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Short Title: Improve Real Estate Licensing Law.

(Public)

Sponsors:

Referred to:

April 19, 2005

A BILL TO BE ENTITLED

AN ACT TO IMPROVE THE REAL ESTATE LICENSING LAW.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 93A-1 reads as rewritten:

"§ 93A-1. License required of real estate ~~brokers and real estate salespersons, brokers.~~

From and after July 1, 1957, it shall be unlawful for any person, partnership, corporation, limited liability company, association, or other business entity in this State to act as a real estate ~~broker or real estate salesperson, broker,~~ or directly or indirectly to engage or assume to engage in the business of real estate broker ~~or real estate salesperson~~ or to advertise or hold himself or herself or themselves out as engaging in or conducting such business without first obtaining a license issued by the North Carolina Real Estate Commission (hereinafter referred to as the Commission), under the provisions of this Chapter. A license shall be obtained from the Commission even if the person, partnership, corporation, limited liability company, association, or business entity is licensed in another state and is affiliated or otherwise associated with a licensed real estate broker ~~or salesperson~~ in this State."

SECTION 2. G.S. 93A-2 is amended by adding a new subsection to read:

"(a2) The term provisional broker within the meaning of this Chapter means a real estate broker who, pending acquisition and documentation to the Commission of the education or experience prescribed by either G.S. 93A-4(a1) or G.S. 93A-4.3, must be supervised by a broker-in-charge when performing any act for which a real estate license is required."

SECTION 3. G.S. 93A-2(b) reads as rewritten:

"(b) The term real estate salesperson within the meaning of this Chapter shall mean and include any person who ~~under the supervision of a real estate broker designated as broker in charge of a real estate office, for a compensation or valuable~~

1 ~~consideration is associated with or engaged by or on behalf of a licensed real estate~~
2 ~~broker to do, perform or deal in any act, acts or transactions set out or comprehended by~~
3 ~~the foregoing definition of real estate broker.~~was formerly licensed by the Commission
4 as a real estate salesperson before April 1, 2006."

5 **SECTION 4.** G.S. 93A-3 reads as rewritten:

6 **"§ 93A-3. Commission created; compensation; organization.**

7 (a) There is hereby created the North Carolina Real Estate Commission,
8 hereinafter called the Commission. The Commission shall consist of nine members,
9 seven members to be appointed by the Governor, one member to be appointed by the
10 General Assembly upon the recommendation of the President Pro Tempore of the
11 Senate in accordance with G.S. 120-121, and one member to be appointed by the
12 General Assembly upon the recommendation of the Speaker of the House of
13 Representatives in accordance with G.S. 120-121. At least three members of the
14 Commission shall be licensed real estate ~~brokers or real estate salespersons.~~brokers. At
15 least two members of the Commission shall be persons who are not involved directly or
16 indirectly in the real estate or real estate appraisal business. Members of the
17 Commission shall serve three-year terms, so staggered that the terms of three members
18 expire in one year, the terms of three members expire in the next year, and the terms of
19 three members expire in the third year of each three-year period. The members of the
20 Commission shall elect one of their members to serve as chairman of the Commission
21 for a term of one year. The Governor may remove any member of the Commission for
22 misconduct, incompetency, or willful neglect of duty. The Governor shall have the
23 power to fill all vacancies occurring on the Commission, except vacancies in legislative
24 appointments shall be filled under G.S. 120-122.

25 ...

26 (c1) The provisions of G.S. 93A-1 and G.S. 93A-2 notwithstanding, the
27 Commission may adopt rules to permit a real estate broker to pay a fee or other valuable
28 consideration to a travel agent for the introduction or procurement of tenants or
29 potential tenants in vacation rentals as defined in G.S. 42A-4. Rules adopted pursuant to
30 this subsection may include a definition of the term "travel agent", may regulate the
31 conduct of permitted transactions, and may limit the amount of the fee or the value of
32 the consideration that may be paid to the travel agent. However, the Commission may
33 not authorize a person or entity not licensed as a broker ~~or salesperson~~ to negotiate any
34 real estate transaction on behalf of another.

35"

36 **SECTION 5.** G.S. 93A-4 reads as rewritten:

37 **"§ 93A-4. Applications for licenses; fees; qualifications; examinations; privilege**
38 **licenses; renewal or reinstatement of license; power to enforce**
39 **provisions.**

40 (a) Any person, partnership, corporation, limited liability company, association,
41 or other business entity hereafter desiring to enter into business of and obtain a license
42 as a real estate broker ~~or real estate salesperson~~ shall make written application for such
43 license to the Commission in the form and manner prescribed by the Commission. Each
44 applicant for a license as a real estate broker ~~or real estate salesperson~~ shall be at least

1 18 years of age. ~~Each applicant for a license as a real estate salesperson shall, within~~
2 ~~three years preceding the date application is made, have satisfactorily completed, at a~~
3 ~~school approved by the Commission, a real estate fundamentals course consisting of at~~
4 ~~least 67 hours of classroom instruction in subjects determined by the Commission, or~~
5 ~~shall possess real estate education or experience in real estate transactions which the~~
6 ~~Commission shall find equivalent to the course.~~ Each applicant for a license as a real
7 estate broker shall, within three years preceding the date the application is made, have
8 satisfactorily completed, at a school approved by the Commission, an education
9 program consisting of at least ~~60~~75 hours of classroom instruction in subjects
10 determined by the Commission, ~~which shall be in addition to the course required for a~~
11 ~~real estate salesperson license,~~ or shall possess real estate education or experience in
12 real estate transactions which the Commission shall find equivalent to the education
13 program. Each applicant for a license as a real estate broker ~~or real estate salesperson~~
14 shall be required to pay a fee, fixed by the Commission but not to exceed thirty dollars
15 (\$30.00).

16 (a1) Each person who is issued a real estate broker license on or after April 1,
17 2006, shall initially be classified as a provisional broker and shall, within three years
18 following initial licensure, satisfactorily complete, at a school approved by the
19 Commission, a postlicensing education program consisting of 90 hours of classroom
20 instruction in subjects determined by the Commission or shall possess real estate
21 education or experience in real estate transactions which the Commission shall find
22 equivalent to the education program. The Commission may, by rule, establish a
23 schedule for completion of the prescribed postlicensing education that requires
24 provisional brokers to complete portions of the 90-hour postlicensing education
25 program in less than three years, and provisional brokers must comply with this
26 schedule in order to be entitled to actively engage in real estate brokerage. Upon
27 completion of the postlicensing education program, the provisional status of the broker's
28 license shall be terminated. When a provisional broker fails to complete all 90 hours of
29 required postlicensing education within three years following initial licensure, the
30 broker's license shall be cancelled, and the Commission may, in its discretion, require
31 the person whose license was cancelled to satisfy the postlicensing education program
32 and the requirements for original licensure prescribed in this Chapter as a condition of
33 license reinstatement, including the examination requirements and the license
34 reinstatement fee prescribed by subsection (c) of this section.

35 (a2) An approved school shall pay a fee of ten dollars (\$10.00) per licensee to the
36 Commission for each licensee completing a postlicensing education course conducted
37 by the school, provided that these fees shall not be charged to a community college,
38 junior college, college, or university located in this State and accredited by the Southern
39 Association of Colleges and Schools.

40 (b) Except as otherwise provided in this Chapter, any person who submits an
41 application to the Commission in proper manner for a license as real estate broker ~~or a~~
42 ~~license as real estate salesperson~~ shall be required to take an examination. The
43 examination may be administered orally, by computer, or by any other method the
44 Commission deems appropriate. The Commission may require the applicant to pay the

1 Commission or a provider contracted by the Commission the actual cost of the
2 examination and its administration. The cost of the examination and its administration
3 shall be in addition to any other fees the applicant is required to pay under subsection
4 (a) of this section. The examination shall determine the applicant's qualifications with
5 due regard to the paramount interests of the public as to the applicant's competency. A
6 ~~person holding a real estate salesperson license in this State and applying for a real~~
7 ~~estate broker license shall not be required to take an additional examination under this~~
8 ~~subsection.~~ A person who fails the license examination shall be entitled to know the
9 result and score. A person who passes the exam shall be notified only that the person
10 passed the examination. Whether a person passed or failed the examination shall be a
11 matter of public record; however, the scores for license examinations shall not be
12 considered public records. Nothing in this subsection shall limit the rights granted to
13 any person under G.S. 93B-8.

14 An applicant for licensure under this Chapter shall satisfy the Commission that he or
15 she possesses the competency, honesty, truthfulness, integrity, and general moral
16 character necessary to protect the public interest and promote public confidence in the
17 real estate brokerage business. The Commission may investigate the moral character of
18 each applicant for licensure and require an applicant to provide the Commission with a
19 criminal record report. All applicants shall obtain criminal record reports from one or
20 more reporting services designated by the Commission to provide criminal record
21 reports. Applicants are required to pay the designated reporting service for the cost of
22 these reports. If the results of any required competency examination and investigation of
23 the applicant's moral character shall be satisfactory to the Commission, then the
24 Commission shall issue to the applicant a license, authorizing the applicant to act as a
25 real estate broker ~~or real estate salesperson~~ in the State of North Carolina, upon the
26 payment of privilege taxes now required by law or that may hereafter be required by
27 law.

28"

29 **SECTION 6.** G.S. 93A-4A is recodified as G.S. 93A-4.1 and reads as
30 rewritten:

31 "**§ 93A-4A.93A-4.1. Continuing education.**

32 (a) The Commission shall establish a program of continuing education for real
33 estate ~~brokers and salespersons~~ brokers. An individual licensed as a real estate broker ~~or~~
34 ~~salesperson~~ is required to complete continuing education requirements in an amount not
35 to exceed eight classroom hours of instruction a year during any license renewal period
36 in subjects and at times the Commission deems appropriate. Any licensee who fails to
37 complete continuing education requirements pursuant to this section shall not actively
38 engage in the business of real estate ~~broker or salesperson~~ broker.

39 ~~(a1) In addition to the requirements of subsection (a) of this section, the~~
40 ~~Commission may may, as part of the broker continuing education requirements, require~~
41 ~~real estate brokers-in-charge to complete during each annual license period a special~~
42 ~~continuing education course of study, not to exceed six classroom hours every three~~
43 ~~years, consisting of not more than four classroom hours of instruction in subjects~~
44 ~~prescribed by the Commission.~~

1 (b) The Commission shall establish procedures allowing for a deferral of
2 continuing education for brokers ~~and salespersons~~ while they are not actively engaged
3 in real estate brokerage.

4 (c) The Commission may adopt any reasonable rules not inconsistent with this
5 Chapter to give purpose and effect to the continuing education requirement, including
6 rules that govern:

7 (1) The content and subject matter of continuing education courses.

8 (2) The curriculum of courses required.

9 (3) The criteria, standards, and procedures for the approval of courses,
10 course sponsors, and course instructors.

11 (4) The methods of instruction.

12 (5) The computation of course credit.

13 (6) The ability to carry forward course credit from one year to another.

14 (7) The deferral of continuing education for brokers and salespersons not
15 engaged in brokerage.

16 (8) The waiver of or variance from the continuing education requirement
17 for hardship or other reasons.

18 (9) The procedures for compliance and sanctions for noncompliance.

19 (d) The Commission may establish a nonrefundable course application fee to be
20 charged to a course sponsor for the review and approval of a proposed continuing
21 education course. The fee shall not exceed one hundred twenty-five dollars (\$125.00)
22 per course. The Commission may charge the sponsor of an approved course a
23 nonrefundable fee not to exceed seventy-five dollars (\$75.00) for the annual renewal of
24 course approval.

25 ~~The Commission may also require a~~ An approved course sponsor to shall pay a fee
26 of ten dollars (\$10.00) per licensee to the Commission for each licensee completing an
27 approved continuing education course conducted by the sponsor. ~~The fee shall not~~
28 ~~exceed five dollars (\$5.00) per licensee.~~

29 The Commission shall not charge a course application fee, a course renewal fee, or
30 any other fee for a continuing education course sponsored by a community college,
31 junior college, college, or university located in this State and accredited by the Southern
32 Association of Colleges and Schools.

33 (e) The Commission may award continuing education credit for an unapproved
34 course or related educational activity. The Commission may prescribe procedures for a
35 licensee to submit information on an unapproved course or related educational activity
36 for continuing education credit. The Commission may charge a fee to the licensee for
37 each course or activity submitted. The fee shall not exceed fifty dollars (\$50.00)."

38 **SECTION 7.** Article 1 of Chapter 93A of the General Statutes is amended
39 by adding the following new sections to read:

40 "**§ 93A-4.2. Broker-in-charge qualification.**

41 To be qualified to serve as a broker-in-charge of a real estate office, a real estate
42 broker shall possess at least two years of full-time real estate brokerage experience or
43 equivalent part-time real estate brokerage experience within the previous five years or
44 real estate education or experience in real estate transactions that the Commission finds

1 equivalent to such experience and shall complete, within a time prescribed by the
2 Commission, a course of study prescribed by the Commission for brokers-in-charge not
3 to exceed 12 classroom hours of instruction. A provisional broker may not be
4 designated as a broker-in-charge.

5 **"§ 93A-4.3. Elimination of salesperson license; conversion of salesperson licenses**
6 **to broker licenses.**

7 (a) Effective April 1, 2006, the Commission shall discontinue issuing real estate
8 salesperson licenses. Also effective April 1, 2006, all salesperson licenses shall become
9 broker licenses, and each person holding a broker license that was changed from
10 salesperson to broker on that date shall be classified as a provisional broker as defined
11 in G.S. 93A-2(a2).

12 (b) A provisional broker as contemplated in subsection (a) of this section who
13 was issued a salesperson license prior to October 1, 2005, shall, not later than April 1,
14 2008, complete a broker transition course prescribed by the Commission, not to exceed
15 24 classroom hours of instruction, or shall demonstrate to the Commission that he or she
16 possesses four years' full-time real estate brokerage experience or equivalent part-time
17 real estate brokerage experience within the previous six years. If the provisional broker
18 satisfies this requirement by April 1, 2008, the provisional status of his or her broker
19 license will be terminated, and the broker will not be required to complete the
20 90-classroom-hour broker postlicensing education program prescribed by
21 G.S. 93A-4(a1). If the provisional broker fails to satisfy this requirement by April 1,
22 2008, his or her license will be placed on inactive status, if not already on inactive
23 status, and he or she must complete the 90-classroom-hour broker postlicensing
24 education program prescribed by G.S. 93A-4(a1) in order to terminate the provisional
25 status of the broker license and to be eligible to return his or her license to active status.

26 (c) An approved school or sponsor shall pay a fee of ten dollars (\$10.00) per
27 licensee to the Commission for each licensee completing a broker transition course
28 conducted by the school or sponsor, provided that these fees shall not be charged to a
29 community college, junior college, college, or university located in this State and
30 accredited by the Southern Association of Colleges and Schools.

31 (d) A provisional broker as contemplated in subsection (a) of this section, who
32 was issued a salesperson license between October 1, 2005, and March 31, 2006, shall,
33 not later than April 1, 2009, satisfy the requirements of G.S. 93A-4(a1). Upon
34 satisfaction of the requirements of G.S. 93A-4(a1), the provisional status of the broker's
35 license will be terminated. If the provisional broker fails to satisfy the requirements of
36 G.S. 93A-4(a1) by April 1, 2009, the broker's license shall be cancelled, and the person
37 will be subject to the requirements for licensure reinstatement prescribed by
38 G.S. 93A-4(a1).

39 (e) A broker who was issued a broker license prior to April 1, 2006, shall not be
40 required to complete either the 90-classroom-hour broker postlicensing education
41 program prescribed by G.S. 93A-4(a1) or the broker transition course prescribed by
42 subsection (b) of this section.

43 (f) For the purpose of determining a licensee's status, rights, and obligations
44 under this section, the Commission may treat a person who is issued a license on or

1 after the October 1, 2005, or April 1, 2006, dates cited in subsections (a), (b), (d), or (e)
2 of this section as though the person had been issued a license prior to those dates if the
3 only reason the person's license was not issued prior to those dates was that the person's
4 application was pending a determination by the Commission as to whether the applicant
5 possessed the requisite moral character for licensure. If a license application is pending
6 on April 1, 2006, for any reason other than a determination by the Commission as to the
7 applicant's moral character for licensure, and if the applicant has not satisfied all
8 education and examination requirements for licensing in effect on April 1, 2006, the
9 applicant's application shall be cancelled and the application fee refunded.

10 (g) No applications for a real estate salesperson license shall be accepted by the
11 Commission between September 1, 2005, and September 30, 2005."

12 **SECTION 8.** G.S. 93A-5 reads as rewritten:

13 "**§ 93A-5. Register of applicants; roster of ~~brokers and salespersons~~; brokers;**
14 **financial report to Secretary of State.**

15 (a) The Executive Director of the Commission shall keep a register of all
16 applicants for license, showing for each the date of application, name, place of
17 residence, and whether the license was granted or refused. Said register shall be prima
18 facie evidence of all matters recorded therein.

19 (b) The Executive Director of the Commission shall also keep a current roster
20 showing the names and places of business of all licensed real estate ~~brokers and real~~
21 ~~estate salespersons~~, brokers, which roster shall be kept on file in the office of the
22 Commission and be open to public inspection.

23 (c) On or before the first day of September of each year, the Commission shall
24 file with the Secretary of State a copy of the roster of real estate brokers ~~and real estate~~
25 ~~salespersons~~ holding certificates of license, and at the same time shall also file with the
26 Secretary of State a report containing a complete statement of receipts and
27 disbursements of the Commission for the preceding fiscal year ending June 30 attested
28 by the affidavit of the Executive Director of the Commission."

29 **SECTION 9.** G.S. 93A-6(a) reads as rewritten:

30 "(a) The Commission has power to take disciplinary action. Upon its own
31 initiative, or on the complaint of any person, the Commission may investigate the
32 actions of any person or entity licensed under this Chapter, or any other person or entity
33 who shall assume to act in such capacity. If the Commission finds probable cause that a
34 licensee has violated any of the provisions of this Chapter, the Commission may hold a
35 hearing on the allegations of misconduct.

36 The Commission has power to suspend or revoke at any time a license issued under
37 the provisions of this Chapter, or to reprimand or censure any licensee, if, following a
38 hearing, the Commission adjudges the licensee to be guilty of:

- 39 (1) Making any willful or negligent misrepresentation or any willful or
40 negligent omission of material fact.
- 41 (2) Making any false promises of a character likely to influence, persuade,
42 or induce.
- 43 (3) Pursuing a course of misrepresentation or making of false promises
44 through agents, ~~salespersons~~, advertising or otherwise.

- 1 (4) Acting for more than one party in a transaction without the knowledge
2 of all parties for whom he or she acts.
- 3 (5) Accepting a commission or valuable consideration as a real estate
4 salesperson for the performance of any of the acts specified in this
5 Article or Article 4 of this Chapter, from any person except his or her
6 broker-in-charge or licensed broker by whom he or she is employed.
- 7 (6) Representing or attempting to represent a real estate broker other than
8 the broker by whom he or she is engaged or associated, without the
9 express knowledge and consent of the broker with whom he or she is
10 associated.
- 11 (7) Failing, within a reasonable time, to account for or to remit any monies
12 coming into his or her possession which belong to others.
- 13 (8) Being unworthy or incompetent to act as a real estate broker ~~or~~
14 ~~salesperson~~ in a manner as to endanger the interest of the public.
- 15 (9) Paying a commission or valuable consideration to any person for acts
16 or services performed in violation of this Chapter.
- 17 (10) Any other conduct which constitutes improper, fraudulent or dishonest
18 dealing.
- 19 (11) Performing or undertaking to perform any legal service, as set forth in
20 G.S. 84-2.1, or any other acts constituting the practice of law.
- 21 (12) Commingling the money or other property of his or her principals with
22 his or her own or failure to maintain and deposit in a trust or escrow
23 account in an insured bank or savings and loan association in North
24 Carolina all money received by him or her as a real estate licensee
25 acting in that capacity, or an escrow agent, or the temporary custodian
26 of the funds of others, in a real estate transaction; provided, these
27 accounts shall not bear interest unless the principals authorize in
28 writing the deposit be made in an interest bearing account and also
29 provide for the disbursement of the interest accrued.
- 30 (13) Failing to deliver, within a reasonable time, a completed copy of any
31 purchase agreement or offer to buy and sell real estate to the buyer and
32 to the seller.
- 33 (14) Failing, at the time the transaction is consummated, to deliver to the
34 seller in every real estate transaction, a complete detailed closing
35 statement showing all of the receipts and disbursements handled by
36 him or her for the seller or failing to deliver to the buyer a complete
37 statement showing all money received in the transaction from the
38 buyer and how and for what it was disbursed.
- 39 (15) Violating any rule or regulation promulgated by the Commission.

40 The Executive Director shall transmit a certified copy of all final orders of the
41 Commission suspending or revoking licenses issued under this Chapter to the clerk of
42 superior court of the county in which the licensee maintains his or her principal place of
43 business. The clerk shall enter these orders upon the judgment docket of the county."

44 **SECTION 10.** G.S. 93A-6.1(a) reads as rewritten:

1 "(a) The Commission, Executive Director, or other representative designated by
2 the Commission may issue a subpoena for the appearance of witnesses deemed
3 necessary to testify concerning any matter to be heard before or investigated by the
4 Commission. The Commission may issue a subpoena ordering any person in possession
5 of records, documents, or other materials, however maintained, that concern any matter
6 to be heard before or investigated by the Commission to produce the records,
7 documents, or other materials for ~~inspection~~inspection or deliver the same into the
8 custody of the Commission's authorized representatives. Upon written request, the
9 Commission shall revoke a subpoena if it finds that the evidence, the production of
10 which is required, does not relate to a matter in issue, or if the subpoena does not
11 describe with sufficient particularity the evidence, the production of which is required,
12 or if for any other reason in law the subpoena is invalid. If any person shall fail to fully
13 and promptly comply with a subpoena issued under this section, the Commission may
14 apply to any judge of the superior court resident in any county where the person to
15 whom the subpoena is issued maintains a residence or place of business for an order
16 compelling the person to show cause why he or she should not be held in contempt of
17 the Commission and its processes. The court shall have the power to impose punishment
18 for acts that would constitute direct or indirect contempt if the acts occurred in an action
19 pending in superior court."

20 **SECTION 11.** G.S. 93A-9 reads as rewritten:

21 "**§ 93A-9. Licensing nonresidents.**

22 (a) An applicant from another state, which offers licensing privileges to residents
23 of North Carolina, may be licensed by conforming to all the provisions of this Chapter
24 and, in the discretion of the Commission, such other terms and conditions as are
25 required of North Carolina residents applying for license in such other state; provided
26 that the Commission may exempt from the examination prescribed in G.S. 93A-4 a
27 broker or salesperson duly licensed in another state if a similar exemption is extended to
28 licensed brokers ~~and salespersons~~ from North Carolina. A license applicant who has
29 been a resident of North Carolina for not more than 90 days may be considered by the
30 Commission as a nonresident for the purposes of this subsection.

31 (b) The Commission may issue a limited broker's ~~or salesperson's~~ license to a
32 person or an entity from another state or territory of the United States without regard to
33 whether that state or territory offers similar licensing privileges to residents in North
34 Carolina if the person or entity satisfies all of the following:

- 35 (1) Is of good moral character and licensed as a real estate broker or
36 salesperson in good standing in another state or territory of the United
37 States.
38 (2) Only engages in business as a real estate broker ~~or salesperson~~ in
39 North Carolina in transactions involving commercial real estate and
40 while the person or entity is affiliated with a resident North Carolina
41 real estate ~~broker or salesperson~~broker.
42 (3) Complies with the laws of this State regulating real estate brokers and
43 ~~salespersons~~and rules adopted by the Commission.

1 The Commission may require an applicant for licensure under this subsection to pay
2 a fee not to exceed three hundred dollars (\$300.00). All licenses issued under this
3 subsection shall expire on June 30 of each year following issuance or on a date that the
4 Commission deems appropriate unless the license is renewed pursuant to the
5 requirements of G.S. 93A-4. A person or entity licensed under this subsection may be
6 disciplined by the Commission for violations of this Chapter as provided in G.S. 93A-6
7 and G.S. 93A-54.

8 Any person or entity licensed under this subsection shall be affiliated with a resident
9 North Carolina real estate ~~broker or salesperson~~, broker, and the resident North Carolina
10 real estate ~~broker or salesperson~~ shall actively and personally supervise the licensee in a
11 manner that reasonably assures that the licensee complies with the requirements of this
12 Chapter and rules adopted by the Commission. A person or entity licensed under this
13 subsection shall not, however, be affiliated with a resident North Carolina real estate
14 provisional broker. The Commission may exempt applicants for licensure under this
15 subsection from examination and the other licensing requirements under G.S. 93A-4.
16 The Commission may adopt rules as it deems necessary to give effect to this subsection,
17 including rules establishing: (i) qualifications for licensure; (ii) licensure and renewal
18 procedures; (iii) requirements for continuing education; (iv) conduct of persons and
19 entities licensed under this subsection and their affiliated resident real estate ~~brokers or~~
20 ~~salespersons;~~ brokers; (v) a definition of commercial real estate; and (vi) any
21 requirements or limitations on affiliation between resident real estate ~~brokers or~~
22 ~~salespersons~~ and persons or entities seeking licensure under this subsection."

23 **SECTION 12.** Article 1 of Chapter 93A of the General Statutes is amended
24 by adding the following new section to read:

25 **"§ 93A-12. Disputed monies.**

26 (a) A real estate broker licensed under this Chapter may deposit with the clerk of
27 court in accordance with this section monies, other than a residential security deposit,
28 the ownership of which are in dispute and that the real estate broker received while
29 acting in a fiduciary capacity.

30 (b) The disputed monies shall be deposited with the clerk of court in the county
31 in which the property for which the disputed monies are being held is located. At the
32 time of depositing the disputed monies, the real estate broker shall certify to the clerk of
33 court that the persons who are claiming ownership of the disputed monies have been
34 notified in accordance with subsection (c) of this section that the disputed monies are to
35 be deposited with the clerk of court and that the persons may initiate a special
36 proceeding with the clerk of court to recover the disputed monies.

37 (c) Notice to the persons who are claiming ownership to the disputed monies
38 required under subsection (b) of this section shall be provided by delivering a copy of
39 the notice to the person or by mailing it to the person by first-class mail, postpaid,
40 properly addressed to the person at the person's last known address.

41 (d) A real estate broker shall not deposit disputed monies with the clerk of court
42 until 90 days following notification of the persons claiming ownership of the disputed
43 monies.

1 (e) Upon the filing of a special proceeding to recover the disputed monies, the
2 clerk shall determine the rightful ownership of the monies and distribute the disputed
3 monies accordingly. If no special proceeding is filed with the clerk of court within one
4 year of the disputed monies being deposited with the clerk of court, the disputed monies
5 shall be deemed unclaimed and shall be delivered by the clerk of court to the State
6 Treasurer in accordance with the provisions of Article 4 of Chapter 116B of the General
7 Statutes."

8 **SECTION 13.** G.S. 93A-16(a) reads as rewritten:

9 "(a) There is hereby created a special fund to be known as the "Real Estate
10 Recovery Fund" which shall be set aside and maintained by the North Carolina Real
11 Estate Commission. The fund shall be used in the manner provided under this Article
12 for the payment of unsatisfied judgments where the aggrieved person has suffered a
13 direct monetary loss by reason of certain acts committed by any real estate ~~broker or~~
14 ~~salesperson licensed under this Chapter.~~ salesperson licensed before April 1, 2006, or by
15 any real estate broker."

16 **SECTION 14.** G.S. 93A-17 reads as rewritten:

17 **"§ 93A-17. Grounds for payment; notice and application to Commission.**

18 (a) An aggrieved person who has suffered a direct monetary loss by reason of the
19 conversion of trust funds by a real estate ~~broker or salesperson licensed before April 1,~~
20 ~~2006, or by any licensed real estate broker under this Chapter~~ shall be eligible to
21 recover, subject to the limitations of this Article, the amount of trust funds converted
22 and which is otherwise unrecoverable provided that:

- 23 (1) The act or acts of conversion which form the basis of the claim for
24 recovery occurred on or after September 1, 1979;
- 25 (2) The aggrieved person has sued the real estate broker or salesperson in
26 a court of competent jurisdiction and has filed with the Commission
27 written notice of such lawsuit within 60 days after its commencement
28 unless the claim against the Real Estate Recovery Fund is for an
29 amount less than three thousand dollars (\$3,000), excluding attorneys
30 fees, in which case the notice may be filed within 60 days after the
31 termination of all judicial proceedings including appeals;
- 32 (3) The aggrieved person has obtained final judgment in a court of
33 competent jurisdiction against the real estate broker or salesperson on
34 grounds of conversion of trust funds arising out of a transaction which
35 occurred when such broker or salesperson was licensed and acting in a
36 capacity for which a license is required; and
- 37 (4) Execution of the judgment has been attempted and has been returned
38 unsatisfied in whole or in part.

39 Upon the termination of all judicial proceedings including appeals, and for a period
40 of one year thereafter, a person eligible for recovery may file a verified application with
41 the Commission for payment out of the Real Estate Recovery Fund of the amount
42 remaining unpaid upon the judgment which represents the actual and direct loss
43 sustained by reason of conversion of trust funds. A copy of the judgment and return of
44 execution shall be attached to the application and filed with the Commission. The

1 applicant shall serve upon the judgment debtor a copy of the application and shall file
2 with the Commission an affidavit or certificate of such service.

3 (b) For the purposes of this Article, the term "trust funds" shall include all earnest
4 money deposits, down payments, sales proceeds, tenant security deposits, undisbursed
5 rents and other such monies which belong to another or others and are held by a real
6 estate broker or salesperson acting in that capacity. Trust funds shall also include all
7 time share purchase monies which are required to be held in trust by G.S. 93A-45(c)
8 during the time they are, in fact, so held. Trust funds shall not include, however, any
9 funds held by an independent escrow agent under G.S. 93A-42 or any funds which the
10 court may find to be subject to an implied, constructive or resulting trust.

11 (c) For the purposes of this Article, the terms "licensee", "broker", and
12 "salesperson" shall include only individual persons licensed under this Chapter as
13 brokers ~~and~~ or individual persons who were licensed under this Chapter as salespersons
14 prior to April 1, 2006. The terms "licensee", "broker", and "salesperson" and shall not
15 include a time share developer, time share project, independent escrow agent,
16 corporation or other entity licensed under this Chapter."

17 **SECTION 15.** G.S. 93A-22 reads as rewritten:

18 **"§ 93A-22. Repayment to fund; automatic suspension of license.**

19 Should the Commission pay from the Real Estate Recovery Fund any amount in
20 settlement of a claim or toward satisfaction of a judgment against a licensed real estate
21 broker or salesperson, ~~the any license of~~ issued to the broker or salesperson shall be
22 automatically suspended upon the effective date of the order authorizing payment from
23 the fund. No such broker or salesperson shall be granted a reinstatement until the fund
24 has been repaid in full, including interest at the legal rate as provided for in G.S. 24-1."

25 **SECTION 16.** G.S. 93A-32(2) reads as rewritten:

26 "(2) "Private real estate school" means any real estate educational entity
27 which is privately owned and operated by an individual, partnership,
28 ~~corporation~~ corporation, limited liability company, or association, and
29 which conducts, for a profit or tuition charge, real estate ~~salesperson or~~
30 broker prelicensing or postlicensing courses prescribed by
31 ~~G.S. 93A-4(a),~~ G.S. 93A-4(a) or (a1), provided that a proprietary
32 business or trade school licensed by the State Board of Community
33 Colleges under G.S. 115D-90 to conduct courses other than those real
34 estate courses described herein shall not be considered to be a private
35 real estate school."

36 **SECTION 17.** G.S. 93A-34 reads as rewritten:

37 **"§ 93A-34. License required; application for license; fees; requirements for**
38 **issuance of license.**

39 (a) No person, partnership, corporation or association shall operate or maintain or
40 offer to operate in this State a private real estate school as defined herein unless a
41 license is first obtained from the Commission in accordance with the provisions of this
42 Article and the rules and regulations promulgated by the Commission under this Article.
43 For licensing purposes, each branch location where a school conducts courses shall be
44 considered a separate school requiring a separate license.

1 (b) Application for a license shall be filed in the manner and upon the forms
2 prescribed by the Commission for that purpose. The Commission may by rule set
3 nonrefundable application fees not to exceed two hundred fifty dollars (\$250.00) for
4 each school location and fifty dollars (\$50.00) for each real estate salesperson or broker
5 prelicensing or postlicensing course. The application for a license shall be accompanied
6 by the appropriate fees and shall contain the following:

- 7 (1) Name and address of the applicant and the school;
- 8 (2) Names, biographical data, and qualifications of director, administrators
9 and instructors;
- 10 (3) Description of school facilities and equipment;
- 11 (4) Description of course(s) to be offered and instructional materials to be
12 utilized;
- 13 (5) Information on financial resources available to equip and operate the
14 school;
- 15 (6) Information on school policies and procedures regarding
16 administration, record keeping, entrance requirements, registration,
17 tuition and fees, grades, student progress, attendance, and student
18 conduct;
- 19 (7) Copies of bulletins, catalogues and other official publications;
- 20 (8) Copy of bond required by G.S. 93A-36;
- 21 (9) Such additional information as the Commission may deem necessary
22 to enable it to determine the adequacy of the instructional program and
23 the ability of the applicant to operate a school in such a manner as
24 would best serve the public interest.

25 (c) After due investigation and consideration by the Commission, a license shall
26 be issued to the applicant when it is shown to the satisfaction of the Commission that
27 the applicant and school are in compliance with the following standards, as well as the
28 requirements of any supplemental regulations of the Commission regarding these
29 standards:

- 30 (1) The program of instruction is adequate in terms of quality, content and
31 duration.
- 32 (2) The director, administrators and instructors are adequately qualified by
33 reason of education and experience.
- 34 (3) There are adequate facilities, equipment, instructional materials and
35 instructor personnel to provide instruction of good quality.
- 36 (4) The school has adopted adequate policies and procedures regarding
37 administration, instruction, record keeping, entrance requirements,
38 registration, tuition and fees, grades, student progress, attendance, and
39 student conduct.
- 40 (5) The school publishes and provides to all students upon enrollment a
41 bulletin, catalogue or similar official publication which is certified as
42 being true and correct in content and policy by an authorized school
43 official, and which contains the following information:
 - 44 a. Identifying data and publication date;

- b. Name(s) of school and its full-time officials and faculty;
 - c. School's policies and procedures relating to entrance requirements, registration, grades, student progress, attendance, student conduct and refund of tuition and fees;
 - d. Detailed schedule of tuition and fees;
 - e. Detailed course outline of all courses offered.
- (6) Adequate records as prescribed by the Commission are maintained in regard to grades, attendance, registration and financial operations.
- (7) Institutional standards relating to grades, attendance and progress are enforced in a satisfactory manner.
- (8) The applicant is financially sound and capable of fulfilling educational commitments made to students.
- (9) The school's owner(s), director, administrators and instructors are of good reputation and character.
- (10) ~~The school complies~~ school's facilities and equipment comply with all applicable local, State and federal laws and regulations regarding safety and sanitation of facilities, health, safety, and welfare, including the Americans with Disabilities Act and other laws relating to accessibility standards for places of public accommodation.
- (11) The school does not utilize advertising of any type which is false or misleading, either by actual statement, omission or intimation.
- (12) Such additional standards as may be deemed necessary by the Commission to assure the conduct of adequate instructional programs and the operation of schools in a manner which will best serve the public interest."

SECTION 18. G.S. 93A-38(6) reads as rewritten:

"§ 93A-38. Suspension, revocation or denial of license.

The Commission shall have the power to suspend, revoke, deny issuance, or deny renewal of license to operate a private real estate school. In all proceedings to suspend, revoke or deny a license, the provisions of Chapter 150B of the General Statutes shall be applicable. The Commission may suspend, revoke, or deny such license when it finds:

- ...
- (6) That the applicant for or holder of such license or any officer of a corporate licensee or corporation applying for a license, ~~or~~ any partner of a partnership licensee or partnership applying for a license, or any member of a limited liability company licensee or limited liability company applying for a license has pleaded guilty, entered a plea of nolo contendere or been found guilty of a crime involving moral turpitude in any state or federal court."

SECTION 19. G.S. 93A-40 reads as rewritten:

"§ 93A-40. Registration required of time share projects; real estate salespersons license required.

1 (a) ~~From and after July 1, 1984, it~~It shall be unlawful for any person in this State
2 to engage or assume to engage in the business of a time share salesperson without first
3 obtaining a real estate broker ~~or salesperson~~ license issued by the North Carolina Real
4 Estate Commission under the provisions of Article 1 of this Chapter, and it shall be
5 unlawful for a time share developer to sell or offer to sell a time share located in this
6 State without first obtaining a certificate of registration for the time share project to be
7 offered for sale issued by the North Carolina Real Estate Commission under the
8 provisions of this Article.

9 (b) A person responsible as general partner, corporate officer, joint venturer or
10 sole proprietor who intentionally acts as a time share developer, allowing the offering of
11 sale or the sale of time shares to a purchaser, without first obtaining registration of the
12 time share project under this Article shall be guilty of a Class I felony."

13 **SECTION 20.** G.S. 93A-41(7a) reads as rewritten:

14 "(7a) "Project broker" means a natural person licensed as a real estate broker
15 and designated by the developer to supervise brokers ~~and salespersons~~
16 at the time share project;"

17 **SECTION 21.** G.S. 93A-50 reads as rewritten:

18 **"§ 93A-50. Securities laws apply.**

19 The North Carolina Securities Act, Chapter 78A, shall also apply, in addition to the
20 laws relating to real estate, to time shares deemed to be investment contracts or to other
21 securities offered with or incident to a time share; provided, in the event of such
22 applicability of the North Carolina Securities Act, any offer or sale of time shares
23 registered under this Article shall not be subject to the provisions of G.S. 78A-24 and
24 any real estate broker ~~or salesperson~~ registered under Article 1 of this Chapter shall not
25 be subject to the provisions of G.S. 78A-36."

26 **SECTION 22.** G.S. 93A-52 reads as rewritten:

27 **"§ 93A-52. Application for registration of time share project; denial of**
28 **registration; renewal; reinstatement; and termination of developer's**
29 **interest.**

30 (a) Prior to the offering in this State of any time share located in this State, the
31 developer of the time share project shall make written application to the Commission
32 for the registration of the project. The application shall be accompanied by a fee in an
33 amount fixed by the Commission but not to exceed ~~fifteen hundred dollars (\$1500), one~~
34 thousand five hundred dollars (\$1,500), and shall include a description of the project,
35 copies of proposed time share instruments including public offering statements, sale
36 contracts, deeds, and other documents referred to therein, information pertaining to any
37 marketing or managing entity to be employed by the developer for the sale of time
38 shares in a time share project or the management of the project, information regarding
39 any exchange program available to the purchaser, an irrevocable appointment of the
40 Commission to receive service of any lawful process in any proceeding against the
41 developer or the developer's time share salespersons arising under this Article, and such
42 other information as the Commission may by rule require.

43 Upon receipt of a properly completed application and fee and upon a determination
44 by the Commission that the sale and management of the time shares in the time share

1 project will be directed and conducted by persons of good moral character, the
2 Commission shall issue to the developer a certificate of registration authorizing the
3 developer to offer time shares in the project for sale. The Commission shall within 15
4 days after receipt of an incomplete application, notify the developer by mail that the
5 Commission has found specified deficiencies, and shall, within 45 days after the receipt
6 of a properly completed application, either issue the certificate of registration or notify
7 the developer by mail of any specific objections to the registration of the project. The
8 certificate shall be prominently displayed in the office of the developer on the site of the
9 project.

10 The developer shall promptly report to the Commission any and all changes in the
11 information required to be submitted for the purpose of the registration. The developer
12 shall also immediately furnish the Commission complete information regarding any
13 change in its interest in a registered time share project. In the event a developer disposes
14 of, or otherwise terminates its interest in a time share project, the developer shall certify
15 to the Commission in writing that its interest in the time share project is terminated and
16 shall return to the Commission for cancellation the certificate of registration.

17 ...

18 (d) All certificates of registration granted and issued by the Commission under
19 the provisions of this Article shall expire on the 30th day of June following issuance
20 thereof, and shall become invalid after such date unless reinstated. Renewal of such
21 certificate may be effected at any time during the month of June preceding the date of
22 expiration of such registration upon proper application to the Commission and by the
23 payment of a renewal fee fixed by the Commission but not to exceed one thousand five
24 hundred dollars (\$1,500) for each time share project. The developer shall, when making
25 application for renewal, also provide a copy of the report required in G.S. 93A-48. Each
26 certificate reinstated after the expiration date thereof shall be subject to a ~~late filing~~ fee
27 of fifty dollars (\$50.00) in addition to the required renewal fee. In the event a time share
28 developer fails to reinstate the registration within 12 months after the expiration date
29 thereof, the Commission may, in its discretion, consider the time share project as not
30 having been previously registered, and thereby subject to the provisions of this Article
31 relating to the issuance of an original certificate. Duplicate certificates may be issued by
32 the Commission upon payment of a fee of one dollar (\$1.00) by the registrant developer.
33 Except as prescribed by Commission rules, all fees paid pursuant to this Article shall be
34 nonrefundable."

35 **SECTION 23.** G.S. 93A-54 reads as rewritten:

36 "**§ 93A-54. Disciplinary action by Commission.**

37 (a) The Commission has power to take disciplinary action. Upon its own motion,
38 or on the verified complaint of any person, the Commission may investigate the actions
39 of any time share salesperson, developer, or project broker of a time share project
40 registered under this Article, or any other person or entity who shall assume to act in
41 such capacity. If the Commission finds probable cause that a time share salesperson,
42 developer, or project broker has violated any of the provisions of this Article, the
43 Commission may hold a hearing on the allegations of misconduct.

1 The Commission has the power to suspend or revoke at any time a real estate license
2 issued to a time share salesperson or project broker, or a certificate of registration of a
3 time share project issued to a developer; or to reprimand or censure such salesperson,
4 developer, or project broker; or to fine such developer in the amount of five hundred
5 dollars (\$500.00) for each violation of this Article, if, after a hearing, the Commission
6 adjudges either the salesperson, developer, or project broker to be guilty of:

7 ...

8 (3) Pursuing a course of misrepresentation or making of false promises
9 through agents, ~~salesperson~~, salespersons, advertising or otherwise;

10 ...

11 (e) When a licensee is accused of any act, omission, or misconduct under this
12 Article which would subject the licensee to disciplinary action, the licensee may, with
13 the consent and approval of the Commission, surrender the licensee's license and all the
14 rights and privileges pertaining to it for a period of time to be established by the
15 Commission. A licensee who surrenders a license shall not be eligible for, or submit any
16 application for, licensure as a real estate broker ~~or salesperson~~ or registration of a time
17 share project during the period of license surrender. For the purposes of this section, the
18 term licensee shall include a time share developer."

19 **SECTION 24.** G.S. 93A-58(c) reads as rewritten:

20 "(c) The developer shall designate for each project and other locations where time
21 shares are sold or offered for sale a project broker. The project broker shall act as
22 supervising broker for all ~~persons licensed as time share~~ salespersons at the project or
23 other location and shall directly, personally, and actively supervise all such persons
24 ~~licensed as brokers or salespersons~~ at the project or other location in a manner to
25 reasonably ensure that the sale of time shares will be conducted in accordance with the
26 provisions of this Chapter."

27 **SECTION 25.** G.S. 115D-5(h) reads as rewritten:

28 "(h) Whenever a community college offers real estate continuing education
29 courses pursuant to ~~G.S. 93A-4A~~, G.S. 93A-4.1, the courses shall be offered on a
30 self-supporting basis."

31 **SECTION 26.** This section and G.S. 93A-4.3, as enacted in Section 7 of this
32 act, are effective when this act becomes law. Sections 6, 12, and 25 of this act become
33 effective October 1, 2005. The remainder of the act becomes effective April 1, 2006.