

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 738

Short Title: Real Estate Act Amds.

(Public)

Sponsors: Senators Sherron; and Carpenter.

Referred to: Judiciary II.

April 8, 1993

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE QUALIFICATION REQUIREMENTS AND AUTHORIZE AN INCREASE IN FEES FOR PERSONS HOLDING REAL ESTATE LICENSES AS RECOMMENDED BY THE NORTH CAROLINA REAL ESTATE COMMISSION AND TO CHANGE THE TITLE OF REAL ESTATE SALESMAN TO REAL ESTATE SALESPERSON.

The General Assembly of North Carolina enacts:

Section 1. G. S. 93A-4 reads as rewritten:

"§ 93A ♦ examinations; bond; privilege licenses; renewal or reinstatement of license; power to enforce provisions.

(a) Any person, partnership, association, or corporation hereafter desiring to enter into business of and obtain a license as a real estate broker or real estate salesman shall make written application for such license to the Commission on such forms as are prescribed by the Commission. Each applicant for a license as a real estate broker or real estate salesman shall be at least 18 years of age. Each applicant for a license as a real estate salesman shall, within five years preceding the date application is made, have satisfactorily completed, at a school approved by the Commission, a real estate fundamentals course consisting of at least 30 hours of classroom instruction in subjects determined by the Commission, or possess real estate education or experience in real estate transactions which the Commission shall find equivalent to the course. Each applicant for a license as a real estate broker shall, within five years preceding the date the application is made, either have been actively engaged on a full-time basis as a licensed real estate salesman for at least two years, or have satisfactorily completed, at a school approved by the Commission, advanced courses in Real Estate Law, Real Estate

1 Finance, and Real Estate Brokerage Operations, each consisting of at least 30 hours of
2 classroom instruction, these courses to be in addition to those required for a real estate
3 salesman license, or possess real estate education or experience in real estate
4 transactions which the Commission shall find equivalent to the above requirements.
5 Each application for license as a real estate broker shall be accompanied by a fee, fixed
6 by the Commission but not to exceed thirty dollars (\$30.00). Each application for
7 license as a real estate salesman shall be accompanied by a fee, fixed by the
8 Commission but not to exceed thirty dollars (\$30.00).

9 (b) Any person who files such application to the Commission in proper manner
10 for a license as real estate broker or a license as real estate salesman shall be required to
11 take an oral or written examination to determine his qualifications with due regard to the
12 paramount interests of the public as to the honesty, truthfulness, integrity and
13 competency of the applicant.

14 The Commission may make such investigation as it deems necessary into the ethical
15 background of the applicant. If the results of the examination and investigation shall be
16 satisfactory to the Commission, then the Commission shall issue to such a person a
17 license, authorizing such person to act as a real estate broker or real estate salesman in
18 the State of North Carolina, upon the payment of privilege taxes now required by law or
19 that may hereafter be required by law. Anyone failing to pass an examination may be
20 reexamined without payment of additional fee, under such rules as the Commission may
21 adopt in such cases.

22 Provided, however, that any person who, at the time of the passage or at the
23 effective date of this Chapter, has a license to engage in, and is engaged in business as a
24 real estate broker or real estate salesman and who shall file a sworn application with the
25 Commission setting forth his qualifications, including a statement that such applicant
26 has not within five years preceding the filing of the application been convicted of any
27 felony or any misdemeanor involving moral turpitude, shall not be required to take or
28 pass such examination, but all such persons shall be entitled to receive such license
29 from the Commission under the provisions of this Chapter on proper application
30 therefor and payment of a fee of ten dollars (\$10.00).

31 (c) All licenses issued by the Commission under the provisions of this Chapter
32 shall expire on the 30th day of June following issuance or on any other date that the
33 Commission may determine and shall become invalid after that date unless reinstated. A
34 license may be renewed 45 days prior to the expiration date by filing an application with
35 and paying to the Executive Director of the Commission the fee required by the
36 Commission, which may not exceed twenty five dollars (\$25.00). The Commission may
37 adopt rules establishing a system of license renewal in which the licenses expire
38 annually with varying expiration dates. These rules shall provide for prorating the
39 annual fee to cover the initial renewal period so that no licensee shall be charged an
40 amount greater than the annual fee for any 12 month period. All licenses reinstated after
41 the expiration date thereof shall be subject to a late filing fee of five dollars (\$5.00) in
42 addition to the required renewal fee. In the event a licensee fails to obtain a
43 reinstatement of such license within 12 months after the expiration date thereof, the
44 Commission may, in its discretion, consider such person as not having been previously

1 licensed, and thereby subject to the provisions of this Chapter relating to the issuance of
2 an original license, including the examination requirements set forth herein. Duplicate
3 licenses may be issued by the Commission upon payment of a fee of five dollars (\$5.00)
4 by the licensee. Commission certification of a licensee's license history shall be made
5 only after the payment of a fee of ten dollars (\$10.00).

6 (d) The Commission is expressly vested with the power and authority to make
7 and enforce any and all such reasonable rules and regulations connected with the
8 application for any license as shall be deemed necessary to administer and enforce the
9 provisions of this Chapter. The Commission is further authorized to adopt rules and
10 regulations necessary for the approval of real estate schools and such rules and
11 regulations may, in accordance with G.S. 93A-4(a), prescribe specific requirements
12 pertaining to the teaching of mechanics and law governing real estate transactions at
13 such schools.

14 (e) Nothing contained in this Chapter shall be construed as giving any authority
15 to the Commission nor any licensee of the Commission as authorizing any licensee
16 whether by examination or under the grandfather clause or by comity to engage in the
17 practice of law or to render any legal service as specifically set out in G.S. 84-2.1 or any
18 other legal service not specifically referred to in said section.

19 **"§ 93A-4. Applications for licenses; fees; qualifications; examinations; privilege**
20 **licenses; renewal or reinstatement of license; power to enforce**
21 **provisions.**

22 (a) Any person, partnership, association, or corporation desiring to obtain a
23 license as a real estate broker or real estate salesperson shall submit a properly
24 completed written application for such license to the Commission on forms prescribed
25 by the Commission. Each person applying for a real estate broker or salesperson license
26 shall be at least 18 years of age.

27 Each person applying for a real estate salesperson license shall have satisfactorily
28 completed a Commission-approved course of study consisting of at least 60 classroom
29 hours of instruction in subjects determined by the Commission within five years
30 preceding the date application is made, or shall possess real estate education or
31 experience in real estate transactions which the Commission shall find equivalent to
32 such course of study.

33 Each person applying for a real estate broker license shall, within five years
34 preceding the date application is made, have satisfactorily completed a Commission-
35 approved course of study consisting of at least 90 classroom hours of instruction in
36 subjects determined by the Commission, such instruction to be in addition to that
37 required for a real estate salesperson license, and have obtained two years' full-time or
38 equivalent part-time experience as a licensed real estate salesman or salesperson. The
39 Commission may, in its discretion, waive all or a portion of the above qualification
40 requirements for a broker applicant upon finding that the applicant possesses other
41 equivalent real estate education or experience in real estate transactions.

42 Each applicant for a real estate broker or salesperson license shall pay a license
43 application fee fixed by the Commission, which may not exceed sixty dollars (\$60.00).
44 No additional fee shall be charged to an applicant for application processing.

1 examination, and license issuance, except that the Commission may charge an
2 additional fee in an amount sufficient to defray the actual cost per applicant of any
3 examination services which are provided by an outside agency with whom the
4 Commission has contracted for such services.

5 (b) As a condition of licensure, each applicant for a real estate broker or
6 salesperson license shall demonstrate to the Commission that the applicant possesses the
7 honesty, integrity, and moral fitness necessary to act as a real estate broker or
8 salesperson in a manner that protects the public interest, and the Commission may make
9 such investigation as it deems necessary into the background of the applicant. Except as
10 may be authorized elsewhere in this Article, any person applying for a real estate broker
11 or salesperson license shall also be required to pass an appropriate examination to
12 demonstrate his competency. If satisfied with the applicant's character and competency,
13 then the Commission shall issue a license authorizing the licensee to act as a real estate
14 broker or real estate salesperson in the State of North Carolina upon the payment of
15 privilege taxes now required by law or that may hereafter be required by law.

16 (c) All real estate broker and salesperson licenses issued by the Commission
17 under the provisions of this Chapter shall expire on the 30th day of June following
18 issuance or on such other annual expiration date as the Commission may establish, and
19 shall be invalid after that date unless properly renewed. A licensee may renew his
20 license annually with 45 days preceding the expiration date by filing the prescribed
21 renewal application and paying the renewal fee required by the Commission, which may
22 not exceed forty dollars (\$40.00). The Commission may adopt rules establishing a
23 system of license renewal in which licenses expire annually with varying expiration
24 dates. These rules shall provide for prorating the license renewal fee to cover the initial
25 renewal period so that no licensee shall be charged an amount that equates to more than
26 the annual fee for any 12-month period. A former licensee desiring to reinstate an
27 expired license within 12 months following the expiration date shall file the prescribed
28 application and pay a fee fixed by the Commission, which may not exceed eighty
29 dollars (\$80.00).

30 In the event a former licensee fails to reinstate his license within 12 months
31 following the expiration date, such former licensee must file the prescribed application
32 and pay the fee required of applicants for original licensure. The Commission may, in
33 its discretion, subject such applicants for license reinstatement to the requirements of
34 this section relating to qualifications for an original license, including the competency
35 examination, and to any continuing education required by this Chapter.

36 Duplicate and replacement licenses may be issued by the Commission upon payment
37 of a fee of five dollars (\$5.00) by the licensee. Certification of a licensee's license
38 history may be provided by the Commission upon payment of a fee of ten dollars
39 (\$10.00) by the licensee or other party requesting the certification.

40 (d) The Commission is expressly vested with the power and authority to adopt
41 rules relating to application and qualification for real estate licensure. The Commission
42 is further authorized to adopt rules prescribing minimum standards and procedures for
43 the approval of real estate prelicensing courses and the schools and instructors
44 conducting such courses.

1 (e) Nothing contained in this Chapter shall be construed as authorizing any real
2 estate licensee to engage in the practice of law or to render any legal service as
3 specifically set out in G.S. 84-2.1 or any other legal service not specifically referred to
4 in said section."

5 Sec. 2. The title of Article 1 of Chapter 93A of the General Statutes reads as
6 rewritten:

7 **"REAL ESTATE BROKERS AND SALESMEN. SALESPERSONS."**

8 Sec. 3. G.S. 93A-1 reads as rewritten:

9 **"§ 93A-1. License required of real estate brokers and real estate ~~salesmen-~~**
10 **salespersons.**

11 From and after July 1, 1957, it shall be unlawful for any person, partnership,
12 association or corporation in this State to act as a real estate broker or real estate
13 ~~salesman, salesperson,~~ or directly or indirectly to engage or assume to engage in the
14 business of real estate broker or real estate ~~salesman salesperson~~ or to advertise or hold
15 himself or themselves out as engaging in or conducting such business without first
16 obtaining a license issued by the North Carolina Real Estate Commission (hereinafter
17 referred to as the Commission), under the provisions of this Chapter."

18 Sec. 4. G.S. 93A-2(b) reads as rewritten:

19 "(b) The term real estate ~~salesman salesperson~~ within the meaning of this Chapter
20 shall mean and include any person who under the supervision of a real estate broker, for
21 a compensation or valuable consideration is associated with or engaged by or on behalf
22 of a licensed real estate broker to do, perform or deal in any act, acts or transactions set
23 out or comprehended by the foregoing definition of real estate broker."

24 Sec. 5. G.S. 93A-3(a) reads as rewritten:

25 "(a) There is hereby created the North Carolina Real Estate Commission,
26 hereinafter called the Commission. The Commission shall consist of seven members to
27 be appointed by the Governor. At least three members of the Commission shall be
28 licensed real estate brokers or real estate ~~salesmen, salespersons,~~ one of whom shall have
29 been actively engaged in the business of real estate appraising in this State for not less
30 than five years immediately preceding his appointment, and, if appointed to the
31 Commission after January 1, 1991, shall also be a State-licensed or State-certified real
32 estate appraiser. At least two members of the Commission shall be persons who are not
33 involved directly or indirectly in the real estate or real estate appraisal business.
34 Members of the Commission shall serve three-year terms, so staggered that the terms of
35 two members expire in one year, the terms of two members expire in the next year, and
36 the terms of three members expire in the third year of each three-year period. The
37 members of the Commission shall elect one of their members to serve as chairman of
38 the Commission for a term of one year. The Governor may remove any member of the
39 Commission for misconduct, incompetency, or willful neglect of duty. The Governor
40 shall have the power to fill all vacancies occurring on the Commission."

41 Sec. 6. G.S. 93A-5 reads as rewritten:

42 **"§ 93A-5. Register of applicants; roster of brokers and ~~salesmen;~~ salespersons;**
43 **financial report to Secretary of State.**

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

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

9 (c) On or before the first day of September of each year, the Commission shall
10 file with the Secretary of State a copy of the roster of real estate brokers and real estate
11 ~~salesmen~~ salespersons holding certificates of license, and at the same time shall also file
12 with the Secretary of State a report containing a complete statement of receipts and
13 disbursements of the Commission for the preceding fiscal year ending June 30 attested
14 by the affidavit of the Executive Director of the Commission."

15 Sec. 7. G.S. 93A-6 reads as rewritten:

16 "**§ 93A-6. Disciplinary action by Commission.**

17 (a) The Commission shall have power to take disciplinary action. Upon its
18 own motion, or on the verified complaint of any person, the Commission may
19 investigate the actions of any person or entity licensed under this Chapter, or any other
20 person or entity who shall assume to act in such capacity. If the Commission finds
21 probable cause that a licensee has violated any of the provisions of this Chapter, the
22 Commission may hold a hearing on the allegations of misconduct.

23 The Commission shall have power to suspend or revoke at any time a license issued
24 under the provisions of this Chapter, or to reprimand or censure any licensee, if,
25 following a hearing, the Commission adjudges the licensee to be guilty of:

- 26 (1) Making any willful or negligent misrepresentation or any willful or
27 negligent omission of material fact;
- 28 (2) Making any false promises of a character likely to influence, persuade,
29 or induce;
- 30 (3) Pursuing a course of misrepresentation or making of false promises
31 through agents, ~~salesmen~~, salespersons, advertising or otherwise;
- 32 (4) Acting for more than one party in a transaction without the knowledge
33 of all parties for whom he acts;
- 34 (5) Accepting a commission or valuable consideration as a real estate
35 ~~salesman~~ salesperson for the performance of any of the acts specified in
36 this Article or Article 4 of this Chapter, from any person except the
37 licensed broker by whom he is employed;
- 38 (6) Representing or attempting to represent a real estate broker other than
39 the broker by whom he is engaged or associated, without the express
40 knowledge and consent of the broker with whom he is associated;
- 41 (7) Failing, within a reasonable time, to account for or to remit any
42 moneys coming into his possession which belong to others;

- 1 (8) Being unworthy or incompetent to act as a real estate broker or
2 ~~salesman~~ salesperson in a manner as to endanger the interest of the
3 public;
- 4 (9) Paying a commission or valuable consideration to any person for acts
5 or services performed in violation of this Chapter;
- 6 (10) Any other conduct which constitutes improper, fraudulent or dishonest
7 dealing;
- 8 (11) Performing or undertaking to perform any legal service, as set forth in
9 G.S. 84-2.1, or any other acts constituting the practice of law;
- 10 (12) Commingling the money or other property of his principals with his
11 own or failure to maintain and deposit in a trust or escrow account in
12 an insured bank or savings and loan association in North Carolina all
13 money received by him as a real estate broker acting in that capacity,
14 or an escrow agent, or the temporary custodian of the funds of others,
15 in a real estate transaction; provided, these accounts shall not bear
16 interest unless the principals authorize in writing the deposit be made
17 in an interest bearing account and also provide for the disbursement of
18 the interest accrued;
- 19 (13) Failing to deliver, within a reasonable time, a completed copy of any
20 purchase agreement or offer to buy and sell real estate to the buyer and
21 to the seller;
- 22 (14) Failing as a broker, at the time the transaction is consummated, to
23 deliver to the seller in every real estate transaction, a complete detailed
24 closing statement showing all of the receipts and disbursements
25 handled by him for the seller or failing to deliver to the buyer a
26 complete statement showing all money received in the transaction
27 from the buyer and how and for what it was disbursed; or
- 28 (15) Violating any rule or regulation promulgated by the Commission.

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

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

- 36 (1) The licensee has obtained a license by false or fraudulent
37 representation;
- 38 (2) The licensee has been convicted or has entered a plea of guilty or no
39 contest upon which final judgment is entered by a court of competent
40 jurisdiction in this State, or any other state, of the criminal offenses of:
41 embezzlement, obtaining money under false pretense, fraud, forgery,
42 conspiracy to defraud, or any other offense involving moral turpitude
43 which would reasonably affect the licensee's performance in the real
44 estate business;

- 1 (3) The licensee has violated any of the provisions of G.S. 93A-6(a) when
2 selling, leasing, or buying his own property;
- 3 (4) The broker's unlicensed employee, who is exempt from the provisions
4 of this Chapter under G.S. 93A-2(c)(6), has committed, in the regular
5 course of business, any act which, if committed by the broker, would
6 constitute a violation of G.S. 93A-6(a) for which the broker could be
7 disciplined; or
- 8 (5) The licensee, who is also a State-licensed or State-certified real estate
9 appraiser pursuant to Article 5 of this Chapter, has violated any
10 provisions of Article 5.

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

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

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

29 Sec. 8. G.S. 93A-9 reads as rewritten:

30 "**§ 93A-9. Licensing nonresidents.**

31 An applicant from another state, which offers licensing privileges to residents of
32 North Carolina, may be licensed by conforming to all the provisions of this Chapter and,
33 in the discretion of the Commission, such other terms and conditions as are required of
34 North Carolina residents applying for license in such other state; provided that the
35 Commission may exempt from the examination prescribed in G.S. 93A-4 a broker or
36 ~~salesman~~-salesperson duly licensed in another state if a similar exemption is extended to
37 licensed brokers and ~~salesmen~~-salespersons from North Carolina."

38 Sec. 9. G.S. 93A-16 reads as rewritten:

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

40 (a) There is hereby created a special fund to be known as the 'Real Estate
41 Recovery Fund' which shall be set aside and maintained by the North Carolina Real
42 Estate Commission. Said fund shall be used in the manner provided under this Article
43 for the payment of unsatisfied judgments where the aggrieved person has suffered a

1 direct monetary loss by reason of certain acts committed by any real estate broker or
2 ~~salesman~~salesperson licensed under this Chapter.

3 (b) On September 1, 1979, the Commission shall transfer the sum of one hundred
4 thousand dollars (\$100,000) from its expense reserve fund to the Real Estate Recovery
5 Fund. Thereafter, the Commission may transfer to the Real Estate Recovery Fund
6 additional sums of money from whatever funds the Commission may have, provided
7 that, if on December 31 of any year the amount remaining in the fund is less than fifty
8 thousand dollars (\$50,000), the Commission may determine that each person or entity
9 licensed under this Chapter, when renewing his or its license, shall pay in addition to his
10 license renewal fee, a fee not to exceed ten dollars (\$10.00) per broker and five dollars
11 (\$5.00) per ~~salesman~~salesperson as shall be determined by the Commission for the
12 purpose of replenishing the fund.

13 (c) The Commission shall invest and reinvest the moneys in the Real Estate
14 Recovery Fund in the same manner as provided by law for the investment of funds by
15 the clerk of superior court. The proceeds from such investments shall be deposited to
16 the credit of the fund.

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

21 Sec. 10. G.S. 93A-17 reads as rewritten:

22 **"§ 93A-17. Grounds for payment; notice and application to Commission.**

23 (a) An aggrieved person who has suffered a direct monetary loss by reason of the
24 conversion of trust funds by a real estate broker or ~~salesman~~salesperson licensed under
25 this Chapter shall be eligible to recover, subject to the limitations of this Article, the
26 amount of trust funds converted and which is otherwise unrecoverable provided that:

27 (1) The act or acts of conversion which form the basis of the claim for
28 recovery occurred on or after September 1, 1979;

29 (2) The aggrieved person has sued the real estate broker or ~~salesman~~
30 salesperson in a court of competent jurisdiction and has filed with the
31 Commission written notice of such lawsuit within 60 days after its
32 commencement unless the claim against the Real Estate Recovery
33 Fund is for an amount less than one thousand five hundred dollars
34 (\$1,500), excluding attorneys fees, in which case the notice may be
35 filed within 60 days after the termination of all judicial proceedings
36 including appeals;

37 (3) The aggrieved person has obtained final judgment in a court of
38 competent jurisdiction against the real estate broker or ~~salesman~~
39 salesperson on grounds of conversion of trust funds arising out of a
40 transaction which occurred when such broker or ~~salesman~~salesperson
41 was licensed and acting in a capacity for which a license is required;
42 and

43 (4) Execution of the judgment has been attempted and has been returned
44 unsatisfied in whole or in part.

1 Upon the termination of all judicial proceedings including appeals, and for a period
2 of one year thereafter, a person eligible for recovery may file a verified application with
3 the Commission for payment out of the Real Estate Recovery Fund of the amount
4 remaining unpaid upon the judgment which represents the actual and direct loss
5 sustained by reason of conversion of trust funds. A copy of the judgment and return of
6 execution shall be attached to the application and filed with the Commission. The
7 applicant shall serve upon the judgment debtor a copy of the application and shall file
8 with the Commission an affidavit or certificate of such service.

9 (b) For the purposes of this Article, the term 'trust funds' shall include all earnest
10 money deposits, down payments, sales proceeds, tenant security deposits, undisbursed
11 rents and other such monies which belong to another or others and are held by a real
12 estate broker or ~~salesman~~ salesperson acting in that capacity. Trust funds shall also
13 include all time share purchase monies which are required to be held in trust by G.S.
14 93A-45(c) during the time they are, in fact, so held. Trust funds shall not include,
15 however, any funds held by an independent escrow agent under G.S. 93A-42 or any
16 funds which the court may find to be subject to an implied, constructive or resulting
17 trust.

18 (c) For the purposes of this Article, the terms 'licensee', 'broker', and '~~salesman~~
19 salesperson' shall include only individual persons licensed under this Chapter as brokers
20 and ~~salesmen~~ salespersons and shall not include a time share developer, time share
21 project, independent escrow agent, corporation or other entity licensed under this
22 Chapter."

23 Sec. 11. G.S. 93A-22 reads as rewritten:

24 "**§ 93A-22. Repayment to fund; automatic suspension of license.**

25 Should the Commission pay from the Real Estate Recovery Fund any amount in
26 settlement of a claim or toward satisfaction of a judgment against a licensed real estate
27 broker or ~~salesman~~ salesperson, the license of the broker or ~~salesman~~ salesperson shall
28 be automatically suspended upon the effective date of the order authorizing payment
29 from the fund. No such broker or ~~salesman~~ salesperson shall be granted a reinstatement
30 until he has repaid in full, plus interest at the legal rate as provided for in G.S. 24-1, the
31 amount paid from the Real Estate Recovery Fund."

32 Sec. 12. G.S. 93A-25 reads as rewritten:

33 "**§ 93A-25. Persons ineligible to recover from fund.**

34 No real estate broker or real estate ~~salesman~~ salesperson who suffers the loss of any
35 commission from any transaction in which he was acting in the capacity of a real estate
36 broker or real estate ~~salesman~~ salesperson shall be entitled to make application for
37 payment from the Real Estate Recovery Fund for such loss."

38 Sec. 13. G.S. 93A-32 reads as rewritten:

39 "**§ 93A-32. Definitions.**

40 As used in this Article:

- 41 (1) 'Commission' means the North Carolina Real Estate Commission.
- 42 (2) 'Private real estate school' means any real estate educational entity
43 which is privately owned and operated by an individual, partnership,
44 corporation or association, and which conducts, for a profit or tuition

1 charge, real estate ~~salesman~~-salesperson or broker prelicensing courses
2 prescribed by G.S. 93A-4(a) or real estate appraiser prelicensing or
3 precertification courses prescribed by G.S. 93A-73(a), provided that a
4 private business or trade school licensed by the State Board of
5 Community Colleges under G.S. 115D-571 [115D-90] to conduct
6 courses other than those real estate courses described herein shall not
7 be considered to be a private real estate school."

8 Sec. 14. G.S. 93A-34(b) reads as rewritten:

9 "(b) Application for a license shall be filed in the manner and upon the forms
10 prescribed by the Commission for that purpose. The Commission may by rule set
11 nonrefundable application fees not to exceed two hundred fifty dollars (\$250.00) for
12 each school location and fifty dollars (\$50.00) for each real estate ~~salesman~~-salesperson
13 or broker prelicensing course or real estate appraiser prelicensing or precertification
14 course. The application for a license shall be accompanied by the appropriate fees and
15 shall contain the following:

- 16 (1) Name and address of the applicant and the school;
- 17 (2) Names, biographical data, and qualifications of director, administrators
18 and instructors;
- 19 (3) Description of school facilities and equipment;
- 20 (4) Description of course(s) to be offered and instructional materials to be
21 utilized;
- 22 (5) Information on financial resources available to equip and operate the
23 school;
- 24 (6) Information on school policies and procedures regarding
25 administration, record keeping, entrance requirements, registration,
26 tuition and fees, grades, student progress, attendance, and student
27 conduct;
- 28 (7) Copies of bulletins, catalogues and other official publications;
- 29 (8) Copy of bond required by G.S. 93A-36;
- 30 (9) Such additional information as the Commission may deem necessary
31 to enable it to determine the adequacy of the instructional program and
32 the ability of the applicant to operate a school in such a manner as
33 would best serve the public interest."

34 Sec. 15. G.S. 93A-35(b) reads as rewritten:

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

44 Sec. 16. G.S. 93A-40 reads as rewritten:

1 **"§ 93A-40. Registration required of time share projects; real estate salesmen**
2 **salespersons license required.**

3 (a) From and after July 1, 1984, it shall be unlawful for any person in this State
4 to engage or assume to engage in the business of a time share ~~salesman~~salesperson
5 without first obtaining a real estate broker or ~~salesman~~salesperson license issued by the
6 North Carolina Real Estate Commission under the provisions of Article I of this
7 Chapter, and it shall be unlawful for a time share developer to sell or offer to sell a time
8 share located in this State without first obtaining a certificate of registration for the time
9 share project to be offered for sale issued by the North Carolina Real Estate
10 Commission under the provisions of this Article.

11 (b) A person responsible as general partner, corporate officer, joint venturer or
12 sole proprietor who intentionally acts as a time share developer, allowing the offering of
13 sale or the sale of time shares to a purchaser, without first obtaining registration of the
14 time share project under this Article shall be guilty of a Class I felony."

15 Sec. 17. G.S. 93A-41 reads as rewritten:

16 **"§ 93A-41. Definitions.**

17 When used in this Article, unless the context otherwise requires, the term:

- 18 (1) 'Commission' means the North Carolina Real Estate Commission;
19 (2) 'Developer' means any person or entity which creates or is engaged in
20 the business of selling its own time shares and shall include any person
21 or entity who controls, is controlled by, or is in common control with
22 the developer which is engaged in creating or selling time shares for
23 the developer;
24 (3) 'Enrolled' means paid membership in exchange programs or
25 membership in an exchange program evidenced by written acceptance
26 or confirmation of membership;
27 (4) 'Exchange company' means any person operating an exchange
28 program;
29 (5) 'Exchange program' means any opportunity or procedure for the
30 assignment or exchange of time shares among purchasers in the same
31 or other time share project;
32 (5a) 'Independent escrow agent' means a licensed attorney located in this
33 State or a financial institution located in this State;
34 (6) 'Managing agent' means a person who undertakes the duties,
35 responsibilities, and obligations of the management of a time share
36 program;
37 (7) 'Person' means one or more natural persons, corporations, partnerships,
38 associations, trusts, other entities, or any combination thereof;
39 (7a) 'Project broker' means a natural person licensed as a real estate broker
40 and designated by the developer to supervise brokers and ~~salesmen~~
41 salespersons at the time share project;
42 (8) 'Purchaser' means any person other than a developer or lender who
43 owns or acquires an interest or proposes to acquire an interest in a time
44 share;

- 1 (9) 'Time share' means a right to occupy a unit or any of several units
 2 during five or more separated time periods over a period of at least five
 3 years, including renewal options, whether or not coupled with a
 4 freehold estate or an estate for years in a time share project or a
 5 specified portion thereof, including, but not limited to, a vacation
 6 license, prepaid hotel reservation, club membership, limited
 7 partnership, or vacation bond;
- 8 (9a) 'Time share instrument' means an instrument transferring a time share
 9 or any interest, legal or beneficial, in a time share to a purchaser,
 10 including a contract, installment contract, lease, deed, or other
 11 instrument;
- 12 (10) 'Time share program' means any arrangement for time shares whereby
 13 real property has been made subject to a time share;
- 14 (11) 'Time share project' means any real property that is subject to a time
 15 share program;
- 16 (11a) 'Time share registrar' means a natural person who is designated by
 17 the developer to record or cause time share instruments and lien
 18 releases to be recorded and to fulfill the other duties imposed by this
 19 Article;
- 20 (12) 'Time share ~~salesman~~-salesperson' means a person who sells or offers
 21 to sell on behalf of a developer a time share to a purchaser; and
- 22 (13) 'Time share unit' or 'unit' means the real property or real property
 23 improvement in a project which is divided into time shares and
 24 designated for separate occupancy and use."

25 Sec. 18. G.S. 93A-45 reads as rewritten:

26 **"§ 93A-45. Purchaser's right to cancel; escrow; violation.**

27 (a) A developer shall, before transfer of a time share and no later than the date of
 28 any contract of sale, provide a prospective purchaser with a copy of a public offering
 29 statement containing the information required by G.S. 93A-44. The contract of sale is
 30 voidable by the purchaser for five days after the execution of the contract. The contract
 31 shall conspicuously disclose the purchaser's right to cancel under this subsection and
 32 how that right may be exercised. The purchaser may not waive this right of cancellation.
 33 Any oral or written declaration or instrument that purports to waive this right of
 34 cancellation is void.

35 (b) A purchaser may elect to cancel within the time period set out in subsection
 36 (a) by hand delivering or by mailing notice to the developer or the time share ~~salesman~~-
 37 salesperson. Cancellation under this section is without penalty and upon receipt of the
 38 notice all payments made prior to cancellation must be refunded immediately.

39 (c) Any payments received by a time share developer or time share ~~salesman~~
 40 salesperson in connection with the sale of the time share shall be immediately
 41 deposited by such developer or ~~salesman~~-salesperson in a trust or escrow account in an
 42 insured bank or savings and loan association in North Carolina and shall remain in such
 43 account for 10 days or cancellation by the purchaser, whichever occurs first. Payments
 44 held in such trust or escrow accounts shall be deemed to belong to the purchaser and not

1 the developer. In lieu of such escrow requirements, the Commission shall have the
2 authority to accept, in its discretion, alternative financial assurances adequate to protect
3 the purchaser's interest during the contract cancellation period, including but not limited
4 to a surety bond, corporate bond, cash deposit or irrevocable letter of credit in an
5 amount equal to the escrow requirements.

6 (d) If a developer fails to provide a purchaser to whom a time share is transferred
7 with the statement as required by subsection (a), the purchaser, in addition to any rights
8 to damages or other relief, is entitled to receive from the developer an amount equal to
9 ten percent (10%) of the sales price of the time share not to exceed three thousand
10 dollars (\$3,000). A receipt signed by the purchaser stating that he has received the
11 statement required by subsection (a) is **prima facie** evidence of delivery of such
12 statement."

13 Sec. 19. G.S. 93A-50 reads as rewritten:

14 "**§ 93A-50. Securities laws apply.**

15 The North Carolina Securities Act, Chapter 78A, shall also apply, in addition to the
16 laws relating to real estate, to time shares deemed to be investment contracts or to other
17 securities offered with or incident to a time share; provided, in the event of such
18 applicability of the North Carolina Securities Act, any offer or sale of time shares
19 registered under this Article shall not be subject to the provisions of G.S. 78A-24 and
20 any real estate broker or ~~salesman~~salesperson registered under Article 1 of this Chapter
21 shall not be subject to the provisions of G.S. 78A-36."

22 Sec. 20. G.S. 93A-52(a) reads as rewritten:

23 "(a) Prior to the offering in this State of any time share located in this State, the
24 developer of the time share project shall make written application to the Commission
25 for the registration of the project. The application shall be accompanied by a fee in an
26 amount fixed by the Commission but not to exceed fifteen hundred dollars (\$1500), and
27 shall include a description of the project, copies of proposed time share instruments
28 including public offering statements, sale contracts, deeds, and other documents referred
29 to therein, information pertaining to any marketing or managing entity to be employed
30 by the developer for the sale of time shares in a time share project or the management of
31 the project, information regarding any exchange program available to the purchaser, an
32 irrevocable appointment of the Commission to receive service of any lawful process in
33 any proceeding against the developer or the developer's ~~salesmen~~salespersons arising
34 under this Article, and such other information as the Commission may by rule require.

35 Upon receipt of a properly completed application and fee and upon a determination
36 by the Commission that the sale and management of the time shares in the time share
37 project will be directed and conducted by persons of good moral character, the
38 Commission shall issue to the developer a certificate of registration authorizing the
39 developer to offer time shares in the project for sale. The Commission shall within 15
40 days after receipt of an incomplete application, notify the developer by mail that the
41 Commission has found specified deficiencies, and shall, within 45 days after the receipt
42 of a properly completed application, either issue the certificate of registration or notify
43 the developer by mail of any specific objections to the registration of the project. The

1 certificate shall be prominently displayed in the office of the developer on the site of the
2 project.

3 The developer shall promptly report to the Commission any and all changes in the
4 information required to be submitted for the purpose of the registration. The developer
5 shall also immediately furnish the Commission complete information regarding any
6 change in its interest in a registered time share project. In the event a developer disposes
7 of, or otherwise terminates its interest in a time share project, the developer shall certify
8 to the Commission in writing that its interest in the time share project is terminated and
9 shall return to the Commission for cancellation the certificate of registration."

10 Sec. 21. G.S. 93A-54 reads as rewritten:

11 "**§ 93A-54. Disciplinary action by Commission.**

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

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

- 26 (1) Making any willful or negligent misrepresentation or any willful or
27 negligent omission of material fact about any time share or time share
28 project;
- 29 (2) Making any false promises of a character likely to influence, persuade,
30 or induce;
- 31 (3) Pursuing a course of misrepresentation or making of false promises
32 through agents, ~~salesman~~, salesperson, advertising or otherwise;
- 33 (4) Failing, within a reasonable time, to account for all money received
34 from others in a time share transaction, and failing to remit such
35 monies as may be required in G.S. 93A-45 of this Article;
- 36 (5) Acting as a time share ~~salesman~~ salesperson or time share developer in
37 a manner as to endanger the interest of the public;
- 38 (6) Paying a commission, salary, or other valuable consideration to any
39 person for acts or services performed in violation of this Article;
- 40 (7) Any other conduct which constitutes improper, fraudulent, or
41 dishonest dealing;
- 42 (8) Performing or undertaking to perform any legal service as set forth in
43 G.S. 84-2.1, or any other acts not specifically set forth in that section;

- 1 (9) Failing to deposit and maintain in a trust or escrow account in an
2 insured bank or savings and loan association in North Carolina all
3 money received from others in a time share transaction as may be
4 required in G.S. 93A-45 of this Article or failing to place with an
5 independent escrow agent the funds of a time share purchaser when
6 required by G.S. 93A-42(c);
- 7 (10) Failing to deliver to a purchaser a public offering statement containing
8 the information required by G.S. 93A-44 and any other disclosures that
9 the Commission may by regulation require;
- 10 (11) Failing to comply with the provisions of Chapter 75 of the General
11 Statutes in the advertising or promotion of time shares for sale, or
12 failing to assure such compliance by persons engaged on behalf of a
13 developer;
- 14 (12) Failing to comply with the provisions of G.S. 93A-48 in furnishing
15 complete and accurate information to purchasers concerning any
16 exchange program which may be offered to such purchaser;
- 17 (13) Making any false or fraudulent representation on an application for
18 registration;
- 19 (14) Violating any rule or regulation promulgated by the Commission;
- 20 (15) Failing to record or cause to be recorded a time share instrument as
21 required by G.S. 93A-42(c), or failing to provide a purchaser the
22 protection against liens required by G.S. 93A-57(a); or
- 23 (16) Failing as a time share project broker to exercise reasonable and
24 adequate supervision of the conduct of sales at his project or location
25 by the brokers and ~~salesmen~~ salespersons under his control.
- 26 (b) Following a hearing, the Commission shall also have power to suspend or
27 revoke any certificate of registration issued under the provisions of this Article or to
28 reprimand or censure any developer when the registrant has been convicted or has
29 entered a plea of guilty or no contest upon which final judgment is entered by a court of
30 competent jurisdiction in this State, or any other state, of the criminal offenses of:
31 embezzlement, obtaining money under false pretense, fraud, forgery, conspiracy to
32 defraud, or any other offense involving moral turpitude which would reasonably affect
33 the developer's performance in the time share business.
- 34 (c) The Commission may appear in its own name in superior court in actions for
35 injunctive relief to prevent any person or entity from violating the provisions of this
36 Article or rules promulgated by the Commission. The superior court shall have the
37 power to grant these injunctions even if criminal prosecution has been or may be
38 instituted as a result of the violations, or regardless of whether the person or entity has
39 been registered by the Commission.
- 40 (d) Each developer shall maintain or cause to be maintained complete records of
41 every time share transaction including records pertaining to the deposit, maintenance,
42 and withdrawal of money required to be held in a trust or escrow account, or as
43 otherwise required by the Commission, under G.S. 93A-45 of this Article. The
44 Commission may inspect these records periodically without prior notice and may also

1 inspect these records whenever the Commission determines that they are pertinent to an
2 investigation of any specific complaint against a registrant.

3 (e) When a licensee is accused of any act, omission, or misconduct under this
4 Article which would subject the licensee to disciplinary action, the licensee may, with
5 the consent and approval of the Commission, surrender his or its license and all the
6 rights and privileges pertaining to it for a period of time to be established by the
7 Commission. A licensee who surrenders his or its license shall not be eligible for, or
8 submit any application for, licensure as a real estate broker or ~~salesman~~ salesperson or
9 registration of a time share project during the period of license surrender. For the
10 purposes of this section, the term licensee shall include a time share developer."

11 Sec. 22. G.S. 93A-58(c) reads as rewritten:

12 "(c) The developer shall designate for each project and other locations where time
13 shares are sold or offered for sale a project broker. The project broker shall act as
14 supervising broker for all persons licensed as ~~salesmen~~ salespersons at the project or
15 other location and shall directly, personally, and actively supervise all persons licensed
16 as brokers or ~~salesmen~~ salespersons at the project or other location in a manner to
17 reasonably ensure that the sale of time shares will be conducted in accordance with the
18 provisions of this Chapter."

19 Sec. 23. G.S. 93A-71(e) reads as rewritten:

20 "(e) Nothing in this Article shall preclude a real estate broker or ~~salesman~~
21 salesperson licensed under Article 1 of this Chapter or any other person who is not a
22 State-licensed or State-certified real estate appraiser from appraising real estate for
23 compensation, provided such persons do not represent themselves as being State-
24 licensed or State-certified as a real estate appraiser."

25 Sec. 24. New education and experience requirements for real estate broker
26 and salesperson applicants under Section 1 of this act become effective July 1, 1994.
27 The current provisions of G.S. 93A-4 on that subject remain effective until that date.
28 The remainder of Section 1 of this act is effective upon ratification. The remainder of
29 the act becomes effective July 1, 1993.