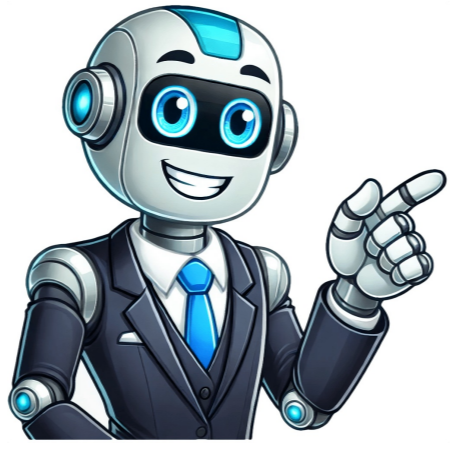


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Rosters of exam candidates, NC licensees, new licenses, and licensees with CE deficiencies can be ordered online. The roster files contain names and addresses formatted as comma separated values. By Tiffany Ross- Consumer Resource Officer & Bruce Rinne- Information Officer Brokers are often confused about measuring and square footage requirements, whether or not they can use technology to assist, and whose requirements they are complying with. This article is designed to provide clarification, answer frequently asked questions and correct misconceptions. **FACT #1** – The North Carolina Real Estate Commission (NCREC) does not require that the square footage of a property be advertised. If there is an advertising requirement for square footage, it is likely from a local MLS. It is important to know the difference between the rules of NCREC, your firm, and every MLS that you choose to join, as they are all separate organizations with separate rules. If the square footage is advertised (as well as all other information), the NCREC requires it to be accurate. Brokers-in-charge are responsible for all advertising, including representations about square footage in the MLS. Individual brokers are also responsible for any representations they make about the property in advertising, the MLS, or otherwise. North Carolina License Law states: § 93A-6. Disciplinary action by Commission. (a) The Commission has power to take disciplinary action. Upon its own initiative, or on the complaint of any person, the Commission may investigate the actions of any person or entity licensed under this Chapter, or any other person or entity who shall assume to act in such capacity. If the Commission finds probable cause that a licensee has violated any of the provisions of this Chapter, the Commission may hold a hearing on the allegations of misconduct. 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: (1) Making any willful or negligent misrepresentation or any willful or negligent omission of material fact. (3) Pursuing a course of misrepresentation or making of false promises through agents, advertising or otherwise. **FACT #2** – Last year, the NCREC received approximately 1,500 complaints. 43% of these were about the failure to disclose material facts. Square footage misrepresentations was number 2 among the complaints related to material facts. When a listing agent gathers information on a property to prepare to advertise it, they can measure the property themselves or have a qualified person measure it for them such as a competent state-licensed or state-certified appraiser or another agent with greater expertise. When hiring an individual or company, the broker who relies on another's measurement is expected to recognize an obvious error in the reported square footage and to alert any interested parties. Any individual or company performing the measurement of a residential property on behalf of a broker should follow the Commission's Residential Square Footage Guidelines (found here ), those approved by ANSI, or comparable guidelines. There are several tools available to measure a property that you can use – a standard tape measure, laser tape measure, or even an app on your cell phone. Bear in mind though, that some technology is more reliable than others, and the technology is only as good as the operators. The NCREC does not endorse any particular technology, but does not discourage the use of technology for the purpose of measuring a property, as long as it is accurate. **FACT #3** – When advertising square footage, heated living area (HLA) is the primary space that is included in the calculation. Keep in mind that there may be other types of square footage that should be excluded entirely or separately calculated and disclosed. Whether utilizing technology to perform measurements or a simple tape measure, be sure to observe the unique characteristics of the property that may cause your measurement to be off. Is there a 2 or 3 story foyer? Interior space that is open from the floor of one level to the ceiling of the next higher level is included in the square footage for the lower level only. Do you have a room with a slanted ceiling? Make sure the ceiling height is 7' or higher for at least 50% or more of the room and then include only the space that is 5' or higher. Another requirement for HLA is that you must be able to enter one room from another through heated living area. If you have to enter a room through an unheated space it is considered 'additional square footage' and should be reported separately. Finally, areas such as additions must be permitted, and if the property is on a septic system bedrooms advertised must match those permitted. Just because the seller is utilizing a space as a bedroom does not mean a broker can advertise it as such. If a property is on septic, the number of bedrooms permitted is determined by the capacity of the septic system. Minimum square footage, number of points of egress and regress, and whether a bedroom must have a closet are sometimes local restrictions. When property is measured, a broker should be able to ascertain the different type of square footage such as HLA, Additional Square Footage and Unpermitted Square Footage and advertise it correctly. Technology can do an efficient job at measuring. Your job as a broker is to make sure those areas are properly identified on the floorplan of the property. If you hire an expert to measure for you, be sure that you provide them with information about any space that is unpermitted. In summary, the NCREC does not prohibit the use of technology or a qualified service provider to assist you with measuring a property. Brokers are liable for their representations and BICs are liable for advertising errors by their brokers. Technology can be a tremendous tool to provide fast, accurate measurements and dynamic images at affordable prices. The photos, virtual tours, floor plans and 3D modeling can dramatically enhance your marketing program. These enhancements may lead to more showings, more offers and perhaps even higher prices. As good as the technology is, however, there is no substitute for you as the listing agent verifying the type and accuracy of advertised square footage. The Commission regularly receives inquiries and complaints about the measuring of square footage in properties listed or being listed for sale. Accuracy in measuring is critical because the amount of space in a structure has a bearing on value and functionality and is a material fact. Thus, the task of assessing square footage should be one of the most important in the process of market evaluation. Following are questions typically asked of Commission staff. Read these and the answers that follow to test and review your knowledge of this topic. Q. Have there been changes to Commission rules on the reporting of square footage? A. The Commission has no specific rules on this topic. However, it does have rules about misrepresentation which can result from inaccurate measuring. It also has educational information in the form of the Residential Square Footage Guidelines – a booklet which provides instruction in measuring different types of floor plans in residential properties – and content in postlicensing courses on the topic. All of this is available on the Commission's website, [www.ncrec.gov](http://www.ncrec.gov). And, if questions still arise, you can call the Commission. Q. I am the listing agent. Am I required to report the square footage? A. The Commission doesn't require it, but if you decide to report the square footage, it must be correct. Furthermore, your MLS may require it. To avoid problems, obtain the correct square footage yourself or obtain the services of a licensed appraiser. Q. Is it okay to use tax records of square footage as a source? A. No. Review the tax records, but never rely on them for this information. If you find that the square footage of the property differs from the information on the tax records, there may be a permit or other issue to be resolved. Q. If I do not measure the property myself, must I get an appraiser to do it? A. No, but appraisers are generally a very good source because they are typically trained and experienced in measuring. The Commission will normally allow a broker to rely on a licensed appraiser's current measurement as long as that reliance is reasonable and there was no red flag to alert the broker to a problem. Regardless of who does the measuring, the broker should keep the measurements on file in the event of questions or problems arising. Q. Is it okay to use an old appraisal? A. No. Do not use an old appraisal or an old MLS listing description since there may have been changes to the property at a later date. Q. What happens if I make a mistake in measuring, or report the wrong square footage for any reason? A. According to NC General Statute 93A-6, the Commission has the authority to take disciplinary action against a licensee who makes any willful or negligent misrepresentation or pursues a course of misrepresentation through advertising or otherwise. Therefore, if the square footage is wrong, the listing agent and firm may be held responsible. In addition, the broker-in-charge is responsible for all advertising, so he or she may also be the subject of disciplinary action. The Commission looks at many factors when assessing these types of cases. • Why was the square footage wrong? • Who measured, and was he/she qualified? • Can the measurements/sketch be reproduced by the broker? • How much harm was done to the consumer? • How far off were the measurements; was it a significant amount or negligible? • Was the property unusually difficult to measure? • Did the listing agent rely on square footage from tax records? • Should the buyer's agent have recognized a significant difference and checked the measurements? • When/why was the mistake made and was it corrected? The bottom line, though, is that the listing broker, firm and broker-in-charge, and maybe even the buyer agent could be at risk of disciplinary action by the Commission for misrepresenting square footage. Q. Assuming I do discover an un-permitted section of the house, is it okay to include it in the overall square footage? A. Include it separately and make the parties aware of it. As a listing agent, be sure not to misrepresent the property and/or mislead the buyer. The buyer needs to be made aware of the un-permitted section's size and location in the dwelling. It's best to provide written disclosure and maintain a copy in the file. The un-permitted section must be separately identified. Document your disclosures for future reference. This article came from the February 2015-Vol45-3 edition of the bulletin. Since 1999, the North Carolina Real Estate Commission has produced and distributed the Residential Square Footage Guidelines ("Guidelines"). The Guidelines booklet can be found on the Commission website under Publications and then Guides. The Guidelines booklet explains how to measure residential properties, the definition of living area, and provides numerous examples of various types of residential buildings. Brokers should follow the Guidelines any time they are measuring residential property. Alternatively, brokers can instead use the standards from the American National Standards Institute ("ANSI"). Brokers-in-charge should use the Guidelines as a training tool for their brokers. Brokers are not required by the Real Estate License Law or Real Estate Commission rules to report the square footage of properties offered for sale or rent. However, when brokers do report square footage, including in a multiple listing service, it is essential that it is accurate. There have been many disciplinary actions against brokers who failed to accurately report heated living area, which constitutes a misrepresentation under N.C.G.S. § 93A-6(a)(1). What Counts Living area (sometimes referred to as "heated living area" or "heated square footage") is space that is intended for human occupancy and is: Heated by a conventional heating system or systems (forced air, radiant, solar, etc.) that are permanently installed in the dwelling – not a fireplace or portable heater – which generates heat sufficient to make the space suitable for year-round occupancy Finished, with walls, floors, and ceilings of materials generally accepted for interior construction (e.g., painted drywall/sheet rock or paneled walls, carpeted or hardwood flooring, etc.) and with a ceiling height of at least seven feet, except under beams, ducts, etc. where the height must be at least six feet four inches [Note: In rooms with sloped ceilings (e.g., finished attics, bonus rooms, etc.) you may also include as living area the portion of the room with a ceiling height of at least five feet if at least one-half of the finished area of the room has a ceiling height of at least seven feet.] Directly accessible from other living area (through a door or by a heated hallway or stairway) What Doesn't Count Areas that are not heated by a permanent heat source (fireplace does not count) Unpermitted areas - The square footage of unpermitted additions or improvements must be separately identified when making representations concerning square footage, and brokers must inform prospective buyers that there is no permit for the addition Rooms with a ceiling height under seven feet with two exceptions for areas under beams or ducts and areas with a sloped ceiling (see above for details) Rooms that are not accessible from other living area, as defined above Bay windows that do not reach the floor or are less than seven feet tall Chimney base if external to the building (chimney hearth does count) Mechanical rooms that are not located within the living area Decks, balconies, porches, garages and carports Newly licensed brokers are taught how to measure a building using the Guidelines booklet in Postlicensing 301. For those who need a refresher, there are several continuing education elective courses about measuring square footage. Brokers can search for these courses on the Commission website. Can tax records be used as a resource for square footage measurements? No. Brokers cannot utilize tax records as a resource for square footage measurements. If a broker finds after measuring the property, that the square footage measurement differs from the information in the tax records, there may be other issues, like a permit, that need to be investigated and resolved. Blueprints are also not an acceptable resource for square footage measurements. If you have any additional questions, please go to the Commission's website and review the resource Residential Square Footage Guidelines. When a real estate broker wishes to include the heated living area ("HLA") (aka heated square footage) in any form of advertising, the broker must first verify the accuracy of the HLA by measuring and calculating the HLA or by hiring a qualified professional (preferably an experienced broker or licensed appraiser) to do so. Brokers are not permitted to rely upon the following sources for HLA: a seller's representation, an appraisal prepared prior to the listing, a previous MLS listing, tax records, or a set of blue prints if the construction of the house has been completed. If a broker is unable or unwilling to verify the accuracy of the HLA, then the broker should refrain from including an HLA figure in any form of advertising as doing so may constitute false advertising and/or a misrepresentation of material fact. The Commission does not specifically dictate which method a broker must use to determine the HLA. A broker may use the Commission's Residential Square Footage Guidelines ("RSFG") (aka "the yellow book") or the American National Standards Institute ("ANSI") standard or any other recognized professional standard. What is the difference between the Commission's Residential Square Footage Guidelines and the ANSI standard? The chart that follows this article shows a general comparison of some, but not all, of the components of the two. The chart is for comparison purposes only and is not a how-to guide for determining square footage. Any person wishing to use one of the two methods referenced in the chart should carefully review and follow all of the steps prescribed by the method chosen. The text for the Commission's Guidelines is available on [ncrec.gov](http://ncrec.gov) under "Publications," then "Guides." The ANSI standard must be obtained from its publisher (American National Standards Institute). There are two primary differences between the Commission's Guidelines and the ANSI standard. First, the end users of the square footage data produced using the Commission's Guidelines are residential buyers and sellers who want to know the total amount of HLA in the homes they want to buy or sell, respectively. The end users of the data produced by the ANSI standard are lenders, Fannie Mae, Freddie Mac, USDA, and the Veterans Administration who want to determine the value of the homes as collateral for the loans being requested by prospective buyers. The second primary difference between the two methods is that the Commission's Guidelines allow for the combination of all HLA in a home. The ANSI standard requires users to separately identify the Gross Living Area ("GLA") as either "above-grade" or "below-grade." When an exterior wall has soil against it, the ANSI standard requires its users to designate that entire floor as "below-grade. Is there any reason for a broker to use the ANSI standard for loans sold to Fannie Mae. A listing agent who hires a professional to determine the HLA of a new listing should know and understand the method that will be used to determine the HLA. Additionally, the listing agent should review the completed work to verify that the HLA calculation includes only areas that qualify as HLA or GLA according to the method used. A broker who encounters different representations of the square footage of a property should understand the differences that can result depending upon the method used. For example, suppose that a buyer agent represents a buyer whose lender orders an appraisal that indicates 2,400 square feet of GLA "above-grade." The listing agent for this property advertised 3,000 square feet of HLA in the MLS. The buyer gets upset, believing that the listing agent overstated the HLA. The buyer agent should be familiar enough with the ANSI standard to check the appraisal report to see if it contains an additional 600 square feet of GLA designated as "below-grade" to account for the 600 square foot difference. If the appraisal indicates 600 square feet of GLA "below-grade," then the calculations of both the listing agent and the appraiser are likely correct. If the appraisal report does not show 600 square feet of GLA "below-grade," then all interested persons need to determine the correct HLA or GLA and proceed accordingly. Remember, HLA is a material fact, because it is an important factor used by sellers, buyers and others in making decisions. It is therefore imperative that brokers exercise skill, care and diligence in providing accurate HLA information so that consumers can make informed decisions. Knowing and properly using the methods referenced in this article will help protect brokers and their clients and customers. NCREC Residential Square Footage GuidelinesANSI Z765-2021End Users: Prospective buyers and sellersLenders, Fannie Mae, Freddie Mac, VA, USDACost: FreeANSI membership fee, license, etc.Recommended guide for brokersAppraisers must use the ANSI standard for all loans sold to Fannie Mae (effective 4/1/22)Heated Living Area: includes areas which are heated, finished, and directly accessible to main living area.Gross Living Area: SameAreas that qualify as heated living areas may be combined and reported together as total heated living area regardless of whether they are above-grade or below-grade.Above-grade and below-grade areas must be reported separately.Ceiling height: if at least 50% of room has a ceiling height of 7 ft. or more, then any floor space with a height of 5 ft. or more is included.SameMeasure exterior walls from outside. When measuring from inside, add 6" for each exterior wall. Same for single-family attached and detached. Dimensions acquired in any manner other than by direct, exterior measurement must be explained.For condos, measure from inside. Do not add thickness of walls.ANSI is not intended for use with condos or other multi-family dwellings.A finished area connected to living area via a heated, finished hallway or stairway is included.SameUnfinished areas, garages, chimneys(outside foot print of house) are not includedSame, except that unfinished areas must be distinguished as above-grade or below-grade.Openings to the floor below not included. If an opening for stairs is larger than the width of the stairs, a deduction for the excess width is required.SameMake a sketch of building exterior with dimensions for all exterior walls. Identify all unfinished areas inside the dwelling.Sketch must be computer-generated. Appraiser must disclose if he/she did not view interior. Square footage determined from building plans for a proposed house must be disclosed.Recommend showing calculations.Must show calculations.Differences in the square footage of individual spaces based upon a broker's thoughtful judgement when properly using this method will not necessarily constitute an error.If appraiser can't adhere to ANSI Z765-2021, he/she must insert Code "GXXX001" in Additional Features field and explain reason(s) for non-compliance. Annex: (informative, but not enforced) Finished floors include concrete with "decorative finishes," but not bare concrete.