final considerations regarding square footage: 1) as a *licensee*, the incident of an audit from the NCREC perpetually exists. 2) your office policy can be completely vague or completely specific. In candor,

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as it relates to "reasonable" material fact discovery and disclosure, ANY licensee is well served to not "just do it", but to "over do it".

BREAK (10 Minutes)

Discovery of Material Facts - *24 minutes*

- **NAR Window to the Law Video on Reducing the Risk of Misrepresentation Claims (3.5 minutes)**

In the North Carolina Real Estate Commission's recent mandatory continuing education courses they cite the disciplinary actions documented for the years 2020-2021. Forty-seven percent of those disciplinary actions were reported as material fact violations with the next closest disciplinary action for trust account-related cases at nineteen percent. The Commission went on to report that for 2021-2022, specific material fact scenario violations were primarily due to structural issues followed closely by square footage issues, then lots, subdivisions and roads. While the theme of these material facts seems to be primarily rooted in residential real estate brokerage, the likelihood still exists that similar issues could be determined as violations for commercial real estate practitioners.

A former education director of the NCREC, the late Larry Outlaw, attorney had once shared that in his legal opinion the best definition of a material fact is "anything relevant to someone making a decision". A licensee should continually ponder such a definition due to the fact that its scope and reach are so unbelievably vast, especially when referencing commercial real estate.

In order to ease the absorption and comprehension of a broker as to what makes a fact a "material fact", the Real Estate Commission chose to break it down into four basic categories. 1) facts about the property itself, 2)facts that relate directly to the property, 3)facts affecting the principal's ability to complete the transaction and 4)facts known to be of special importance to a party.

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Facts about the property itself include detail noted within the boundaries of the subject such as the area of the land or the presence of a septic system. Facts that relate to the property are those that are discovered outside of the boundaries of the subject property such as a nearby train track or a school two miles away. Facts related to a principal's ability to complete a transaction can be items such as a seller not being able to get clear title to

convey or a buyer who is unable to secure financing. Facts known to be of special importance to a party means something a little bit different and that is where the reasonableness standard comes into play.

Your job as a listing agent includes accurately gathering information about necessary details relevant to your firm's listed property. You also as a listing agent are responsible to discover and present other disclosure requirements such as the presence of lead-based paint or a Residential Property and Owner's Association Disclosure Form on a one to four unit family dwelling.

One of the oldest "trick questions" authored by the NCREC has been the question "Does a real estate licensee have an *absolute duty* of discovery and disclosure?" An agent's immediate instinct is to answer yes to such a question. The "trick" is in reference to the word "absolute". "Absolute" makes it false, due to the "reasonableness standard" referenced by the NCREC's 22-23 GENUP & BICUP. The first question a licensee might ponder could be, "who determines 'reasonable'?" Historically, when it matters, a judge does.

"Reasonable" is just what it sounds like. It's reasonable that an agent should have noted the mold on the ceiling of the dock office in the warehouse during an initial inspection of the subject they are listing for lease. It is also reasonable that the same agent should note heaving insulation at the roof of the same warehouse and the resulting pool of water on the concrete floor as a likely water intrusion.

It is "unreasonable" during any broker's inspection of a property to expect them to note and communicate improper wiring behind the drywall at the electric panel box that will eventually cause a small fire. In other words, what should a licensee know or what should they have known about a property that they might have

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listed? Then the question becomes, "what should they NOT be expected to know?" So much of the mastery of the recording and communication of material facts comes with time performing these tasks themselves.

Competent listing agents ask questions. Perhaps placing themselves mentally in the place of a purchasing or leasing party and asking themselves, "what would they want to know?" could be an effective tool. Once, I stood

in a warehouse for lease with a listing agent and while standing with my tenant clients, I heard the sound of passing trains whose tracks were literally across a two lane street from the subject property. I then asked the listing broker approximately how many times per day does the train pass? They didn't have the answer. In truth, when an agent and their client are reviewing aerials of the subject before traveling to view the property, the odds strongly favor that the client and agent will note the presence of the train tracks, and simply expect there to be passing trains. So then, why ask such a question? Because while it might seem a foregone conclusion for the listing agent of such a property to assume that many folks wouldn't even visit a property if they cannot tolerate the sound of trains; the error is in the assumption. While listing the property, a licensee would note this material fact of train tracks "outside of the boundaries of the property itself". The listing broker knows that the aerial images will appear on brochures and "everyone will know" and "accept" that trains will continually pass by. Those assumptions bely knowledge that clients and customers MAY desire. As a material fact, when the listing agent asks the owner "about how many times do trains pass by", it could be relevant to future prospective tenants making a decision to lease or not.

NC listing brokers will document and communicate any "Red Flags" about their listing to their client and to subsequent prospective clients and customers. Most of us have experienced such documentation. What have been your own experiences?

If a listing broker has requested building plans, surveys, environmental and other various reports of the owner, then they possess a bevy of material facts. It is incumbent upon the agent to look them over and ask clarifying questions of ownership regarding any items that might be relevant to a prospective leasing or purchasing party's decision. If the subject property is remote or unable to secure water or sewer services, a

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licensee should walk the property, documenting any irregularities about the soil where the septic tank(s) would be located. Check the plans or inside the building itself for where the supply line enters the building or ASK THE OWNER where the well head might be. (Bring a y-shaped willow tree branch to assist the discovery ;)

Every one of the 100 NC counties has an online geospatial information service or GIS. (Here's a handy link to all of them!) **https://www.lib.ncsu.edu/gis/counties.html.** Simply searching Orange County, NC GIS can also give an immediate hit to that respective county-maintained web page. These interactive systems are a WEALTH of information related to the subject property. A broker is well-served to practice a bit navigating various GIS systems. The "Layers" feature found in most GIS systems is an easy way to zoom into the subject property and populate various overlays that detail zoning, water and sewer lines, watershed districts, topography, various flood plains, etc.

✳ Let's take a look! (Instructor will discontinue ppt presentation to access and present a live GIS webpage to illustrate the aforementioned possible uses) 7 minutes

While the broad scope of provided information from GIS systems is nearly overwhelming, it is important to note that much of such detail is in reference to land. Certainly ownership can typically provide a plethora of data to an agent relating to the land on which offices, retail or industrial properties rest. However, when the commercial property an agent wishes to list is undeveloped land, their discovery tasks might have just become a bit more difficult.

Surveys, like appraisals, are pretty much only good for the day they were performed. As such, reviewing an old survey is like getting a little bit pregnant. The detail is helpful, but cannot be reasonably relied upon for being complete, thorough and accurate. This is sometimes based on the fact that a twenty year old survey will not note an easement sold by the owner six years later. Neither will it note the shifting of a waterway through flooding and erosion that is now dramatically changed in configuration and affect to the subject

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property. It is also quite unlikely that it will have documented the location of a city water line that wasn't installed in the right of way until 18 years following the execution of the survey. GIS can help. FEMA maps, when reasonably updated, can help. But how can a listing agent of vacant commercial land know what surprises await an interested purchaser or lessee UNDER the surface of the land they might wish to develop?

The aggregate, or soil type, of a subject property can make a dramatic difference in its utility or lack thereof. Is it “reasonable” to expect a listing agent to know upon inspection what type of aggregate makes up the subject property? Not unless the broker is also a practicing geologist or affiliated with that county’s environmental health department. Even THEN, the answer is not really. Brokers are not reasonably expected to know the identity and presence of various aggregates on a property. But prudent brokers will ask. Some limited GIS systems have part of this data as a Layer that can be populated. Many do not. Absent a soil boring report, such answers cannot be secured by an agent. Buyer and tenant representatives will suggest to their clients that boring tests be performed on vacant and undeveloped properties due to the myriad of uncertainties.

Finally, all of the aforementioned indicates that real estate listing agents should tell what they know when it comes to material facts, excepting personal, motivational, financial or confidential information about clients that could damage their negotiating position. However, to quote a sage-like friend of mine from long ago, “a closed mouth gathers no foot”.

A tremendous and necessary resource to a listing licensee is public administrators. Zoning ordinances can be personally accessed with very little effort. Private versus public roadways can be ascertained also with a GIS layer in many NC county systems. But what nuance is present in your area’s zoning ordinance that lurks in the shadows waiting to disappoint you and your client at the eleventh hour of an investigation period? The strongest advice in an effort to be thorough is to contact local administrators, e.g. water department officials, planning & zoning officials, environmental health administrators, etc. Posing hypothetical questions about property near your subject can yield essential detail. Notice I said “near your subject”. Administrators are

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enormously helpful and patient, but they are still people and they are still administrators. What do buyers and sellers wish to do with their properties? What might be their end game? Strategically, is it anyone’s business but theirs what those answers might be? As a result, it is possible to glean helpful information that could be reasonably relied upon without “tipping the hand” of a client. In some cases, a client simply won’t care if their details are learned by the general public. Listing brokers should not assume such indifference, but ask ownership for clarity. Lastly, remember that local environmental health can be very knowledgeable about a prospective subject property’s recorded “maladies”. An agent should avoid starting dialogue with the federal

government (EPA) about such concerns. Listing brokers could be directed by county officials to contact NC DEHNR or the North Carolina Department of Health and Natural Resources. However, such listing brokers are well-advised to not BEGIN by speaking with them. “Keep it local”, is a good phrase to remember. If local officials need to escalate, they’ll let you know.

✳ **Let’s share some horror stories! (The instructor should open the forum of attendees to discuss their various experiences and hindsight gained as a result) - 5 minutes.**

LEARNING OBJECTIVES - By the end of this section, licensees should be able to - compare and contrast general approaches to listing presentations versus their own company policy, and recognize & compare the brokerage and listing practice approaches utilized by other North Carolina professionals and their own practice.

Listing Presentation - *5 minutes*

Perhaps one of the most extraordinary gifts for listing brokers working for larger commercial firms would certainly have to be access and regular use of the firm’s client & informational database as well as all of the various tools that will prime a licensee for success in the field. That said, it should be noted that practice and training on these programs and in this software is crucial. Brokers working with smaller firms, or as sole proprietors are well advised to develop a “system” to share with a prospective seller or landlord. All of these tools must indicate to the prospective client that the agent and/or their firm are abundantly capable of

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executing their charge. Agents must be able to clearly and concisely explain the advantages and premium services that accompany the described system.

When the time comes for any agent to make a presentation to the representative of a company or an individual pursuing or disposing of commercial property, they must be incredibly prepared, self-assured and brief. Many clients and customers have grown accustomed to being shown menus of services related to the task for which an agent might be hired. Can a broker, on behalf of their firm, merely communicate such details in a

conversation over coffee with executable documents in tow? In theory, this is feasible, but truly might depend on the scope of tasks and services a firm might be promising. It can also simply depend on the price point of the subject property. Many agents would argue that the same level and scope of services should be promised and provided to all clients, regardless of the size and/or range of listing price of the subject property. It presents an incredibly strong argument for how fiduciary is best and most completely performed. Should this be the regular practice of all practicing commercial brokers? Well, … sure. But based on our own experiences in the field, what will likely happen? I would welcome any input related to this topic, but I think most have a reasonable idea of what would likely happen. A listing broker will likely adapt their service and presentation to the needs expressed or implied by the prospective client, because that is what salespeople do. **(Remember, this precludes the ability of any firm to remove fiduciary duties by agreement)**. Salespeople listen to the needs of the party as the prospect expresses their interest or indifference to the various details and as a result, a broker is given a better understanding of how to tailor their presentation to those needs. To be clear, this may be a very common practice. However, individual company policies can be absolutely adamant about what their brokers shall and shall not do. So the most favorable approach is to always defer to that which is expected of you as an affiliate of a firm and its Broker-In-Charge. As a "competing" BIC or sole practitioner, there can sometimes be afforded a bit more latitude related to a listing presentation approach.

From time to time, as a broker is giving a listing presentation, a prospective client may bring up the topic of other firms or other licensees with whom they have spoken. Sometimes the prospective client may express their own opinion about that firm or the competing agent themselves, thereby "inviting" the presenter to

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engage in the same practice. As a member of the National Association of Realtors®, North Carolina real estate brokers are bound to the tenets of the NAR Code of Ethics which includes specific language referencing how Realtors® shall not make disparaging remarks about another firm or licensee. The NCREC will acknowledge the importance of resisting the use of disparaging remarks while attempting to secure client relationships, though they do not have a specific North Carolina Real Estate Commission Rule related to this topic. Another good way to process this topic is to ask yourself if you may wish for someone to be speaking of you or your firm in that fashion. As you would not be present to defend yourself or the honor of your company, you would likely find that to be an unfair practice by your competitor. In this case, the final thought is clear: Refraining from

or discouraging the making of disparaging remarks is a sign of professional conduct. Doing the opposite of that is slimy and karma can be known to take no prisoners.

Once again, company policies can be very clear about what the firm or sole proprietorship might charge for specific services. If that is the circumstance in which a listing broker finds themselves, they will invariably obey the company policy. This would be the case unless they find it necessary to approach the BIC and petition for something slightly or greatly varied from an existing policy. What's the adage about "maybe getting half of what you ask for …"?

Absent a company policy and based on a clear understanding of NCREC Rule and the NAR Code of Ethics, all commissions and fees for service are negotiable. Based on somewhat prevalent stigmas related to real estate brokers, the general public might always be quick to dangle the "don't you all charge six percent" phrase. Federal antitrust laws are clear and specific. That answer is no. There is no industry standard.

⁕ How do you or your company approach a pricing discussion? Breakout groups then summarize. (Instructors will pose the question and place the learners in breakout groups to discuss the topic and then return them all to discuss prevailing summaries.) - 10 minutes

As a twenty plus year real estate instructor one of the most common questions I have received from most students whether they be in pre-licensing or post-licensing classes has been "how do I get into commercial

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brokerage?". The shortest answer I typically gave was that they make sure to have quite a lot of money set aside, or that they examine the possibility of going to work as a licensed assistant for existing commercial agents and their firms. The latter does not seem to hold much appeal for many, but when someone is rather new in the industry and working relationships are fewer to non-existent, such an approach can be beneficial. This would be based on the ability of that newer licensee to witness how the practice is regularly done. And, they can cover their apartment rent with the income. The other answer that I give to students can sometimes start with, who do you know?

Anyone practicing in commercial brokerage keeps an eye on the larger local players and companies as well as nationwide and worldwide. The moves of those particular firms can be indicative of what smaller firms in the industry itself should also be anticipating for the foreseeable future as far as the markets themselves are concerned.

It can also be terribly frustrating as you watch them from afar and wish that you could be a participant in such an involved and monumental activity. A common phrase that I like to reference is that when some of us were still waiting for our pants to be changed, the founders of these juggernaut companies were working into the night with clients whose corporations are still in existence today. Does this mean that a licensee should always anticipate working for or attempting to work for a larger company? The answer to that is no. What is interesting about real estate is that there are so many different methods of how one might approach simply earning a living in brokerage. The size of such companies is not an absolute deterrent to a broker's ability to perform and profit in the field. So to coin a phrase, “I'm okay with the table scraps, especially if they might close with a ten to 20+ million dollar value or even half or less of those numbers”, because that can be a pretty comfortable living for some.

Finally, a broker should remember that large companies will always be present, but they can’t do it all. There will be a time when you might show one of their office listings. Then later, there might be a time when they bring a client to YOUR retail listing. Large firms are still made up of people, and people can make strong working relationships in their markets.

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BREAK (10 Minutes)

Tricks of The Trade - *12 minutes*

To be fair, no tangibly lucrative business practice has “tricks”. I mean, cheat codes on video games are handy and all, but this is real life. So going forward, I would ask the learner to simply acknowledge that we all reference “tricks” in near daily vernacular. To be honest, we don’t really mean TRICKS, but rather “little known

facts" or "personal approaches" that professionals might share with us in order to get burgeoning commercial brokers better prepared.

When someone decides to write a continuing education elective and offer it up to the North Carolina Real Estate Commission for consideration and approval, that someone has to be absolutely certain that the topics covered have absolutely nothing to do with sales training. This is primarily due to the fact that our regulatory body in Raleigh has a charge to protect the General Public i.e. consumers. Questions could be pondered regarding how sales training could have *any* positive impact on the General Public. However, based on some of the conversations I had with the following commercial brokers in the Charlotte North Carolina area while preparing this material, I discovered positive impacts. Their knowledge, when applied to the daily activity of a practicing listing broker, can be extremely beneficial to their customers and clients and, in many ways, still meet their fiduciary obligations to principals.

Josh Beaver, Vice-President of The Nichols Company took some time by phone with me to share some of his general knowledge of commercial brokerage. Josh and I had closed on an office property not long before and after multiple conversations, I knew that his time and skill in the field and his expertise with transactions made for one of the most polished brokers I had ever encountered. Practicing in commercial real estate since 2000, his skills have been prestigiously acknowledged on multiple occasions by the CRCBR, the Charlotte Business Journal & CoStar to name but a few. Having also been a serving planning committee member of the International Council of Shopping Centers, "ICSC", Josh's representation benefitted North and South Carolina as member and Chair for the Carolinas Idea Exchange as well as its State Retail Chair.

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We had a terrific conversation that essentially boiled down to just a few topics. My prevailing question to him was, "what makes a commercial broker a skilled and more efficient professional?"

- Relationships: Critical client relationships aside, it is absolutely necessary for a practicing commercial broker to maintain and grow relationships with other licensees and firms. He shares his knowledge with them and they reciprocate. Sometimes being reliable and competent in a transaction gives rise to other firms

referring customers and at times, clients to Josh. The families and companies of the CLT Metro know him well and he has fostered and grown these associations.

- Audacity & Confidence: The commercial brokerage practice is not for the faint of heart. When opportunities arise, a confident agent pursues them. How would a broker know if they had the chance to list and market an office building if they never worked up the nerve to approach the owner(s)? While there are no guarantees of success, the audacity of attempting to reach new and important clients can yield amazing results. Expressing and showing your history of skill and care necessary to serve a principal presents a reliable confidence to them that can continually reassure the party during listing, marketing, lease and/or disposition processes.

- Hyper Organization: One of the traits Josh admitted to possessing is “hyper organization” with regard to his work. At all times, he is fully aware of where he is in his day, what is to come with customers and clients, and which tools must be brought to bear in order to efficiently accomplish the requisite tasks. When a broker truly considers what aspects can dominate their time during a workday, it could very well be trying to put pieces together necessary to address a task or an issue. If information is scattered about and not easily retrieved, how much time can be “burned” attempting to bring it all together? Much of the time, commercial brokers are responding to businesses. No company wishes to wait about for some types of information when decisions are crucial and time is of the essence.

- The Leasing Issue: As had been mentioned earlier in this material, the difficulty for some with commercial brokerage leasing is how to determine the most accurate rate range for a subject property. Such

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knowledge is certainly crucial for the listing agent, but also for tenant representatives. I mentioned this to Josh and he acknowledged the shortcomings of many of the large, database-driven systems and agreed with me that it is something that they have not yet mastered. He then told me of how the opportunities for him are strong and constant in that he has the ability to reach out to previous cooperating firms and their agents as well as long time practitioners that have an absolute command of his market of practice to the same extent as Josh himself. He did note that companies will maintain their own database of closed transactions and lean on that

information from time to time, but his biggest takeaway of a cure for how to better ascertain appropriate leasing ranges of value is simply to have reliable associates in his office and friends in the field in his immediate market.

Patty Dowdy, Real Estate Advisor & Broker with Pedal Retail Advisors has been known to my family and me for several years. Interestingly, her daughter and my own have been friends since they were essentially infants. Patty and I passed each other from time to time at Plaza Weekday School as the girls grew and moved to kindergarten and elementary school. It was a few years after first meeting Patty that we stopped each other long enough to learn that we had both been in real estate for what seemed like forever. In the 2000's, Patty began her real estate career in earnest, working with her father at his company, National Restaurant Properties in Charlotte. The "one stop shop" for anyone looking to buy, sell or lease a restaurant at times included not just the real estate, but also the very businesses themselves that were brokered by Patty and her company. Whether acquisition or disposition, lease, or a combination of it all, Patty cultivated and mastered the process before selling the business in 2021. She now uses her vast knowledge of the retail industry with a boutique firm based in Washington D.C. and Charlotte to assist small businesses with their ventures in pursuit of retail properties. Patty and the company have carved a phenomenal niche in a brokerage space that can sometimes be generally ignored by larger, brand name firms.

I was able to reach Patty by phone and share the details of this course. Within a few days, she had responded to me with an absolutely thorough and well thought out response via email. I had asked her about the valuable lessons she's learned over the course of her career that not only make the profession

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bearable, but also could give listing brokers more consistent and effective drive to practice methods that can bring success

- Being real with associates, counterparts, clients and customers sets you apart from the chatbots and perpetual cold-callers. Fostering relationships with prospects and within the brokerage community, writing

handwritten notes, and taking an interest in people (not just their property) will serve you in the long-run. You're still dealing with humans.

- Don't set prospecting goals you'll never stick to. Are you really going to make 250 cold calls a week? I certainly won't. Set easy-to-crush goals and build from there. Repeat the word consistency 50 times each morning;) In that spirit, don't do it if it hurts (too much). Prospecting can be a drag but, for example, if you totally stink at cold calling, put your focus where your strengths lie.

- People can't do business with you if they don't know you. Sitting at your home office and plotting to take over the world won't get you anywhere. You have to put yourself out there with your peers, prospects, and work on your presence in the field. Being physically present for clients promotes and enhances their understanding of your loyalty. Customers might be more forthcoming regarding their needs and wants when a broker is across the table from them. Networking and knowledge events can also prove to be amazingly productive while reinforcing the expectations of your clients and customers.

- Many real estate agents can struggle with competence. At times, the bar can be set pretty low, so my opinion is that all one needs to be successful in this business is attention to detail, a certain level of care, & hustle. (Skill & Care) And it certainly helps to, by nature, be likable.

James Craig, Brokerage & Development Specialist with Lat Purser & Associates, Inc. is someone I have had the pleasure to know for about six years. I have been fortunate enough to watch James' brokerage career from its outset, and he has deservedly and rightfully established himself in the flourishing commercial niche of urban acquisitions. His expertise in the Urban Infill markets of the Carolinas has created extraordinary business opportunities in Charlotte and its surrounding areas. By implementing strategic retail

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plans and assisting involved parties from pre-concept to fruition, James is personally responsible for a multitude of reimagined and thriving locations. The physical and monetary enhancements to each of these affected and blossoming communities will create and benefit scores of retail operations and their patrons for many years to come.

James is a true Specialist. From the time of our first meeting, I knew that he would ultimately succeed in brokerage. Drive? Of course. Intelligence? Certainly. Unbelievable focus? I remain pretty damned jealous. Having known these attributes of his, James has always made himself accessible. He understood very early on that opportunities cannot be created if a broker chooses not to be present for them. Over time, he and I have exchanged countless transactional details, (more time given by him to myself and others, to be sure). I reached out again to him to tell him about this elective. I asked him if he's come to notice effective habits that he's developed over the years that seem to have produced the most favorable results for his commercial brokerage practice. He shared the following with me that would most certainly assist a listing broker, but could be of a great benefit to any agent getting underway in commercial real estate.

- Industry Veterans: One of the most intelligent things that James chose to do when he first embarked on his real estate career was to affiliate with a commercial firm in Charlotte whose founder is a veteran of multiple decades in the business. As a matter of fact, the namesake of his company and my own father have worked with each other off and on since the latter part of the 1970s. As a result of his affiliation, he has enjoyed access to a multitude of different long-practicing commercial brokers in his immediate circle and has been able to glean extraordinarily helpful, thorough and complete advice and direction from these parties as needed. Our first topic of discussion was how effective and fortunate his affiliation has been as he learned directly from some of the best in the industry.

- Specialization: One of our earliest conversations about commercial brokerage dealt with the idea of picking from a smaller batch of possible commercial activities. Doing just a few types of transactions versus attempting to do any business that comes along. James acknowledged that such an approach has been enormously beneficial to his pursuits. He found his niche and has built it to the success he enjoys today. I'd

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mentioned to him how, just a few years ago, the NCREC's Update C.E. courses dealt on the topic of competence. No one can question James' competence today, because he threw a smaller net, and yielded bigger results.

- “Low Hanging Fruit”: During our conversation, James said something to the effect of, “you know, Steve, it’s okay to go after the “low hanging fruit”. This simply means that if a commercial broker knows their market well enough and sees an immediate opportunity, they should pursue it. Some agents could be dissuaded based on how instantly viable a property circumstance appears. Never assume that some big company or developer has captured all of its surrounding marketplace. They do have big resources, but again, they can’t do it all.

- Likely Opportunity Locations: To the point of specialization, this aspect of our conversation was very intriguing. Just like Josh knows his part of the market and has the connections and relationships in place, James possesses the same skills and similar contacts. James is fully aware that he serves his clients best if he masters his market. To that end, he will “farm” those locations tirelessly in order to find the next likely locations that would meet their needs. This simply means that he will reach out to companies, individuals, etc. that own likely developable properties and ask them for the listing. It is certainly a tried and true sales technique, “ask for the sale”. A broker can talk themselves blue to a prospective client, but all of that data must eventually culminate to the pointed question of, “Can I put this one on the market for you?”, or some equally dazzling phrase.

- Transactions Breed Transactions: Lastly, James shared with me that the invaluable aspect he has gleaned over the years from his transactions and client, customer relationships is that someone always seems to know someone else. That “someone else” could be the next client that might be in need of a listing broker’s services. Anyone with just a bit of time working as a broker is well aware of how business seems to beget business. Recognizing possible opportunities and acting on them can be very different things. Over time, licensees will develop the skills necessary to identify possible opportunities, take the next steps to

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clarify their viability, then act based on the likelihood of success. In other words, try not to immerse yourself in scenarios that will either bear no fruit or take decidedly too much time to bear ANY.

Cindy Chandler, CCIM, CRE, DREI, Owner of The Chandler Group is someone that I have admittedly known well enough to call friend for about 22 years. I would LOVE to share every particle of her astonishing accomplishments in general and commercial real estate brokerage, but the NCREC (of which she is a current member and past Chair), would raise an eyebrow for the amount of time necessary to do so. From her executive positions in our local Association of Realtors® to the National Association of Realtors® or from being named North Carolina, South Carolina, and CRCBR Realtor of the Year, to being named Educator of the Year AND serving as Secretary & Executive Committee Member of the National Real Estate Educators Association as well as the NC Real Estate Educators Association Educator of the year AND writing its Educational Program of the Year, this phenomenal person is one of the most kind and decent human beings a practicing real estate broker could hope to know.

Without even asking, Cindy effectively "took me under her wing" in 2001 as I first met her in an NCREEA conference in Winston-Salem. I had met so many amazing professional real estate educators that week and found myself intimidated and kinda scared whether I could get close to their level of knowledge and skill. Cindy and I just kinda found our way near each other over time at each of these types of conferences and my favorite memory was asking her, "when will I know if I can ever just 'let go' of this bloody PowerPoint and teach?" to her reply, "You'll absolutely know. You'll find yourself teaching one day and it will just flow, because you will know that you know it. It's okay to have it as a tool, but you'll become an instructor soon enough." Needless to say, she was completely spot on. My "adopted mentor" called me one morning after we had texted about this course. She mentioned that she wasn't quite sure what to say, but after a minute, she gave me some info that, as expected, can be priceless for promising careers.

- "You're mistaken if you think you can do it all": Cindy and I exchanged experiences on that call not long ago regarding agents that we've met that get somewhat "ravenous" as it relates to generating business. We've both noted the characteristics of the newer agent or the licensee with little guidance where the broker begins to "take on" everything that comes at them. Many agents start in residential real estate and want to

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"stick their toe in the water" of commercial real estate and experiment. OR the agent begins a commercial brokerage pursuit and decides whether its retail, industrial, agricultural, office, medical, whatever, they can and

will try to be that agent. We both realize that rural environments can give rise to such an agent. That explanation can be summed up in a few observational words: “who else is gonna come out this far to do all of this stuff?” Still, the urban agent convinced of new found ability and sheer gall, will chase any opportunity that gives a hint of possibility. Both circumstances beg the “competence” question. Such brokers are in a constant mode of preparation and uncertainty. “Fake it, ‘til you make it” doesn’t serve clients, customers or a firm well. Lastly, “doing it all” generally means that a licensee isn’t specializing. The same way that a handful of successful developers can’t touch all of the buildable and viable opportunities in their market, a broker shouldn’t realistically expect to have the time, drive, money, etc. to accomplish the same with trying to list, buy, rent, or sell all manner of commercial property. Such a reckless approach breeds future accidents. In other words, the agent more likely creates more opportunities for the NC Real Estate Commission to watch them more closely, or ask the agent to respond to a received complaint. In truth, the preceding doesn’t even SPEAK to the consequence of failing to specialize and be superior at what an agent is expected to do. If the vast majority of new business for brokers is, year by year, generated from referrals and repeat business, then ultimately failing to specialize means those opportunities will become less likely. No client or customer will likely tell the agent how poor their service was. They’ll just never contact them again and tell anyone they know to avoid that agent and their firm.

- “Get your posse together”: It’s funny how transactions beget transactions and the more a broker generates, the more associates and practitioners slowly find themselves in orbit around that “producer”. As has already been mentioned, the brokers that improve your chances of creating and executing successful transactions don’t always manifest themselves within your own firm. While they can be on your team within your company, some can be across town with another firm. A savvy commercial broker knows to keep their market penetration smaller and effective. They also know the other professionals in their same arena need or will eventually need similar information just as themselves. Your “posse” as Cindy calls it, is made up of all of those professionals and those others that make commercial brokerage tick for a respective licensee. From service providers, to lenders, to sage-like mentors, to appraisers, inspectors, administrators,

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government officials, etc., having a mental command and tangible organization of these reliable figures is crucial for establishing habitual success and an efficient and desirable fiduciary.

- Your market contacts: So a broker asks themselves, “who are these people, really?” “How can we all help each other and keep the give and take fair?” “How long can I ‘wing it’ with spontaneity based on whatever transactional issue I face?” Competent, successful and efficient brokers tangibly organize these human beings. Make a list, make physical note cards, enter a segment in Notes or some other, similar app. Or establish a recurring category flagged in your contacts list. Imagine the benefit of looking back over your work year and recognizing all of those that helped your cause, and by extension, your clients, your customers, your wallet. A Starbucks gift card, or a personal, mailed note to each of them by year’s end can go a long way to make you a person that these folks are happy to continue working with and assisting. And you will reciprocate that assistance. Your knowledge and time feeds them as well. Balance is most assuredly, key.

- Limiting your market: Cindy gave great emphasis to the necessity of not overreaching your territory. Concentrating your efforts in a controllable manner creates relationships, grows your knowledge and competence and fosters recurring transactions. A “floating” agent will flit from one market to another, one city to another, one state to another and at times, one country to another. Such an agent is fully aware of the precarious nature of their provision of service. Many of those types of transactions are account-based. The client might be regional or national in nature and they are fabulous relationships to find oneself in. However, failing or falling short just once can have catastrophic consequences. Getting better and becoming competent as a commercial broker means that you’ve been staying “home” and playing with those that are better than you. Such professionals and veterans will teach you, sometimes without even intending to. Sometimes they’ll hamstring you as well. But you’ll learn not to touch the hot stove again. Or, at least, to wear a mitt and be better prepared to spar.

⁕ Group Breakout for summary discussion and group sharing of the preceding and the learner’s own experiences. Asking the question: “How does this help me be a better fiduciary?” (5 minutes)

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LEARNING OBJECTIVES - By the end of this section, licensees should be able to - differentiate between NAR Codes of Ethics & Standards of Practice and NC Real Estate Commission Rules and regulations for advertising requirements, evaluate marketing strategies and options best suited to a client and/or property, and improve communication with clients, customers & cooperating firms to better generate interest.

THE ACTIVE PHASE

Marketing - *7 minutes*

As with all things related to the practice of real estate brokerage in the state, the NCREC has rules related to marketing property as a listing broker.

Take a look at one of the NC Real Estate Commission Rules (58A .0105) regarding advertising:
(b) Blind Ads. A broker shall not advertise the sale, purchase, exchange, rent, or lease of real estate for others in a manner indicating the offer to sell, purchase, exchange, rent, or lease is being made by the broker's principal only.
Every such advertisement shall indicate that it is the advertisement of a broker or firm and shall not be confined to publication of only contact information, such as a post office box number, telephone number, street address, internet web address, or e-mail address.

More detail from NC State Law (GS 93A-1): It is unlawful for any person or entity to advertise or hold themselves out as engaging in real estate without obtaining a license. It's important to also remember what an act of brokerage (engaging in real estate) is understood to be. Essentially, it assists, for compensation, anyone who wishes to buy, rent, sell, lease, rent, exchange or be consulted regarding real estate.This is NC State Law (GS 93A-2).

Private owners of real estate also still have obligations. Ads run by THEM must be truthful and accurate. There can be no documentation that ultimately reflects that fraud or misrepresentation was utilized to solicit

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parties to purchase or lease their property. Those private owners will also comply with and observe all Federal and NC State fair housing laws.

When a licensee is dealing with their own property, they are always subject to NC Real Estate Commission rule. As a licensee, they enjoy more liability than do private sellers. The licensee shall not only disclose their agency, but they shall also disclose all material facts regarding their property that is known or reasonably known to them.

NC Real Estate Commission rule A.0104(c) is well known to licensees due to the aforementioned Working With Real Estate Agents disclosure and the necessity to use that for buyers contacting regarding properties that you and your firm have advertised. Remember that this document is delivered and discussed not later than 3 calendar days following first substantial contact. When the discussion has begun to turn to ANY detail of the party that could be deemed personal, motivational, financial or confidential, the contact has become “substantial”. The earlier the delivery and discussion of the disclosure, the better.

A property owner never needs a license to advertise their own property, however brokers must disclose the fact that they are licensees at the earliest opportunity to all parties involved. Such a broker must also first get the consent of their Broker In Charge and include the name of the firm with whom they are affiliated. NC Real Estate Commission Rule A.0105(a)(1).

For practicing commercial brokers who are also practicing Realtors®, the National Association of Realtors® Code of Ethics Standards of Practice 12-5 includes advertising requirements for licensees. The advertising referenced includes properties advertised as well as brokerage services advertised. The daunting aspect of this NAR requirement (which also includes NCREC Rule), is that it includes all forms of media utilized in a broker’s advertising efforts. The “linkage exemption” is basically the concept that acknowledges a broker can only be responsible for advertisements that are reasonably within their control. For example, once an advertisement like a listing is entered into one’s local MLS association, the broker will have typically granted authority for their association to submit this to the greatest feasible online reach available. Many licensees understand that one of the first platforms that their ad will reach is Zillow. Zillow does allow limited access to

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practicing brokers enabling them to make minor changes to information they will have uploaded for syndication. Therefore, the licensee is responsible for making those corrections necessary that can be reasonably altered, such as their immediate MLS uploaded listings AND, to some extent, Zillow. Otherwise, within about two weeks, their respective listings will have reached nearly 14,000 global websites. It is unreasonable to expect an agent to be able to make changes to incorrect data found on websites that are inaccessible to them. However, a broker should be diligent with all of their listing information before launching it into the public domain.

One of the most difficult concepts for a North Carolina broker to absorb and practice is the NC Real Estate Commission Rules regarding advertising. Rule A.0105(b) clearly states the necessity for EVERY advertisement made by a broker as property owner and/or landlord shall include information identifying that broker as a licensee or the name of the broker's firm. When the advertisement is made by a firm or sole proprietor on behalf of another party, the name of the firm or sole proprietor shall be included in EACH of those advertisements. A.0105(a)(1)

This includes any and all print advertisements, any and all digital advertisements and ANY social media platform utilized by the broker to advertise their services or a listing they are marketing. Remember, this includes, but is not limited to, YouTube, Facebook, LinkedIn, Zillow, Truilia, etc. AND your own company and personal website.

Realtors® shall also disclose their state(s) of licensure per the NAR Code of Ethics SOP 12-9. Many commercial real estate brokers "float" from state to state and, if they are registered and advertise as Realtors®, they are also obligated to disclose this fact in every advertisement and at first contact. If a broker is not a Realtor® this rule would not apply.

NCREC Rule A.0110(i)(3) states that a NC Broker-in-Charge has responsibility for the conduct of all advertising by or in the name of the firm. As such, this rule gives rise to a BIC's obligation to observe yet another NCREC Rule, A.0108(d). That rule details the obligation of all brokers to provide ALL documentation having ANYTHING to do with their brokerage practice activities to their firm and/or BIC within 3 calendar

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days of receipt, generation, posting, etc. As the BIC is personally responsible for the conduct of all firm advertising done in its name, they must assure that they and the firm are in receipt of all generated documentation, e.g. text, emails, voicemails, advertisements, written correspondence, etc. within 3 calendar days of the generation, receipt, etc. of said documentation. With shared drives and the use of other means of moving data, the task can be tedious, but it isn't insurmountable.

NCREC Rule A.0105 (a)(2) implicitly states that a broker or firm cannot display "For Sale" or "For Rent" signage without the written consent of the owner. Bear in mind that this consent occurs with the principal's execution of a listing agreement to sell, lease or lease and/or sell a piece of real estate for another party. The NCREC is quite clear, "There is no such thing as an oral listing". Without a written employment agreement in place to do so, it is illegal to market someone else's property.

NCREC Rule A.0105(b) is clear regarding the necessity of ALL ads placed on behalf of others and/or the provision of brokerage services must include the name of the broker and/or their firm. Another portion of this rule clearly prohibits the placement of "Blind Ads" in the public forum. Blind ads are not clearly originating from a licensee. They might have contact information clearly visible, but historically do not include the name of the licensed party or their firm.

The NAR Code of Ethics Article 12 states that Realtors® shall ensure that their status as real estate professionals is readily apparent in advertising, marketing and other representations. NAR does allow Realtors® to utilize a "one-click rule" feature to their ads, allowing a consumer to follow a link to detail that includes the name of the licensed broker and/or their firm. The NCREC does NOT allow this rule. ANY advertisement MUST include the name of the firm and the licensed broker.

Remember that the NAR Code of Ethics contains more restrictions and details regarding advertising than do state law and regulations. The most strict language will always prevail.

✳ Discussion: What conversations do licensees need to have with sellers regarding client activities in marketing and advertising? Breakout group discussion (3 minutes)

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Customer Service

Every broker would like to claim they provide great customer service.

✳ **What is an example of something you do that goes beyond the basics? Open Forum (2 minutes)**

Communication is one of the most reported topics for complaints to the NC Real Estate Commission. The best practice for commercial real estate brokers is to systematically contact their owners, landlords, customers and cooperating brokers. It's important to draw a balance of this communication. Too much can be annoying to business people. Too little could indicate indifference on the part of the listing broker to their principal.

During listing appointments, it is enormously beneficial for a listing broker to be able to give their new client a preview of how the property will be marketed, boosted in presence and its interest increased. Simple menus of service can be quite beneficial. Detailed pdf reports make the proposal of a service become tangible. Show the company or business person what the likely suitor for their property will see when searching for properties like your new listing. Show your new client previous ads that have been generated and launched. Get the principal's feedback and learn if it is formatted to their liking, detailed enough, too detailed, etc. as well as naming the platforms and/or venues where the exposure for their property will occur. If you've spent money for video production in the past, show your prospective and/or new clients what that can look like. If these items become too expensive, they can be offered in a menu format to have it available to the client as an additional service. Success in selling or leasing properties is never guaranteed. Weigh the best approach, but be cognizant of its costs, likelihood of success and overall necessity.

- **YouTube Video on Using Drones in Real Estate Advertising (1 minute)**

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Buyer or leasing agents can account for as much as 90% of all transactions in which a listing broker can find themselves. In other words, you and your firm may list the property, but up to 9 out of 10 listings will witness a

cooperative brokerage scenario as the end result of success in selling, leasing or exchanging properties. As Brian Pate likes to say, “you’ll get more bees with honey”. In other words, react to the contacts. Be available to these agents with answers to their questions and engage them in a kind manner. Don’t be afraid to use the “we” pronoun from time to time in order to make the cooperating agent feel more a part of the equation and the solution that both brokers desire. Never forget your fiduciary to your client and the duty of confidentiality owed to them by law. Make every effort to ingratiate yourself to the responding agent, but never compromise the integrity of your client relationship or that of any ensuing negotiation. Lastly, a listing broker must be fair in their exchanges and conversations with cooperating brokers, but set the right expectations of them in how you and your firm expect them to react and continually and reasonably inform you about their progress.

There are innumerable methods of following up with clients, customers and cooperating agents. ASK the party with whom you are working how they prefer to communicate. Some will say to give them a call, some will prefer texting, some will prefer email, and a select few will insist on face to face interaction. My mother logs a daily protest to all things SMS. She simply refuses to look at anything she receives, even when it’s pictures of her grandchildren. That type of party likely demands a phone call. Many Millennials and Generation Z parties will become kind of angry when you call them or, heavens forbid, leave a voicemail. “Just text me, bro”. And, honestly, dispense with pleasantries with this manner of human communication. It’s designed to be direct and to the point. But take care with unintended consequences in the form of insulting texts…like using too many periods at the end of your text sentences
Or saying “k” instead of okay. Seriously, it’s true.

The best part of follow up in commercial brokerage is that most of these clients, customers and cooperating agents greatly prefer email threads. In other words, communication with them should be contained in the start of one email message that contains every subsequent email message. Such threads can reach well

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into double digit entries and become a bit messy, so practice accordingly, but surely default to this approach until the party creates another thread on their own. Texting can also be very effective in commercial circumstances. There’s zero emotion in these, so don’t fret, but be cognizant of whether this is suitable for the

party or too informal. It's much more likely to be achievable with a cooperating broker as opposed to a principal or customer.

Let's take a look at some sales statistics. Specifically check the top priority. (see PPT)

LEARNING OBJECTIVES - By the end of this section, licensees should be able to - define when an offer becomes a contract under NC Rules, explain the proper technique for handling multiple offers, define the rules for retention of records from the NC Real Estate Commission, and better assist a seller in evaluating multiple offers to identify the best choice.

Offers & Contracts - *8 minutes*

Having earlier established that commercial brokers will quite likely use counsel-drafted documents as

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opposed to standard forms, the following stage is important to set for an accurate and effective discussion about offers and sales contracts.

Per NC Real Estate Commission Rule 58A.0112, “(b) A broker acting as an agent in a real estate transaction shall not use a preprinted offer or sales contract form containing:
(1) any provision concerning the payment of a commission or compensation, including the forfeiture of earnest money, to any broker or firm; or
(2) any provision that attempts to disclaim the liability of a broker for his or her representations in connection with the transaction.”

The preceding is a bit tough for commercial practitioners. “Disclaimers of liability”, okay, no worries. We get it. “No reference to compensation”? Not so much. Without question, regardless of what brokerage services are being rendered, this rule shall be obeyed. So then the next question a commercial broker asks themselves is, “so how do I make sure I get paid?” Any non-binding LOI can readily establish the data associated with brokerage fees. And most commercial brokers have vivid memories of phrases found within lease or disposition contracts that say something to the effect that, “brokerage fees shall be the responsibility of (whoever), the terms of which to be established in an agreement between the broker(s) and (whoever), to be agreed to and executed by the parties not later than (whenever).” (For all that’s good and holy, please don’t copy this last part down verbatim to use later. I’m not a lawyer, nor do I pretend to be one).

Lastly, the phrase “preprinted offer or standard contract form” indicates standardized language and/or forms then referenced in the subparagraph that immediately follows “(c) Nothing contained in this Rule shall be construed to prohibit the buyer and seller in a real estate transaction from altering, amending or deleting any provision in a form offer to purchase or contract nor shall this Rule be construed to limit the rights of the buyer and seller to draft their own offers or contracts or to have the same drafted by an attorney at law.” This is stating that residential or commercial PSAs or lease agreements when authored originally by the principals or their counsel are permitted to contain the aforementioned 2 items at (b) above, if that is what

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the parties and/or their counsel have chosen.

A recent mandatory update from the NCREC detailed how offers should be handled and the sequences anticipated and associated with them. While a lot of commercial brokers get a bit irritated at the prospect of attending the GENUP or BICUP due to the "all about residential" nature that they perceive about them, THAT lesson applied across the board. Sure, it was basic, it was rudimentary. But the NCREC generally doesn't teach us about stuff unless they're seeing some volume of complaints about it. That said, remember the following:

1) Listing broker lists property as available
2) Buyer's agent takes prospective buyer to subject property
3) Buyer (offeror) wants to make offer and makes it through their agent
4) Seller agent receives offer and communicates it to Seller (offerree) via any reasonable means
5) Offeree can a) accept the offer, b) reject the offer, c) counter the offer, or d) ignore the offer.

It's that last part that should make many agents do the rump shuffle in their chairs. "Whaddya mean, 'ignore' it?" Exactly that. While many brokers will understandably mentally resist such an approach, but they must make their client aware of "ignore it" as an option. Be aware that when a client has done this, communication between parties can become a bit testy and muddled. For example, a listing agent's seller has received an offer and says something to the effect like, "They're not even serious. Call me with something serious" and they hang up. The Seller (or landlord for that matter), has given no reply. The listing broker can tell that the offer isn't being accepted. But it's not being countered either.

✳ **What Should You Do? Open Forum Discussion (2 minutes)**

Back to the task at hand.

Student Notes:

"Accept it": make no changes to the offer and, as offeree, agree to the offer as it sits.

"Reject it": tell the offeror to "pound sand" and that there is no acceptance of their offer whatsoever.

"Counteroffer": make changes to the offer in receipt and return the changed offer to the offeror, telling them that you will accept the offer YOU just sent over to them, if they agree to IT with no changes. This is a sticky wicket for one reason: when an offeree responds to the offeror with a counteroffer, they now are the new offeror and the other party becomes the offeree. The reason counteroffers are "sticky", is because they place the new offeror in a bindable state. This means that the new offeree can accept that counteroffer with no changes, sign it and communicate their acceptance back to the new offeror by any reasonable means. THEREFORE, (for example) a Seller may not legally counteroffer more than one party as they have only one property (or portfolio) that is the subject of the original offer. More on this in a moment.

We all remember pre and post-licensing when the topic was raised, "When is a contract formed?" Hypothetically, here we go again: There is an offer, There is an acceptance (with no changes), There now must be communication of that acceptance back to the offeror. THEN there is a valid and binding agreement.

Deep breath, please. A buyer makes an offer and is the offeror. A seller receives the offer and is the offeree. ("...OR" is the 'giver' and "...EE" is the 'receiver', right?). NOW, the seller counteroffers and is now the offeror. The buyer receives that counteroffer and is now the offeree. Perhaps now, the buyer wants to counteroffer the counteroffer. So the hats change again. And they could still change again and again. All the while each involved agent is personally responsible for maintaining all of the records, documents and timelines associated with this entire exchange. Some brokers might be thinking, "So what?". So, the reason it matters is that the ultimate acceptance without ANY changes by any offeree must be noted and transmitted to the most recent offeror to establish a valid and binding agreement.

What is a reasonable method of communicating final acceptance with no changes? Phone, voicemail, email, fax, in person, but school is still kinda out on how valid a method that texting is. The offeree themselves or

Student Notes:

their agent must communicate that final acceptance through one of these reasonable means to make a valid and binding agreement. Regrettably, I must remind everyone that there is a difference between "valid and binding" and enforceable. What element helps to make a contract enforceable in North Carolina? It must be in

writing per the Statute of Frauds. GET. A. FULLY. SIGNED. COPY. OF. THE. ACCEPTANCE. TO. THE. OFFEROR. RIGHT. AWAY. Today's real estate transactions can sometimes be grossly deficient in the "honor" department. Do not trust the party in receipt of that acceptance you may have just given them to wait about looking for your written and signed agreement. Some will say one thing and then do another. Via their agent, Sellers might accept an offer from one buyer (with no changes via a reasonable phone call) and within 15 minutes electronically sign what they decide is a better offer from another buyer. People suck. The written copy of the signed agreement removes all doubt and reduces the suckitude. Electronically signed documents are perfectly acceptable to accomplish this. So move it!

Any broker working for an offering party must, at the earliest opportunity, advise them that their offer may be withdrawn at ANY time prior to receiving notice of acceptance from the offeree or their representative. This is referred to as the "absolute right to withdraw". During the offering process, as the offeror awaits a reply, they may pull out of the offering process and make the offeree aware by any reasonable means, e.g. phone, fax, email, in person, etc. On the other hand, the offeror may pull their offer "off the table" and return with other terms they might deem more likely to be met with approval and signing by the offeree.

So why not throw some general statute (state law) in for good measure? NC General Statute 93A-6 (a)(13) "The Commission has power to suspend or revoke at any time a license issued under the provisions of this Chapter, or to reprimand or censure any licensee, if, following a hearing, the Commission adjudges the licensee to be guilty of … *Failing to deliver*, within a reasonable time, a completed copy of any purchase agreement or *offer to buy and sell real estate* to the buyer and to the seller." This is quite plain and it is quite simple. A NC broker is breaking the law when they fail to deliver all offers to buy and sell real estate. A broker is not supposed to follow any client's unlawful instruction. For example, if a seller tells their listing agent to not bring them any offers below $300,000, they are asking their agent to break the law. This is

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because the agent cannot "filter" offers based on client direction. They must be submitted and then the client can select one of the four responding options. A $12.36 offer for a $1.2M property would be utterly ludicrous. Yep, it would. Present it or you're breaking the law. This obligation lasts for a listing broker up until the

occurrence of settlement. A broker could receive a call and email making an offer on a property at 10am the day of settlement when the event isn't scheduled to occur until 2:30pm that same day. Present the offer. Oh, and be sure that you can *prove* that you performed every submission throughout the listing period if someone wants that proof later.

The only other note to make about refereeing the contract activities is to take great care as a broker when representing a signed agreement with communicated acceptance as a "Contract". If a broker is not a lawyer, they essentially have no right to deem these signed agreements as contracts. To do so implies one's intimate and legal knowledge and the authority to communicate it to other parties. Lawyers can do this. Non-lawyers cannot. They are agreements to us. I know, the old residential doc is called an Offer to Purchase and Contract. It's an Offer. It has the incident of becoming a Contract. Never harp on the establishment of a "contract" or its existence in front of clients and customers when you are not a lawyer. And finally, please also avoid imparting the preceding lesson with clients and customers as well. They already have a lot to think about and they need no more ammunition against brokers than they may already possess.

Handling Multiple Offers - *5 minutes*

Commercial brokers are not exempt from the "blissful" experience that is multiple offers.

- **NAR Window to the Law Video on Handling Multiple Offers (5 minutes)**

The relevant NC Real Estate Commission Rules:

58A.0115 DISCLOSURE OF OFFERS PROHIBITED

Student Notes:

A broker shall not disclose the price or other material terms contained in a party's offer to purchase, sell, lease, rent, or to option real property to a competing party without the express authority of the offering party.

58A.0104(k)(l)(n) AGENCY AGREEMENTS AND DISCLOSURE

The broker … shall represent only the interest of the seller/buyer and shall not, without the seller's/buyer's permission, disclose to the seller/buyer or a broker designated to represent the seller/buyer: (1) that the seller/buyer may agree to a price, terms, or any conditions of sale other than those established by the seller; (2) the seller's/buyer's motivation for engaging in the transaction unless disclosure is otherwise required by statute or rule; and (3) any information about the seller/buyer that the seller/buyer has identified as confidential unless disclosure of the information is otherwise required by statute or rule.

58A .0106 DELIVERY OF INSTRUMENTS (a) Except as provided in Paragraph (b) of this Rule, every broker shall deliver a copy of any written agency agreement, contract, offer, lease, rental agreement, option, or other related transaction document to their customer or client within three days of the broker's receipt of the executed document

The Relevant National Association of Realtors® Standard of Practice:

Standard of Practice 1-7: Upon the written request of a cooperating broker who submits an offer to the listing broker, the listing broker shall provide, as soon as practical, a written affirmation to the cooperating broker stating that the offer has been submitted to the seller/landlord

Standard of Practice 1-8: Upon the written request of the listing broker who submits a counter-offer to the buyer's/tenant's broker, the buyer's/tenant's broker shall provide, as soon as practical, a written affirmation to the listing broker stating that the counteroffer has been submitted to the buyers/tenants

Standard of Practice 1-15: Realtors®, in response to inquiries from buyers or cooperating brokers shall,

Student Notes:

with the sellers' approval, disclose the existence of offers on the property. Where disclosure is authorized, Realtors® shall also disclose, if asked, whether offers were obtained by the listing licensee, another licensee in the listing firm, or by a cooperating broker.

Licensees should remember that the default observation is the more strict rule. All licensees in North Carolina are brokers. Not all licensees in North Carolina are Realtors®.

Commercial brokers may operate on somewhat different planes than do residential practitioners, but regardless of their specialty or their chosen fields, they are still responsible to the North Carolina Real Estate Commission rules detailed above and, if they are also a Realtor®, they must observe the previously cited standards of practice as well.

One aspect of this discussion is the difficulty in weighing loyalty to a client versus ethics in business. A broker's commercial listing may have come from a company with whom the firm has done business (or has been contractually retained) for decades. Their firm might be small or regional. Their firm might be publicly traded. Regardless, it can be argued that careful and effective communication by a listing agent is the key to the negotiation of multiple offer scenarios.

From the information above, one can glean that listing brokers do not have a "given right" to disclose the existence of multiple offers. Once a second offer is received as an existing "first offer" is present, any broker knows that this is a multiple offer scenario. Their first inclination is to perhaps envision a "bidding war" or to make the second party aware from the outset of communication. Licensees simply must wait until their Seller has given consent for disclosure. Agents may find themselves evaluating this circumstance asking "Why WOULDN'T a Seller want to have this information known?" Two answers: 1) it's their decision, not yours. They are the principal. 2) Some owners might be of the opinion that the "truest" indication of the worth of their asset is to see an unaffected or "pure" offer. In other words, what does the buyer REALLY want to pay? In any case, it is not for an employed broker to evaluate or decide. Decisions belong to their client.

Student Notes:

If a broker has been given permission to reveal the existence of multiple offers, the ethical dilemma has begun. It has already been established by NCREC Rule and NAR Standards of Practice. The terms and conditions of an offer cannot be revealed to the opposing principal or their agent without written permission having been given by the offering party (or counteroffering party). In what would seem to be rare cases, some offerors may

just throw in the towel and say, “Whatever. I don’t care.” if the question of permission is raised to them. Most offerors want to retain the confidentiality of their offering position in the interest of not giving an advantage to another offering party.

Permission in this context is not so much the idea of keeping your parties informed and making sure they’re okay with something. It’s mostly rooted in the NCREC’s attempt to eliminate the “shopping” of an offer. The illegal practice of shopping is fairly similar to shilling at an auction. Shilling is the illegal practice of putting “planted” bidders in a crowd to artificially inflate the bids on a property in order to get a seller the highest possible price at sale. Shopping an offer either directly or indirectly increases the offering prices in multiple offering scenarios through the efforts of a listing agent. Those “efforts” include, but are not limited to: 1) revealing the terms of a buyer’s offer (without the buyer’s permission) to other buyers or their agent, 2) using phrases in conversation with a buyer or their agent that indicate the need to “pay more” or “have better” terms in their current offer in order to have a better chance at success, 3) indicating that a buyer’s offer is in (for example) “4th place” out of 7 offers in order to garner better terms from the buyer or a higher price point for purchase, due diligence monies, earnest monies, etc. While some would argue that such methods are “too indirect” to be considered shopping, consider that whether values, general or specific terms are being discussed, it is the fact that these (and other) items are being COMPARED to other existing offers. Thus, the end goal can be accomplished by a listing agent without “actually” using specificity of numbers or terms. For example, the information necessary to deem an offer “in 4th place” is the catalytic information found in all other offers and that information must be evaluated and compared by a listing agent to arrive at a declaration of “4 out of 7”.

Remember earlier how we discussed the options available to a seller during the offering process? Again, the

Student Notes:

options are accept the offer, reject the offer, counter the offer or ignore the offer. When the scenario turns to multiple offers, a broker must properly advise their client regarding any counteroffer. For example, five offers cannot receive five counteroffers. Only one counteroffer can be made. While sellers, in general, are never exempted from the ability to “make offers” to interested parties for the seller’s property, the seller must fully

understand their options in multiple offer frameworks. The most effective method of advising a seller about multiple offers is to tell them that all four of the aforementioned could be applied to each of the offers, but they must remember that they only have one property or portfolio to sell or rent.

Conventional thought could generally lead a broker to (with seller permission), inform the parties that there is a multiple offer circumstance. If the seller agrees, a date and time for final submission of offers could be called for from each of the interested parties. The listing broker could then inform the parties that the final submission should be the “best and final” offer that the buyer agent clients. Buyer agents must be careful when advising their clients during this period. The primary reason for this is that the offeror may find the phrase “best and final” to indicate something like “bring all of the money you and both of your grandmothers can muster”. Skilled brokers of every agency persuasion should be prepared to share ALL of the different aspects to an offer that could be brought to bear in an effective negotiating process. Also, the listing broker would do well to advise their client that while a final submission date and time has been issued to the parties, there should also be a final seller decision date and time issued to the parties as well. Communicate, communicate, communicate.

✳ **What are some of the aspects of an offer that could be used to make offers or counteroffers more effective without just raising the purchase price? (Open forum - 3 minutes)**

BREAK (10 Minutes)

LEARNING OBJECTIVES - By the end of this module, a student will be able to - define what an escalation clause is and explain how it works, differentiate the legal use by mastery of the NC

Student Notes:

Real Estate Commission rules governing their usage, and develop a strategy to help buyers and sellers understand the effect of an escalation clause so the consumer can make an informed decision.

Escalation Clauses - *5 minutes*

An escalation clause is language created as an addendum to the offer by the principal and/or their counsel designed to trigger an automatic increase in the price being offered by a purchaser or tenant. For example, an office property is listed for sale at $1.25M and known to be pursued by multiple parties. The listing agent calls for best and final offers on the following Tuesday at 5pm local time. One of the parties makes a full price offer and includes an escalation addendum that effectively details the following: 1) any other offer received by the seller that exceeds the current offer by the offeror, shall immediately trigger an increase in the party's offering price of $8,000 more than the currently, higher priced offer. 2) any such increases will continue to a maximum total increased amount of not more than $88,000, and 3) if this offering party's efforts are successful and automatic increases were implemented, the seller and/or listing agent will, upon successful execution of the offer by both parties, make a copy of the triggering offer to the buyer or their representative.

Now for some quick points regarding escalation clauses. a) The emphasis cannot be made strongly enough. Non-lawyer broker licensees never have the authority to draft legal instruments, even when their client requests or attempts to demand it. Such a client is asking their agent to break the law and the agent shall not comply. b) Any decisions regarding the entertainment or utility of escalation clauses are made by the client, never the agent, unless the licensee has an ownership interest (that has been revealed) in the company making the offer. c) multiple offers with multiple escalation clauses will sometimes be present. Like any offer, the seller shall decide whether to accept, reject, counter or ignore that offer.

Sometimes a seller will surprise a listing agent in multiple offer scenarios by simply selecting one of the offering parties as their favorite. Brokers will advise the client of pros and cons of this selection and ultimately respond to their seller's direction if the client doesn't change their mind again.

Student Notes:

Like the (mostly) residential form 340-T, a seller can also respond to multiple offers with a non-binding LOI. Again, please remember that the phrase "non-binding" must be included in such correspondence when the non-lawyer listing agent is involved. While the seller could also hire counsel to craft an LOI response to the offering parties, the result is still the same: the seller is not counteroffering any of the parties. The seller is NOT putting themselves or their property disposition in a "bindable" state. The seller is simply stating to what terms

they would be most agreeable. Interestingly, any existing offers currently “on the table” will have given the listing agent and their client a better idea of a reasonable offering price for their property. The client then must decide whether to proceed in the first place, select one party with whom to negotiate, or reply to all of the parties with the chance to bring a more informed offer to purchase by a “best and final” date and time.

A listing broker should remind themselves of the helplessness they might have previously experienced in other transactions as a multiple offering buyer agent. Perhaps the greatest volume of disgust I’ve heard from past learners about being such a buyer agent is the gross lack of poor quality of communication by the listing broker. While multiple offer buyer agents should certainly realize there is only one property or portfolio to sell, they need updates and any available opportunities to continually update THEIR clients to help make all involved feel at least involved in the process.

If a broker is a Realtor, Standards of Practice 1-7 & 1-8 clearly details any agent’s obligation to keep the parties informed and the right of offering parties to demand proof that their first (or latest) offer has been dutifully submitted by the offeree’s agent. If a broker is not a Realtor, they should remember the enumerated fiduciary duties to principal any licensee owes their client. Such a broker should remember responsibilities to reveal all material facts to customers and NCREC rules regarding delivery of instruments (documents).

LEARNING OBJECTIVES - By the end of this section, licensees should be able to - define the rules for Retention of Records under NC Real Estate Commission rules, have a better understanding of the maintenance and utility of contracts and relevant documents, and establish a deeper comprehension of due diligence as a concept and its facility.

Student Notes:

Retention of Records - 3 minutes

58A .0108 RETENTION OF RECORDS

(a) Brokers shall retain records of all sales, rental, & other transactions conducted in such capacity, whether the transaction is pending, completed, or terminated. The broker shall retain records for 3 years after all funds

held by the broker in connection with the transaction have been disbursed to the proper party or parties or the conclusion of the transaction, whichever occurs later. If the broker's agency agreement is terminated prior to the conclusion of the transaction, the broker shall retain such records for three years after the termination of the agency agreement or the disbursement of all funds held by or paid to the broker in connection with the transaction, whichever occurs later.

Remember our discussion about the BIC's personal responsibility to just about everything having anything to do with a real estate transaction? A licensee must deliver to the BIC ALL details regarding their advertisements and other marketing efforts, unaccepted offers, check copies, closing data, inspection reports, every single engagement of communication made and/or received by the broker which includes texts, voicemails, emails, letters, snapchats, etc. Lo and behold, these are also considered the records that shall be retained by A LICENSEE and made available for inspection, if necessary, by the NCREC for not less than three (3) years. THAT is a LOT of stuff. It's a good thing that there are electronic methods to store, view & transmit all of this information in a timely manner. Shared drives, Google drive, Dotloop, DocuSign, etc. are just some of the platforms that offer a ton of different options for a practicing NC broker.

The retention of records rule from the NCREC should raise some questions from brokers regarding their general practice methods and whether or not they have these records available in such a fashion that makes it reasonably possible to be prepared for an audit of them. Your "paper" trail is your history as a licensee. For example, if your buyer was one of the offering parties in a multiple offer scenario and their offer was rejected, how would this be proven and recorded in your files? Would the listing agent have delivered a polite text? Would you get a "Dear John" note that says sorry, but you lose? If you knew than an audit was to be performed by NCREC representatives at your home office, (which is absolutely possible), and you had

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three previous multiple offer failures as your client pursued office property in an absolute seller's market, how would you feel that these current records would look?

✳ **Breakout group session "What are some of the things that a broker can do to make their records complete and ready for audit? What have you not been doing that you feel should be corrected over the past three years and implemented in your practice going forward?" - 5 minutes**

✳ **Open Forum session discussion over findings and summary - 2 minutes**

Over the years I have quizzed countless attorneys regarding how long business and even personal records should be kept. The consistent response that I hear is “10 years”. Would a ten year period placate the NCREC records retention requirement? Of course. Would a ten year period satisfy the presence of records that might be needed to reply to many possible litigation scenarios? Surely. Would that same ten years be adequate in the event a sitting judge decided to allow arguments past a statutorily recorded statute of limitations? More conceivably with the longer period, one would surmise. Lastly, how long does the IRS have to evaluate business and personal records for auditing purposes? Ten years. Keep your stuff for ten years.

LEARNING OBJECTIVES - By the end of this section, licensees should be able to - have a better understanding of proactive reactions during the pending phase of a transaction, recognize and communicate with critical parties during examination periods, and recognize the intricacies and variables of Leases & TICAM.

CONTRACT TO CLOSE

Paperwork - *2 minutes*

The buyer, seller, landlord or tenant have an agreement to which they have affixed their signatures. Whether an agreement to sell or to lease, the result is the same for any broker involved in the process who is anticipating compensation for assisting with the process. Brokers must assure that all parties to the transaction have a fully executed (signed by both parties), copy of the agreement or contract. Case law

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precedent has established that the failure of either principal to a contract to have a fully executed copy could conceivably be used as a defense by them for non-performance. In other words, one or both of the parties could declare themselves “not under contract”, excusing themselves from the obligation.

If such a circumstance were to occur, the likely scenario to follow would be litigation. A savvy broker will never comment on the feasibility or likelihood of such a thing. To do so could be construed as the practice of law.

Smart brokers advise their clients of the likely necessity to seek the advice of legal counsel. Having lost a commission aside, the remaining liability that could exist for a broker could be the injured party (the party that did not choose to vacate the agreement), speaking with their counsel about “whose fault” this all might be. Imagine being branded the responsible party for failing to simply assure that everyone had a signed copy of any legal agreement.

There are always six parties that should be in receipt of fully executed contracts. They are the listing agent (firm), the selling agent (firm), the buyer/tenant, the seller/landlord, the lender (if applicable) & the respective counsel for both parties. A go-to phrase to also remember is that a fully executed copy of the contract is considered “an original” copy.

As previously discussed, shared drives can be enormously helpful when attempting to share critical data and documents with parties in a transaction. The Uniform Electronic Transactions Act from 2000 left no room for doubt that electronic transactions and resulting documents are considered legal and binding. The use of electronic methods has become progressively easier to work with and affect the transmissions and data communication that is so crucial to the effective management of real estate transactions. Many firms swear by Dotloop and DocuSign not only for the ease of transmission and execution of legally binding documents, but also for the purpose of storage recently discussed. Google Drive, as an example, is a tremendous source for storing data and sharing it with various parties.

Inspections - *2 minutes*

An inspection or “examination” period can be a tedious and nerve wracking process or an abundantly

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smooth and uneventful process. At times there seems to be no in between. It’s either awful or delightful. A listing agent’s responsibility to this period is generally limited to the provision of prior documents, inspection reports, surveys, etc. that some licensees and/or principals refer to as “due diligence”. I know that sounded somewhat basic, so it must be clarified. It isn’t a “due diligence” *period* to which they are referring. The due diligence IS the very documents and data, either previously recorded by the property owner or perhaps

executed in a prior contract that did not reach settlement. Such detail may seem mundane, but when you're having a conversation with an old salt commercial broker and they keep using that phrase in what seems like a twisted fashion, you will know precisely what they mean. And, to them, perhaps you picked up a couple of "cool points".

For the most part, during the examination of the property, the anticipation is that the purchasing or leasing party will enjoy the absolute right to walk away from the contract if they find something that would serve to make the ownership of the property untenable to what would be the new ownership or company. In other words, initial and continual ownership would not be cost effective or allow the contracted party to perform all of the tasks they would need to perform in order to fully conduct their business. For example, boring tests are performed on a subject property to determine its feasibility to accommodate a structure and parking lot. The results determine that $690,000 would need to be spent to remove bull tallow entirely from the subject and THEN topsoil would need to be purchased and brought in to be tamped down and used for just the base BEFORE digging the first foundation ditch. If the subject property is being purchased for $200,000 and there's a million dollars necessary to be spent in order to *get it ready* to be developed, THAT is untenable.

The preceding speaks to why many transactions do not witness purchasers or tenants paying an owner in non-refundable monies for this examination period. I have personally witnessed 350 to $400,000 getting spent by a tenant in order to complete satisfactory inspections for a property that they would lease for twenty years in the initial term. These inspections were completely critical to determine the fullest utility of the subject property for their anticipated minimal 20 year use. Seller's markets aside, what rational landlord would expect a tenant to compensate them with non-refundable monies as they sit poised to drop nearly half a million dollars only to determine that something is discovered at the eleventh hour that renders the

Student Notes:

property unusable? Many landlords are well aware (if the listing broker has discussed and prepared them in some cases), that tenants will need to spend exorbitant sums to establish the validation for its ultimate leasing.

Inspection periods, tenant improvements (TI) and or landlord upfits are truly just part of the initial conversations that listing agents will have with a landlord. Setting the right expectations with a seller is critical as well at listing time. A seller may declare that a property is to be sold "as is", essentially stating that they're not going to make

any repairs. Any buyer's broker worth their salt will acknowledge this with their client and then ask them what they'd like the seller to pay for. In other words, the phrase *sounds* good to a seller because it makes them feel more self assured that they will "maintain control" of the disposition process as a result. Listing agents will emphasize and reinforce the seller's position, but absolutely should tell the seller to expect some buying parties to ignore it.

There are a smattering of residential listing brokers who will advise a seller client of the necessity to repair items before listing a property for sale. This is not terribly common in commercial practice. Commercial listing brokers will definitely note when a particular feature or affected portion of a subject property would be a greater deterrent to maintaining buyer or tenant interest and share that information with their seller. If the interested parties are predominantly engaged to the real estate with demolition as the end result would certainly have no concern. A gaping hole in the roof of a 20' high warehouse would instantly make a tenant reconsider whether they should've even crossed the threshold of the building. Ultimately, the seller will greatly benefit from a thorough review with their listing broker following the agent's walkthrough inspection of the property. Resulting conversations can be decidedly delicate in nature, but they are not instantly insurmountable. Tell the seller about what items, "won't give". Let them know that a particularly disastrous feature will turn away more suitors than it will present. Or tell them that the state of the office, warehouse, retail space, etc. is such that basic expectations must be promised as performed by the seller or landlord at the time of delivery. While many sellers and landlords will generally have already retained contractors that would perform general repairs to a property, there will occasionally be a circumstance that warrants securing estimates for repairs. Keeping your "circle small" helps this process in that a broker's prior connections can

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speed the process and assure reliable parties from which the seller or landlord can choose. Try to have at least three contractors available to your client in these cases. Also, make the quoting process reasonably simple for the contacts. Without question, some projects have to have extraordinary detail. Smaller projects, not so much is necessary. Get a seller or landlord comfortable with the idea of reasonable approximations of time and cost.

Proactive in the Process - *5 minutes*

The following information might not necessarily be too palatable for some listing agents. The bottom line of this segment is the study of how transactions can greatly benefit from a pro-active listing broker who doesn't "quit when they get a contract".

Inspections & Examinations

While a great number of transactions witness a buying party that has no need for contingent financing, some companies will elect to use financiers when accounting or the circumstances dictate to do so. Listing brokers should remain respectful of the process, but engaged. Material facts that shall be disclosed by agents include whether or not the party has the ability to secure the financing necessary to purchase a property. Therefore, listing agents should not be shy about routinely inquiring with the buyer's agent regarding the success of (or lack of it) the process for the buyer. One must assume that buyer agents might be so preoccupied with other clients and customers that they need to visit the status of their buyer's loan and where the process is at certain points awaiting settlement. Listing agents inquiring after this information are not only entitled to know it, but serve an additional purpose to keep the pressure on all parties working toward securing financing.

Listing brokers should routinely assure that a contracted property never has an impediment to the successful inspection of any kind to be performed on it. These agents can't allow themselves to be surprised or caught unprepared. When examination days are ticking by, each successive failure to proceed eats into something that would've followed, but must then be pushed back. Perhaps the most difficult aspect of inspections for

Student Notes:

which preparation is a challenge is utility functionality. For example, if there is a three year old (and it helps to know how old), 100 gallon water heater that operates with natural gas, has the owner disconnected the service entirely or have they kept it active. This proactive approach needs to happen at listing time in truth. Many service providers have specific procedures that allow temporary activation of utilities, but it can be different from market to market. Know the disposition of the utilities at the time of listing. Prepare yourself to position the buyer and their agent for more immediate success when conducting inspections.

Planning & Zoning

While GIS can certainly get a listing broker better prepared to understand their listing and share pertinent data with interested parties, eventually the broker must reach out and correspond with their respective planning & zoning departments. Relationships with these administrators and directors can prove to be long effective. After all, when a use is prescribed for a property, there will be times when that use is deemed “special” or “conditional” requiring either additional monies and/or implementations by a purchasing or leasing party. At one point, my client was in the final days of a pending lease transaction in Georgia. I wanted to be absolutely certain that my tenant would not be met with any surprises or insurmountable issues. I contacted the listing agent and his words were, “I don’t contact the planning department. That’s the leasing agent’s job.” Circumstances were tenuous at best for several days until I successfully communicated the activities that my client would be performing on the subject property. The director and I eventually spoke and he established that there would be no issue with allowing the use by my client as intended. But it was tedious for about 10 days.

- **Open Forum: Was the listing agent correct in his assessment? (1 minute w/lecture)**

DOT

When vacant or developing land is the subject, listing brokers will have to meet the challenge of working with the Department of Transportation. In North Carolina, an easy way to remember how to determine which office to call is to note that there is only NC State DOT or municipal DOT. If the subject property is within city

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limits, an agent should be in contact with that city’s DOT. If not, the State DOT would likely be in order. The reason for “likely” is that developing properties or areas could be within an ETJ or extra territorial jurisdiction. While the property would not, for example, at listing time be within city limits, it could ultimately be falling into that jurisdiction and it could mean communication with both state and city. Also note the absence of any “County Road” reference. NC has no county roads. Many commercial brokers prolific in the process of working with developers understand that their clients will do most of the heavy lifting associated with DOT-based issues. There should be no real necessity to stay active in communication with DOT representatives or involve oneself in the process, unless the client specifically details and requests it of the firm.

Other tracts of smaller or less involved parcels of vacant or developing land could be presented by a seller for disposition or leasing. Such circumstances will assuredly dictate that a listing broker discover as many aspects as feasible about the serving or contemplated roads. One of the first revelations a broker could make is whether the roads are public or private. This can again be discovered via GIS for most NC counties. More rural areas can prove initially puzzling. For example, a “list” is made annually by DOT regarding which roads are scheduled to be paved during the coming year. Owners could hypothetically share with their broker that the property service roads are “4th on the list to be paved”. Um…probably not. The Seller might even show the broker a DOT notice to that effect. The secret is that when the DOT runs out of money, they’re done for the year. My understanding is that the lists are reshuffled and reprioritized annually. So the earlier example could watch an owner’s served property go from 4th to 13th the very next time the monies are allocated. Listing brokers should get the ear of the governing authority for their listing and learn as much as possible early in order to more accurately market the property during the listing period itself and in order to be more beneficial to the party that chooses to contract for the property’s purchase.

TICAM & Other Convoluted Stuff ***- 10 minutes***

Part of a lease negotiation could possibly include tenant improvement monies (TI) and common area maintenance (CAM) charges. If a commercial broker refers to TICAM, well…there you are. Once again,

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these are the scenarios whereby the database of a larger firm or the connectivity in the immediate market becomes essential. The quickest answer is with a rhetorical question, “What are the other like kind property owners doing?” What concessions, if any, are those owners giving? Is there such demand for similar properties that the named rental rate and CAM are the same and ownership is giving no TI. More on this shortly.

For newer practitioners, commercial leases can seem to be chocked full of skullduggery. If the property is being marketed in a database, the lease rate might be the first detail a leasing broker would want to visit. What if the lease rate (or a sale price for that matter) is labeled “Not disclosed”? This can be due to a few different factors. The listing broker could’ve pushed to list the property and is updating that data after better research and more market contacts discussions. It can also be an effort to simply get the email or the phone to blow up with

heightened interest. Still another factor could be at the behest of company policy or a client's desire to "see where they come in", or to cull lookers who truly cannot afford the offering. CAM charges could be revealed or not disclosed until someone views the property. TI is, in my experience, a rarely posted piece of data. Again, getting a party to the site and having discussions after determining their level of interest is a listing broker's preferred method. It's kind of similar to visiting a car dealership and being allowed to look it over, drive it around and get excited, then to have the salesperson ask, "So how do you feel about this payment?"

Whatever the strategy a listing broker chooses to use or is told to use by their firm and/or client, it is the owner that must be advised about this various data and the likelihood of attempts at negotiation by prospective suitors. For example, Tenant Improvement allowances can have great pliability from a structural perspective. As a further illustration, let's look at a hypothetical retail property for lease. The subject is a 3,849 square foot cold dark shell with optimum use defined as "restaurant" due to its first floor location beneath a well-anchored 15 story office building. Ceiling heights are mammoth and awe inducing, allowing the prospective tenant to see all of the raw conduits and service lines available to it, e.g. plumbing, electrical, hvac. Such dramatic vistas entice diners and developers are well aware of it. The asking rental rate per

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square foot is $53. TICAM is $32.25 per square foot, ($27 for TI and $5.25 for CAM with a 5% year-over-base cumulative cap as pro rata share).

✳ Whiteboard Exercise - Instructor explains the math associated with the determination of the preceding (7 minutes)

As can be seen from the prior example, the landlord is willing to "pitch in" about $104,000 to assist the development of this sized available space. Another option likely available to the prospective tenant could be an option for the developer to build it out to suit the tenant. This makes an offering $53 per square foot go up dramatically and the resulting lease would likely be for a lengthy period with marked security for the developer. Whether the tenant elects to build out their restaurant on their own or requests the developer's assistance, a listing broker should be prepared to address as much as is feasible regarding all of the variables. The tenant

will likely request a greater amount than the proposed $27 psf. They would also likely ask for a base rental rate of less than this. Still another option they could seek would be absorption of the TI expense allowance into a lower psf rate that could detail regular per annum increases beginning in, say, year 3. Or the increases could be flat at the beginning of a renewal period. Every proposal yields a different result, but the ownership has likely committed most of any allowances to spreadsheets in order to determine their flexibility. As if all of that isn't enough, another factor that a broker will take into account is whether the tenant is a "national", a strong local performer, or a start up. Start ups can bring risk with them. In truth, some owners will demand nationals only regardless of what security a tenant might produce.

If the subject is offered by *Net* lease, a tenant's other expenses (in addition to the base rental rate), are typically a pro rata share of the (likely) real property tax, insurance and maintenance for their leased space, i.e. a "NNN" or a "triple net" lease. Such a tenant will also have to pay a pro rata share of CAM charges, when applicable. *Absolute Net* leases generally anticipate that the tenant is responsible for every aspect of the property's expenses, including a pro rata share of CAM expenses, when applicable. *Gross* leases commonly "wrap up" all the common and various expenditures along with the rental rate and are defined on

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a total, per square foot declaration. *Full Service* leases are very similar to gross leases with interesting exceptions. One common exception is that a full service lease likely contains a "base year stop" provision which sets the first year expenses (NNN and likely CAM) as a "hard cap" toward what the landlord will pay. So if, for example, the landlord's operating expenses increase in year three of a seven year lease, the tenant will pay any excess expenses (NNN and likely CAM) over that "cap" and for any subsequent years remaining, with the landlord actually paying the providers with those proceeds. By comparison, a gross lease does not typically contain a base year expense stop as the contemplation is to have all expenses, rent, etc. to be paid by the tenant via a declared rental rate. However, this does not preclude the chance that a savvy landlord will assure there to be a "high expense stop" provision in a gross lease, in the event expenses go up quickly and dramatically. In any case, customized and crafted leases between two parties begin with general approaches such as the aforementioned, but can morph into something bearing a greater resemblance to characteristics

found in other types of leases, depending on agreement between the parties. E.g. “Okay, we’ll do all of that, but I want you to pay for your own utilities.” Welp. That’s a *Full Service Lease Plus*. Geez.

Common area maintenance (CAM) charges in the previous exercise, in an office or industrial park, or in a strip shopping plaza, etc. are a veritable certainty. Suitable tenants enjoy a pro rata share of these expenses as part of their overall rent. CAM charges help the property owner divide the responsibility for scores of various expenses. The respective county tax office will assess the common area itself for taxation purposes and issue an annual tax bill to ownership requesting payment. The city tax office determines their rate of tax necessary for the same and also bills accordingly. Other covered items such as electricity for elevators, escalators, lighting, internet, parking area lighting and equipment, etc. HVAC equipment must also be maintained and common area bathrooms, break rooms or kitchens (when applicable) could also be included in the overall mix. Landscaping maintenance can also be a substantial expense, including regular services as well as equipment maintenance, e.g. water treatments, fountains, etc. Security and sanitation service for the building is an utmost necessity and overall, reserve accounts must be maintained and bolstered in anticipation of long term projects such as roof or parking lot replacement or resurfacing.

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A prospective tenant will examine and likely attempt to negotiate the CAM expenses and cap numbers quoted by the listing broker. The calculations are crafted in order to best extrapolate a likely per annum outcome for expenditures in addition to the overall preservation of the entirety of a property. “Cumulative Cap” rates allow for the landlord to retain the overages if estimates exceed the anticipated revenue need. While certainly favorable to a landlord, a tenant can also glean a benefit due to the certainty of annual expenditures as well as a likely reduction in surprising and untenable assessments due to a shortage. By comparison, a “Compounded Cap" can be preferred by tenants due to the fact that a ceiling is set on annual increases in CAM charges. Increases are calculated typically on a yearly basis to account for the actual need to cover expenses, thus reducing the CAM expense during the course of the lease. Also, if the actual charges are below the cap, the cap will not apply. Many tenants may bristle at the inclusion of capital improvement or assessment stipulations. A listing broker should have intimate knowledge of every aspect of these intricacies and their seller’s default position.

The difficulty with ownership flexibility with NNN and CAM is the uncertainty of those items over which they have no control, e.g. real property taxes and insurance, utility rates, etc. A listing broker is expected to cover as much of this detail as possible when beginning negotiations with interested parties. Brokers should remember the rule of offers all over again, because this part can get tedious and brokers aren't the decision makers.

Let's review what it would take to open our previous restaurant example and to regularly operate it. Then, maybe we can determine how many drinks and plates of food will need to be served to make the owners a profit.

✳ **Open Forum - (3 minutes review together)**

LEARNING OBJECTIVES - By the end of this section, licensees should be able to - have a

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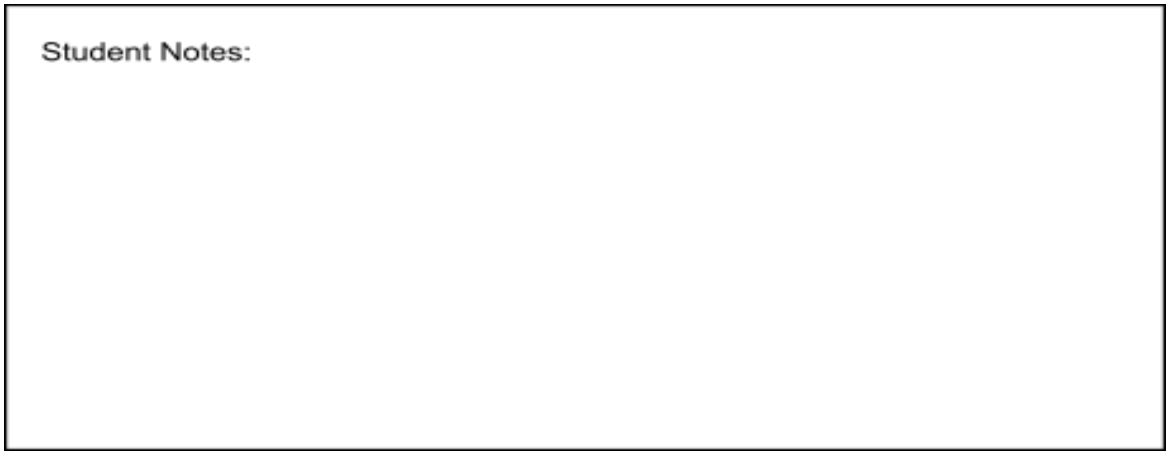
better grasp of the skill and necessities of working with attorneys, recognize settlement attributes and procedures as well as turnover & post closing and understand the importance of personal record keeping & compensation.

Attorneys - *2 minutes*

As has been established, paperwork is a listing broker's (any broker's) everything. It should go without mentioning therefore that any amendment to a contract, whether using standard forms or counsel-authored, needs respective counsel review, full execution and agreement, and completed, executed copies distributed to listing firm, selling/leasing firm, attorney for seller/landlord, attorney for buyer/tenant, seller/landlord, buyer/tenant, and lender (if utilized). If a broker is not a lawyer, they will neither author or advise the authorship of any amendment, nor shall they make statements or inferences as to the legal efficacy of any amendment, the necessity of any legal amendment, nor make any declarations to customers or clients regarding the

positive or negative results of an amendment. Wow, that was a lot. Yep. This follows the letter of license law and NCREC rule, NAR Codes of Ethics and Standards of Practice, and it might help keep you more clear from litigation. While no one is naive enough to believe the existence of iron clad indemnification, “it’s still important to stand at least twenty feet away from murky rivers in parts of Australia and Florida”, to coin one last phrase.

In the most general sense, settlement of real property dispositions in commercial real estate is an infrequent thing. Specifically, settlement in the sense of a residential closing that one may have attended. For example, the sellers on one side of the table, the buyers on the other side of the table, respective agents in their respective places and counsel for the purchaser at the head of the table. Maayyyybe a lender shows up. To be clear, when Truist Bank acquired the Hearst Tower in Charlotte, NC for just shy of a half billion dollars, I would be willing to bet that there *was* a settlement meeting, … with champagne in the next room, the press waiting in another room for the official release, and private photographers and videographers recording the event itself. This is not to say that some smaller transactions keep to a more traditional approach because



they certainly can. The point is that with the aforementioned UETA, the streamlining of closing and settlement procedures and the ease with which respective counsel can communicate with one another and their clients, accomplishment has overtaken pomp and circumstance. Whether it’s in the form of mailaway deeds of trust, and/or settlement docs, or zoom meetings with a “team member” virtually present, whatever the nuance the goal is to conclude what the parties intended.

In candor, involved real estate brokers will have very little to do with the preceding. Their presence, unless requested or expected, is to most participants an afterthought. Many brokers would concur that “That’s okay. Just pay me.” More on that in a second. In any case, it is the leadup to settlement that should find a broker perhaps the most occupied. Who has the keys and how/when do you want to get them to the purchasing/leasing party? Are there any contracts for services performed on or within the subject property? Was this addressed in the lease? (probably) If those provider’s services are expected to continue, whom should the broker call? If there is leased equipment on the property, whom should the broker call to verify its disposition? What utilities serve the property? How might the listing broker best coordinate with the

purchaser/lessee or their representative regarding those accounts and avoiding the discontinuation of respective services?

Communicate, communicate, communicate. There it is again. Sometimes a broker literally carries the mail for their client or customers. Sometimes the mail is phone call after email after text message after phone call, etc. In the most basic sense, when a broker remembers the core of their tasks, they are performing (on a limited and established basis) *as their client* because their client either cannot or wishes not to perform all of those tasks for which a firm has been hired.

After a settlement, it is incumbent upon the listing broker to have a predetermined system for following up with their client. A pleasant congratulatory email on the day of the settlement is a given. A card mailed two to three weeks afterward to the primary point of contact is warranted. If the transaction progressed the way it should have and the end result was to their complete satisfaction, the client will seek your firm's services

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again. They also chat and, at times, have lunch with other prospective sellers and landlords. Remember the vast source of new business annually for ANY real estate broker is repeat business and referrals. And consider whether another "hello and thank you" card might be in order after about nine months.

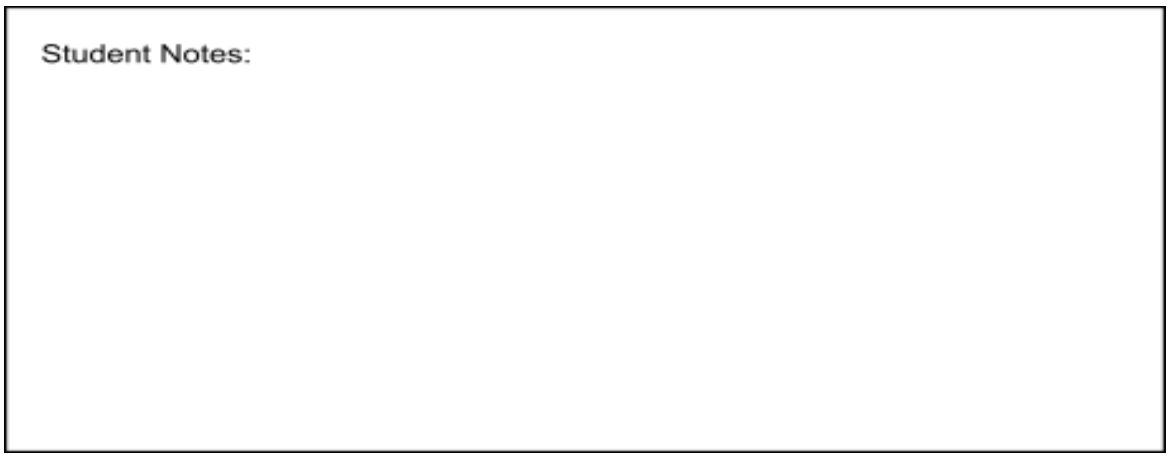
Lastly, communicate with buyer/lessee agents pleasantly via email following closing. Then record the name of the purchaser/tenant for your database. Consider mailing a thank you card to that party as well after about a six month period. Be brief, and don't skimp on the stationery. And for heaven's sake, don't enclose your business card in the mailer for that party. Ew.

QUICK HITS & FIN - *3 minutes*

By the way, efficient brokers meticulously document their activities. There are apps for days to assist this. Built in voice recorders for a broker's cell phone make keeping track of data a walk in the park. Ask yourself what you had for breakfast two days before today. Exactly. How could one possibly be expected to remember the

ridiculous volume of detail related to an entire transaction? People suck, remember? Their ammunition is your failed memory and vacant documentation. TAKE COPIOUS NOTES ABOUT EVERYTHING! e.g. what made the client angry that day after the inspection? How did they behave and what was said several days later? Be able to recreate the events of a transaction to the best of your ability. And hold on to your records for at least 10 years, or longer. BT Dubs, there is no statute of limitation as to how long following interaction or a transaction with a licensee that a consumer can file a complaint with the NC Real Estate Commission. Let that one sink in.

Prior and patient learners in my classrooms can attest that I'm a fan of brokers getting paid. When you've earned it, you should receive it. A broker should never go on an apology tour for seeking compensation for services rendered. Non-binding LOIs can have brokerage compensation information in them, so do it. Consider phrases like "...the greater of 4% or ½ of listing broker's compensation". It's an offer, when the



listing broker isn't sharing upfront or avoids the discussion. A listing broker can simply respond, "I'm getting 3%, you're getting 3%". Or they might say something like, "Cooperative brokerage cannot be more than 2% according to the seller/landlord" as they pay themselves 7%. Listing firms have client relationships. We all get it. But some commercial listing brokers are blissfully free of the ravages of a moral center. I know that getting parties contracted is the culmination of a lot of work, but never should any broker just "trust the process" of a lease or purchase contract as it relates to their compensation. Once the lawyers have a working draft between them, go look at. Look at the minutiae. If it doesn't appear accurate, speak to your BIC and form a plan on how to diplomatically proceed toward a correction. You've done the work they hired you for. Get paid fairly…and go buy groceries.

Student Notes: