

§ 93A-54. Disciplinary action by Commission.

(a) The Commission has power to take disciplinary action for violation of the provisions of this Article in the offering or sale of a timeshare program to a purchaser. Upon its own motion, or on the complaint of any person, the Commission may investigate the actions of any regulated party or any other person or entity who shall assume to act in such capacity of a regulated party. If the Commission finds probable cause that a timeshare regulated party has violated any of the provisions of this Article, the Commission may hold a hearing on the allegations of misconduct.

(a1) The Commission has the power to suspend or revoke at any time a real estate license issued to a timeshare salesperson or program broker, or a certificate of registration of a timeshare program issued to a developer; or to reprimand or censure a regulated party; or to fine a regulated party in the amount of five hundred dollars (\$500.00) for each violation of this Article; or to impose any other specified penalty permitted under this Article; if, after a hearing, the Commission adjudges the regulated party to be guilty of any of the following:

- (1) Making any willful or negligent misrepresentation or any willful or negligent omission of material fact about any timeshare or timeshare program.
- (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, salespersons, advertising or otherwise.
- (4) Failing, within a reasonable time, to account for all money received from others in a timeshare transaction, and failing to remit such monies as may be required in G.S. 93A-45 of this Article.
- (5) Acting in a manner as to endanger the interest of the public.
- (6) Paying a commission, salary, or other valuable consideration to any person for acts or services performed in violation of this Article.
- (7) Any other conduct which constitutes improper, fraudulent, or dishonest dealing.
- (8) 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.
- (9) Failing to deposit and maintain in an escrow account all money received from others in a timeshare transaction as may be required in G.S. 93A-42 or G.S. 93A-45.
- (10) Failing to deliver to a purchaser a public offering statement containing the information required by G.S. 93A-44 and any other disclosures that the Commission may by regulation require.
- (11) Failing to comply with the provisions of Chapter 75 of the General Statutes in the advertising or promotion of timeshares for sale, or failing to assure such compliance by persons engaged on behalf of a developer.
- (12) Failing to comply with the provisions of G.S. 93A-48 in furnishing complete and accurate information to purchasers concerning any exchange program which may be offered to such purchaser or owner.
- (13) Making any false or fraudulent representation on an application for registration.
- (14) Violating any rule or regulation promulgated by the Commission.
- (15) Failing to record or cause to be recorded a timeshare instrument as required by G.S. 93A-42(c1) [G.S. 93A-42(c)] or failing to provide an owner the protection against liens required by G.S. 93A-57(a).
- (16) Failing as a timeshare program broker to exercise reasonable and adequate supervision of the conduct of sales at a project or location by the brokers and salespersons under the timeshare program broker's control.

(a2) The clear proceeds of fines collected pursuant to subsection (a1) of this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(b) Following a hearing, the Commission shall also have power to suspend or revoke any certificate of registration issued under the provisions of this Article or to reprimand or censure any regulated party when the regulated party 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 regulated party's performance in the timeshare business.

(c) The Commission may appear in its own name in superior court in actions for injunctive relief to prevent any person or entity from violating the provisions of this Article 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 regardless of whether the regulated party or person has been registered by the Commission.

(d) Each developer shall maintain or cause to be maintained complete records of every timeshare transaction and each independent escrow agent shall maintain or cause to be maintained complete records pertaining to the deposit, maintenance, and withdrawal of money required to be held in an escrow account, or as otherwise required by the Commission, under G.S. 93A-45 of this Article. 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 developer or independent escrow agent.

(e) When a licensee is accused of any act, omission, or misconduct under this Article which would subject the licensee to disciplinary action, the licensee may, with the consent and approval of the Commission, surrender the licensee's license and all the rights and privileges pertaining to it for a period of time to be established by the Commission. A licensee who surrenders a license shall not be eligible for, or submit any application for, licensure as a real estate broker or registration of a timeshare program during the period of license surrender. For the purposes of this section, the term licensee shall include a developer. (1983, c. 814, s. 1; 1985, c. 578, ss. 6-10; 1987, c. 516, ss. 17, 18; 1998-215, s. 138; 2000-140, s. 19(b); 2001-487, s. 23(1); 2005-395, s. 23; 2011-217, s. 22; 2021-163, s. 1(c); 2021-192, s. 5(a).)