

Chapter 93A.

Real Estate License Law.

Article 1.

Real Estate Brokers and Salespersons.

§ 93A-1. License required of real estate brokers.

From and after July 1, 1957, it shall be unlawful for any person, partnership, corporation, limited liability company, association, or other business entity in this State to act as a real estate broker, or directly or indirectly to engage or assume to engage in the business of real estate broker or to advertise or hold himself or herself or themselves out as engaging in or conducting such business without first obtaining a license issued by the North Carolina Real Estate Commission (hereinafter referred to as the Commission), under the provisions of this Chapter. A license shall be obtained from the Commission even if the person, partnership, corporation, limited liability company, association, or business entity is licensed in another state and is affiliated or otherwise associated with a licensed real estate broker in this State. (1957, c. 744, s. 1; 1969, c. 191, s. 1; 1983, c. 81, ss. 1, 2; 1995, c. 351, s. 19; 1999-229, s. 1; 2005-395, s. 1.)

§ 93A-2. Definitions and exceptions.

(a) A real estate broker within the meaning of this Chapter is any person, partnership, corporation, limited liability company, association, or other business entity who for a compensation or valuable consideration or promise thereof lists or offers to list, sells or offers to sell, buys or offers to buy, auctions or offers to auction (specifically not including a mere crier of sales), or negotiates the purchase or sale or exchange of real estate, or who leases or offers to lease, or who sells or offers to sell leases of whatever character, or rents or offers to rent any real estate or the improvement thereon, for others.

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

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

(b) The term real estate salesperson within the meaning of this Chapter shall mean and include any person who was formerly licensed by the Commission as a real estate salesperson before April 1, 2006.

- (c) The provisions of G.S. 93A-1 and G.S. 93A-2 do not apply to and do not include:
- (1) Any partnership, corporation, limited liability company, association, or other business entity that, 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. The exemption from licensure under this subsection shall extend to the following persons when those persons are engaged in acts or services for which the corporation, partnership, limited liability company, or other business entity would be exempt hereunder:

- a. The officers and employees whose income is reported on IRS Form W-2 of an exempt corporation.
- b. The general partners and employees whose income is reported on IRS Form W-2 of an exempt partnership.
- c. The managers, member-managers, and employees whose income is reported on IRS Form W-2 of an exempt limited liability company.
- d. The natural person owners of an exempt closely held business entity. For purposes of this subdivision, a closely held business entity is a limited liability company or a corporation, neither having more than two legal owners, at least one of whom is a natural person.
- e. The officers, managers, member-managers, and employees whose income is reported on IRS Form W-2 of a closely held business entity when acting as an agent for an exempt business entity if the closely held business entity is owned by a natural person either (i) owning fifty percent (50%) or more ownership interest in the closely held business entity and the exempt business entity or (ii) owning fifty percent (50%) or more of a closely held business entity that owns a fifty percent (50%) or more ownership interest in the exempt business entity. The closely held business entity acting as an agent under this sub-subdivision must file an annual written notice with the Secretary of State, including its legal name and physical address. The exemption authorized by this sub-subdivision is only effective if, immediately following the completion of the transaction for which the exemption is claimed, the closely held business entity has a net worth that equals or exceeds the value of the transaction.

When a person conducts a real estate transaction pursuant to an exemption under this subdivision, the person shall disclose, in writing, to all parties to the transaction (i) that the person is not licensed as a real estate broker or salesperson under Article 1 of this Chapter, (ii) the specific exemption under this subdivision that applies, and (iii) the legal name and physical address of the owner of the subject property and of the closely held business entity acting under sub-subdivision e. of this subdivision, if applicable. This disclosure may be included on the face of a lease or contract executed in compliance with an exemption under this subdivision.

- (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) Acts or services performed by an attorney who is an active member of the North Carolina State Bar if the acts and services constitute the practice of law under Chapter 84 of the General Statutes.
- (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 written trust agreement, deed of trust or will, or that person's regular salaried employees. The trust agreement, deed of trust, or will must specifically identify the trustee, the beneficiary, the corpus of trust, and the trustee's authority over the corpus.
- (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's employment is limited to: exhibiting units on the real estate to prospective tenants; providing the prospective tenants with information about the lease of the units; accepting applications for lease of the units; completing and executing preprinted form leases; and accepting security deposits and rental payments for the 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. However, in a vacation rental transaction as defined by G.S. 42A-4(6), the employee may offer a prospective tenant a rental price and term from a schedule setting forth prices and terms and the conditions and limitations under which they may be offered. The schedule shall be written and provided by the employee's employing broker with the written authority of the landlord.
- (7) Any individual owner who personally leases or sells the owner's own property.
- (8) Any housing authority organized in accordance with the provisions of Chapter 157 of the General Statutes and any regular salaried employees of the housing authority when performing acts authorized in this Chapter with regard to the sale or lease of property owned by the housing authority or the subletting of property which the housing authority holds as tenant. This exception shall not apply to any person, partnership, corporation, limited liability company, association, or other business entity that contracts with a housing authority to sell or manage property owned or leased by the housing authority. (1957, c. 744, s. 2; 1967, c. 281, s. 1; 1969, c. 191, s. 2; 1975, c. 108; 1983, c. 81, ss. 4, 5; 1985, c. 535, s. 1; 1995, c. 351, s. 20; 1999-229, ss. 2, 3; 1999-409, s. 1; 2001-487, s. 23(a); 2005-395, ss. 2, 3; 2011-217, s. 1; 2011-235, s. 1; 2015-286, s. 2.1; 2016-98, s. 1.8.)

§ 93A-3. Commission created; compensation; organization.

(a) There is hereby created the North Carolina Real Estate Commission, hereinafter called the Commission. The Commission shall consist of nine members, seven members to be appointed by the Governor, one member to be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121, and one member to be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121. At least three members of the Commission shall be licensed real estate brokers. At least two members of the Commission shall be persons who are not involved directly or indirectly in the real estate or real estate appraisal business. Members of the

Commission shall serve three-year terms, so staggered that the terms of three members expire in one year, the terms of three members expire in the next year, and the terms of three members expire in the third year of each three-year period. The members of the Commission shall elect one of their members to serve as chairman of the Commission for a term of one year. The Governor may remove any member of the Commission for misconduct, incompetency, or willful neglect of duty. The Governor shall have the power to fill all vacancies occurring on the Commission, except vacancies in legislative appointments shall be filled under G.S. 120-122.

(b) The provisions of G.S. 93B-5 notwithstanding, members of the Commission shall receive as compensation for each day spent on work for the Commission a per diem in an amount established by the Commission by rule, and mileage reimbursement for transportation by privately owned automobile at the business standard mileage rate set by the Internal Revenue Service per mile of travel along with actual cost of tolls paid. The total expense of the administration of this Chapter shall not exceed the total income therefrom; and none of the expenses of said Commission or the compensation or expenses of any office thereof or any employee shall ever be paid or payable out of the treasury of the State of North Carolina; and neither the Commission nor any officer or employee thereof shall have any power or authority to make or incur any expense, debt or other financial obligation binding upon the State of North Carolina. After all expenses of operation, the Commission may set aside an expense reserve each year. The Commission may deposit moneys in accounts, certificates of deposit, or time deposits as the Commission may approve, in any federally insured depository institution or any trust institution authorized to do business in this State. Moneys also may be invested in the same classes of securities referenced in G.S. 159-30(c).

(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.

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

(c2) The Commission shall adopt a seal for its use, which shall bear thereon the words "North Carolina Real Estate Commission." Copies of all records and papers in the office of the Commission duly certified and authenticated by the seal of the Commission shall be received in evidence in all courts and with like effect as the originals.

(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. The Commission

shall fix salaries and shall require employees to make good and sufficient surety bond for the faithful performance of their duties. The Commission shall reimburse its employees for travel on official business. Mileage expenses for transportation by privately owned automobile shall be reimbursed at the business standard mileage set by the Internal Revenue Service per mile of travel along with the actual tolls paid. Other travel expenses shall be reimbursed in accordance with G.S. 138-6. The Commission may, when it deems it necessary or convenient, delegate to the Executive Director, legal counsel for the Commission, or other Commission staff, professional or clerical, the Commission's authority and duties under this Chapter, but the Commission may not delegate its authority to make rules or its duty to act as a hearing panel in accordance with the provisions of G.S. 150B-40(b).

(e) The Commission shall be entitled to the services of the Attorney General of North Carolina, in connection with the affairs of the Commission, and may, with the approval of the Attorney General, employ attorneys to represent the Commission or assist it in the enforcement of this Chapter. The Commission may prefer a complaint for violation of this Chapter before any court of competent jurisdiction, and it may take the necessary legal steps through the proper legal offices of the State to enforce the provisions of this Chapter and collect the penalties provided therein.

(f) The Commission is authorized to acquire, hold, convey, rent, encumber, alienate, and otherwise deal with real property in the same manner as a private person or corporation, subject only to the approval of the Governor and Council of State. The rents, proceeds, and other revenues and benefits of the ownership of real property shall inure to the Commission. Collateral pledged by the Commission for any encumbrance of real property shall be limited to the assets, income, and revenues of the Commission. Leases, deeds, and other instruments relating to the Commission's interest in real property shall be valid when executed by the executive director of the Commission. The Commission may create and conduct education and information programs relating to the real estate business for the information, education, guidance and protection of the general public, licensees, and applicants for license. The education and information programs may include preparation, printing and distribution of publications and articles and the conduct of conferences, seminars, and lectures. The Commission may claim the copyright to written materials it creates and may charge fees for publications and programs. (1957, c. 744, s. 3; 1967, c. 281, s. 2; c. 853, s. 1; 1971, c. 86, s. 1; 1979, c. 616, ss. 1, 2; 1983, c. 81, ss. 1, 2, 6-8; 1989, c. 563, s. 1; 1993, c. 419, s. 9; 1999-229, s. 4; 1999-405, s. 2; 1999-431, s. 3.4(a); 2000-140, s. 19(a); 2001-293, ss. 1, 2; 2002-168, s. 3; 2005-374, s. 1; 2005-395, s. 4; 2007-366, s. 1; 2011-217, s. 2; 2017-25, s. 1(j).)

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

(a) Any person, partnership, corporation, limited liability company, association, or other business entity hereafter desiring to enter into business of and obtain a license as a real estate broker shall make written application for such license to the Commission in the

form and manner prescribed by the Commission. Each applicant for a license as a real estate broker shall be at least 18 years of age. Each applicant for a license as a real estate broker shall, within three years preceding the date the application is made, have satisfactorily completed, at a school approved by the Commission, an education program consisting of at least 75 hours of instruction in subjects determined by the Commission, or shall possess real estate education or experience in real estate transactions which the Commission shall find equivalent to the education program. Each applicant for a license as a real estate broker shall be required to pay a fee. The application fee shall be one hundred dollars (\$100.00) unless the Commission sets the fee at a higher amount by rule; however, the Commission shall not set a fee that exceeds one hundred twenty dollars (\$120.00). The application fee shall not increase by more than five dollars (\$5.00) during a 12-month period.

(a1) Each person who is issued a real estate broker license on or after April 1, 2006, shall initially be classified as a provisional broker and shall, within three years following initial licensure, satisfactorily complete, at a school approved by the Commission, a postlicensing education program consisting of 90 hours of instruction in subjects determined by the Commission or shall possess real estate education or experience in real estate transactions which the Commission shall find equivalent to the education program. The Commission may, by rule, establish a schedule for completion of the prescribed postlicensing education that requires provisional brokers to complete portions of the 90-hour postlicensing education program in less than three years, and provisional brokers must comply with this schedule in order to be entitled to actively engage in real estate brokerage. Upon completion of the postlicensing education program, the provisional status of the broker's license shall be terminated. When a provisional broker fails to complete all 90 hours of required postlicensing education within three years following initial licensure, the broker's license shall be placed on inactive status. The broker's license shall not be returned to active status until he or she has satisfied such requirements as the Commission may by rule require. Every license cancelled after April 1, 2009, because the licensee failed to complete postlicensing education shall be reinstated on inactive status until such time as the licensee satisfies the requirements for returning to active status as the Commission may by rule require.

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

(b) Except as otherwise provided in this Chapter, any person who submits an application to the Commission in proper manner for a license as real estate broker shall be required to take an examination. The examination may be administered orally, by computer, or by any other method the Commission deems appropriate. The Commission may require the applicant to pay the Commission or a provider contracted by the Commission the actual cost of the examination and its administration. The cost of the examination and its administration shall be in addition to any other fees the applicant is

required to pay under subsection (a) of this section. The examination shall determine the applicant's qualifications with due regard to the paramount interests of the public as to the applicant's competency. A person who fails the license examination shall be entitled to know the result and score. A person who passes the exam shall be notified only that the person passed the examination. Whether a person passed or failed the examination shall be a matter of public record; however, the scores for license examinations shall not be considered public records. Nothing in this subsection shall limit the rights granted to any person under G.S. 93B-8.

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

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

(b1) The Department of Public Safety may provide a criminal record check to the Commission for a person who has applied for a license through the Commission. The Commission shall provide to the Department of Public Safety, along with the request, the fingerprints of the applicant, any additional information required by the Department of Public Safety, and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State

Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The Commission shall keep all information pursuant to this subsection privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

The Department of Public Safety may charge each applicant a fee for conducting the checks of criminal history records authorized by this subsection.

(b2) Records, papers, and other documentation containing personal information collected or compiled by the Commission in connection with an application for examination, licensure, certification, or renewal or reinstatement, or the subsequent update of information shall not be considered public records within the meaning of Chapter 132 of the General Statutes unless admitted into evidence in a hearing held by the Commission.

(c) All licenses issued by the Commission under the provisions of this Chapter shall expire on the 30th day of June following issuance or on any other date that the Commission may determine and shall become invalid after that date unless reinstated. A license may be renewed 45 days prior to the expiration date by filing an application with and paying to the Executive Director of the Commission the license renewal fee. The license renewal fee shall be forty-five dollars (\$45.00) unless the Commission sets the fee at a higher amount by rule; however, the Commission shall not set the license renewal fee at an amount that exceeds sixty dollars (\$60.00). The license renewal fee may not increase by more than five dollars (\$5.00) during a 12-month period. The Commission may adopt rules establishing a system of license renewal in which the licenses expire annually with varying expiration dates. These rules shall provide for prorating the annual fee to cover the initial renewal period so that no licensee shall be charged an amount greater than the annual fee for any 12-month period. The fee for reinstatement of an expired, revoked, or suspended license shall be an amount equal to two times the license renewal fee at the time the application for reinstatement is submitted. In the event a licensee fails to obtain a reinstatement of such license within six months after the expiration date thereof, the Commission may, in its discretion, consider such person as not having been previously licensed, and thereby subject to the provisions of this Chapter relating to the issuance of an original license, including the examination requirements set forth herein. Duplicate licenses may be issued by the Commission upon payment of a fee of five dollars (\$5.00) by the licensee. Commission certification of a licensee's license history shall be made only after the payment of a fee of ten dollars (\$10.00).

(d) The Commission is expressly vested with the power and authority to make and enforce any and all reasonable rules and regulations connected with license application, examination, renewal, and reinstatement as shall be deemed necessary to administer and enforce the provisions of this Chapter. The Commission is further authorized to adopt reasonable rules and regulations necessary for the approval of real estate schools, instructors, and textbooks and rules that prescribe specific requirements pertaining to instruction, administration, and content of required education courses and programs.

(e) Nothing contained in this Chapter shall be construed as giving any authority to the Commission nor any licensee of the Commission as authorizing any licensee to engage

in the practice of law or to render any legal service as specifically set out in G.S. 84-2.1 or any other legal service not specifically referred to in said section. (1957, c. 744, s. 4; 1967, c. 281, s. 3; c. 853, s. 2; 1969, c. 191, s. 3; 1973, c. 1390; 1975, c. 112; 1979, c. 614, ss. 2, 3, 6; c. 616, ss. 2-5; 1983, c. 81, ss. 2, 9, 11; c. 384; 1985, c. 535, ss. 2-5; 1995, c. 22, s. 1; 1999-200, s. 1.; 2000-140, s. 19(b); 2002-147, s. 11; 2002-168, s. 4; 2003-361, s. 1; 2005-395, s. 5; 2007-366, s. 2; 2011-217, s. 3; 2013-280, s. 1; 2014-100, s. 17.1(o); 2016-117, s. 4(a).)

§ 93A-4.1. Continuing education.

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

(a1) The Commission may, as part of the broker continuing education requirements, require real estate brokers-in-charge to complete during each annual license period a special continuing education course consisting of not more than four classroom hours of instruction in subjects prescribed by the Commission.

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

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

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

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

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

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

(e) The Commission may award continuing education credit for an unapproved course or related educational activity. The Commission may prescribe procedures for a licensee to submit information on an unapproved course or related educational activity for continuing education credit. The Commission may charge a fee to the licensee for each course or activity submitted. The fee shall not exceed fifty dollars (\$50.00). (1993, c. 492, s. 1; 1999-229, s. 5; 2003-361, s. 2; 2005-395, s. 6; 2011-217, s. 4.)

§ 93A-4.2. Broker-in-charge qualification.

To be qualified to serve as a broker-in-charge of a real estate office, a real estate broker shall possess at least two years of full-time real estate brokerage experience or equivalent part-time real estate brokerage experience within the previous five years or real estate education or experience in real estate transactions that the Commission finds equivalent to such experience and shall complete, within a time prescribed by the Commission, a course of study prescribed by the Commission for brokers-in-charge not to exceed 12 classroom hours of instruction. A provisional broker may not be designated as a broker-in-charge. (2005-395, s. 7.)

§ 93A-4.3. Elimination of salesperson license; conversion of salesperson licenses to broker licenses.

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

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

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

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

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

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

(g) No applications for a real estate salesperson license shall be accepted by the Commission between September 1, 2005, and September 30, 2005. (2005-395, s. 7.)

§ 93A-4A: Recodified as G.S. 93A-4.1 by Session Laws 2005-395, s. 6.

§ 93A-5. Register of applicants and roster of brokers.

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

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

(c) The Commission shall file reports annually as required by G.S. 93B-2. (1957, c. 744, s. 5; 1969, c. 191, s. 4; 1983, c. 81, ss. 2, 9, 12.; 2000-140, s. 19(b); 2005-395, s. 8; 2011-217, s. 5.)

§ 93A-6. Disciplinary action by Commission.

(a) The Commission has power to take disciplinary action. Upon its own initiative, or on the 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.

The Commission has 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, advertising or otherwise.
- (4) Acting for more than one party in a transaction without the knowledge of all parties for whom he or she acts.
- (5) Accepting a commission or valuable consideration as a real estate broker on provisional status for the performance of any of the acts specified in this Article or Article 4 of this Chapter, from any person except his or her broker-in-charge or licensed broker by whom he or she is employed.
- (6) Representing or attempting to represent a real estate broker other than the broker by whom he or she is engaged or associated, without the express knowledge and consent of the broker with whom he or she is associated.
- (7) Failing, within a reasonable time, to account for or to remit any monies coming into his or her possession which belong to others.
- (8) Being unworthy or incompetent to act as a real estate broker 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 constituting the practice of law.
- (12) Commingling the money or other property of his or her principals with his or her own or failure to maintain and deposit in a trust or escrow account in a bank as provided by subsection (g) of this section all money received by him or her as a real estate licensee acting in that capacity, or an escrow agent, or the custodian or manager of the funds of another person or entity which relate to or concern that person's or entity's interest or investment in real property, 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, at the time a sales transaction is consummated, to deliver to the broker's client a detailed and accurate closing statement showing the receipt and disbursement of all monies relating to the transaction about which the broker knows or reasonably should know. If a closing statement is prepared by an attorney or lawful settlement agent, a broker may rely on the delivery of that

statement, but the broker must review the statement for accuracy and notify all parties to the closing of any errors.

(15) Violating any rule adopted by the Commission.

(b) The Commission may suspend or revoke any license issued under the provisions of this Chapter or 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 any misdemeanor or felony that involves false swearing, misrepresentation, deceit, extortion, theft, bribery, embezzlement, false pretenses, fraud, forgery, larceny, misappropriation of funds or property, perjury, or any other offense showing professional unfitness or 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 the licensee's own property;
- (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; or
- (5) The licensee, who is also licensed as an appraiser, attorney, home inspector, mortgage broker, general contractor, or member of another licensed profession or occupation, has been disciplined for an offense under any law involving fraud, theft, misrepresentation, breach of trust or fiduciary responsibility, or willful or negligent malpractice.

(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 adopted 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 the broker's principals or held in escrow or in trust for the broker's 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.

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

(f) In any contested case in which the Commission takes disciplinary action authorized by any provision of this Chapter, the Commission may also impose reasonable

conditions, restrictions, and limitations upon the license, registration, or approval issued to the disciplined person or entity. In any contested case concerning an application for licensure, time share project registration, or school, sponsor, instructor, or course approval, the Commission may impose reasonable conditions, restrictions, and limitations on any license, registration, or approval it may issue as a part of its final decision.

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

(h) 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 or her principal place of business. The clerk shall enter the order upon the judgment docket of the county. (1957, c. 744, s. 6; 1967, c. 281, s. 4; c. 853, s. 3; 1969, c. 191, s. 5; 1971, c. 86, s. 2; 1973, c. 1112; c. 1331, s. 3; 1975, c. 28; 1979, c. 616, ss. 6, 7; 1981, c. 682, s. 15; 1983, c. 81, s. 13; 1987, c. 516, ss. 1, 2; 1989, c. 563, s. 2; 1993, c. 419, s. 10; 1999-229, s. 6; 2000-149, s. 19(b); 2001-487, s. 23(b); 2002-168, s. 5; 2005-374, s. 2; 2005-395, s. 9; 2011-217, s. 6.)

§ 93A-6.1. Commission may subpoena witnesses, records, documents, or other materials.

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

(b) The Commission shall be exempt from the requirements of Chapter 53B of the General Statutes with regard to subpoenas issued to compel the production of a licensee's trust account records held by any financial institution. Notwithstanding the exemption,

whenever the Commission issues a subpoena under this subsection, the Commission shall send a copy to the licensee at his or her address of record by regular mail. (1999-229, s. 7; 2005-395, s. 10; 2011-217, s. 7.)

§ 93A-7. Power of courts to revoke.

Whenever any person, partnership, association or corporation claiming to have been injured or damaged by the gross negligence, incompetency, fraud, dishonesty or misconduct on the part of any licensee following the calling or engaging in the business herein described and shall file suit upon such claim against such licensee in any court of record in this State and shall recover judgment thereon, such court may as part of its judgment or decree in such case, if it deem it a proper case in which so to do, order a written copy of the transcript of record in said case to be forwarded by the clerk of court to the chairman of the said Commission with a recommendation that the licensee's certificate of license be revoked. (1957, c. 744, s. 7; 1983, c. 81, s. 2.)

§ 93A-8. Penalty for violation of Chapter.

Any person violating the provisions of this Chapter shall upon conviction thereof be deemed guilty of a Class 1 misdemeanor. (1957, c. 744, s. 8; 1993, c. 539, s. 657; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 93A-9. Licensing foreign brokers.

(a) The Commission may issue a broker license to an applicant licensed in a foreign jurisdiction who has satisfied the requirements for licensure set out in G.S. 93A-4 or such other requirements as the Commission in its discretion may by rule require.

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

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

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

Any person or entity licensed under this subsection shall be affiliated with a resident North Carolina real estate broker, and the resident North Carolina real estate broker shall actively and personally supervise the licensee in a manner that reasonably assures that the

licensee complies with the requirements of this Chapter and rules adopted by the Commission. A person or entity licensed under this subsection shall not, however, be affiliated with a resident North Carolina real estate provisional broker. The Commission may exempt applicants for licensure under this subsection from examination and the other licensing requirements under G.S. 93A-4. The Commission may adopt rules as it deems necessary to give effect to this subsection, including rules establishing: (i) qualifications for licensure; (ii) licensure and renewal procedures; (iii) requirements for continuing education; (iv) conduct of persons and entities licensed under this subsection and their affiliated resident real estate brokers; (v) a definition of commercial real estate; and (vi) any requirements or limitations on affiliation between resident real estate brokers and persons or entities seeking licensure under this subsection. (1957, c. 744, s. 9; 1967, c. 281, s. 5; 1969, c. 191, s. 6; 1971, c. 86, s. 3; 1983, c. 81, s. 2.; 2000-140, s. 19(b); 2003-361, s. 3; 2005-395, s. 11; 2011-217, s. 8.)

§ 93A-10. Nonresident licensees; filing of consent as to service of process and pleadings.

Every nonresident applicant shall file an irrevocable consent that suits and actions may be commenced against such applicant in any of the courts of record of this State, by the service of any process or pleading authorized by the laws of this State in any county in which the plaintiff may reside, by serving the same on the Executive Director of the Commission, said consent stipulating and agreeing that such service of such process or pleadings on said Executive Director shall be taken and held in all courts to be valid and binding as if due service had been made personally upon the applicant in this State. This consent shall be duly acknowledged, and, if made by a corporation, shall be executed by an officer of the corporation. The signature of the officer on the consent to service instrument shall be sufficient to bind the corporation and no further authentication is necessary. An application from a corporation or other business entity shall be signed by an officer of the corporation or entity or by an individual designated by the Commission. In all cases where process or pleadings shall be served, under the provisions of this Chapter, upon the Executive Director of the Commission, such process or pleadings shall be served in duplicate, one of which shall be filed in the office of the Commission and the other shall be forwarded immediately by the Executive Director of the Commission, by registered mail, to the last known business address of the nonresident licensee against which such process or pleadings are directed. (1957, c. 744, s. 10; 1983, c. 81, ss. 3, 10; 2003-361, s. 4.)

§ 93A-11. Reimbursement by real estate independent contractor of brokers' workers' compensation.

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

(b) Nothing in this section shall affect a requirement under any other law to provide workers' compensation coverage or in any manner exclude from coverage any person, firm,

or corporation otherwise subject to the provisions of Article 1 of Chapter 97 of the General Statutes. (1995, c. 127, s. 1.; 2000-140, s. 19(b); 2011-217, s. 9.)

§ 93A-12. Disputed monies.

(a) A real estate broker licensed under this Chapter or an attorney licensed to practice law in this State may deposit with the clerk of court in accordance with this section monies, other than a residential security deposit, the ownership of which are in dispute and that the real estate broker or attorney received while acting in a fiduciary capacity.

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

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

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

(e) Upon the filing of a special proceeding to recover the disputed monies, the clerk shall determine the rightful ownership of the monies and distribute the disputed monies accordingly. If no special proceeding is filed with the clerk of court within one year of the disputed monies being deposited with the clerk of court, the disputed monies shall be deemed unclaimed and shall be delivered by the clerk of court to the State Treasurer in accordance with the provisions of Article 4 of Chapter 116B of the General Statutes. (2005-395, s. 12.; 2011-350, s. 1.)

§ 93A-13. Contracts for broker services.

No action between a broker and the broker's client for recovery under an agreement for broker services is valid unless the contract is reduced to writing and signed by the party to be charged or by some other person lawfully authorized by the party to sign. (2011-165, s. 2.)

§ 93A-14: Reserved for future codification purposes.

§ 93A-15: Reserved for future codification purposes.