

APPENDIX II-G

COVER SHEET FOR FINAL PROPOSAL

Notice Number 2022-28 Rule Number Rea 400 various

<p>1. Agency Name & Address: NH Real Estate Commission c/o Office of Professional Licensure & Certification 7 Eagle Square Concord, NH 03301</p>	<p>2. RSA Authority: <u>RSA 331-A:25, V & XIII and RSA 541-A:16, I(b)</u></p> <p>3. Federal Authority: <u>n/a</u></p> <p>4. Type of Action:</p> <p><input type="checkbox"/> Adopt</p> <p><input type="checkbox"/> Amendment (only if Initial Proposal was filed before 9/27/20.)</p> <p><input type="checkbox"/> Repeal</p> <p><input type="checkbox"/> Readoption</p> <p><input checked="" type="checkbox"/> Readoption w/amendment</p>
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5. Short Title: **License Renewal and Continuing Education Requirements**

6. Contact person for copies and questions:

Name:	Tina M. Kelley	Title:	Program Specialist IV
Address:	Office of Professional Licensure and Certification 7 Eagle Square Concord, NH 03301	Phone #:	(603) 271-5247

7. The rulemaking notice appeared in the Rulemaking Register on November 24, 2021.

**SEE THE INSTRUCTIONS--PLEASE SUBMIT ONE COPY OF THIS COVER SHEET
AND ONE COPY OF THE FOLLOWING:
(optional to number correspondingly)**

8. The "Final Proposal-Fixed Text," including the cross-reference table required by RSA 541-A:3-a, II as an appendix.

9. Yes N/A Incorporation by Reference Statement(s) because this rule incorporates a document or Internet content by reference for which an Incorporation by Reference Statement is required pursuant to RSA 541-A:12, III.

10. Yes N/A The "Final Proposal-Annotated Text," indicating how the proposed rule was changed because the text of the rule changed from the Initial Proposal pursuant to RSA 541-A:12, II(d).

11. Yes N/A The amended fiscal impact statement because the change to the text of the Initial Proposal affects the original fiscal impact statement (FIS) pursuant to RSA 541-A:5, VI.

<p>1. Agency Name & Address:</p> <p>NH Real Estate Commission c/o Office of Professional Licensure & Certification 7 Eagle Square Concord, NH 03301</p>	<p>2. RSA Authority: <u>RSA 331-A:25, V & XIII and RSA 541-A:16, I(b)</u></p> <p>3. Federal Authority: <u>n/a</u></p> <p>4. Type of Action:</p> <p>Adoption _____</p> <p>Repeal _____</p> <p>Readoption _____</p> <p>Readoption w/amendment <u>X</u></p>
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5. Short Title: **License Renewal and Continuing Education Requirements**

6. (a) Summary of what the rule says and of any proposed amendments:

Rea 401.01 describes renewal of licenses and is being readopted with amendment to remove old forms and insert revised forms, require a separate document to describe any “yes” answers indicated on the application form, and make various editorial changes.

Rea 401.02 describes renewals of late or lapsed licenses and is being readopted with amendment to:

- **Insert completed before renewal form;**
- **Insert the requirement for the broker or salesperson renewing a license up to six months after the expiration date to complete an additional 9 hours of continuing education above what is required for renewal before the license expires;**
- **Insert the requirement that a broker or salesperson who wishes to renew a license after 6 months of expiration but before 12 months shall complete the renewal form, submit the renewal fee, and provide a certificate of completion of a 40-hour pre licensing course; and**
- **Make various editorial changes.**

Rea 403.01 describes continuing education requirements and is being readopted with amendment to include with that in addition to a salesperson who is applying for his or her firms renewal the continuing education requirement for 12 hours of elective courses in addition to core courses also applies to those applicants amendment an inactive license to active status for the first time.

Rea 403.02 describes continuing education documentation and audits and is being readopted with amendment to change the percentage of those audited from not less than 10% of the licensees to no less than 5% of the licensees.

Rea 404.02 describes amendments to information on file with the Board and is being readopted with amendment to remove old forms and insert revised forms, to include an attestation on the “Real Estate Commission Transfer/Activation Form”, and to make various editorial changes.

6. (b) Brief description of the groups affected:

The groups affected by these rule changes are brokers, associate or managing brokers, and salesperson’s who are:

- **Renewing their license or renewing a late or lapsed license;**
- **Obtaining continuing education; or**
- **Amending information on file with the Board.**

6. (c) Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement:

Rule	Specific State Statute the Rule Implements
Rea 401.01	RSA 331-A:12-a; 14; 19; 22; 25, XIII
Rea 401.02	RSA 331-A:19; 25, XIII
Rea 403.01	RSA 331-A:12-a; 19; 20; 25, IX
Rea 403.02	RSA 331-A:25, V, IX; RSA 541-A:16, I(b)
Rea 404.02	RSA 331-A:17; 25, I

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name: **Tina Kelley** Title: **Program Specialist IV**
 Address: **Office of Professional Licensure and Certification** Phone #: **(603) 271-5247**
7 Eagle Square Fax#: **None**
Concord, NH 03301 E-mail: **OPLC-Rules@oplc.nh.gov**

TTY/TDD Access: Relay NH 1-800-735-2964 or dial 711 (in NH)

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **Tues., April 19, 2022 at the conclusion of the public hearing.**

Fax E-mail Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Tuesday, April 19, 2022 at 9:00 a.m.**
Office of Professional Licensure and Certification
 Place: **7 Eagle Square**
Concord NH 03301

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant)

FIS # 22:027, dated 2-17-2022

1. Comparison of the costs of the proposed rule(s) to the existing rule(s):

When compared to the existing rules the proposed rules may result in an indeterminable impact to State Citizens and independently owned businesses. (See 3(b) & 3(c) below.)

2. Cite the Federal mandate. Identify the impact on state funds:

No federal mandate, no impact on state funds.

3. Cost and benefits of the proposed rule(s):

This rule updates old and revises old forms at no cost. It also removes the late fee established in Rea 301.02 and increases the continuing education course requirements for certain situations. The increase in continuing education course requirements could have an impact on State Citizens and independently owned businesses if the additional courses have a cost.

A. To State general or State special funds:

None

B. To State citizens and political subdivisions:

There is no cost or benefits to political subdivisions. However, there may be an indeterminable impact to State citizens who are brokers and salesperson renewing an expired or inactive license and are required to complete additional hours of continuing education course credit that have a cost.

C. To independently owned businesses:

There maybe an impact to independently owned businesses to the extent they choose to pay for the additional continuing education credits for their employees.

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:

These rules do not violate Part I, Article 28-a of the New Hampshire Constitution. These rules do not mandate or assign this program to any political subdivision in any way.

Unclear. The form requires a fee of \$155 which is not mentioned in Rea 401.01. A citation to Rea 301.02 may be needed.

Edit/Unclear. There is an attestation for #4 that doesn't appear here: "As a licensee, you attest that you are aware of the wall display requirements of RSA 331-A:15. All Managing and Principal Brokers must obtain the wall license from any agent affiliated with them. All Associate Brokers must deliver their wall license to the broker in responsible charge at the brokerage where they are employed."

Readopt with amendment Rea 401.01, effective 1/23/2020 (Document #12977-B), to read as follows:

Rea 401.01 Renewals of License.

Edit. The edition date on page 1 of the form is incorrect.

(a) Applicants for renewal of a broker's license shall complete and submit a "Real Estate Commission Broker Renewal Form", revised 6/2022, and include the following:

Edit/Unclear. There are different forms that have to be attached depending on the response to 1, 2, and 5. For instance, an affirmative response to 1 means that the applicant has to submit an "Arrest and Conviction" form. It would be better to split this into subparagraph that indicate that the applicant shall have to submit certain documents if the answer is Yes.

(1) If the applicant answered "yes" to questions 1, 2, and 5 on the "Real Estate Commission Broker Renewal Form" described in (a) above, a separate document shall be submitted with the application giving full details and an explanation of each "yes" answer;

(2) For all applicants, the applicant's attestation after the following statement:

"Applies to Principal Brokers Only - As a principal broker, pursuant to RSA 331-A:13, V, I hereby give permission to the Real Estate Commission to audit the escrow account or accounts. I attest that I have read the foregoing statement and affixed my signature below:

I have read and understand the provisions of New Hampshire revised statutes RSA 331-A and the New Hampshire Real Estate administrative rules, Rea 100 through 700. I attest that the information contained in this form is true and correct to the best of my knowledge and belief and I further acknowledge that the provision of materially false information in the application knowingly provided is a basis for denial and if it is discovered after the license is issued, is a basis for disciplinary action by the board."

Unclear. This indicates all applicants, yet the statement says "Principal Brokers Only". Even if the rule language is intended, it will be unclear to applicants.

Edit. The form uses "Commission".

Edit/Unclear. This is the same attestation that only appears once on the form.

(3) If the applicant is a principal broker, the applicant's signature after the following certification:

"As a principal broker, pursuant to RSA 331-A:13, V, I hereby give permission to the Real Estate Commission to audit the escrow account or accounts. I attest that I have read the foregoing statement and affixed my signature below:"

(4) If the applicant is a principal broker or managing broker, a copy of a surety bond in the sum of not less than \$25,000 to run concurrently with the dates of licensure, executed by the applicant and by a surety company authorized to do business in the state of New Hampshire.

(b) Applicants seeking renewal as an associate or managing broker under (a) above or as a salesperson under (c) below shall have their principal broker complete and submit the appropriate sections of the relevant form, indicated by principal broker's signature after the following statement:

"Upon receipt of the license herein applied for, the above named applicant will be employed by me or will otherwise be under contract with me to perform services as a real estate licensee, and will work under my supervision. I will display his/her license prominently at my place of business, and when he/she leaves my employ I will notify the New Hampshire Real Estate Commission within 5 days, as required by RSA 331-A:17, IV."

(c) Applicants for renewal of a salesperson's license shall complete and submit a "Real Estate Commission Salesperson Renewal Form" revised 6/2022 and include the following:

Unclear. The form requires a fee of \$155 which is not mentioned in Rea 401.01. A citation to Rea 301.02 may be needed.

Unclear. This form contains an attestation not include in (c) below. "Upon receipt of the license herein applied for, the above named applicant will be employed by me or will otherwise be under contract with me to perform services as a real estate licensee, and will work under my supervision. I will display his/her license prominently at my place of business, and when he/she leaves my employ I will notify the New Hampshire Real Estate Commission within 5 days, as required by RSA 331-A:17, IV."

Edit/Unclear. It is unclear whether the form is requiring different documents to be submitted. #1 requires the applicant to provide an explanation, and #2 requires a "letter of explanation". It is unclear whether that is a form. #5 does not appear to require additional documents.

(1) If the applicant answered "yes" to questions 1, 2 and 5 on the "Real Estate Commission Salesperson Renewal Form" described in (c) above a separate document attached to the application providing the full details and an explanation of that "yes" answer; and

(2) The applicant's attestation after the following statement:

"I have read and understand the provisions of New Hampshire revised statutes, RSA 331-A and the Real Estate Commission administrative rules, Rea 100 through 700. I attest that the information contained in this form is true and correct to the best of my knowledge and belief and I further acknowledge that the provision of materially false information in the application knowingly provided is a basis for denial and if it is discovered after the license is issued, is a basis for disciplinary action by the Commission."

(d) The forms described in (a) and (b) above may be accessed at <http://www.app-support.nh.gov/licensing>.

(e) All broker and salesperson renewal applicants shall complete continuing education requirements pursuant to Rea 403.01.

(f) Each licensee who is applying to have her or his license renewed shall submit a continuing education certificate pursuant to RSA 331-A:19, containing the following:

- (1) Name, address, license number, and signature of renewal applicant;
- (2) Name and location of continuing education program;
- (3) Date and number of credit hours obtained; and
- (4) Name of program instructor.

Edit/Unclear. This requirement is actually on the "Sales Person Renewal Form". Consider: All principal broker, managing and salesperson renewal applicants shall...". Also the sale person form says \$2,500"

Unclear. The form requires a fee of \$155 which is not mentioned in Rea 401.01. A citation to Rea 301.02 may be needed.

(g) Principal broker and managing broker applicants shall submit to the commission a surety bond in the sum of not less than \$25,000 to run concurrently with the dates of licensure, executed by the applicant and by a surety company authorized to do business in the state of New Hampshire.

(h) All applicants for renewal of a broker license as a firm shall complete and submit a "Real Estate Commission Firm Renewal Form", revised 6/2022 and include the firm's certificate of good standing from the secretary of state. If the applicant is a non-resident, the applicant shall include a signed "Real Estate Commission Irrevocable Uniform Consent to Service of Process" dated 6/2022, as required by RSA 331-A:22, II and sign the form after the following statement;

Edit. Use the 11pt font size throughout.

"The undersigned applicant for licensure as a broker, salesperson or broker firm in New Hampshire (Print Name of Person or Brokerage Firm) does hereby irrevocably consent, stipulate and agree that suits, actions and administrative proceedings may be commenced against such applicant in the courts and agencies of this State, by the service of any process authorized by the laws of this State on the Executive Director of the New Hampshire Office of Professional Licensure and Certification and that service of such process upon said Executive Director shall be taken and held in all courts to be as valid and binding as if the service had been made upon said applicant in the State of New Hampshire.

I, (Name of Applicant – individual, entity, or Brokerage firm), am authorized to act on behalf of the Applicant, (if an entity or brokerage firm), and agree that notice of service of process on the

Unclear. The form requires a fee of \$155 which is not mentioned in Rea 401.01. A citation to Rea 301.02 may be needed.

Executive Director of the New Hampshire Office of Professional Licensing & Certification (“OPLC”), shall be sent to, (check one), me as the Applicant -OR- (name of person responsible for service upon the entity or Brokerage firm) at the current address and/or email address on file with the OPLC.”

(i) All applicants for renewal of a broker license as a firm branch shall complete and submit a “Real Estate Commission **Firm Branch Renewal Form**”, revised 6/2022 and attach the firm’s certificate of good standing from the secretary of state. If the applicant is a non-resident, the applicant must include on the application a signed “Real Estate Commission Irrevocable Uniform Consent to Service of Process” dated 6/2022, as required by RSA 331-A:22, II.

Readopt with amendment Rea 401.02, effective 1/23/2020 (Document #12977-B), to read as follows:

Rea 401.02 Renewals of Late or Lapsed License.

Edit "and:"

(a) All broker and salesperson renewal applicants who submit a completed renewal form up to 6 months after expiration shall be considered late; **and**

Unclear. A citation to Rea 301.02 may be needed.

(1) Pay the **regular renewal fee**; and

(2) Provide copies of certificates showing completion of 9 hours of continuing education courses accredited by the commission pursuant to Rea 302, in addition to the credits claimed for renewal. The credit hours used towards late renewal shall not be used on any future renewals or used as credits towards future licenses.

(b) All broker and salesperson renewal applicants who submit a renewal form after ~~[six]~~ **6** months from expiration, but before 12 months from expiration, shall be considered lapsed and:

(1) Submit a renewal form described in Rea 401.01, **renewal fee**, and all required documents;

(2) Provide a certificate of completion of a 40 hour pre licensing course described in Rea 302.04(g);

(3) Submit a written document explaining why the applicant believes the period of time for lapse and the good cause meets the requirements of RSA 331-A:18, II. For purposes of this section, good cause shall include serious accident, **illness** or other circumstances beyond the control of the applicant; and

Edit. Insert a comma.

(4) The commission or designee shall grant the request to renew a lapsed license if the licensee meets the requirements of RSA 331-A:18, II.

(c) All broker and salesperson renewal applicants who submit a renewal form 12 months or later from expiration shall be considered an original applicant and shall be required to complete all education, examination, and application requirements pursuant to Rea 301.01 and Rea 301.03.

Readopt with amendment Rea 403.01, effective 1/23/2020 (Document #12977-B), to read as follows:

Rea 403.01 Continuing Education Requirements.

(a) All active and inactive renewal applicants shall complete a minimum 3-hour continuing education core course that has been accredited by the commission pursuant to Rea 302.01.

(b) All renewal applicants whose licenses are on active status, and inactive licensees who are applying to have their licenses placed on active status, shall complete an additional 12 hours of continuing education elective courses accredited by the commission pursuant to Rea 302.01.

(c) A salesperson renewal applicant as defined in Rea 403.01(b), who is applying for his or her first renewal or amending an inactive license to an active status for the first time, shall complete post-licensing continuing education courses as designated by the commission to meet the applicant's 12 hours of continuing education elective courses in addition to the core course.

(d) The 12 hours of post-licensing continuing education in Rea 403.01(b) shall consist of accredited courses from one each of four approved post-licensing course topics and may include one or more additional accredited courses from approved optional post-licensing course topics.

(e) An additional 3-hour core course may be submitted as elective course hours to fulfill the requirement of (b) above by renewal applicants whose licenses are on active status and not applying for their first renewal, and inactive licensees who are applying to have their licenses placed on active status.

(f) All applicants, when submitting an application for renewal of a broker or salesperson license prior to the expiration date of the license, shall have completed the continuing education required in (a) and (b) above within the current 2-year license period.

(g) All courses submitted to fulfill the requirements of (a) through (e) above shall have different course numbers.

(h) All applicants, when submitting an application for renewal of a broker or salesperson license after the expiration date of the license, shall have completed the continuing education required in (a) and (b) above within the prior 2-year license period, but no later than the late renewal period allowed under RSA 331-A:18.

Readopt with amendment Rea 403.02, effective 1/23/2020 (Document #12977-B), to read as follows:

Rea 403.02 Continuing Education Documentation and Audits.

(a) All active and inactive renewal applicants shall retain verification records for a period of at least 4 years.

(b) Continuing education documentation shall be made available to the commission for random audit and verification purposes.

(c) Documentation shall support continuing education hours claimed.

(d) Failure to provide documentation for audit verification shall result in disciplinary action pursuant to Rea 200.

(e) Not less than 5% of the licensees shall be randomly selected each year by the commission for compliance with the continuing education requirements outlined in Rea 403.01 and (a) through (d) above.

Unclear. This does not follow from the intro language of (b) in that it does not list a form

Readopt with amendment Rea 404.02, effective 1/23/2020 (Document #12977-B), to read as follows:

Rea 404.02 Amendments.

(a) Each licensee and firm shall at all times keep the commission informed of the licensee’s or firm’s current resident address, mailing address, email address, contact phone number(s), work location address, legal name, or trade names.

(b) Any such changes in the information listed in (a) above shall be reported, in writing, to the commission no later than 10 days after the change by completing and submitting one or more of the following forms:

Edit. Insert a comma.

(1) If the licensee is changing their residential address, personal phone number, or email address they shall submit the new information by logging into the commission’s online portal and entering the updated information;

Edit. 6/2022.

(2) “Real Estate Commission Transfer/Activation Form”, revised 5/2022, indicated by the principal broker’s signature after the following statement:

“Upon receipt of the license herein applied for, the above named applicant will be employed by me or will otherwise be under contract with me to perform services as a real estate licensee and will work under my supervision. I will display his/her license prominently at my place of business, and when he/she leaves my employ I will notify the New Hampshire Real Estate Commission within 5 days, as required by RSA 331-A:17, IV.” and include the following:

Unclear. These do not follow from (2).

- a. 12 hours of elective education, if applicable;
- b. An amendment fee in the amount of \$20.00;
- c. For principal and managing brokers evidence of not less than a \$25,000.00 surety bond; and
- d. If the principal broker is changing include the original wall license with the “Real Estate Commission Deactivation of an Active License Form” revised 6/2022.

(3) Principal brokers submitting a “Real Estate Commission Change of Managing Broker of Branch Office Form,” revised 6/2022 shall submit the following with the form:

- a. The original firm wall license;
- b. An amendment fee in the amount of \$20.00; and
- c. The original wall license and pocket card of both the old and new managing broker. If the wall license or pocket card is not available, the individual shall submit an explanation as to its unavailability;

(4) Individuals submitting the “Real Estate Commission Change of Principal Broker of Firm, Firm Branch, or Trade Name,” revised [5]6/2022 shall submit the following with the form:

- a. The original firm wall license;
- b. An amendment fee in the amount of \$20.00; and
- c. The original wall license and pocket card of both the old and new managing broker. If the wall license or pocket card is not available, the principal brokers shall submit an explanation as to its unavailability;

Unclear/Edit. This form requires the applicant to check a box as to indicate that they give permission for their personal address and email address to be released as part of a records request.

(5) Principal brokers submitting the “Real Estate Commission Deactivation of an Active License Form” revised 6/2022 shall submit with the form the licensee’s original wall license and pocket card. If the wall license or pocket card is not available, the principal broker shall submit an explanation as to its unavailability;

(6) Individuals submitting the “Real Estate Commission Change of Broker Status Form” revised 6/2022 shall submit the following along with the form:

- a. If there is a change from a broker license type to another, the individual’s wall license and pocket card;
- b. For principal and managing brokers, proof of a surety bond in the sum of not less than \$25,000 to run concurrently with the dates of licensure, executed by the individual and by a surety company authorized to do business in the state of New Hampshire; and
- c. The “Real Estate Commission Transfer/Activation Form” revised 6/2022.

Unclear. It is unclear whether the rule should include the "Salesperson, Associate, and Managing Broker Affiliation Form". It was submitted with the IP and FP, but not referenced in these rules. The form has a 6/2022 edition date and includes an attestation.

→ (c) Whenever a licensee changes his or her affiliation from one principal broker to another, or ceases to represent a principal broker, the principal broker shall notify the commission, in writing, no later than 5 business days after the change along with the appropriate form described in (b) above.

(d) The fee described in Rea 301.02(c) shall be submitted for any changes listed in (a) through (c) above that require the salesperson, broker, firm, or firm branch license to be amended.

(e) Should a broker or salesperson change her or his status to nonresident broker or salesperson, she or he shall file an “Real Estate Commission Irrevocable Uniform Consent to Service of Process” dated 5/2022 authorizing the commission to act as specified in RSA 331-A:22.

APPENDIX

Rule	Specific State Statute the Rule Implements
Rea 401.01	RSA 331-A:12-a; 14; 19; 22; 25, XIII
Rea 401.02	RSA 331-A:19; 25, XIII
Rea 403.01	RSA 331-A:12-a; 19; 20; 25, IX
Rea 403.02	RSA 331-A:25, V, IX; RSA 541-A:16, I(b)
Rea 404.02	RSA 331-A:17; 25, I