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SENATE BILL 738
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Short Title: Real Estate Act Amds.

(Public)

Sponsors:

Referred to:

April 8, 1993

A BILL TO BE ENTITLED

1
2 AN ACT TO INCREASE THE QUALIFICATION REQUIREMENTS AND
3 AUTHORIZE AN INCREASE IN FEES FOR PERSONS HOLDING REAL
4 ESTATE LICENSES AS RECOMMENDED BY THE NORTH CAROLINA REAL
5 ESTATE COMMISSION AND TO CHANGE THE TITLE OF REAL ESTATE
6 SALESMAN TO REAL ESTATE SALESPERSON.

7 The General Assembly of North Carolina enacts:

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

9 "**§ 93A ♦ examinations; bond; privilege licenses; renewal or reinstatement of**
10 **license; power to enforce provisions.**

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

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

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

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

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

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

1 reinstatement of such license within 12 months after the expiration date thereof, the
2 Commission may, in its discretion, consider such person as not having been previously
3 licensed, and thereby subject to the provisions of this Chapter relating to the issuance of
4 an original license, including the examination requirements set forth herein. Duplicate
5 licenses may be issued by the Commission upon payment of a fee of five dollars (\$5.00)
6 by the licensee. Commission certification of a licensee's license history shall be made
7 only after the payment of a fee of ten dollars (\$10.00).

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

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

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

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

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

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

1 Each applicant for a real estate broker or salesperson license shall pay a license
2 application fee fixed by the Commission, which may not exceed sixty dollars (\$60.00).
3 The Commission shall not increase the application fee by an amount exceeding ten
4 dollars (\$10.00) in any calendar year. No additional fee shall be charged to an applicant
5 for application processing, examination, and license issuance, except that the
6 Commission may charge an additional fee in an amount sufficient to defray the actual
7 cost per applicant of any examination services which are provided by an outside agency
8 with whom the Commission has contracted for such services.

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

20 (c) All real estate broker and salesperson licenses issued by the Commission
21 under the provisions of this Chapter shall expire on the 30th day of June following
22 issuance or on such other annual expiration date as the Commission may establish, and
23 shall be invalid after that date unless properly renewed. A licensee may renew his
24 license annually within 45 days preceding the expiration date by filing the prescribed
25 renewal application and paying the renewal fee required by the Commission, which may
26 not exceed forty dollars (\$40.00). The Commission shall not increase the renewal fee
27 by an amount exceeding five dollars (\$5.00) in any calendar year. The Commission
28 may adopt rules establishing a system of license renewal in which licenses expire
29 annually with varying expiration dates. These rules shall provide for prorating the
30 license renewal fee to cover the initial renewal period so that no licensee shall be
31 charged an amount that equates to more than the annual fee for any 12-month period. A
32 former licensee desiring to reinstate an expired license within 12 months following the
33 expiration date shall file the prescribed application and pay a fee fixed by the
34 Commission, which may not exceed eighty dollars (\$80.00).

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

41 Duplicate and replacement licenses may be issued by the Commission upon payment
42 of a fee of five dollars (\$5.00) by the licensee. Certification of a licensee's license
43 history may be provided by the Commission upon payment of a fee of ten dollars
44 (\$10.00) by the licensee or other party requesting the certification.

1 (d) The Commission is expressly vested with the power and authority to adopt
2 rules relating to application and qualification for real estate licensure. The Commission
3 is further authorized to adopt rules prescribing minimum standards and procedures for
4 the approval of real estate prelicensing courses and the schools and instructors
5 conducting such courses.

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

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

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

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

14 **"§ 93A-1. License required of real estate brokers and real estate ~~salesmen-~~**
15 **salespersons.**

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

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

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

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

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

1 Commission for misconduct, incompetency, or willful neglect of duty. The Governor
2 shall have the power to fill all vacancies occurring on the Commission."

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

4 "**§ 93A-5. Register of applicants; roster of brokers and ~~salesmen~~; salespersons;**
5 **financial report to Secretary of State.**

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

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

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

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

21 "**§ 93A-6. Disciplinary action by Commission.**

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

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

- 31 (1) Making any willful or negligent misrepresentation or any willful or
32 negligent omission of material fact;
- 33 (2) Making any false promises of a character likely to influence, persuade,
34 or induce;
- 35 (3) Pursuing a course of misrepresentation or making of false promises
36 through agents, ~~salesmen~~, salespersons, advertising or otherwise;
- 37 (4) Acting for more than one party in a transaction without the knowledge
38 of all parties for whom he acts;
- 39 (5) Accepting a commission or valuable consideration as a real estate
40 ~~salesman~~ salesperson for the performance of any of the acts specified in
41 this Article or Article 4 of this Chapter, from any person except the
42 licensed broker by whom he is employed;

- 1 (6) Representing or attempting to represent a real estate broker other than
2 the broker by whom he is engaged or associated, without the express
3 knowledge and consent of the broker with whom he is associated;
- 4 (7) Failing, within a reasonable time, to account for or to remit any
5 moneys coming into his possession which belong to others;
- 6 (8) Being unworthy or incompetent to act as a real estate broker or
7 ~~salesman~~ salesperson in a manner as to endanger the interest of the
8 public;
- 9 (9) Paying a commission or valuable consideration to any person for acts
10 or services performed in violation of this Chapter;
- 11 (10) Any other conduct which constitutes improper, fraudulent or dishonest
12 dealing;
- 13 (11) Performing or undertaking to perform any legal service, as set forth in
14 G.S. 84-2.1, or any other acts constituting the practice of law;
- 15 (12) Commingling the money or other property of his principals with his
16 own or failure to maintain and deposit in a trust or escrow account in
17 an insured bank or savings and loan association in North Carolina all
18 money received by him as a real estate broker acting in that capacity,
19 or an escrow agent, or the temporary custodian of the funds of others,
20 in a real estate transaction; provided, these accounts shall not bear
21 interest unless the principals authorize in writing the deposit be made
22 in an interest bearing account and also provide for the disbursement of
23 the interest accrued;
- 24 (13) Failing to deliver, within a reasonable time, a completed copy of any
25 purchase agreement or offer to buy and sell real estate to the buyer and
26 to the seller;
- 27 (14) Failing as a broker, at the time the transaction is consummated, to
28 deliver to the seller in every real estate transaction, a complete detailed
29 closing statement showing all of the receipts and disbursements
30 handled by him for the seller or failing to deliver to the buyer a
31 complete statement showing all money received in the transaction
32 from the buyer and how and for what it was disbursed; or
- 33 (15) Violating any rule or regulation promulgated by the Commission.

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

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

- 41 (1) The licensee has obtained a license by false or fraudulent
42 representation;
- 43 (2) The licensee has been convicted or has entered a plea of guilty or no
44 contest upon which final judgment is entered by a court of competent

1 jurisdiction in this State, or any other state, of the criminal offenses of:
2 embezzlement, obtaining money under false pretense, fraud, forgery,
3 conspiracy to defraud, or any other offense involving moral turpitude
4 which would reasonably affect the licensee's performance in the real
5 estate business;

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

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

13 (5) The licensee, who is also a State-licensed or State-certified real estate
14 appraiser pursuant to Article 5 of this Chapter, has violated any
15 provisions of Article 5.

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

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

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

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

35 **"§ 93A-9. Licensing nonresidents.**

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

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

44 **"§ 93A-16. Real Estate Recovery Fund created; payment to fund; management.**

1 (a) There is hereby created a special fund to be known as the 'Real Estate
2 Recovery Fund' which shall be set aside and maintained by the North Carolina Real
3 Estate Commission. Said fund shall be used in the manner provided under this Article
4 for the payment of unsatisfied judgments where the aggrieved person has suffered a
5 direct monetary loss by reason of certain acts committed by any real estate broker or
6 ~~salesman~~-salesperson licensed under this Chapter.

7 (b) On September 1, 1979, the Commission shall transfer the sum of one hundred
8 thousand dollars (\$100,000) from its expense reserve fund to the Real Estate Recovery
9 Fund. Thereafter, the Commission may transfer to the Real Estate Recovery Fund
10 additional sums of money from whatever funds the Commission may have, provided
11 that, if on December 31 of any year the amount remaining in the fund is less than fifty
12 thousand dollars (\$50,000), the Commission may determine that each person or entity
13 licensed under this Chapter, when renewing his or its license, shall pay in addition to his
14 license renewal fee, a fee not to exceed ten dollars (\$10.00) per broker and five dollars
15 (\$5.00) per ~~salesman~~-salesperson as shall be determined by the Commission for the
16 purpose of replenishing the fund.

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

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

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

26 **"§ 93A-17. Grounds for payment; notice and application to Commission.**

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

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

33 (2) The aggrieved person has sued the real estate broker or ~~salesman~~
34 salesperson in a court of competent jurisdiction and has filed with the
35 Commission written notice of such lawsuit within 60 days after its
36 commencement unless the claim against the Real Estate Recovery
37 Fund is for an amount less than one thousand five hundred dollars
38 (\$1,500), excluding attorneys fees, in which case the notice may be
39 filed within 60 days after the termination of all judicial proceedings
40 including appeals;

41 (3) The aggrieved person has obtained final judgment in a court of
42 competent jurisdiction against the real estate broker or ~~salesman~~
43 salesperson on grounds of conversion of trust funds arising out of a
44 transaction which occurred when such broker or ~~salesman~~-salesperson

1 was licensed and acting in a capacity for which a license is required;
2 and
3 (4) Execution of the judgment has been attempted and has been returned
4 unsatisfied in whole or in part.

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

13 (b) For the purposes of this Article, the term 'trust funds' shall include all earnest
14 money deposits, down payments, sales proceeds, tenant security deposits, undisbursed
15 rents and other such monies which belong to another or others and are held by a real
16 estate broker or ~~salesman~~-salesperson acting in that capacity. Trust funds shall also
17 include all time share purchase monies which are required to be held in trust by G.S.
18 93A-45(c) during the time they are, in fact, so held. Trust funds shall not include,
19 however, any funds held by an independent escrow agent under G.S. 93A-42 or any
20 funds which the court may find to be subject to an implied, constructive or resulting
21 trust.

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

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

28 "**§ 93A-22. Repayment to fund; automatic suspension of license.**

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

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

37 "**§ 93A-25. Persons ineligible to recover from fund.**

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

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

43 "**§ 93A-32. Definitions.**

44 As used in this Article:

1 (1) 'Commission' means the North Carolina Real Estate Commission.

2 (2) 'Private real estate school' means any real estate educational entity
3 which is privately owned and operated by an individual, partnership,
4 corporation or association, and which conducts, for a profit or tuition
5 charge, real estate ~~salesman~~salesperson or broker prelicensing courses
6 prescribed by G.S. 93A-4(a) or real estate appraiser prelicensing or
7 precertification courses prescribed by G.S. 93A-73(a), provided that a
8 private business or trade school licensed by the State Board of
9 Community Colleges under G.S. 115D-571 [115D-90] to conduct
10 courses other than those real estate courses described herein shall not
11 be considered to be a private real estate school."

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

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

20 (1) Name and address of the applicant and the school;

21 (2) Names, biographical data, and qualifications of director, administrators
22 and instructors;

23 (3) Description of school facilities and equipment;

24 (4) Description of course(s) to be offered and instructional materials to be
25 utilized;

26 (5) Information on financial resources available to equip and operate the
27 school;

28 (6) Information on school policies and procedures regarding
29 administration, record keeping, entrance requirements, registration,
30 tuition and fees, grades, student progress, attendance, and student
31 conduct;

32 (7) Copies of bulletins, catalogues and other official publications;

33 (8) Copy of bond required by G.S. 93A-36;

34 (9) Such additional information as the Commission may deem necessary
35 to enable it to determine the adequacy of the instructional program and
36 the ability of the applicant to operate a school in such a manner as
37 would best serve the public interest."

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

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

1 location and twenty-five dollars (\$25.00) for each real estate ~~salesman~~-salesperson or
2 broker prelicensing course or real estate appraiser prelicensing or precertification
3 course."

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

5 "**§ 93A-40. Registration required of time share projects; real estate ~~salesmen~~
6 salespersons license required.**

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

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

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

20 "**§ 93A-41. Definitions.**

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

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

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

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

32 "**§ 93A-45. Purchaser's right to cancel; escrow; violation.**

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

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

1 (c) Any payments received by a time share developer or time share ~~salesman~~
2 ~~salesperson~~ ~~in connection~~ ~~with~~ the sale of the time share shall be immediately
3 deposited by such developer or ~~salesman~~ ~~salesperson~~ in a trust or escrow account in an
4 insured bank or savings and loan association in North Carolina and shall remain in such
5 account for 10 days or cancellation by the purchaser, whichever occurs first. Payments
6 held in such trust or escrow accounts shall be deemed to belong to the purchaser and not
7 the developer. In lieu of such escrow requirements, the Commission shall have the
8 authority to accept, in its discretion, alternative financial assurances adequate to protect
9 the purchaser's interest during the contract cancellation period, including but not limited
10 to a surety bond, corporate bond, cash deposit or irrevocable letter of credit in an
11 amount equal to the escrow requirements.

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

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

20 "**§ 93A-50. Securities laws apply.**

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

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

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

41 Upon receipt of a properly completed application and fee and upon a determination
42 by the Commission that the sale and management of the time shares in the time share
43 project will be directed and conducted by persons of good moral character, the
44 Commission shall issue to the developer a certificate of registration authorizing the

1 developer to offer time shares in the project for sale. The Commission shall within 15
2 days after receipt of an incomplete application, notify the developer by mail that the
3 Commission has found specified deficiencies, and shall, within 45 days after the receipt
4 of a properly completed application, either issue the certificate of registration or notify
5 the developer by mail of any specific objections to the registration of the project. The
6 certificate shall be prominently displayed in the office of the developer on the site of the
7 project.

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

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

16 "**§ 93A-54. Disciplinary action by Commission.**

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

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

- 31 (1) Making any willful or negligent misrepresentation or any willful or
32 negligent omission of material fact about any time share or time share
33 project;
- 34 (2) Making any false promises of a character likely to influence, persuade,
35 or induce;
- 36 (3) Pursuing a course of misrepresentation or making of false promises
37 through agents, ~~salesman~~, salespersons, advertising or otherwise;
- 38 (4) Failing, within a reasonable time, to account for all money received
39 from others in a time share transaction, and failing to remit such
40 monies as may be required in G.S. 93A-45 of this Article;
- 41 (5) Acting as a time share ~~salesman~~ salesperson or time share developer in
42 a manner as to endanger the interest of the public;
- 43 (6) Paying a commission, salary, or other valuable consideration to any
44 person for acts or services performed in violation of this Article;

- 1 (7) Any other conduct which constitutes improper, fraudulent, or
2 dishonest dealing;
- 3 (8) Performing or undertaking to perform any legal service as set forth in
4 G.S. 84-2.1, or any other acts not specifically set forth in that section;
- 5 (9) Failing to deposit and maintain in a trust or escrow account in an
6 insured bank or savings and loan association in North Carolina all
7 money received from others in a time share transaction as may be
8 required in G.S. 93A-45 of this Article or failing to place with an
9 independent escrow agent the funds of a time share purchaser when
10 required by G.S. 93A-42(c);
- 11 (10) Failing to deliver to a purchaser a public offering statement containing
12 the information required by G.S. 93A-44 and any other disclosures that
13 the Commission may by regulation require;
- 14 (11) Failing to comply with the provisions of Chapter 75 of the General
15 Statutes in the advertising or promotion of time shares for sale, or
16 failing to assure such compliance by persons engaged on behalf of a
17 developer;
- 18 (12) Failing to comply with the provisions of G.S. 93A-48 in furnishing
19 complete and accurate information to purchasers concerning any
20 exchange program which may be offered to such purchaser;
- 21 (13) Making any false or fraudulent representation on an application for
22 registration;
- 23 (14) Violating any rule or regulation promulgated by the Commission;
- 24 (15) Failing to record or cause to be recorded a time share instrument as
25 required by G.S. 93A-42(c), or failing to provide a purchaser the
26 protection against liens required by G.S. 93A-57(a); or
- 27 (16) Failing as a time share project broker to exercise reasonable and
28 adequate supervision of the conduct of sales at his project or location
29 by the brokers and ~~salesmen~~ salespersons under his control.

30 (b) Following a hearing, the Commission shall also have power to suspend or
31 revoke any certificate of registration issued under the provisions of this Article or to
32 reprimand or censure any developer when the registrant has been convicted or has
33 entered a plea of guilty or no contest upon which final judgment is entered by a court of
34 competent jurisdiction in this State, or any other state, of the criminal offenses of:
35 embezzlement, obtaining money under false pretense, fraud, forgery, conspiracy to
36 defraud, or any other offense involving moral turpitude which would reasonably affect
37 the developer's performance in the time share business.

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

1 (d) Each developer shall maintain or cause to be maintained complete records of
2 every time share transaction including records pertaining to the deposit, maintenance,
3 and withdrawal of money required to be held in a trust or escrow account, or as
4 otherwise required by the Commission, under G.S. 93A-45 of this Article. The
5 Commission may inspect these records periodically without prior notice and may also
6 inspect these records whenever the Commission determines that they are pertinent to an
7 investigation of any specific complaint against a registrant.

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

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

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

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

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

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