

21 NCAC 58A .0502 FIRM LICENSING

(a) Every business entity other than a sole proprietorship shall apply for and obtain from the Commission a firm license prior to engaging in business as a real estate broker. A business entity shall not be permitted to apply for or obtain a firm license when a principal of the firm has a pending disciplinary case where probable cause has been found by the Commission. For purposes of this Rule, the term "principal," when it refers to a person or entity, means any person or entity owning 10 percent or more of the business entity, or who is an officer, director, manager, member, partner, or who holds any other comparable position.

(b) An entity that changes its business form in a manner not described in G.S. 55 Article 11A shall submit a new firm license application upon making the change and obtain a new firm license. However, such converted entity shall provide the information required by this Rule in writing to the Commission within 10 days of the conversion and shall include the duplicate license fee pursuant to Rule .0101(c) of this Subchapter.

(c) Firm license application forms shall be available on the Commission's website or upon request to the Commission and shall require the applicant to set forth:

- (1) the legal name of the entity;
- (2) the name under which the entity will do business;
- (3) the type of business entity;
- (4) the address of its principal office;
- (5) the entity's NC Secretary of State Identification Number if it is required to be registered with the Office of the NC Secretary of State;
- (6) each federally insured depository institution lawfully doing business in this State where the entity's trust account(s) will be held, if applicable;
- (7) the name, real estate license number, and signature of the proposed qualifying broker for the firm;
- (8) the address of and name of the proposed broker-in-charge for each office as defined in Rule .0110(a) of this Subchapter, along with a completed broker-in-charge designation form described in Rule .0110(f) of this Subchapter for each proposed broker-in-charge;
- (9) any past criminal conviction of and any pending criminal charge against any principal in the company or any proposed broker-in-charge;
- (10) any past revocation, suspension, or denial of a business or professional license of any principal in the company or any proposed broker-in-charge;
- (11) any pending or previous professional license disciplinary action against the firm, its principals, or any proposed broker-in-charge;
- (12) if a general partnership, a description of the applicant entity, including a copy of its written partnership agreement or if no written agreement exists, a written description of the rights and duties of the partners, and the name of each partner. If a partner is an entity rather than a natural person, the name of each officer, partner, or manager of that entity, or any entity therein;
- (13) if a limited liability company, a description of the applicant entity, including a copy of its written operating agreement or if no written agreement exists, a written description of the rights and duties of the managers, and the name of each manager. If a manager is an entity rather than a natural person, the name of each officer, partner, or manager of that entity, or any entity therein;
- (14) if a business entity other than a corporation, limited liability company, or partnership, a description of the organization of the applicant entity, including a copy of its organizational documents evidencing its authority to engage in real estate brokerage;
- (15) if a foreign business entity, a Certificate of Authority to transact business in North Carolina issued by the NC Secretary of State and an executed consent to service of process and pleadings; and
- (16) any other information required by this Rule.

(d) When the authority of a business entity to engage in the real estate business is unclear in the application or in law, the Commission shall require the applicant to declare in the firm license application that the applicant's organizational documents authorize the firm to engage in the real estate business and to submit organizational documents, addresses of affiliated persons, and similar information.

(e) After filing a firm license application with the Commission, the entity shall be licensed provided that it:

- (1) has one principal holding a broker license on active status in good standing who will serve as the qualifying as defined by this Rule; and
- (2) employs and is directed by personnel licensed as a broker in accordance with this Chapter.

The qualifying broker of a partnership of any kind shall be a general partner of the partnership; the qualifying broker of a limited liability company shall be a manager of the company; and the qualifying broker of a corporation shall be an officer of the corporation. A licensed business entity may serve as the qualifying broker of another licensed

business entity if the qualifying broker-entity has as its qualifying broker a natural person who is licensed as a broker. The natural person who is qualifying broker shall assure to the Commission the performance of the qualifying broker's duties with regard to both entities. A provisional broker may not serve as a qualifying broker.

(f) The licensing of a business entity shall not be construed to extend to the licensing of its partners, managers, members, directors, officers, employees or other persons acting for the entity in their individual capacities regardless of whether they are engaged in furthering the business of the licensed entity.

(g) The qualifying broker of a business entity shall assume responsibility for:

- (1) designating and assuring that there is at all times a broker-in-charge for each office and branch office of the entity as "office" and "branch office" are defined in Rule .0110(a) of this Subchapter;
- (2) renewing the real estate broker license of the entity;
- (3) retaining the firm's current pocket card at the firm and producing it as proof of firm licensure upon request and maintaining a photocopy of the firm license certificate and pocket card at each branch office thereof;
- (4) notifying the Commission of any change of business address or legal or trade name of the entity and the registration of any assumed business name adopted by the entity for its use;
- (5) notifying the Commission in writing of any change of his or her status as qualifying broker within 10 days following the change;
- (6) securing and preserving the transaction and trust account records of the firm whenever there is a change of broker-in-charge at the firm or any office thereof and notifying the Commission if the trust account records are out of balance or have not been reconciled as required by Rule .0117 of this Subchapter;
- (7) retaining and preserving the transaction and trust account records of the firm upon termination of his or her status as qualifying broker until a new qualifying broker has been designated with the Commission or, if no new qualifying broker is designated, for the period of time records are required to be retained by Rule .0108 of this Subchapter;
- (8) notifying the Commission if, upon the termination of his or her status as qualifying broker, the firm's transaction and trust account records cannot be retained or preserved or if the trust account records are out of balance or have not been reconciled as required by Rule .0117 of this Subchapter; and
- (9) notifying the Commission regarding any revenue suspension, revocation of Certificate of Authority, or administrative dissolution of the entity by the NC Secretary of State within 10 days of the suspension, revocation, or dissolution.

(h) Every licensed business entity and every entity applying for licensure shall conform to all the requirements imposed upon it by the North Carolina General Statutes for its continued existence and authority to do business in North Carolina. Failure to conform to such requirements shall be grounds for disciplinary action or denial of the entity's application for licensure.

(i) Upon receipt of notice from an entity or agency of this State that a licensed entity has ceased to exist or that its authority to engage in business in this State has been terminated by operation of law, the Commission shall cancel the license of the entity.

History Note: Authority G.S. 93A-3(c); 93A-4;

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