



## May a broker be paid a commission by their former BIC?

Release Date: 10/14/2021

Will Martin, Martin & Gifford, PLLC

**QUESTION:** According to our agreement with him, an agent who was formerly affiliated with our firm is entitled to a commission on one of our listings that he put under contract before he left the firm, but which will be closing after his departure. I am the BIC and the agent has requested that I pay his share of the commission directly to him when the transaction closes rather than to his new firm. He says that the BIC of his new firm would be fine with that arrangement. Am I permitted to do this or must he receive payment from his current BIC?

**ANSWER:** The answer to your question depends on how you interpret [NC Real Estate Commission Rule 58A.0120\(b\)](#), which went into effect July 1, 2021. That rule states that “[a]n affiliated broker shall not be paid a commission or referral fee directly by anyone other than their current BIC or the person who served as their BIC at the time of the transaction.” In other words, a broker can receive payment of a commission either from their current BIC or, under certain circumstances, from their former BIC. Since you are no longer his BIC, your former agent can’t receive payment directly from you based on the first part of the Rule, but how about the second part, which permits direct payment from someone who served as the broker’s BIC at the time of the transaction? The answer to that question depends on whether the phrase “the time of the transaction” refers to the time of closing or the time of contract. Since commissions are generally understood to be earned at the time of contract, we think it is reasonable to interpret the phrase “the time of the transaction” to mean the time when the property went under contract. This interpretation would permit you to pay your former agent directly (assuming, of course, that the transaction closes) since you were his BIC at the time the property went under contract. A member of the Real Estate Commission’s legal staff has concurred with this interpretation of the Rule.

Click [here](#) to read a recent Q&A on whether the Rule permits a broker affiliated with a firm to receive a commission check directly from the closing attorney.

*NC REALTORS® provides articles on legal topics as a member service. They are general statements of applicable legal and ethical principles for member education only. They do not constitute legal advice. The services of a private attorney should be sought for legal advice.*

**© Copyright 2021. North Carolina Association of REALTORS®, Inc. This article is intended solely for the benefit of NC REALTORS® members, who may reproduce and distribute it to other NC REALTORS® members and their clients, provided it is reproduced in its entirety without any change to its format or content, including disclaimer and copyright notice, and provided that any such reproduction is not intended for monetary gain. Any unauthorized reproduction, use or distribution is prohibited.**