

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 386*
Committee Substitute Favorable 4/20/11

Short Title: Real Estate License Law Amendments.-AB

(Public)

Sponsors:

Referred to:

March 17, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO MODERNIZE THE NORTH CAROLINA REAL ESTATE LICENSE LAW.
3 The General Assembly of North Carolina enacts:

4 SECTION 1. G.S. 93A-2 reads as rewritten:
5 "§ 93A-2. Definitions and exceptions.

6 ...
7 (a1) The term broker-in-charge within the meaning of this Chapter means a real estate
8 broker who has been designated as the broker having responsibility for the supervision of ~~real~~
9 ~~estate salespersons~~ brokers on provisional status engaged in real estate brokerage at a particular
10 real estate office and for other administrative and supervisory duties as the Commission shall
11 prescribe by rule.

12 ...
13 (c) The provisions of this Chapter do not apply to and do not include:

- 14 (1) Any ~~person,~~ partnership, corporation, limited liability company, association,
15 or other business entity ~~who,~~ that, as owner or lessor, shall perform any of the
16 acts aforesaid with reference to property owned or leased by them, where the
17 acts are performed in the regular course of or as incident to the management
18 of that property and the investment therein.
- 19 (2) Any person acting as an attorney-in-fact under a duly executed power of
20 attorney from the owner authorizing the final consummation of performance
21 of any contract for the sale, lease or exchange of real estate.
- 22 (3) ~~The acts or services of an attorney at law.~~ Acts or services performed by an
23 attorney who is an active member of the North Carolina State Bar if the acts
24 and services constitute the practice of law under Chapter 84 of the General
25 Statutes.
- 26 (4) Any person, while acting as a receiver, trustee in bankruptcy, guardian,
27 administrator or executor or any person acting under order of any court.
- 28 (5) Any person, while acting as a trustee under a written trust agreement, deed
29 of trust or will, or that person's regular salaried employees. The trust
30 agreement, deed of trust, or will must specifically identify the trustee, the
31 beneficiary, the corpus of trust, and the trustee's authority over the corpus.
- 32 (6) Any salaried person employed by a licensed real estate broker, for and on
33 behalf of the owner of any real estate or the improvements thereon, which
34 the licensed broker has contracted to manage for the owner, if the salaried
35 employee's employment is limited to: exhibiting units on the real estate to
36 prospective tenants; providing the prospective tenants with information
37 about the lease of the units; accepting applications for lease of the units;



1 completing and executing preprinted form leases; and accepting security
2 deposits and rental payments for the units only when the deposits and rental
3 payments are made payable to the owner or the broker employed by the
4 owner. The salaried employee shall not negotiate the amount of security
5 deposits or rental payments and shall not negotiate leases or any rental
6 agreements on behalf of the owner or broker. However, in a vacation rental
7 transaction as defined by G.S. 42A-4(3), the employee may offer a
8 prospective tenant a rental price and term from a schedule setting forth
9 prices and terms and the conditions and limitations under which they may be
10 offered. The schedule shall be written and provided by the employee's
11 employing broker with the written authority of the landlord.

- 12 (7) Any individual owner who personally leases or sells the owner's own
13 property.
14 (8) Any housing authority organized in accordance with the provisions of
15 Chapter 157 of the General Statutes and any regular salaried employees of
16 the housing authority when performing acts authorized in this Chapter ~~as to~~
17 ~~any property owned or leased by the housing authority.~~ with regard to the
18 sale or lease of property owned by the housing authority or the subletting of
19 property which the housing authority holds as tenant. This exception shall
20 not apply to any person, partnership, corporation, limited liability company,
21 association, or other business entity that contracts with a housing authority to
22 sell or manage property owned or leased by the housing authority."

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

24 "(e) The Commission shall be entitled to the services of the Attorney General of North
25 Carolina, in connection with the affairs of the ~~Commission or may on approval of the Attorney~~
26 ~~General, employ an attorney to assist or represent it in the enforcement of this Chapter, as to~~
27 ~~specific matters, but the fee paid for such service shall be approved by the Attorney General.~~
28 Commission, and may, with the approval of the Attorney General, employ attorneys to
29 represent the Commission or assist it in the enforcement of this Chapter. The Commission may
30 prefer a complaint for violation of this Chapter before any court of competent jurisdiction, and
31 it may take the necessary legal steps through the proper legal offices of the State to enforce the
32 provisions of this Chapter and collect the penalties provided therein."

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

34 "**§ 93A-4. Applications for licenses; fees; qualifications; examinations; privilege licenses;**
35 **renewal or reinstatement of license; power to enforce provisions.**

36 ...

37 (a1) Each person who is issued a real estate broker license on or after April 1, 2006, shall
38 initially be classified as a provisional broker and shall, within three years following initial
39 licensure, satisfactorily complete, at a school approved by the Commission, a postlicensing
40 education program consisting of 90 hours of classroom instruction in subjects determined by
41 the Commission or shall possess real estate education or experience in real estate transactions
42 which the Commission shall find equivalent to the education program. The Commission may,
43 by rule, establish a schedule for completion of the prescribed postlicensing education that
44 requires provisional brokers to complete portions of the 90-hour postlicensing education
45 program in less than three years, and provisional brokers must comply with this schedule in
46 order to be entitled to actively engage in real estate brokerage. Upon completion of the
47 postlicensing education program, the provisional status of the broker's license shall be
48 terminated. When a provisional broker fails to complete all 90 hours of required postlicensing
49 education within three years following initial licensure, the broker's license shall be ~~cancelled,~~
50 ~~and the Commission may, in its discretion, require the person whose license was cancelled to~~
51 ~~satisfy the postlicensing education program and the requirements for original licensure~~

1 ~~prescribed in this Chapter as a condition of license reinstatement, including the examination~~
2 ~~requirements and the license reinstatement fee prescribed by subsection (c) of this~~
3 ~~section, placed on inactive status. The broker's license shall not be returned to active status until~~
4 ~~he or she has satisfied such requirements as the Commission may by rule require. Every license~~
5 ~~cancelled after April 1, 2009, because the licensee failed to complete postlicensing education~~
6 ~~shall be reinstated on inactive status until such time as the licensee satisfies the requirements~~
7 ~~for returning to active status as the Commission may by rule require.~~

8 ...

9 (b) Except as otherwise provided in this Chapter, any person who submits an
10 application to the Commission in proper manner for a license as real estate broker shall be
11 required to take an examination. The examination may be administered orally, by computer, or
12 by any other method the Commission deems appropriate. The Commission may require the
13 applicant to pay the Commission or a provider contracted by the Commission the actual cost of
14 the examination and its administration. The cost of the examination and its administration shall
15 be in addition to any other fees the applicant is required to pay under subsection (a) of this
16 section. The examination shall determine the applicant's qualifications with due regard to the
17 paramount interests of the public as to the applicant's competency. A person who fails the
18 license examination shall be entitled to know the result and score. A person who passes the
19 exam shall be notified only that the person passed the examination. Whether a person passed or
20 failed the examination shall be a matter of public record; however, the scores for license
21 examinations shall not be considered public records. Nothing in this subsection shall limit the
22 rights granted to any person under G.S. 93B-8.

23 An applicant for licensure under this Chapter shall satisfy the Commission that he or she
24 possesses the competency, honesty, truthfulness, integrity, ~~and general moral character~~
25 moral character, and general fitness, including mental and emotional fitness, necessary to
26 protect the public interest and promote public confidence in the real estate brokerage business.
27 The Commission may investigate the moral character and fitness, including the mental and
28 emotional fitness, of each applicant for licensure ~~and as the applicant's character and fitness~~
29 may generally relate to the real estate brokerage business, the public interest, and the public's
30 confidence in the real estate brokerage business. The Commission may also require an
31 applicant to provide the Commission with a criminal record report. All applicants shall obtain
32 criminal record reports from one or more reporting services designated by the Commission to
33 provide criminal record reports. Applicants are required to pay the designated reporting service
34 for the cost of these reports. Criminal record reports, credit reports, and reports relating to an
35 applicant's mental and emotional fitness obtained in connection with the application process
36 shall not be considered public records under Chapter 132 of the General Statutes. If the results
37 of any required competency examination and investigation of the applicant's moral character
38 and fitness shall be satisfactory to the Commission, then the Commission shall issue to the
39 applicant a license, authorizing the applicant to act as a real estate broker in the State of North
40 Carolina, upon the payment of any privilege taxes ~~now required by law or that may hereafter be~~
41 ~~required by law.~~

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

50 **SECTION 4.** G.S. 93A-4.1(c) reads as rewritten:

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

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

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

16 "**§ 93A-5. Register of applicants; ~~roster of brokers; financial report to Secretary of State.~~**
17 **applicants and roster of brokers.**

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

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

25 (c) ~~On or before the first day of September of each year, the Commission shall file with~~
26 ~~the Secretary of State a copy of the roster of real estate brokers holding certificates of license,~~
27 ~~and at the same time shall also file with the Secretary of State a report containing a complete~~
28 ~~statement of receipts and disbursements of the Commission for the preceding fiscal year ending~~
29 ~~June 30 attested by the affidavit of the Executive Director of the Commission.~~ The Commission
30 shall file reports annually as required by G.S. 93B-2."

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

32 "**§ 93A-6. Disciplinary action by Commission.**

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

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

- 42 (1) Making any willful or negligent misrepresentation or any willful or negligent
43 omission of material fact.
- 44 (2) Making any false promises of a character likely to influence, persuade, or
45 induce.
- 46 (3) Pursuing a course of misrepresentation or making of false promises through
47 agents, advertising or otherwise.
- 48 (4) Acting for more than one party in a transaction without the knowledge of all
49 parties for whom he or she acts.
- 50 (5) Accepting a commission or valuable consideration as a real estate
51 salesperson/broker on provisional status for the performance of any of the

- 1 acts specified in this Article or Article 4 of this Chapter, from any person
 2 except his or her broker-in-charge or licensed broker by whom he or she is
 3 employed.
- 4 (6) Representing or attempting to represent a real estate broker other than the
 5 broker by whom he or she is engaged or associated, without the express
 6 knowledge and consent of the broker with whom he or she is associated.
- 7 (7) Failing, within a reasonable time, to account for or to remit any monies
 8 coming into his or her possession which belong to others.
- 9 (8) Being unworthy or incompetent to act as a real estate broker in a manner as
 10 to endanger the interest of the public.
- 11 (9) Paying a commission or valuable consideration to any person for acts or
 12 services performed in violation of this Chapter.
- 13 (10) Any other conduct which constitutes improper, fraudulent or dishonest
 14 dealing.
- 15 (11) Performing or undertaking to perform any legal service, as set forth in
 16 G.S. 84-2.1, or any other acts constituting the practice of law.
- 17 (12) Commingling the money or other property of his or her principals with his or
 18 her own or failure to maintain and deposit in a trust or escrow account in ~~an~~
 19 ~~insured bank or savings and loan association in North Carolina~~ bank as
 20 provided by subsection (g) of this section all money received by him or her
 21 as a real estate licensee acting in that capacity, or an escrow agent, or the
 22 custodian or manager of the funds of another person or entity which relate to
 23 or concern that person's or entity's interest or investment in real property,
 24 provided, these accounts shall not bear interest unless the principals
 25 authorize in writing the deposit be made in an interest bearing account and
 26 also provide for the disbursement of the interest accrued.
- 27 (13) Failing to deliver, within a reasonable time, a completed copy of any
 28 purchase agreement or offer to buy and sell real estate to the buyer and to the
 29 seller.
- 30 (14) Failing, at the time ~~the~~ a sales transaction is consummated, to deliver to ~~the~~
 31 ~~seller in every real estate transaction, a complete detailed closing statement~~
 32 ~~showing all of the receipts and disbursements handled by him or her for the~~
 33 ~~seller or failing to deliver to the buyer a complete statement showing all~~
 34 ~~money received in the transaction from the buyer and how and for what it~~
 35 ~~was disbursed,~~ the broker's client a detailed and accurate closing statement
 36 showing the receipt and disbursement of all monies relating to the
 37 transaction about which the broker knows or reasonably should know. If a
 38 closing statement is prepared by an attorney or lawful settlement agent, a
 39 broker may rely on the delivery of that statement, but the broker must review
 40 the statement for accuracy and notify all parties to the closing of any errors.
- 41 (15) Violating any rule ~~or regulation promulgated~~ adopted by the Commission.
- 42 ~~The Executive Director shall transmit a certified copy of all final orders of the Commission~~
 43 ~~suspending or revoking licenses issued under this Chapter to the clerk of superior court of the~~
 44 ~~county in which the licensee maintains his or her principal place of business. The clerk shall~~
 45 ~~enter these orders upon the judgment docket of the county.~~
- 46 (b) ~~Following a hearing, the~~ The Commission shall also have power to ~~may~~ suspend or
 47 revoke any license issued under the provisions of this Chapter or ~~to~~ reprimand or censure any
 48 licensee when:
- 49 (1) The licensee has obtained a license by false or fraudulent representation;
- 50 (2) The licensee has been convicted or has entered a plea of guilty or no contest
 51 upon which final judgment is entered by a court of competent jurisdiction in

1 this State, or any other state, of ~~the criminal offenses of: embezzlement,~~
2 ~~obtaining money under false pretense, fraud, forgery, conspiracy to~~
3 ~~defraud, any misdemeanor or felony that involves false swearing,~~
4 ~~misrepresentation, deceit, extortion, theft, bribery, embezzlement, false~~
5 ~~pretenses, fraud, forgery, larceny, misappropriation of funds or property,~~
6 ~~perjury, or any other offense showing professional unfitness or involving~~
7 ~~moral turpitude which would reasonably affect the licensee's performance in~~
8 ~~the real estate business;~~

9 (3) The licensee has violated any of the provisions of G.S. 93A-6(a) when
10 selling, leasing, or buying the licensee's own property;

11 (4) The broker's unlicensed employee, who is exempt from the provisions of this
12 Chapter under G.S. 93A-2(c)(6), has committed, in the regular course of
13 business, any act which, if committed by the broker, would constitute a
14 violation of G.S. 93A-6(a) for which the broker could be disciplined; or

15 (5) ~~The licensee, who is also a State licensed or State certified real estate~~
16 ~~appraiser pursuant to Chapter 93E of the General Statutes, has violated any~~
17 ~~provisions of Chapter 93E of the General Statutes and has been reprimanded~~
18 ~~or has had an appraiser license or certificate suspended or revoked by the~~
19 ~~Appraisal Board.~~ The licensee, who is also licensed as an appraiser, attorney,
20 home inspector, mortgage broker, general contractor, or member of another
21 licensed profession or occupation, has been disciplined for an offense under
22 any law involving fraud, theft, misrepresentation, breach of trust or fiduciary
23 responsibility, or willful or negligent malpractice.

24 (c) The Commission may appear in its own name in superior court in actions for
25 injunctive relief to prevent any person from violating the provisions of this Chapter or rules
26 ~~promulgated~~ adopted by the Commission. The superior court shall have the power to grant
27 these injunctions even if criminal prosecution has been or may be instituted as a result of the
28 violations, or whether the person is a licensee of the Commission.

29 (d) Each broker shall maintain complete records showing the deposit, maintenance, and
30 withdrawal of money or other property owned by the broker's principals or held in escrow or in
31 trust for the broker's principals. The Commission may inspect these records periodically,
32 without prior notice and may also inspect these records whenever the Commission determines
33 that they are pertinent to an investigation of any specific complaint against a licensee.

34 (e) When a person or entity licensed under this Chapter is accused of any act, omission,
35 or misconduct which would subject the licensee to disciplinary action, the licensee, with the
36 consent and approval of the Commission, may surrender the license and all the rights and
37 privileges pertaining to it for a period of time established by the Commission. A person or
38 entity who surrenders a license shall not thereafter be eligible for or submit any application for
39 licensure as a real estate broker ~~or salesperson~~ during the period of license surrender.

40 (f) In any contested case in which the Commission takes disciplinary action authorized
41 by any provision of this Chapter, the Commission may also impose reasonable conditions,
42 restrictions, and limitations upon the license, registration, or approval issued to the disciplined
43 person or entity. In any contested case concerning an application for licensure, time share
44 project registration, or school, sponsor, instructor, or course approval, the Commission may
45 impose reasonable conditions, restrictions, and limitations on any license, registration, or
46 approval it may issue as a part of its final decision.

47 (g) A broker's trust or escrow account shall be a demand deposit account in a federally
48 insured depository institution lawfully doing business in this State which agrees to make its
49 records of the broker's account available for inspection by the Commission's representatives.

50 (h) The Executive Director shall transmit a certified copy of all final orders of the
51 Commission suspending or revoking licenses issued under this Chapter to the clerk of superior

1 court of the county in which the licensee maintains his or her principal place of business. The
2 clerk shall enter the order upon the judgment docket of the county."

3 **SECTION 7.** G.S. 93A-6.1(b) reads as rewritten:

4 "(b) The Commission shall be exempt from the requirements of Chapter 53B of the
5 General Statutes with regard to subpoenas issued to compel the production of a licensee's trust
6 account records held by any financial institution. ~~Notwithstanding that exemption, the~~
7 ~~Commission shall serve, pursuant to G.S. 1A-1, Rule 4(j) of the N.C. Rules of Civil Procedure~~
8 ~~or by certified mail to the licensee's last known address, a copy of the subpoena and notice that~~
9 ~~the subpoena has been served upon the financial institution. Service of the subpoena and notice~~
10 ~~on the licensee shall be made within 10 days following service of the subpoena on the financial~~
11 ~~institution holding the trust account records.~~Notwithstanding the exemption, whenever the
12 Commission issues a subpoena under this subsection, the Commission shall send a copy to the
13 licensee at his or her address of record by regular mail."

14 **SECTION 8.** G.S. 93A-9(a) reads as rewritten:

15 **"§ 93A-9. Licensing ~~nonresidents, foreign brokers.~~**

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

27 **SECTION 9.** G.S. 93A-11(a) reads as rewritten:

28 "(a) Notwithstanding the provisions of G.S. 97-21 or any other provision of law, a real
29 estate broker may include in the governing contract with a real estate ~~salesperson-broker on~~
30 provisional status whose nonemployee status is recognized pursuant to section 3508 of the
31 United States Internal Revenue Code, 26 U.S.C. § 3508, an agreement for the
32 ~~salesperson-broker on provisional status~~ to reimburse the broker for the cost of covering that
33 ~~salesperson-broker on provisional status~~ under the broker's workers' compensation coverage of
34 the broker's business."

35 **SECTION 10.** G.S. 93A-16 reads as rewritten:

36 "Article 2.

37 "Real Estate Education and Recovery Fund.

38 **"§ 93A-16. Real Estate Education and Recovery Fund created; payment to fund;**
39 **management.**

40 (a) There is hereby created a special fund to be known as the "Real Estate Education
41 and Recovery Fund" which shall be set aside and maintained by the North Carolina Real Estate
42 Commission. The fund shall be used in the manner provided under this Article for the payment
43 of unsatisfied judgments where the aggrieved person has suffered a direct monetary loss by
44 reason of certain acts committed by ~~any real estate salesperson licensed before April 1, 2006, or~~
45 ~~by any real estate broker.~~ The Commission may also expend money from the fund to create
46 books and other publications, courses, forms, seminars, and other programs and materials to
47 educate licensees and the public in real estate subjects. However, the Commission shall make
48 no expenditures from the fund for educational purposes if the expenditure will reduce the
49 balance of the fund to an amount less than two hundred thousand dollars (\$200,000).

50 (b) On September 1, 1979, the Commission shall transfer the sum of one hundred
51 thousand dollars (\$100,000) from its expense reserve fund to the Real Estate Education and

1 Recovery Fund. Thereafter, the Commission may transfer to the Real Estate Education and
2 Recovery Fund additional sums of money from whatever funds the Commission may have,
3 provided that, if on December 31 of any year the amount remaining in the fund is less than fifty
4 thousand dollars (\$50,000), the Commission may determine that each person or entity licensed
5 under this Chapter, when renewing a license, shall pay in addition to the license renewal fee, a
6 fee not to exceed ten dollars (\$10.00) per broker ~~and five dollars (\$5.00) per salesperson~~ as
7 shall be determined by the Commission for the purpose of replenishing the fund.

8 (c) The Commission shall invest and reinvest the monies in the Real Estate Education
9 and Recovery Fund in the same manner as provided by law for the investment of funds by the
10 clerk of superior court. The proceeds from such investments shall be deposited to the credit of
11 the fund.

12 (d) The Commission shall have the authority to adopt ~~reasonable~~ rules and procedures
13 not inconsistent with the provisions of this Article, to provide for the orderly, fair and efficient
14 administration and payment of monies held in the Real Estate Education and Recovery Fund."

15 **SECTION 11.** G.S. 93A-17 reads as rewritten:

16 **"§ 93A-17. Grounds for payment; notice and application to Commission.**

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

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

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

45 (b) For the purposes of this Article, the term "trust funds" shall include all earnest
46 money deposits, down payments, sales proceeds, tenant security deposits, undisbursed rents
47 and other such monies which belong to another or others and are held by a real estate broker ~~or~~
48 ~~salesperson~~ acting in that capacity. Trust funds shall also include all time share purchase
49 monies which are required to be held in trust by G.S. 93A-45(c) during the time they are, in
50 fact, so held. Trust funds shall not include, however, any funds held by an independent escrow

1 agent under G.S. 93A-42 or any funds which the court may find to be subject to an implied,
2 constructive or resulting trust.

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

9 **SECTION 12.** G.S. 93A-18(8) reads as rewritten:

10 "(8) Knows of no assets of the judgment debtor and has attempted collection
11 from all other persons who may be liable for the transaction for which the
12 aggrieved person seeks payment from the Real Estate Education and
13 Recovery Fund if there be any such other persons."

14 **SECTION 13.** G.S. 93A-20 reads as rewritten:

15 **"§ 93A-20. Order directing payment out of fund; compromise of claims.**

16 Applications for payment from the Real Estate Education and Recovery Fund shall be heard
17 and decided by a majority of the members of the Commission. If, after a hearing, the
18 Commission finds the claim should be paid from the fund, the Commission shall enter an order
19 requiring payment from the fund of whatever sum the Commission shall find to be payable
20 upon the claim in accordance with the limitations contained in this Article.

21 Subject to Commission approval, a claim based upon the application of an aggrieved person
22 may be compromised; however, the Commission shall not be bound in any way by any
23 compromise or stipulation of the judgment debtor. If a claim appears to be otherwise
24 meritorious, the Commission may waive procedural defects in the application for payment."

25 **SECTION 14.** G.S. 93A-21 reads as rewritten:

26 **"§ 93A-21. Limitations; pro rata distribution; attorney fees.**

27 (a) Payments from the Real Estate Education and Recovery Fund shall be subject to the
28 following limitations:

- 29 (1) The right to recovery under this Article shall be forever barred unless
30 application is made within one year after termination of all proceedings
31 including appeals, in connection with the ~~judgment;~~ judgment.
- 32 (2) The fund shall not be liable for more than ~~twenty five thousand dollars~~
33 ~~(\$25,000)~~ fifty thousand dollars (\$50,000) per transaction regardless of the
34 number of persons aggrieved or parcels of real estate involved in such
35 ~~transaction; and~~ transaction.
- 36 (3) ~~The liability of~~ Payment from the fund shall not exceed in the aggregate
37 twenty-five thousand dollars (\$25,000) for any one licensee within a single
38 calendar year, and in no event shall it exceed in the aggregate ~~fifty thousand~~
39 ~~dollars~~ ~~(\$50,000)~~ seventy-five thousand dollars (\$75,000) for any one
40 licensee.
- 41 (4) The fund shall not be liable for payment of any judgment awards of
42 consequential damages, multiple or punitive damages, civil penalties,
43 incidental damages, special damages, interest, costs of court or action or
44 other similar awards.

45 (b) If the maximum liability of the fund is insufficient to pay in full the valid claims of
46 all aggrieved persons whose claims relate to the same transaction or to the same licensee, the
47 amount for which the fund is liable shall be distributed among the claimants in a ratio that their
48 respective claims bear to the total of such valid claims or in such manner as the Commission, in
49 its discretion, deems equitable. Upon petition of counsel for the Commission, the Commission
50 may require all claimants and prospective claimants to be joined in one proceeding to the end
51 that the respective rights of all such claimants to the Real Estate Education and Recovery Fund

1 may be equitably resolved. A person who files an application for payment after the maximum
2 liability of the fund for the licensee or transaction has been exhausted shall not be entitled to
3 payment and may not seek judicial review of the Commission's award of payment to any party
4 except upon a showing that the Commission abused its discretion.

5 (c) In the event an aggrieved person is entitled to payment from the fund in an amount
6 ~~of one thousand five hundred dollars (\$1,500) or less, which is equal to or less than the~~
7 maximum amount of money which may be awarded in small claims court under G.S. 7A-210,
8 the Commission may allow such person to recover from the fund reasonable attorney's fees
9 incurred in effecting such recovery. Reimbursement for attorney's fees shall be limited to those
10 fees incurred in effecting recovery from the fund and shall not include any fee incurred in
11 obtaining judgment against the licensee."

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

13 **"§ 93A-22. Repayment to fund; automatic suspension of license.**

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

20 **SECTION 16.** G.S. 93A-23 reads as rewritten:

21 **"§ 93A-23. Subrogation of rights.**

22 When the Commission has paid from the Real Estate Education and Recovery Fund any
23 sum to the judgment creditor, the Commission shall be subrogated to all of the rights of the
24 judgment creditor to the extent of the amount so paid and the judgment creditor shall assign all
25 right, title, and interest in the judgment to the extent of the amount so paid to the Commission
26 and any amount and interest so recovered by the Commission on the judgment shall be
27 deposited in the Real Estate Education and Recovery Fund."

28 **SECTION 17.** G.S. 93A-25 reads as rewritten:

29 **"§ 93A-25. Persons ineligible to recover from fund.**

30 No real estate broker ~~or real estate salesperson~~ who suffers the loss of any commission from
31 any transaction in which he or she was acting in the capacity of a real estate broker ~~or real~~
32 ~~estate salesperson~~ shall be entitled to make application for payment from the Real Estate
33 Education and Recovery Fund for the loss."

34 **SECTION 18.** G.S. 93A-35(b) reads as rewritten:

35 "(b) Licenses shall be renewable annually on July 1, provided that a renewal application
36 accompanied by the appropriate renewal fees has been filed not later than June 1 in the form
37 and manner prescribed by the Commission, and provided further that the applicant and school
38 are found to be in compliance with the standards established for issuance of an original license.
39 The Commission may by rule set nonrefundable renewal fees not to exceed one hundred
40 twenty-five dollars (\$125.00) for each school location and twenty-five dollars (\$25.00) for each
41 real estate ~~salesperson or broker~~ prelicensing and postlicensing course."

42 **SECTION 19.** G.S. 93A-41(9) reads as rewritten:

43 "(9) "Time share" means a right to occupy a unit or any of several units during
44 five or more separated time periods over a period of at least five years,
45 including renewal options, whether or not coupled with a freehold estate or
46 an estate for years in a time share project or a specified portion ~~thereof,~~
47 including, but not limited to, of a time share project. "Time share" shall also
48 include a vacation license, prepaid hotel reservation, club membership,
49 limited partnership, vacation bond, or a plan or system where the right to use
50 a time share unit or units for periods of time is awarded or apportioned on

1 the basis of points, vouchers, split, divided, or floating use; use, even if on a
2 competitive basis with other purchasers;".

3 **SECTION 20.** G.S. 93A-42 reads as rewritten:

4 **"§ 93A-42. Time shares deemed real estate.**

5 (a) A time share which in whole or in part burdens or pertains to real property in this
6 State is deemed to be an interest in real estate, and shall be governed by the law of this State
7 relating to real estate.

8 (b) A purchaser of a time share which burdens or pertains to real property located in the
9 State may in accordance with G.S. 47-18 register the time share instrument by which the
10 purchaser acquired the interest and upon such registration shall be entitled to the protection
11 provided by Chapter 47 of the General Statutes for the recordation of other real property
12 instruments. A time share instrument transferring or encumbering a time share shall not be
13 rejected for recordation because of the nature or duration of that estate, provided all other
14 requirements necessary to make an instrument recordable are complied with. An instrument
15 concerning a time share which burdens or pertains to no real property located in this State shall
16 not be recorded in the office of the register of deeds in any county in this State.

17 (c) The developer shall record or cause to be recorded a time share instrument:

- 18 (1) Not less than six days nor more than 45 days following the execution of the
19 contract of sale by the purchaser; or
20 (2) Not later than 180 days following the execution of the contract of sale by the
21 purchaser, provided that all payments made by the purchaser shall be placed
22 by the developer with an independent escrow agent upon the expiration of
23 the 10-day escrow period provided by G.S. 93A-45(c).

24 (d) The independent escrow agent provided by G.S. 93A-42(c)(2) shall deposit and
25 maintain the purchaser's payments in an insured trust or escrow account in a bank or savings
26 and loan association located in this State. The trust or escrow account may be interest-bearing
27 and the interest earned shall belong to the developer, if agreed upon in writing by the
28 purchaser; provided, however, if the time share instrument is not recorded within the time
29 periods specified in this section, then the interest earned shall belong to the purchaser. The
30 independent escrow agent shall return all payments to the purchaser at the expiration of 180
31 days following the execution of the contract of sale by the purchaser, unless prior to that time
32 the time share instrument has been recorded. However, if prior to the expiration of 180 days
33 following the execution of the contract of sale, the developer and the purchaser provide their
34 written consent to the independent escrow agent, the developer's obligation to record the time
35 share instrument and the escrow period may be extended for an additional period of 120 days.
36 Upon recordation of the time share instrument, the independent escrow agent shall pay the
37 purchaser's funds to the developer. Upon request by the Commission, the independent escrow
38 agent shall promptly make available to the Commission inspection of records of money held by
39 the independent escrow agent.

40 (e) In no event shall the developer be required to record a time share instrument if the
41 purchaser is in default of the purchaser's obligations.

42 (f) Recordation under the provisions of this section of the time share instrument shall
43 constitute delivery of that instrument from the developer to the purchaser."

44 **SECTION 21.** G.S. 93A-53 reads as rewritten:

45 **"§ 93A-53. Register of applicants; roster of registrants; registered projects; financial**
46 **report to Secretary of State.**

47 (a) The Executive Director of the Commission shall keep a register of all applicants for
48 certificates of registration, showing for each the date of application, name, business address,
49 and whether the certificate was granted or refused.

1 (b) The Executive Director of the Commission shall also keep a current roster showing
2 the name and address of all time share projects registered with the Commission. The roster
3 shall be kept on file in the office of the Commission and be open to public inspection.

4 (c) ~~On or before the first day of September of each year, the Commission shall file with~~
5 ~~the Secretary of State a copy of the roster of time share projects registered with the~~
6 ~~Commission and a report containing a complete statement of income received by the~~
7 ~~Commission in connection with the registration of time share projects for the preceding fiscal~~
8 ~~year ending June 30th attested by the affidavit of the Executive Director of the Commission.~~
9 ~~The report shall be made a part of those annual reports required under the provisions of~~
10 ~~G.S. 93A-5. The Commission shall include a copy of the roster of time share projects current on~~
11 ~~the preceding June 30 and a statement of the income received by the Commission in connection~~
12 ~~with the registration of time share projects during the fiscal year ending on June 30 with the~~
13 ~~report required by G.S. 93B-2."~~

14 **SECTION 22.** G.S. 93A-54(a) reads as rewritten:

15 "(a) The Commission has power to take disciplinary action. Upon its own motion, or on
16 the verified complaint of any person, the Commission may investigate the actions of any time
17 share salesperson, developer, or project broker of a time share project registered under this
18 Article, or any other person or entity who shall assume to act in such capacity. If the
19 Commission finds probable cause that a time share salesperson, developer, or project broker
20 has violated any of the provisions of this Article, the Commission may hold a hearing on the
21 allegations of misconduct.

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

28 ...

29 (9) ~~Failing to deposit and maintain in a trust or escrow account in an insured~~
30 ~~bank or savings and loan association in North Carolina~~ broker's trust or
31 escrow account as defined by G.S. 93A-6(g) all money received from others
32 in a time share transaction as may be required in G.S. 93A-45 of this Article
33 or failing to place with an independent escrow agent the funds of a time
34 share purchaser when required by G.S. 93A-42(c);

35"

36 **SECTION 23.** The Real Estate Commission shall adopt any rules necessary to
37 implement the provisions of Sections 3 and 8 of this act when this act becomes law.

38 **SECTION 24.** Sections 23 and 24 of this act are effective when this act becomes
39 law. The remainder of this act becomes effective January 1, 2012.