

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE BILL 1120

Short Title: Improve Real Estate Licensing Law.

(Public)

Sponsors: Senator Rand.

Referred to: Commerce.

March 24, 2005

1 A BILL TO BE ENTITLED
2 AN ACT TO IMPROVE THE REAL ESTATE LICENSING LAW.
3 The General Assembly of North Carolina enacts:

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

5 "**§ 93A-1. License required of real estate ~~brokers and real estate~~**
6 **~~salespersons, brokers.~~**

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

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

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

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

25 "(b) The term real estate salesperson within the meaning of this Chapter shall
26 mean and include any person who ~~under the supervision of a real estate broker~~
27 ~~designated as broker in charge of a real estate office, for a compensation or valuable~~
28 ~~consideration is associated with or engaged by or on behalf of a licensed real estate~~
29 ~~broker to do, perform or deal in any act, acts or transactions set out or comprehended by~~

1 ~~the foregoing definition of real estate broker.~~ was formerly licensed by the Commission
2 ~~as a real estate salesperson before March 1, 2006."~~

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

4 **"§ 93A-3. Commission created; compensation; organization.**

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

23 ...

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

33"

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

35 **"§ 93A-4. Applications for licenses; fees; qualifications; examinations; privilege**
36 **licenses; renewal or reinstatement of license; power to enforce**
37 **provisions.**

38 (a) Any person, partnership, corporation, limited liability company, association,
39 or other business entity hereafter desiring to enter into business of and obtain a license
40 as a real estate broker ~~or real estate salesperson~~ shall make written application for such
41 license to the Commission in the form and manner prescribed by the Commission. Each
42 applicant for a license as a real estate broker ~~or real estate salesperson~~ shall be at least
43 18 years of age. ~~Each applicant for a license as a real estate salesperson shall, within~~
44 ~~three years preceding the date application is made, have satisfactorily completed, at a~~

1 ~~school approved by the Commission, a real estate fundamentals course consisting of at~~
2 ~~least 67 hours of classroom instruction in subjects determined by the Commission, or~~
3 ~~shall possess real estate education or experience in real estate transactions which the~~
4 ~~Commission shall find equivalent to the course.~~ Each applicant for a license as a real
5 estate broker shall, within three years preceding the date the application is made, have
6 satisfactorily completed, at a school approved by the Commission, an education
7 program consisting of at least ~~60~~90 hours of classroom instruction in subjects
8 determined by the Commission, ~~which shall be in addition to the course required for a~~
9 ~~real estate salesperson license,~~ or shall possess real estate education or experience in
10 real estate transactions which the Commission shall find equivalent to the education
11 program. Each applicant for a license as a real estate broker ~~or real estate salesperson~~
12 shall be required to pay a fee, fixed by the Commission but not to exceed thirty dollars
13 (\$30.00).

14 (a1) Each person who is issued a real estate broker license on or after March 1,
15 2006, shall initially be classified as a provisional broker and shall, within two years
16 following initial licensure, satisfactorily complete, at a school approved by the
17 commission, a postlicensing education program consisting of 90 hours of classroom
18 instruction in subjects determined by the Commission or shall possess real estate
19 education or experience in real estate transactions which the Commission shall find
20 equivalent to the education program. Upon completion of the postlicensing education
21 program, the provisional status of the broker's license shall be terminated. When a
22 provisional broker fails to complete the postlicensing education program within the
23 prescribed period, the broker license shall be cancelled and the Commission may, in its
24 discretion, require the person whose license was cancelled to satisfy the postlicensing
25 education program and the requirements for original licensure prescribed in this Chapter
26 as a condition of license reinstatement, including the examination requirements and the
27 license reinstatement fee prescribed by subsection (c) of this section.

28 (a2) An approved school shall pay a fee of ten dollars (\$10.00) per licensee to the
29 Commission for each licensee completing a postlicensing education course conducted
30 by the school, provided that these fees shall not be charged to 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 (b) Except as otherwise provided in this Chapter, any person who submits an
34 application to the Commission in proper manner for a license as real estate broker ~~or a~~
35 ~~license as real estate salesperson~~ shall be required to take an examination. The
36 examination may be administered orally, by computer, or by any other method the
37 Commission deems appropriate. The Commission may require the applicant to pay the
38 Commission or a provider contracted by the Commission the actual cost of the
39 examination and its administration. The cost of the examination and its administration
40 shall be in addition to any other fees the applicant is required to pay under subsection
41 (a) of this section. The examination shall determine the applicant's qualifications with
42 due regard to the paramount interests of the public as to the applicant's competency. A
43 ~~person holding a real estate salesperson license in this State and applying for a real~~
44 ~~estate broker license shall not be required to take an additional examination under this~~

1 ~~subsection.~~—A person who fails the license examination shall be entitled to know the
2 result and score. A person who passes the exam shall be notified only that the person
3 passed the examination. Whether a person passed or failed the examination shall be a
4 matter of public record; however, the scores for license examinations shall not be
5 considered public records. Nothing in this subsection shall limit the rights granted to
6 any person under G.S. 93B-8.

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

21"

22 **SECTION 6.** G.S. 93A-4A reads as rewritten:

23 **"§ 93A-4A. Continuing education.**

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

31 (a1) ~~In addition to the requirements of subsection (a) of this section, the~~The
32 Commission ~~may~~ may, as part of the broker continuing education requirements, require
33 real estate brokers-in-charge to complete a special continuing education course ~~of study,~~
34 ~~not to exceed six classroom hours every three years,~~ in subjects prescribed by the
35 Commission.

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

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

- 42 (1) The content and subject matter of continuing education courses.
- 43 (2) The curriculum of courses required.

- 1 (3) The criteria, standards, and procedures for the approval of courses,
2 course sponsors, and course instructors.
- 3 (4) The methods of instruction.
- 4 (5) The computation of course credit.
- 5 (6) The ability to carry forward course credit from one year to another.
- 6 (7) The deferral of continuing education for brokers and salespersons not
7 engaged in brokerage.
- 8 (8) The waiver of or variance from the continuing education requirement
9 for hardship or other reasons.
- 10 (9) The procedures for compliance and sanctions for noncompliance.

11 (d) The Commission may establish a nonrefundable course application fee to be
12 charged to a course sponsor for the review and approval of a proposed continuing
13 education course. The fee shall not exceed one hundred twenty-five dollars (\$125.00)
14 per course. The Commission may charge the sponsor of an approved course a
15 nonrefundable fee not to exceed seventy-five dollars (\$75.00) for the annual renewal of
16 course approval.

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

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

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

30 **SECTION 7.** Article 1 of Chapter 93A, is amended by adding the following
31 new sections to read:

32 **"§ 93A-4B. Broker-in-charge qualification.**

33 To be qualified to serve as a broker-in-charge of a real estate office, a real estate
34 broker shall possess at least one year of full-time real estate brokerage experience or
35 equivalent part-time real estate brokerage experience within the previous five years or
36 real estate education or experience in real estate transactions that the Commission finds
37 equivalent to such experience, and shall complete, within a time prescribed by the
38 Commission, a course of study prescribed by the Commission for brokers-in-charge not
39 to exceed 12 classroom hours of instruction. A provisional broker may not be
40 designated as a broker-in-charge.

41 **"§ 93A-4C. Elimination of salesperson license; conversion of salesperson licenses**
42 **to broker licenses.**

43 (a) Effective March 1, 2006, the Commission shall discontinue issuing real estate
44 salesperson licenses. Also effective March 1, 2006, all salesperson licenses shall

1 become broker licenses and each person holding a broker license that was changed from
2 salesperson to broker on that date shall be classified as a provisional broker as defined
3 in G.S. 93A-2(a2).

4 (b) A provisional broker as contemplated in subsection (a) of this section who
5 was issued a salesperson license prior to October 1, 2005, shall, not later than March 1,
6 2008, complete a broker transition course prescribed by the Commission, not to exceed
7 24 classroom hours of instruction, or shall demonstrate to the Commission that he or she
8 possesses four years full-time real estate brokerage experience or equivalent part-time
9 real estate brokerage experience within the previous six years. If the provisional broker
10 satisfies this requirement by March 1, 2008, the provisional status of his or her broker
11 license will be terminated and the broker will not be required to complete the 90
12 classroom hour broker postlicensing education program prescribed by G.S. 93A-4(a1).
13 If the provisional broker fails to satisfy this requirement by March 1, 2008, his or her
14 license will be placed on inactive status, if not already on inactive status, and he or she
15 must complete the 90 classroom hour broker postlicensing education program
16 prescribed by G.S. 93A-4(a1) in order to terminate the provisional status of the broker
17 license and to be eligible to return his or her license to active status.

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

23 (d) A provisional broker as contemplated in subsection (a) of this section, who
24 was issued a salesperson license between October 1, 2005, and February 28, 2006, shall,
25 not later than March 1, 2008, satisfy the requirements of G.S. 93A-4(a1). Upon
26 satisfaction of the requirements of G.S. 93A-4(a1), the provisional status of the broker
27 license will be terminated. If the provisional broker fails to satisfy the requirements of
28 G.S. 93A-4(a1) by March 1, 2008, the broker's license shall be cancelled and the person
29 will be subject to the requirements for licensure reinstatement prescribed by
30 G.S. 93A-4(a1).

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

35 (f) For the purpose of determining a licensee's status, rights, and obligations
36 under this section, the Commission may treat a person who is issued a license on or
37 after the October 1, 2005, or March 1, 2006, dates cited in subsections (a), (b), (d), or
38 (e) of this section as though the person had been issued a license prior to those dates if
39 the only reason the person's license was not issued prior to those dates was that the
40 person's application was pending a determination by the Commission as to whether the
41 applicant possessed the requisite moral character for licensure. If a license application is
42 pending on March 1, 2006, for any reason other than a determination by the
43 Commission as to the applicant's moral character for licensure, and if the applicant has
44 not satisfied all education and examination requirements for licensing in effect on

1 March 1, 2006, the applicant's application shall be cancelled and the application fee
2 refunded.

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

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

6 "**§ 93A-5. Register of applicants; roster of ~~brokers and salespersons~~; brokers;**
7 **financial report to Secretary of State.**

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

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

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

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

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

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

- 32 (1) Making any willful or negligent misrepresentation or any willful or
33 negligent omission of material fact.
- 34 (2) Making any false promises of a character likely to influence, persuade,
35 or induce.
- 36 (3) Pursuing a course of misrepresentation or making of false promises
37 through agents, ~~salespersons~~, advertising or otherwise.
- 38 (4) Acting for more than one party in a transaction without the knowledge
39 of all parties for whom he or she acts.
- 40 (5) Accepting a commission or valuable consideration as a real estate
41 salesperson for the performance of any of the acts specified in this
42 Article or Article 4 of this Chapter, from any person except his or her
43 broker-in-charge or licensed broker by whom he or she is employed.

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

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

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

39 "(a) The Commission, Executive Director, or other representative designated by
40 the Commission may issue a subpoena for the appearance of witnesses deemed
41 necessary to testify concerning any matter to be heard before or investigated by the
42 Commission. The Commission may issue a subpoena ordering any person in possession
43 of records, documents, or other materials, however maintained, that concern any matter
44 to be heard before or investigated by the Commission to produce the records,

1 documents, or other materials for ~~inspection~~-inspection or deliver the same into the
2 custody of the Commission's authorized representatives. Upon written request, the
3 Commission shall revoke a subpoena if it finds that the evidence, the production of
4 which is required, does not relate to a matter in issue, or if the subpoena does not
5 describe with sufficient particularity the evidence, the production of which is required,
6 or if for any other reason in law the subpoena is invalid. If any person shall fail to fully
7 and promptly comply with a subpoena issued under this section, the Commission may
8 apply to any judge of the superior court resident in any county where the person to
9 whom the subpoena is issued maintains a residence or place of business for an order
10 compelling the person to show cause why he or she should not be held in contempt of
11 the Commission and its processes. The court shall have the power to impose punishment
12 for acts that would constitute direct or indirect contempt if the acts occurred in an action
13 pending in superior court."

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

15 **"§ 93A-9. Licensing nonresidents.**

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

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

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

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

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

16 **SECTION 12.** G.S. 93A-16(a) reads as rewritten:

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

24 **SECTION 13.** G.S. 93A-17 reads as rewritten:

25 **"§ 93A-17. Grounds for payment; notice and application to Commission.**

26 (a) An aggrieved person who has suffered a direct monetary loss by reason of the
27 conversion of trust funds by a real estate ~~broker or salesperson licensed before March 1,~~
28 2006, or by any licensed real estate broker under this Chapter shall be eligible to
29 recover, subject to the limitations of this Article, the amount of trust funds converted
30 and which is otherwise unrecoverable provided that:

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

1 (4) Execution of the judgment has been attempted and has been returned
2 unsatisfied in whole or in part.

3 Upon the termination of all judicial proceedings including appeals, and for a period
4 of one year thereafter, a person eligible for recovery may file a verified application with
5 the Commission for payment out of the Real Estate Recovery Fund of the amount
6 remaining unpaid upon the judgment which represents the actual and direct loss
7 sustained by reason of conversion of trust funds. A copy of the judgment and return of
8 execution shall be attached to the application and filed with the Commission. The
9 applicant shall serve upon the judgment debtor a copy of the application and shall file
10 with the Commission an affidavit or certificate of such service.

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

19 (c) For the purposes of this Article, the terms "licensee", "broker", and
20 "salesperson" shall include only individual persons licensed under this Chapter as
21 brokers ~~and~~ or individual persons who were licensed under this Chapter as salespersons
22 prior to March 1, 2006. The terms "licensee", "broker", and "salesperson" ~~and~~ shall not
23 include a time share developer, time share project, independent escrow agent,
24 corporation or other entity licensed under this Chapter."

25 **SECTION 14.** G.S. 93A-22 reads as rewritten:

26 "**§ 93A-22. Repayment to fund; automatic suspension of license.**

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

33 **SECTION 15.** G.S. 93A-32(2) reads as rewritten:

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

44 **SECTION 16.** G.S. 93A-34 reads as rewritten:

1 **"§ 93A-34. License required; application for license; fees; requirements for**
2 **issuance of license.**

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

9 (b) Application for a license shall be filed in the manner and upon the forms
10 prescribed by the Commission for that purpose. The Commission may by rule set
11 nonrefundable application fees not to exceed two hundred fifty dollars (\$250.00) for
12 each school location and fifty dollars (\$50.00) for each real estate ~~salesperson or broker~~
13 prelicensing or post-licensing course. The application for a license shall be accompanied
14 by the appropriate fees and shall contain the following:

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

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

- 38 (1) The program of instruction is adequate in terms of quality, content and
39 duration.
- 40 (2) The director, administrators and instructors are adequately qualified by
41 reason of education and experience.
- 42 (3) There are adequate facilities, equipment, instructional materials and
43 instructor personnel to provide instruction of good quality.

- 1 (4) The school has adopted adequate policies and procedures regarding
2 administration, instruction, record keeping, entrance requirements,
3 registration, tuition and fees, grades, student progress, attendance, and
4 student conduct.
- 5 (5) The school publishes and provides to all students upon enrollment a
6 bulletin, catalogue or similar official publication which is certified as
7 being true and correct in content and policy by an authorized school
8 official, and which contains the following information:
- 9 a. Identifying data and publication date;
10 b. Name(s) of school and its full-time officials and faculty;
11 c. School's policies and procedures relating to entrance
12 requirements, registration, grades, student progress, attendance,
13 student conduct and refund of tuition and fees;
14 d. Detailed schedule of tuition and fees;
15 e. Detailed course outline of all courses offered.
- 16 (6) Adequate records as prescribed by the Commission are maintained in
17 regard to grades, attendance, registration and financial operations.
- 18 (7) Institutional standards relating to grades, attendance and progress are
19 enforced in a satisfactory manner.
- 20 (8) The applicant is financially sound and capable of fulfilling educational
21 commitments made to students.
- 22 (9) The school's owner(s), director, administrators and instructors are of
23 good reputation and character.
- 24 (10) ~~The school complies~~ school's facilities and equipment comply with all
25 applicable local, State and federal laws and regulations regarding
26 ~~safety and sanitation of facilities~~ health, safety, and welfare, including
27 the Americans with Disabilities Act and other laws relating to
28 accessibility standards for places of public accommodation.
- 29 (11) The school does not utilize advertising of any type which is false or
30 misleading, either by actual statement, omission or intimation.
- 31 (12) Such additional standards as may be deemed necessary by the
32 Commission to assure the conduct of adequate instructional programs
33 and the operation of schools in a manner which will best serve the
34 public interest."

35 **SECTION 17.** G.S. 93A-38(6) reads as rewritten:

36 **"§ 93A-38. Suspension, revocation or denial of license.**

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

42 ...

- 43 (6) That the applicant for or holder of such license or any officer of a
44 corporate licensee or corporation applying for a license, ~~or~~ any partner

1 of a partnership licensee or partnership applying for a license, or any
2 member of a limited liability company licensee or limited liability
3 company applying for a license has pleaded guilty, entered a plea of
4 nolo contendere or been found guilty of a crime involving moral
5 turpitude in any state or federal court."

6 **SECTION 18.** G.S. 93A-40 reads as rewritten:

7 **"§ 93A-40. Registration required of time share projects; real estate salespersons**
8 **license required.**

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

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

21 **SECTION 19.** G.S. 93A-41(7a) reads as rewritten:

22 "(7a) "Project broker" means a natural person licensed as a real estate broker
23 and designated by the developer to supervise brokers ~~and salespersons~~
24 at the time share project;"

25 **SECTION 20.** G.S. 93A-50 reads as rewritten:

26 **"§ 93A-50. Securities laws apply.**

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

34 **SECTION 21.** G.S. 93A-52 reads as rewritten:

35 **"§ 93A-52. Application for registration of time share project; denial of**
36 **registration; renewal; reinstatement; and termination of developer's**
37 **interest.**

38 (a) Prior to the offering in this State of any time share located in this State, the
39 developer of the time share project shall make written application to the Commission
40 for the registration of the project. The application shall be accompanied by a fee in an
41 amount fixed by the Commission but not to exceed fifteen hundred dollars (\$1500), and
42 shall include a description of the project, copies of proposed time share instruments
43 including public offering statements, sale contracts, deeds, and other documents referred
44 to therein, information pertaining to any marketing or managing entity to be employed

1 by the developer for the sale of time shares in a time share project or the management of
2 the project, information regarding any exchange program available to the purchaser, an
3 irrevocable appointment of the Commission to receive service of any lawful process in
4 any proceeding against the developer or the developer's time share salespersons arising
5 under this Article, and such other information as the Commission may by rule require.

6 Upon receipt of a properly completed application and fee and upon a determination
7 by the Commission that the sale and management of the time shares in the time share
8 project will be directed and conducted by persons of good moral character, the
9 Commission shall issue to the developer a certificate of registration authorizing the
10 developer to offer time shares in the project for sale. The Commission shall within 15
11 days after receipt of an incomplete application, notify the developer by mail that the
12 Commission has found specified deficiencies, and shall, within 45 days after the receipt
13 of a properly completed application, either issue the certificate of registration or notify
14 the developer by mail of any specific objections to the registration of the project. The
15 certificate shall be prominently displayed in the office of the developer on the site of the
16 project.

17 The developer shall promptly report to the Commission any and all changes in the
18 information required to be submitted for the purpose of the registration. The developer
19 shall also immediately furnish the Commission complete information regarding any
20 change in its interest in a registered time share project. In the event a developer disposes
21 of, or otherwise terminates its interest in a time share project, the developer shall certify
22 to the Commission in writing that its interest in the time share project is terminated and
23 shall return to the Commission for cancellation the certificate of registration.

24 ...

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

42 **SECTION 22.** G.S. 93A-54 reads as rewritten:

43 **"§ 93A-54. Disciplinary action by Commission.**

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

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

14 ...

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

17 ...

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

26 **SECTION 23.** G.S. 93A-58(c) reads as rewritten:

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

34 **SECTION 24.** Article 19 of Chapter 7A of General Statutes is amended by
35 adding a new section to read:

36 "**§ 7A-211.2. Declaratory judgment in small claims court.**

37 Notwithstanding G.S. 7A-210(2), a real estate broker licensed pursuant to Chapter
38 93A of the General Statutes has recourse to obtain a declaratory judgment ruling in
39 accordance with G.S. 1A-1, Rule 57, in a small claims action with respect to monies,
40 other than a residential security deposit held pursuant to Article 6 of Chapter 42 of the
41 General Statutes, the ownership of which are in dispute and that the real estate broker
42 received while acting in a fiduciary capacity. Notwithstanding G.S. 7A-211, venue for
43 an action under this section is appropriate in the county in which the property for which
44 the disputed monies are being held is located. The defendant may be subjected to the

1 jurisdiction of the court over his person by the methods provided in G.S. 7A-217 or G.S.
2 1A-1, Rules 4(j) and 4(j1), of the Rules of Civil Procedure."

3 **SECTION 25.** This section and G.S. 93A-4C, as enacted in Section 7 of this
4 act, are effective when this act becomes law. The remainder of the act becomes effective
5 March 1, 2006.