

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H.B. 514
Apr 1, 2015
HOUSE PRINCIPAL CLERK

H

D

HOUSE DRH40290-MQfqq-31A* (02/23)

Short Title: Community Association Managers Licensure Act. (Public)

Sponsors: Representative R. Moore.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT ESTABLISHING THE COMMUNITY ASSOCIATION MANAGERS LICENSURE
3 ACT AND REQUIRING REGISTRATION OF ALL COMMUNITY ASSOCIATIONS.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.(a)** G.S. 93A-3(a) reads as rewritten:

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

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

24 **SECTION 1.(b)** Chapter 93A of the General Statutes is amended by adding a new
25 Article to read:

26 "Article 7.

27 "Community Association Managers.

28 "Part 1. Community Association Managers Licensure Act.

29 "**§ 93A-100. Short title.**

30 The provisions of this Article shall be known and may be cited as the "North Carolina
31 Community Association Managers Licensure Act."

32 "**§ 93A-101. Legislative findings and purpose.**

33 The General Assembly finds that individuals or entities that provide community association
34 management in North Carolina affect the public health, safety, and welfare and that the
35 mandatory licensure of those who provide community association management for



1 compensation is necessary to ensure minimum standards of competency. It is the purpose and
2 intent of this Article to protect the public from individuals or entities unqualified to provide
3 community association management and from unprofessional conduct by individuals or entities
4 licensed pursuant to this Article.

5 **"§ 93A-102. Definitions.**

6 The following definitions apply in this Article:

- 7 (1) Community association. – An association or organization of the owners of
8 residential condominiums, time shares, townhouses, apartments, or lots in a
9 planned community or subdivision that is subject to a uniform scheme of
10 restrictive covenants, in which owner membership is made mandatory by
11 covenant, contract, or deed, and is authorized to collect dues, assessments, or
12 other payments from owner-members.
- 13 (2) Community association manager. – Any person, partnership, firm,
14 corporation, limited liability company, association, or other business entity
15 who, for compensation or other valuable consideration or promise thereof,
16 performs any of the following on behalf of a community association:
- 17 a. Acts with the authority of a community association in its business,
18 legal, financial, or other transactions and communications with
19 association members and nonmembers.
- 20 b. Executes the resolutions and decisions of the government of a
21 community association or, with the authority of the association,
22 enforces the rights of the association secured by statutes, contract,
23 covenant, rule, or bylaw.
- 24 c. Collects, disburses, or otherwise exercises dominion or control over
25 money or other property belonging to a community association.
- 26 d. Prepares budgets, financial statements, or other financial reports for a
27 community association.
- 28 e. Negotiates contracts or otherwise coordinates or arranges for services
29 or the purchase of property or goods for or on behalf of a community
30 association.
- 31 f. Offers or solicits to perform any of the acts or services in
32 sub-subdivisions a. through e. of this subdivision on behalf of a
33 community association.
- 34 (3) Private community association manager school. – Any community
35 association manager educational entity that is privately owned and operated
36 by an individual, partnership, corporation, limited liability company, or
37 association, and which conducts, for a profit or tuition charge, community
38 association manager pre-licensing or continuing education courses. A
39 proprietary business or trade school licensed by the State Board of
40 Community Colleges under G.S. 115D-90 to conduct courses other than the
41 community association manager courses described in this Article shall not be
42 considered a private community association manager school.

43 **"§ 93A-103. License required.**

44 On or after July 1, 2016, it shall be unlawful for any person, partnership, corporation,
45 limited liability company, association, firm, or other business entity in this State to act as a
46 community association manager, directly or indirectly engage in the business of community
47 association management, hold themselves out to be a community association manager, or use
48 the title "Community Association Manager," or any variation thereof, without first obtaining a
49 community association manager license issued by the Commission under the provisions of this
50 Chapter. A license must be obtained from the Commission even if the person, partnership,
51 corporation, limited liability company, firm, association, or other business entity is licensed in

1 another state and is affiliated or otherwise associated with a licensed community association
2 manager in this State.

3 **"§ 93A-104. Exemptions.**

4 The provisions of this Article shall not apply to any of the following:

- 5 (1) An officer or member of a community association who, for no compensation
6 or expectation thereof, performs the acts or services of a community
7 association manager.
- 8 (2) The acts or services performed by an attorney who is an active member of
9 the North Carolina State Bar and is engaged as an attorney to represent a
10 community association or community association manager in matters that
11 constitute the practice of law under Chapter 84 of the General Statutes.
- 12 (3) The acts or services performed by a real estate broker who is actively
13 licensed by the Commission pursuant to Article 1 of this Chapter and is
14 engaged as a real estate broker on behalf of a community association in
15 matters that constitute real estate brokerage.
- 16 (4) A trustee in a bankruptcy proceeding, court-appointed receiver, or any other
17 person acting under the express authority of an order issued by a court of
18 competent jurisdiction.
- 19 (5) The acts or services of a certified public accountant acting solely in the
20 capacity of a certified public account pursuant to Chapter 93 of the General
21 Statutes.
- 22 (6) A regular, salaried employee of a licensed community association manager
23 who performs any of the acts or services described in G.S. 93A-102(2) under
24 the supervision and control of a licensed community association manager.
- 25 (7) A declarant, or the declarant's successor-in-interest, governmental agency,
26 redevelopment authority or commission, or any entity that undertook the
27 development and who (i) has a legal or equitable interest in the property
28 developed and (ii) provides community association management for the
29 development, provided that the provision of community association
30 management does not continue for greater than 120 days after (i) the first
31 conveyance of a lot or parcel or (ii) the collection of fees or dues from any
32 person or entity other than the declarant, whichever occurs first.

33 **"§ 93A-105. Requirements for licensure.**

34 (a) To be licensed as a community association manager, an applicant shall make written
35 application for such license in the form and manner prescribed by the Commission. Each
36 applicant for licensure shall satisfy the following qualification requirements:

- 37 (1) The applicant must be at least 18 years of age.
- 38 (2) The applicant must satisfactorily complete within three years preceding the
39 date the application is made, at a school approved by the Commission, a
40 course of instruction prescribed by the Commission that may consist of at
41 least 45 hours of classroom instruction, or equivalent, in subjects determined
42 by the Commission. The Commission may waive the course requirement for
43 applicants upon a finding that the applicant possesses education or
44 experience in community association management equivalent to the
45 prescribed education program.
- 46 (3) After submitting a complete application, the Commission may require the
47 applicant to pass a licensing examination to demonstrate competency. The
48 examination may be provided by the Commission or by a vendor selected by
49 the Commission. An applicant who fails the examination shall be entitled to
50 know the result and score. An applicant who passes the examination shall be
51 notified only of the result. The result of the examination shall be a matter of

1 public record, however the score shall remain confidential. Nothing in this
2 subdivision shall limit the rights or procedures granted to applicants under
3 G.S. 93B-8.

4 (4) Each applicant for licensure as a community association manager shall be
5 required to pay an application fee for each application filed in an amount to
6 be determined by the Commission, but not to exceed two hundred dollars
7 (\$200.00). In addition to the application fee, the applicant may be required to
8 pay a fee for a license examination not to exceed the actual cost of
9 administering the examination.

10 (5) Before a license is issued, the applicant shall provide to the Commission
11 evidence of coverage by a fidelity bond in accordance with G.S. 93A-113.

12 (6) Each applicant shall demonstrate to the Commission that the applicant
13 possesses the competency, honesty, truthfulness, integrity, good moral
14 character, and general fitness, including mental and emotional fitness,
15 necessary to protect the public interest and promote public confidence in the
16 community association management business.

17 (7) An applicant may be required to provide the Commission with a criminal
18 record report from one or more reporting services designated by the
19 Commission, or to provide fingerprints and consent to a criminal history
20 record check to be conducted by the North Carolina Department of Public
21 Safety. The Commission shall be responsible for providing to the
22 Department of Public Safety the fingerprints of the applicant, a form signed
23 by the applicant consenting to the criminal record check and the use of
24 fingerprints and other identifying information required by the State or
25 national Repositories, and any additional information required by the
26 Department of Public Safety. The Department of Public Safety may charge
27 the applicant a fee for conducting the criminal history record check.

28 (b) The cost of the criminal history record check and the fingerprinting shall be borne
29 by the applicant.

30 (c) If the applicant meets all the requirements of this Article, the Commission shall
31 issue a license authorizing the applicant to act as a community association manager in the State
32 of North Carolina.

33 (d) Records, reports, papers, and other documentation containing personal information
34 collected or compiled by the Commission in connection with an application for examination,
35 licensure, certification, or renewal or reinstatement, or the subsequent update of information
36 shall not be considered public records within the meaning of Chapter 132 of the General
37 Statutes unless admitted into evidence in a hearing held by the Commission.

38 (e) The Commission shall have authority to enact rules related to the status of the
39 license issued to a community association manager. A license may be on active or inactive
40 status.

41 **"§ 93A-106. Denial of licensure.**

42 (a) If the Commission determines that an applicant has not demonstrated that the
43 applicant possesses the character and fitness for licensure, the Commission shall defer action on
44 the applicant's application and shall notify the applicant in writing by first-class mail directed to
45 the address provided by the applicant in the application. Within 60 days following the mailing
46 of the notice, the applicant may make a written request for a hearing before the Commission.
47 Proceedings before the Commission shall be governed by Article 3A of Chapter 150B of the
48 General Statutes. At the hearing, the applicant shall have the burden of demonstrating the
49 applicant's good character and fitness for licensure. If the applicant does not make a timely
50 written request for a hearing, the application shall be deemed denied.

1 (b) Notwithstanding G.S. 150B-38(c), in a contested case commenced upon the request
2 of a party applying for licensure regarding the question of the moral character or fitness of the
3 applicant, if notice has been reasonably attempted, but cannot be given to the applicant
4 personally or by certified mail in accordance with G.S. 150B-38(c), the notice of hearing shall
5 be deemed given to the applicant when a copy of the notice is deposited in an official
6 depository of the United States Postal Service addressed to the applicant at the latest mailing
7 address provided by the applicant to the Commission or by any other means reasonably
8 designed to achieve actual notice to the applicant.

9 **"§ 93A-107. License is property of the Commission; display of license; address change**
10 **reporting.**

11 (a) A license issued by the Commission is the property of the Commission. If the
12 Commission suspends or revokes a license, the community association manager to whom the
13 license is issued shall return the license to the Commission upon demand.

14 (b) A community association manager licensed by the Commission shall display the
15 license in a manner prescribed by the Commission. A licensed community association that has
16 changed its address shall report the change to the Commission within ten days of the change.

17 **"§ 93A-108. Licensing nonresident community association managers.**

18 (a) The Commission may issue a community association manager license to an
19 applicant licensed in a foreign jurisdiction who has satisfied the requirements for licensure set
20 out in G.S. 93A-105 or such other requirements as the Commission in its discretion may by rule
21 require.

22 (b) Every nonresident applicant shall file an irrevocable consent allowing that suits and
23 actions may be commenced against such applicant in any of the courts of record of this State,
24 by the service of any process or pleading authorized by the laws of this State in any county in
25 which the plaintiff may reside, or by serving the same on the Executive Director of the
26 Commission, said consent stipulating and agreeing that such service of such process or
27 pleadings on said Executive Director shall be taken and held in all courts to be valid and
28 binding as if due service had been made personally upon the applicant in this State. This
29 consent shall be duly acknowledged, and, if made by a corporation, shall be executed by an
30 officer of the corporation. The signature of the officer on the consent to service instrument shall
31 be sufficient to bind the corporation and no further authentication is necessary. An application
32 from a corporation or other business entity shall be signed by an officer of the corporation or
33 entity or by an individual designated by the Commission. In all cases where process or
34 pleadings shall be served, under the provisions of this Chapter, upon the Executive Director of
35 the Commission, such process or pleadings shall be served in duplicate, one of which shall be
36 filed in the office of the Commission and the other shall be forwarded immediately by the
37 Executive Director of the Commission, by registered mail, to the last known business address
38 of the nonresident licensee against which such process or pleadings are directed.

39 **"§ 93A-109. Expiration of License, renewal and reinstatement.**

40 (a) All licenses issued by the Commission under the provisions of this Article shall
41 expire on the 30th day of June following issuance or on any other date that the Commission
42 may determine and shall become invalid after that date unless reinstated. A license may be
43 renewed 45 days prior to the expiration date by filing an application with and paying to the
44 Commission the license renewal fee and providing proof of having the required active fidelity
45 bond as required by G.S. 93A-113 for the upcoming license period. The license renewal fee is
46 one hundred dollars (\$100.00) unless the Commission sets the fee at a higher amount. The
47 Commission may set the license renewal fee at an amount that does not exceed two hundred
48 dollars (\$200.00). The license renewal fee may not increase by more than ten dollars (\$10.00)
49 during a 12-month period.

50 (b) The Commission may adopt rules establishing a system of license renewal in which
51 the licenses expire annually with varying expiration dates. These rules shall provide for

1 prorating the annual fee to cover the initial renewal period so that no licensee shall be charged
2 an amount greater than the annual fee for any 12-month period.

3 (c) The fee for reinstatement of an expired license shall be one hundred fifty dollars
4 (\$150.00). In the event a licensee fails to obtain a reinstatement of such license within six
5 months after the expiration date thereof, the Commission may, in its discretion, consider such
6 person as not having been previously licensed, and thereby subject to the provisions of this
7 Article relating to the issuance of an original license, including the examination requirements
8 set forth herein.

9 (d) Duplicate licenses may be issued by the Commission upon payment of a fee of five
10 dollars (\$5.00) by the licensee. Commission certification of a licensee's license history shall be
11 made only after the payment of a fee of ten dollars (\$10.00).

12 **"§ 93A-110. Register of applicants and roster of community association managers.**

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

17 (b) The Executive Director of the Commission shall keep a current roster showing the
18 names and places of business of all licensed community association managers, which roster
19 shall be kept on file in the office of the Commission and be open to public inspection.

20 **"§ 93A-111. Continuing education.**

21 (a) The Commission shall establish a program of continuing education for individual
22 persons licensed as community association managers. An individual licensed as a community
23 association manager shall complete continuing education requirements in an amount not to
24 exceed 12 classroom hours of instruction a year during any license renewal period in subjects
25 and at times the Commission deems appropriate. Any licensee who fails to complete continuing
26 education requirements pursuant to this section shall not hold a license on active status and
27 shall not actively engage in the business of a community association manager.

28 (b) The Commission may adopt rules regarding continuing education requirements,
29 including rules that govern the following:

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

31 (2) The criteria, standards, and procedures for the approval of courses, course
32 sponsors, and course instructors.

33 (3) The methods of instruction.

34 (4) The computation of course credit.

35 (5) The ability to carry forward course credit from one year to another.

36 (6) The waiver of or variance from the continuing education requirement for
37 hardship or other reasons.

38 (7) The procedures for compliance and sanctions for noncompliance.

39 (c) The Commission may establish a nonrefundable course application fee to be
40 charged to a course sponsor for the review and approval of a proposed continuing education
41 course. Approval of a continuing education course shall be renewed annually. The Commission
42 may also require a course sponsor to pay a fee for each licensee completing an approved
43 continuing education course conducted by the sponsor.

44 (d) The Commission may award continuing education credit for an unapproved course
45 or related educational activity. The Commission may prescribe procedures for a licensee to
46 submit information on an unapproved course or related educational activity for continuing
47 education credit. The Commission may charge a fee to the licensee for each unapproved course
48 or activity submitted. The fee shall not exceed fifty dollars (\$50.00).

49 (e) The Commission may create rules allowing for a deferral of continuing education
50 for community association managers while they are not actively engaged in community
51 association management.

1 (f) The Commission may establish a nonrefundable course application fee to be
2 charged to a course sponsor for the review and approval of a proposed continuing education
3 course. The fee shall not exceed one hundred twenty-five dollars (\$125.00) per course. The
4 Commission may charge the sponsor of an approved course a nonrefundable fee not to exceed
5 seventy-five dollars (\$75.00) for the annual renewal of course approval.

6 (g) An approved course sponsor shall pay a fee of ten dollars (\$10.00) per licensee to
7 the Commission for each licensee completing an approved continuing education course
8 conducted by the sponsor.

9 (h) The Commission shall not charge a course application fee, a course renewal fee, or
10 any other fee for a continuing education course sponsored by a community college, junior
11 college, college or university located in this State that is accredited by the Southern Association
12 of Colleges and Schools.

13 **"§ 93A-112. Rule-making authority.**

14 (a) The Commission is expressly vested with the power and authority to make and
15 enforce any and all reasonable rules and regulations connected with license application,
16 examination, education, renewal, and reinstatement as shall be deemed necessary to administer
17 and enforce the provisions of this Article.

18 (b) Nothing contained in this Article shall be construed as giving any authority to the
19 Commission or any licensee of the Commission authority to engage in the practice of law or to
20 render any legal service as specifically set out in Chapter 84 of the General Statutes. Nothing
21 contained in this Chapter shall be construed as giving any authority to the Commission or any
22 licensee of the Commission as authorizing any licensee to engage in the practice of a certified
23 public accountant or to render any certified public accounting service as specifically set out in
24 Chapter 93 of the General Statutes.

25 **"§ 93A-113. Fidelity bonds; segregation of accounts.**

26 (a) Every community association manager shall, at all times, be covered by a fidelity
27 bond or an insurance policy that complies with the provisions of this Article.

28 (b) The bond shall provide coverage in an amount at least equal to the amount of the
29 budgets of all clients of the community association manager but shall not exceed two million
30 dollars (\$2,000,000) and shall comply with the following conditions:

31 (1) The bond shall be written by an insurance company authorized to write
32 fidelity bonds in this State.

33 (2) The bond shall cover the association manager and all of the employees
34 with access to or who are engaged in any of the accounting related to any
35 community association funds, and protect all of the community association
36 funds in the custody of the community association manager or association
37 employees acting under the association manager's supervision.

38 (3) The bond shall provide that the insurance company issuing the bond may not
39 cancel, substantially modify, or refuse to renew the bond without giving
40 30 days prior written notice to the executive board of each community
41 association being managed and to the Commission, except in the case of
42 nonpayment of premiums, in which case 10 days prior written notice shall
43 be given.

44 (4) Contain any other provisions as may be required by the executive board or
45 the Commission by rule.

46 (c) A licensee shall furnish the Commission proof of required bond coverage before
47 engaging in community association management activities and upon license renewal if the
48 licensee continues to engage in community association management activities.

49 (d) The fidelity bond may be issued to an individual licensee naming the licensee as the
50 insured party or may be issued to a community association management firm naming the firm,
51 all affiliated licensees, and any other insured parties.

1 (e) The Commission may establish rules related to the manner in which a community
2 association manager handles and accounts for monies coming into the manager's custody that
3 belong to a community association. A community association manager with custody, dominion,
4 or control of money belonging to a community association or money belonging to a member of
5 a community association shall comply with all the following:

- 6 (1) Safeguard and account for the money promptly and accurately.
- 7 (2) Promptly deposit the money into federally insured accounts in a bank,
8 savings institution, or credit union lawfully doing business in North Carolina
9 that consents to the jurisdiction of the Commission for the examination of its
10 records necessary to enforce this Article.
- 11 (3) Segregate the money in an account or accounts used exclusively for the
12 deposit and maintenance of funds belonging only to one association and not
13 commingle the money belonging to one association with money belonging to
14 another association, the manager, or another person or entity.
- 15 (4) Obtain written authorization if any interest or other income earned by the
16 money is to be paid to any person or party other than the association or
17 member to whom the money belongs.
- 18 (5) Create and maintain books and records sufficient to demonstrate compliance
19 with the provisions of this section and rules adopted by the Commission.
- 20 (6) Upon depositing the money as provided in this subsection, expend, remit, or
21 invest the money as directed by the association to whom the money belongs
22 and provide an accurate account of any expenditure, remittance, or
23 investment.

24 **"§ 93A-114. Disciplinary action by the Commission; injunctions.**

25 (a) The Commission shall have the authority to take disciplinary action. Upon its own
26 initiative or upon the complaint of any person, the Commission may investigate the actions of
27 any person or entity licensed under this Article, or any other person or entity who shall assume
28 to act in such capacity. If the Commission finds probable cause that a licensee has violated any
29 of the provisions of this Article, the Commission may hold a hearing on the allegations of
30 misconduct under Article 3A of Chapter 150B of the General Statutes.

31 The Commission may suspend or revoke a license issued under the provisions of this
32 Article or reprimand a licensee if, following a hearing, the Commission adjudges the licensee to
33 be guilty of any of the following:

- 34 (1) Making any willful or negligent misrepresentation or any willful or negligent
35 omission of material fact.
- 36 (2) Pursuing a course of misrepresentation or making of false promises through
37 employees, advertising, or otherwise.
- 38 (3) Engaging in gross negligence or gross incompetence as a community
39 association manager.
- 40 (4) Engaging in any act or service for which an active community association
41 manager license is required with an expired or inactive license.
- 42 (5) Failing, within a reasonable time, to account for or remit any monies
43 belonging to a community association or others coming into the community
44 association manager's possession in his or her capacity as a community
45 association manager.
- 46 (6) Commingling funds belonging to one community association with funds
47 belonging to another community association, or with money belonging to the
48 community association manager, or failure to maintain, deposit, or safeguard
49 the money of a community association as required by G.S. 93A-113.
- 50 (7) Being unworthy or incompetent to act as a community association manager
51 by acting in a manner as to endanger the interest of the public.

- 1 (8) Paying or offering to pay valuable consideration to any person or entity for
2 acts or services performed in violation of this Article.
- 3 (9) Failing to adequately or reasonably supervise an employee in accordance
4 with G.S. 93A-104(6).
- 5 (10) Any other conduct which constitutes improper, fraudulent, or dishonest
6 dealing.
- 7 (11) Performing or undertaking to perform any legal service, as set forth in
8 Chapter 84 of the General Statutes or a certified public accounting service as
9 set forth in Chapter 93 of the General Statutes.
- 10 (12) Violating any rule adopted by the Commission or any provision of this
11 Article, or aiding and abetting any person or entity in such a violation.
- 12 (b) The Commission may suspend or revoke a license issued to a community
13 association manager or reprimand any licensee when any of the following occur:
- 14 (1) The licensee has obtained a license by false or fraudulent representations.
15 (2) The licensee has been convicted or has entered a plea of guilty or no contest
16 upon which a final judgment has been entered by a court of competent
17 jurisdiction, of any misdemeanor or felony that involves false pretenses,
18 misrepresentation, deceit, extortion, theft, bribery, fraud, embezzlement,
19 larceny, false pretenses, forgery, misappropriation of funds or property,
20 perjury, conspiracy, or any other offense involving dishonesty, breach of
21 trust, or moral turpitude or otherwise demonstrating professional unfitness or
22 reasonably affecting the licensee's performance in the community
23 association management business.
- 24 (3) The community association manager's unlicensed employee, who is exempt
25 from the provisions of this Article, has committed, in the regular course of
26 business, any act which, if committed by the community association
27 manager, would constitute a violation of this Article and for which the
28 community association manager could be disciplined.
- 29 (4) The licensee, who is also a member of another licensed profession or
30 occupation, has been disciplined by another licensing board for any offense
31 under any law involving fraud, theft, misrepresentation, breach of trust or
32 fiduciary responsibility, or willful or negligent malpractice.
- 33 (c) The Commission may appear in its own name in superior court in actions for
34 injunctive relief, a restraining order, or other appropriate action to prevent any person or entity
35 from violating the provisions of this Article or rules adopted by the Commission. The superior
36 court shall have the power to grant injunctive relief even if criminal prosecution has been or
37 may be instituted as a result of the violations, and regardless of whether the person or entity is a
38 licensee of the Commission.
- 39 (d) In any contested case pursuant to Chapter 150B of the General Statutes in which the
40 Commission takes disciplinary action authorized by this Article, the Commission may also
41 impose reasonable conditions, restrictions, limitations, and probation upon the license,
42 registration, or approval issued to the disciplined person or entity. In any contested case
43 concerning an application for licensure or school, sponsor, instructor or course approval, the
44 Commission may impose reasonable conditions, restrictions, and limitations on any license,
45 registration, or approval it might issue as part of its final decision.
- 46 (e) The Commission may assess and recover its reasonable costs for the investigation
47 and hearing as part of its order in any case where disciplinary action is taken against a licensee
48 under this Article.
- 49 (f) When a person or entity licensed under this Article is accused of any act, omission,
50 or misconduct which could subject the licensee to disciplinary action, the licensee, with the
51 consent and approval of the Commission, may surrender the license and all the rights and

1 privileges pertaining to it for a period of time established by the Commission. A person or
2 entity who surrenders a license shall not thereafter be eligible for or submit any application for
3 licensure as a community association manager during the period of license surrender.

4 (g) The Executive Director of the Commission shall transmit a certified copy of all final
5 orders of the Commission suspending or revoking licenses issued under this Article to the clerk
6 of superior court of the county in which the licensee maintains his, her or its principal place of
7 business. The clerk shall enter the order upon the judgment docket.

8 **"§ 93A-115. Subpoena authority.**

9 The Commission shall have authority to issue subpoenas as set forth in G.S. 93A-6.1(a).
10 The Commission shall be exempt from the requirements of Chapter 53B of the General Statutes
11 with regard to subpoenas issued to compel the production of community association accounts if
12 the community association is managed by a licensee that is the subject of an investigation or
13 contested case by the Commission. Notwithstanding the exemption, the Commission shall send
14 a copy of the subpoena to the licensee at the licensee's address of record by regular mail.

15 **"§ 93A-116. Penalty for violations.**

16 Any person violating the provisions of this Article shall upon conviction thereof be deemed
17 guilty of a Class 1 misdemeanor. Each unlawful act or practice constitutes a distinct and
18 separate offense.

19 **"§ 93A-117. Records; written contracts required.**

20 (a) No action between a community association manager and the manager's client for
21 recovery under an agreement for community association manager services is valid unless the
22 contract is reduced to writing and signed by the party to be charged or by some other person
23 lawfully authorized by the party to sign.

24 (b) All licensed community association managers shall maintain full and accurate
25 records of business the licensees have engaged in pursuant to their licenses. The Commission
26 shall have the authority to create rules relating to the types of records that must be maintained
27 and shall include, but not limited to, a written, signed community association management
28 contract for each community association managed and bank statements for each community
29 association. Licensees shall retain records for no less than three years. Licensees shall furnish
30 their records to the Commission on demand and without prior notice.

31 **"§§ 93A-118 through 93A-149. Reserved for future codification purposes.**

32 "Part 2. Private Community Association Manager Schools.

33 **"§ 93A-150. Authority of Commission to conduct investigations, issue licenses, and**
34 **promulgate regulations.**

35 The Commission shall have authority to issue licenses to private community association
36 manager schools as defined herein which have complied with the requirements of this Article
37 and regulations promulgated by the Commission. Through licensing applications, periodic
38 reports required of licensed schools, periodic investigations and inspections of schools, and
39 appropriate regulations, the Commission shall exercise general supervisory authority over
40 private community association manager schools, the object of such supervision being to protect
41 the public interest and to assure the conduct of quality community association manager
42 education programs. The Commission is authorized and directed to promulgate such
43 regulations as it deems necessary which are not inconsistent with the provisions and subject
44 matter of this Part.

45 **"§ 93A-151. License required; application for license; fees; requirements for issuance of**
46 **license.**

47 (a) No person, partnership, corporation, or association shall operate, maintain, or offer
48 to operate in this State a private community association manager school as defined herein
49 unless a license is first obtained from the Commission in accordance with the provisions of this
50 Article and the rules and regulations promulgated by the Commission under this Article. For

1 licensing purposes, each branch location where a school conducts courses shall be considered a
2 separate school requiring a separate license.

3 (b) Application for a license shall be filed in the manner and upon the forms prescribed
4 by the Commission for that purpose. The Commission may by rule set nonrefundable
5 application fees not to exceed two hundred fifty dollars (\$250.00) for each school location and
6 fifty dollars (\$50.00) for each community association manager pre-licensing or continuing
7 education course. The application for a license shall be accompanied by the appropriate fees
8 and shall contain all of the following:

9 (1) Name and address of the applicant and the school.

10 (2) Names, biographical data, and qualifications of directors, administrators, and
11 instructors.

12 (3) Description of school facilities and equipment.

13 (4) Description of courses to be offered and instructional materials to be
14 utilized.

15 (5) Information on financial resources available to equip and operate the school.

16 (6) Information on school policies and procedures regarding administration,
17 record keeping, entrance requirements, registration, tuition and fees, grades,
18 student progress, attendance, and student conduct.

19 (7) Copies of bulletins, catalogues, and other official school publications.

20 (8) Copy of bond required by G.S. 93A-153.

21 (9) Such additional information as the Commission may deem necessary to
22 enable it to determine the adequacy of the instructional program and the
23 ability of the applicant to operate a school in such a manner as would best
24 serve the public interest.

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

29 (1) The program of instruction is adequate in terms of quality, content, and
30 duration.

31 (2) The director, administrators, and instructors are adequately qualified by
32 reason of education and experience.

33 (3) There are adequate facilities, equipment, instructional materials, and
34 instructor personnel to provide quality instruction.

35 (4) The school has adopted adequate policies and procedures regarding
36 administration, instruction, record keeping, entrance requirements,
37 registration, tuition and fees, grades, student progress, attendance, and
38 student conduct.

39 (5) The school publishes and provides to all students upon enrollment a bulletin,
40 catalogue, or similar official publication which is certified as being true and
41 correct in content and policy by an authorized school official, and which
42 contains the following information:

43 a. Identifying data and publication date.

44 b. The school name and its full-time officials and faculty.

45 c. The school's policies and procedures relating to entrance
46 requirements, registration, grades, student progress, attendance,
47 student conduct, and refund of tuition and fees.

48 d. A detailed schedule of tuition and fees.

49 e. A detailed outline of all courses offered.

50 (6) The school maintains adequate records as prescribed by the Commission in
51 regard to grades, attendance, registration, and financial operations.

- 1 (7) The school has established institutional standards relating to grades,
2 attendance, and progress and the standards are enforced in a satisfactory
3 manner.
- 4 (8) The applicant is financially sound and capable of fulfilling educational
5 commitments made to students.
- 6 (9) The school's owners, directors, administrators, and instructors are of good
7 reputation and character.
- 8 (10) The school's facilities and equipment comply with all applicable local, State,
9 and federal laws and regulations regarding health, safety, and welfare,
10 including the Americans with Disabilities Act and other laws relating to
11 accessibility standards for places of public accommodation.
- 12 (11) The school does not utilize advertising of any type which is false or
13 misleading, either by actual statement, omission, or intimation.
- 14 (12) Such additional standards as may be deemed necessary by the Commission
15 to assure the conduct of adequate instructional programs and the operation of
16 schools in a manner which will best serve the public interest.

17 **"§ 93A-152. Duration and renewal of licenses; transfer of school ownership.**

18 (a) All licenses issued shall expire on June 30 following the date of issuance.

19 (b) Licenses shall be renewable annually on July 1, provided that a renewal application
20 accompanied by the appropriate renewal fees has been filed not later than June 1 in the form
21 and manner prescribed by the Commission, and provided further that the applicant and school
22 are found to be in compliance with the standards established for issuance of an original license.
23 The Commission may, by rule, set nonrefundable renewal fees not to exceed one hundred
24 twenty-five dollars (\$125.00) for each school location and twenty-five dollars (\$25.00) for each
25 community association manager pre-licensing and continuing education course.

26 (c) In the event a school is sold or ownership is otherwise transferred, the license issued
27 to the original owner is not transferable to the new owner. A new owner must make application
28 for an original license as prescribed by this Article and Commission regulations.

29 **"§ 93A-153. Execution of bond required; applicability to branch schools; actions upon**
30 **bond.**

31 (a) Before the Commission shall issue a license, the applicant shall execute a bond in
32 the sum of five thousand dollars (\$5,000), payable to the State of North Carolina, signed by a
33 solvent guaranty company authorized to do business in the State of North Carolina, and
34 conditioned that the principal in said bond will carry out and comply with each and every
35 contract or agreement, written or verbal, made and entered into by the applicant's school acting
36 by and through its officers and agents with any student who desires to enter such school and to
37 take any courses offered therein and that said principal will refund to such students all amounts
38 collected in tuition and fees in case of failure on the part of the party obtaining a license from
39 the Commission to open and operate a private community association manager school or to
40 provide the instruction agreed to or contracted for. A bond shall be required for each school for
41 which a license is required and shall first be approved by the Commission and then filed with
42 the clerk of superior court of the county in which the school is located, to be recorded by such
43 clerk in a book provided for that purpose. A separate bond shall not be required for each branch
44 of a licensed school.

45 (b) In any case where the party licensed by the Commission fails to fulfill its
46 obligations under any contract or agreement, written or verbal, made and entered into with any
47 student, upon the relation of the student entering into said contract or agreement, the State of
48 North Carolina, by the Attorney General, shall have a cause of action against the principal and
49 surety on the bond herein required for the full amount of payments made to such party, plus
50 court costs and six percent (6%) interest from the date of payment of said amount. The action
51 shall be brought in Wake County Superior Court within one year of the alleged default.

1 **"§ 93A-154. Contracts with unlicensed schools and evidences of indebtedness made null**
2 **and void.**

3 All contracts or agreements entered into on or after July 1, 2016, by private community
4 association manager schools, as defined in this Article, with students or prospective students,
5 and all promissory notes or other evidence of indebtedness taken on or after July 1, 2016, in
6 lieu of cash payments by such schools, shall be null and void unless such schools are duly
7 licensed as required by this Article on the date of such contract or agreement or taking of any
8 promissory note or other evidence of indebtedness.

9 **"§ 93A-155. Suspension, revocation, or denial of license.**

10 The Commission shall have the power to suspend, revoke, deny issuance, or deny renewal
11 of license to operate a private community association manager school. In all proceedings to
12 suspend, revoke, or deny a license, the provisions of Chapter 150B of the General Statutes shall
13 be applicable. The Commission may suspend, revoke, or deny any license when it finds any of
14 the following:

- 15 (1) That the applicant for or holder of such license has failed to comply with any
16 of the provisions of this Article or the rules or regulations promulgated
17 thereunder.
- 18 (2) That the applicant for or holder of such license has knowingly presented to
19 the Commission false or misleading information relating to matters within
20 the purview of the Commission under this Article.
- 21 (3) That the applicant for or holder of such license has presented to its students
22 or prospective students false or misleading information relating to its
23 instructional program, the instructional programs of other institutions, or
24 employment opportunities.
- 25 (4) That the applicant for or holder of such license has failed to comply with the
26 provisions of any contract or agreement entered into with a student.
- 27 (5) That the applicant for or holder of such license has, at any time, refused to
28 permit authorized representatives of the Commission to inspect the school,
29 or failed to make available information relating to matters within the
30 purview of the Commission under the provisions of this Article or any rules
31 or regulations promulgated pursuant to this Article.
- 32 (6) That the applicant for or holder of such license or any officer of a corporate
33 licensee or corporation applying for a license, any partner of a partnership
34 licensee or partnership applying for a license, or any member of a limited
35 liability company licensee or limited liability company applying for a license
36 has pleaded guilty, entered a plea of nolo contendere, or been found guilty of
37 a crime involving moral turpitude in any state or federal court."

38 **"§§ 93A-156 through 93A-174. Reserved for future codification purposes.**

39 **SECTION 2.** Chapter 93A of the General Statutes is amended by adding a new
40 Article to read:

41 "Article 8.

42 "Registration of Community Associations.

43 **"§ 93A-175. Registration of community associations.**

44 (a) Beginning January 1, 2016, and thereafter annually, every community association
45 shall register the association with the Commission and shall provide the Commission with the
46 following information about the association:

- 47 (1) The name, address, and contact information for the community association.
48 (2) The names, addresses, e-mail addresses, and telephone numbers for each of
49 the members of the community association's board of directors.
50 (3) The name and address of the agent for service of process for the community
51 association.

1 (4) The county or counties where the property governed by the community
2 association is located.

3 (5) The name, address, email address, and telephone number of the community
4 association's manager or management company, if any.

5 (6) Any other information the Commission may require by rule.

6 (b) The registration process and registration system shall be established in a manner
7 prescribed by the Commission by rule. The fee for annual registration, which must accompany
8 each annual registration, shall not exceed one hundred dollars (\$100.00). The registration fee
9 may not increase by more than ten dollars (\$10.00) during a 12-month period.

10 (c) Each community association required to register annually shall make any updates,
11 corrections or modifications to the information provided in the most recent registration with the
12 Commission within 15 days from the date of any such change.

13 (d) In the event an association required to register with the Commission fails to register,
14 the Commission may seek an order in the superior court of Wake County or in the county
15 where the association is located to compel registration. In any event, an association required to
16 register with the Commission shall be prohibited from pursuing any legal remedy otherwise
17 available to it until the association has registered with the Commission and paid in full any
18 delinquent registration fees.

19 (e) The Commission shall create, maintain, and make available to the public a directory
20 of registered community associations containing information about each association collected
21 as part of the registration.

22 (f) The Commission shall have the power to make reasonable rules and regulations that
23 are not inconsistent with the provisions of this Article and the General Statutes of North
24 Carolina. The Commission may prescribe forms and procedures for submitting information to
25 the Commission."

26 **"§§ 93A-176 through 93A-190. Reserved for future codification purposes.**

27 **SECTION 2.** Subpart D of Part 4 of Article 13 of Chapter 143B of the General
28 Statutes is amended by adding a new section to read:

29 **"§ 143B-966. Criminal record checks of applicants for community association manager**
30 **licensure.**

31 The Department of Public Safety may provide to the North Carolina Real Estate
32 Commission from the State and National Repositories of Criminal Histories the criminal
33 history of any applicant for licensure pursuant to Article 8 of Chapter 93A of the General
34 Statutes. Along with the request, the Commission shall provide to the Department of Public
35 Safety the fingerprints of the applicant, a form signed by the applicant consenting to the
36 criminal record check and use of fingerprints and other identifying information required by the
37 State and National Repositories, and any additional information required by the Department of
38 Public Safety. The applicant's fingerprints shall be forwarded to the State Bureau of
39 Investigation for a search of the State's criminal history record file, and the State Bureau of
40 Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a
41 national criminal history record check. The Commission shall keep all information obtained
42 pursuant to this section confidential. The Department of Public Safety may charge a fee to
43 offset the cost incurred by it to conduct a criminal record check under this section. The fee shall
44 not exceed the actual cost of locating, editing, researching, and retrieving the information."

45 **SECTION 3.(a)** G.S. 47F-3-116(f)(1) is rewritten to read:

46 **"§ 47F-3-116. Lien for sums due the association; enforcement.**

47 ...

48 (f) Except as provided in subsection (h) of this section, the association, acting through
49 the executive board, may foreclose a claim of lien in like manner as a mortgage or deed of trust
50 on real estate under power of sale, as provided in Article 2A of Chapter 45 of the General
51 Statutes, if the assessment remains unpaid for 90 days or more. The association shall not

1 foreclose the claim of lien unless the executive board votes to commence the proceeding
2 against the specific lot.

3 The following provisions and procedures shall be applicable to and complied with in every
4 nonjudicial power of sale foreclosure of a claim of lien, and these provisions and procedures
5 shall control to the extent they are inconsistent or in conflict with the provisions of Article 2A
6 of Chapter 45 of the General Statutes:

- 7 (1) The association shall be deemed to have a power of sale for purposes of
8 enforcement of its claim of ~~lien~~lien, unless it has failed to maintain
9 registration with the North Carolina Real Estate Commission pursuant to
10 Article 8 of Chapter 93A of the General Statutes.

11"

12 **SECTION 3.(b)** Article 3 of Chapter 47F of the General Statutes is amended by
13 adding a new section to read:

14 **"§ 47F-3-117. Registration with North Carolina Real Estate Commission; ability to**
15 **enforce liens.**

16 (a) Beginning January 1, 2016, the association shall annually register with the North
17 Carolina Real Estate Commission pursuant to Article 8 of Chapter 93A of the General Statutes.

18 (b) Notwithstanding G.S. 47F-3-116, if the association fails to maintain registration
19 with the North Carolina Real Estate Commission, then it shall not be able to enforce any liens
20 filed against a lot or lot owner."

21 **SECTION 4.(a)** G.S. 47C-3-116(f)(1) is rewritten to read:

22 **"§ 47C-3-116. Lien for sums due the association; enforcement.**

23 (f) Except as provided in subsection (h) of this section, the association, acting through
24 the executive board, may foreclose a claim of lien in like manner as a mortgage or deed of trust
25 on real estate under power of sale, as provided in Article 2A of Chapter 45 of the General
26 Statutes, if the assessment remains unpaid for 90 days or more. The association shall not
27 foreclose the claim of lien unless the executive board votes to commence the proceeding
28 against the specific unit. The following provisions and procedures shall be applicable to and
29 complied with in every nonjudicial power of sale foreclosure of a claim of lien, and these
30 provisions and procedures shall control to the extent they are inconsistent or in conflict with the
31 provisions of Article 2A of Chapter 45 of the General Statutes:

- 32 (1) The association shall be deemed to have a power of sale for purposes of
33 enforcement of its claim of ~~lien~~lien, unless it has failed to maintain
34 registration with the North Carolina Real Estate Commission pursuant to
35 Article 8 of Chapter 93A of the General Statutes."

36 **SECTION 4.(b)** Article 3 of Chapter 47C of the General Statutes is amended by
37 adding a new section to read:

38 **"§ 47C-3-120. Registration with the North Carolina Real Estate Commission; ability to**
39 **enforce liens.**

40 (a) Beginning January 1, 2016, the association shall annually register with the North
41 Carolina Real Estate Commission pursuant to Article 8 of Chapter 93A of the General Statutes.

42 (b) Notwithstanding G.S. 47C-3-116, if the association fails to maintain registration
43 with the North Carolina Real Estate Commission, then it shall not be able to enforce any liens
44 filed against a lot or lot owner."

45 **SECTION 5.(a)** This act is effective when it becomes law. Section 3 and Section 4
46 apply to actions to enforce liens filed on or after that date.

47 **SECTION 5.(b)** The North Carolina Real Estate Commission shall promulgate
48 rules and create any forms and tracking systems necessary to implement the provisions of this
49 act.