

GENERAL ASSEMBLY OF NORTH CAROLINA  
1983 SESSION

CHAPTER 81  
HOUSE BILL 248

AN ACT TO AMEND THE REGULATORY AUTHORITY OF THE REAL ESTATE  
LICENSING BOARD AND TO CHANGE THE NAME OF THE BOARD TO  
THE REAL ESTATE COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 93A-1, 93A-3(a), 93A-3(c), 93A-16(a), 93A-32, 93A-34(b), 93A-35(b), 114-4.2C and all other statutes in which the words "Real Estate Licensing Board" appear are amended by deleting the words "Real Estate Licensing Board" each time they appear and substituting "Real Estate Commission".

Sec. 2. G.S. 93A-1, 93A-3(a), 93A-3(b), 93A-3(c), 93A- 3(d), 93A-3(e), 93A-3(f), 93A-4(a), 93A-4(b), 93A-4(c), 93A-4(d), 93A-4(e), 93A-5(a), 93A-5(b), 93A-5(c), 93A-7, 93A-9, 93A-16(b), 93A-16(c), 93A-17(a), 93A-19(a), 93A-20, 93A-21(b), 93A-22, 93A- 23, 93A-26, 93A-32, 93A-33, 93A-34(a), 93A-34(b), 93A-34(c), 93A-35(b), 93A-35(c), 93A-36(a), 93A-36(b), 93A-38 and all other statutes in which the word "Board" is used in reference to the North Carolina Real Estate Licensing Board are amended by deleting the word "Board" each time it appears and substituting "Commission".

Sec. 3. G.S. 93A-10 is amended by deleting the word "commission" each time it appears and substituting "Commission".

Sec. 4. G.S. 93A-2(a) is amended by deleting the last sentence of that subsection.

Sec. 5. G.S. 93A-2(c) is rewritten to read:

"(c) The provisions of this Chapter shall not apply to and shall not include:

- (1) Any person, partnership, association or corporation who, as owner or lessor, shall perform any of the acts aforesaid with reference to property owned or leased by them, where the acts are performed in the regular course of or as incident to the management of that property and the investment therein;
- (2) Any person acting as an attorney-in-fact under a duly executed power of attorney from the owner authorizing the final consummation of performance of any contract for the sale, lease or exchange of real estate;
- (3) The acts or services of an attorney at law;
- (4) Any person, while acting as a receiver, trustee in bankruptcy, guardian, administrator or executor or any person acting under order of any court;

- (5) Any person, while acting as a trustee under a trust agreement, deed of trust or will, or his regular salaried employees;
- (6) Any salaried person employed by a licensed real estate broker, for and on behalf of the owner of any real estate or the improvements thereon, which the licensed broker has contracted to manage for the owner, if the salaried employee is limited in his employment to: exhibiting residential units on the real estate to prospective tenants; providing the prospective tenants with information about the lease of the residential units; accepting applications for lease of the residential units; completing and executing preprinted form leases; and accepting security deposits and rental payments for the residential units only when the deposits and rental payments are made payable to the owner or the broker employed by the owner. The salaried employee shall not negotiate the amount of security deposits or rental payments and shall not negotiate leases or any rental agreements on behalf of the owner or broker; or
- (7) Any owner who personally leases or sells his own property."

Sec. 6. The first sentence of G.S. 93A-3(b) is rewritten to read:

"(b) Members of the Commission shall receive as compensation for each day spent on work for the Commission the per diem, subsistence and travel allowances as provided in G.S. 93B-5."

Sec. 7. The first sentence of G.S. 93A-3(c) is rewritten to read:

"(c) The Commission shall have power to make reasonable bylaws, rules and regulations that are not inconsistent with the provisions of this Chapter and the General Statutes; provided, however, the Commission shall not make rules or regulations regulating commissions, salaries, or fees to be charged by licensees under this Chapter."

Sec. 8. The first sentence of G.S. 93A-3(d) is rewritten to read:

"(d) The Commission may employ an Executive Director and professional and clerical staff as may be necessary to carry out the provisions of this Chapter and to put into effect the rules and regulations that the Commission may promulgate."

Sec. 9. G.S. 93A-4(c), 93A-5(a), 93A-5(b) and 93A-5(c) are amended by deleting the words "secretary-treasurer" each time they appear in these subsections and substituting "Executive Director".

Sec. 10. G.S. 93A-10 is amended by deleting the word "secretary" each time it appears in this section and substituting "Executive Director".

Sec. 11. The last sentence of G.S. 93A-4(a) is amended by deleting the words: "and shall state the name and address of the real estate broker with whom the applicant is to be associated".

Sec. 12. The first sentence of G.S. 93A-5(a) is amended by deleting the words "place of business,".

Sec. 13. G.S. 93A-6 is rewritten to read:

**"§ 93A-6. Disciplinary action by Commission.**—(a) The Commission shall have power to take disciplinary action. Upon its own motion, or on the verified complaint of any person, the Commission may investigate the actions of any person or entity licensed

under this Chapter, or any other person or entity who shall assume to act in such capacity. If the Commission finds probable cause that a licensee has violated any of the provisions of this Chapter, the Commission may hold a hearing on the allegations of misconduct.

All such hearings shall be conducted in accordance with the provisions of Chapter 150A of the General Statutes. The Commission shall have power to suspend or revoke at any time a license issued under the provisions of this Chapter, or to reprimand or censure any licensee, if, following a hearing, the Commission adjudges the licensee to be guilty of:

- (1) Making any willful or negligent misrepresentation or any willful or negligent omission of material fact;
- (2) Making any false promises of a character likely to influence, persuade, or induce;
- (3) Pursuing a course of misrepresentation or making of false promises through agents, salesmen, advertising or otherwise;
- (4) Acting for more than one party in a transaction without the knowledge of all parties for whom he acts;
- (5) Accepting a commission or valuable consideration as a real estate salesman for the performance of any of the acts specified in this Chapter, from any person except the licensed broker by whom he is employed;
- (6) Representing or attempting to represent a real estate broker other than the broker by whom he is engaged or associated, without the express knowledge and consent of the broker with whom he is associated;
- (7) Failing, within a reasonable time, to account for or to remit any moneys coming into his possession which belong to others;
- (8) Being unworthy or incompetent to act as a real estate broker or salesman in a manner as to endanger the interest of the public;
- (9) Paying a commission or valuable consideration to any person for acts or services performed in violation of this Chapter;
- (10) Any other conduct which constitutes improper, fraudulent or dishonest dealing;
- (11) Performing or undertaking to perform any legal service, as set forth in G.S. 84-2.1, or any other acts not specifically set forth in that section;
- (12) Commingling the money or other property of his principals with his own or failure to maintain and deposit in a trust or escrow account in an insured bank or savings and loan association in North Carolina all money received by him as a real estate broker acting in that capacity, or an escrow agent, or the temporary custodian of the funds of others, in a real estate transaction; provided, these accounts shall not bear interest unless the principals authorize in writing the deposit be made in an interest bearing account and also provide for the disbursement of the interest accrued;

- (13) Failing to deliver, within a reasonable time, a completed copy of any purchase agreement or offer to buy and sell real estate to the buyer and to the seller;
- (14) Failing as a broker, at the time the transaction is consummated, to deliver to the seller in every real estate transaction, a complete detailed closing statement showing all of the receipts and disbursements handled by him for the seller or failing to deliver to the buyer a complete statement showing all money received in the transaction from the buyer and how and for what it was disbursed; or
- (15) Violating any rule or regulation promulgated by the Commission.

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

(b) Following a hearing, the Commission shall also have power to suspend or revoke any license issued under the provisions of this Chapter or to reprimand or censure any licensee when:

- (1) The licensee has obtained a license by false or fraudulent representation;
- (2) The licensee has been convicted or has entered a plea of guilty or no contest upon which final judgment is entered by a court of competent jurisdiction in this State, or any other state, of the criminal offenses of: embezzlement, obtaining money under false pretense, fraud, forgery, conspiracy to defraud, or any other offense involving moral turpitude which would reasonably affect the licensee's performance in the real estate business;
- (3) The licensee has violated any of the provisions of G.S. 93A-6(a) when selling, leasing, or buying his own property; or
- (4) The broker's unlicensed employee, who is exempt from the provisions of this Chapter under G.S. 93A- 2(c)(6), has committed, in the regular course of business, any act which, if committed by the broker, would constitute a violation of G.S. 93A- 6(a) for which the broker could be disciplined.

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

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

Sec. 14. G.S. 93A-17 is amended by adding a new subsection to read:

"(c) For the purposes of Article 2 of this Chapter, the terms 'licensee', 'broker', and 'salesman' shall include only individual persons licensed under this Chapter as brokers and salesmen and shall not include a corporation or other entity licensed under this Chapter."

Sec. 15. G.S. 93A-21(a)(2) is amended by deleting "five thousand dollars (\$5,000)" and substituting "ten thousand dollars (\$10,000)".

Sec. 16. This act shall become effective September 1, 1983.

In the General Assembly read three times and ratified, this the 21st day of March, 1983.