Chapter 93A.

Real Estate License Law.

Article 1.

Real Estate Brokers and Salespersons.

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

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

§ 93A-2. Definitions and exceptions.

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

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

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

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

(c) The provisions of G.S. 93A-1 and G.S. 93A-2 do not apply to and do not include:

(1) Any partnership, corporation, limited liability company, association, or other business entity that, as owner or lessor, shall perform any of the acts aforesaid with reference to property owned or leased by them, where the acts are performed in the regular course of or as incident to the management of that property and the investment therein. The exemption from licensure under this subsection shall extend to the following persons when those persons are engaged in acts or services for which the corporation, partnership, limited liability company, or other business entity would be exempt hereunder:

a. The officers and employees whose income is reported on IRS Form W-2 of an exempt corporation.

b. The general partners and employees whose income is reported on IRS Form W-2 of an exempt partnership.

c. The managers, member-managers, and employees whose income is reported on IRS Form W-2 of an exempt limited liability company.

d. The natural person owners of an exempt closely held business entity. For purposes of this subdivision, a closely held business entity is a limited liability company or a corporation, neither having more than two legal owners, at least one of whom is a natural person.

e. The officers, managers, member-managers, and employees whose income is reported on IRS Form W-2 of a closely held business entity when acting as an agent for an exempt business entity if the closely held business entity is owned by a natural person either (i) owning fifty percent (50%) or more ownership interest in the closely held business entity and the exempt business entity or (ii) owning fifty percent (50%) or more of a closely held business entity that owns a fifty percent (50%) or more ownership interest in the exempt business entity. The closely held business entity acting as an agent under this sub-subdivision must file an annual written notice with the Secretary of State, including its legal name and physical address. The exemption authorized by this sub-subdivision is only effective if, immediately following the completion of the transaction for which the exemption is claimed, the closely held business entity has a net worth that equals or exceeds the value of the transaction.

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

(2) Any person acting as an attorney-in-fact under a duly executed power of attorney from the owner authorizing the final consummation of performance of any contract for the sale, lease or exchange of real estate.

(3) Acts or services performed by an attorney who is an active member of the North Carolina State Bar if the acts and services constitute the practice of law under Chapter 84 of the General Statutes.

(4) Any person, while acting as a receiver, trustee in bankruptcy, guardian, administrator or executor or any person acting under order of any court.

(5) Any person, while acting as a trustee under a written trust agreement, deed of trust or will, or that person's regular salaried employees. The trust agreement, deed of trust, or will must specifically identify the trustee, the beneficiary, the corpus of trust, and the trustee's authority over the corpus.

(6) Any salaried person employed by a licensed real estate broker, for and on behalf of the owner of any real estate or the improvements thereon, which the licensed broker has contracted to manage for the owner, if the salaried employee's employment is limited to: exhibiting units on the real estate to prospective tenants; providing the prospective tenants with information about the lease of the units; accepting applications for lease of the units; completing and executing preprinted form leases; and accepting security deposits and rental payments for the units only when the deposits and rental payments are made payable to the owner or the broker employed by the owner. The salaried employee shall not negotiate the amount of security deposits or rental payments and shall not negotiate leases or any rental agreements on behalf of the owner or broker. However, in a vacation rental transaction as defined by G.S. 42A-4(6), the employee may offer a prospective tenant a rental price and term from a schedule setting forth prices and terms and the conditions and limitations under which they may be offered. The schedule shall be written and provided by the employee's employing broker with the written authority of the landlord.

(7) Any individual owner who personally leases or sells the owner's own property.

(8) Any housing authority organized in accordance with the provisions of Chapter 157 of the General Statutes and any regular salaried employees of the housing authority when performing acts authorized in this Chapter with regard to the sale or lease of property owned by the housing authority or the subletting of property which the housing authority holds as tenant. This exception shall not apply to any person, partnership, corporation, limited liability company, association, or other business entity that contracts with a housing authority to sell or manage property owned or leased by the housing authority. (1957, c. 744, s. 2; 1967, c. 281, s. 1; 1969, c. 191, s. 2; 1975, c. 108; 1983, c. 81, ss. 4, 5; 1985, c. 535, s. 1; 1995, c. 351, s. 20; 1999-229, ss. 2, 3; 1999-409, s. 1; 2001-487, s. 23(a); 2005-395, ss. 2, 3; 2011-217, s. 1; 2011-235, s. 1; 2015-286, s. 2.1; 2016-98, s. 1.8.)

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

(a) There is hereby created the North Carolina Real Estate Commission, hereinafter called the Commission. The Commission shall consist of nine members, seven members to be appointed by the Governor, one member to be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121, and one member to be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121. At least three members of the Commission shall be licensed real estate brokers. At least two members of the Commission shall be persons who are not involved directly or indirectly in the real estate or real estate appraisal business. Members of the Commission shall serve three-year terms, so staggered that the terms of three members expire in one year, the terms of three members expire in the next year, and the terms of three members expire in the third year of each three-year period. The members of the Commission shall elect one of their members to serve as chairman of the Commission for a term of one year. The Governor may remove any member of the Commission for misconduct, incompetency, or willful neglect of duty. The Governor shall have the power to fill all vacancies occurring on the Commission, except vacancies in legislative appointments shall be filled under G.S. 120-122.

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

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

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

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

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

(e) The Commission shall be entitled to the services of the Attorney General of North Carolina, in connection with the affairs of the Commission, and may, with the approval of the Attorney General, employ attorneys to represent the Commission or assist it in the enforcement of

this Chapter. The Commission may prefer a complaint for violation of this Chapter before any court of competent jurisdiction, and it may take the necessary legal steps through the proper legal offices of the State to enforce the provisions of this Chapter and collect the penalties provided therein.

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

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

(a) Any person, partnership, corporation, limited liability company, association, or other business entity hereafter desiring to enter into business of and obtain a license as a real estate broker shall make written application for such license to the Commission in the form and manner prescribed by the Commission. Each applicant for a license as a real estate broker shall be at least 18 years of age. Each applicant for a license as a real estate broker shall, within three years preceding the date the application is made, have satisfactorily completed, through a real estate education provider certified by the Commission, an education program consisting of at least 75 hours of instruction in subjects determined by the Commission, or shall possess real estate education or experience in real estate transactions which the Commission shall find equivalent to the education program. Each applicant for a license as a real estate broker shall be required to pay a fee. The application fee shall be one hundred dollars ($100.00) unless the Commission sets the fee at a higher amount by rule; however, the Commission shall not set a fee that exceeds one hundred twenty dollars ($120.00). The application fee shall not increase by more than five dollars ($5.00) during a 12-month period.

(a1) Each person who is issued a real estate broker license on or after April 1, 2006, shall initially be classified as a provisional broker and shall, within 18 months following initial licensure, satisfactorily complete, through a real estate education provider certified by the Commission, a postlicensing education program consisting of 90 hours of instruction in subjects determined by the Commission or shall possess real estate education or experience in real estate transactions which the Commission shall find equivalent to the education program. The Commission may, by rule, establish a schedule for completion of the prescribed postlicensing education that requires provisional brokers to complete portions of the 90-hour postlicensing education program in less than 18 months, and provisional brokers must comply with this schedule

in order to be entitled to actively engage in real estate brokerage. Upon completion of the postlicensing education program, the provisional status of the broker's license shall be terminated. When a provisional broker fails to complete all 90 hours of required postlicensing education within 18 months following initial licensure, the broker's license shall be placed on inactive status. The broker's license shall not be returned to active status until he or she has satisfied such requirements as the Commission may by rule require. Every license cancelled after April 1, 2009, because the licensee failed to complete postlicensing education shall be reinstated on inactive status until such time as the licensee satisfies the requirements for returning to active status as the Commission may by rule require.

(a2) A certified real estate education provider shall pay a fee of ten dollars ($10.00) per licensee to the Commission for each licensee completing a postlicensing education course conducted by the school, provided that these fees shall not be charged to a community college, junior college, college, or university located in this State and accredited by a preferred accrediting agency, as defined in G.S. 115D-21.2 and G.S. 116-11.4, respectively.

(b) Except as otherwise provided in this Chapter, any person who submits an application to the Commission in proper manner for a license as real estate broker shall be required to take an examination. The examination may be administered orally, by computer, or by any other method the Commission deems appropriate. The Commission may require the applicant to pay the Commission or a provider contracted by the Commission the actual cost of the examination and its administration. The cost of the examination and its administration shall be in addition to any other fees the applicant is required to pay under subsection (a) of this section. The examination shall determine the applicant's qualifications with due regard to the paramount interests of the public as to the applicant's competency. A person who fails the license examination shall be entitled to know the result and score. A person who passes the exam shall be notified only that the person passed the examination. Whether a person passed or failed the examination shall be a matter of public record; however, the scores for license examinations shall not be considered public records. Nothing in this subsection shall limit the rights granted to any person under G.S. 93B-8.

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

Notwithstanding G.S. 150B-38(c), in a contested case commenced upon the request of a party applying for licensure regarding the question of the moral character or fitness of the applicant, if

notice has been reasonably attempted, but cannot be given to the applicant personally or by certified mail in accordance with G.S. 150B-38(c), the notice of hearing shall be deemed given to the applicant when a copy of the notice is deposited in an official depository of the United States Postal Service addressed to the applicant at the latest mailing address provided by the applicant to the Commission or by any other means reasonably designed to achieve actual notice to the applicant.

(b1) The Department of Public Safety may provide a criminal record check to the Commission for a person who has applied for a license through the Commission. The Commission shall provide to the Department of Public Safety, along with the request, the fingerprints of the applicant, any additional information required by the Department of Public Safety, and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The Commission shall keep all information pursuant to this subsection privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

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

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

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

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

(e) Nothing contained in this Chapter shall be construed as giving any authority to the Commission nor any licensee of the Commission as authorizing any licensee to engage in the practice of law or to render any legal service as specifically set out in G.S. 84-2.1 or any other legal service not specifically referred to in said section. (1957, c. 744, s. 4; 1967, c. 281, s. 3; c. 853, s. 2; 1969, c. 191, s. 3; 1973, c. 1390; 1975, c. 112; 1979, c. 614, ss. 2, 3, 6; c. 616, ss. 2-5; 1983, c. 81, ss. 2, 9, 11; c. 384; 1985, c. 535, ss. 2-5; 1995, c. 22, s. 1; 1999-200, s. 1; 2000-140, s. 19(b); 2002-147, s. 11; 2002-168, s. 4; 2003-361, s. 1; 2005-395, s. 5; 2007-366, s. 2; 2011-217, s. 3; 2013-280, s. 1; 2014-100, s. 17.1(o); 2016-117, s. 4(a); 2019-195, s. 1; 2023-132, s. 3.4(b); 2025-56, s. 2(d); 2025-92, s. 2.11(g).)

§ 93A-4.1. Repealed by Session Laws 2019-195, s. 2.1, effective July 1, 2020.

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

To be qualified to serve as a broker-in-charge of a real estate office, a real estate broker shall possess at least two years of full-time real estate brokerage experience or equivalent part-time real estate brokerage experience within the previous five years or real estate education or experience in real estate transactions that the Commission finds equivalent to such experience and shall complete, within a time prescribed by the Commission, an education program prescribed by the Commission for brokers-in-charge not to exceed 12 hours of instruction. A provisional broker may not be designated as a broker-in-charge. (2005-395, s. 7; 2019-195, s. 2.2.)

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

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

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

to terminate the provisional status of the broker license and to be eligible to return his or her license to active status.

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

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

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

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

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

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

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

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

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

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

§ 93A-6. Disciplinary action by Commission.

(a) The Commission has power to take disciplinary action. Upon its own initiative, or on the complaint of any person, the Commission may investigate the actions of any person or entity licensed under this Chapter, or any other person or entity who shall assume to act in such capacity.

If the Commission finds probable cause that a licensee has violated any of the provisions of this Chapter, the Commission may hold a hearing on the allegations of misconduct.

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

(1) Making any willful or negligent misrepresentation or any willful or negligent omission of material fact.

(2) Making any false promises of a character likely to influence, persuade, or induce.

(3) Pursuing a course of misrepresentation or making of false promises through agents, advertising or otherwise.

(4) Acting for more than one party in a transaction without the knowledge of all parties for whom he or she acts.

(5) Accepting a commission or valuable consideration as a real estate broker on provisional status for the performance of any of the acts specified in this Article or Article 4 of this Chapter, from any person except his or her broker-in-charge or licensed broker by whom he or she is employed.

(6) Representing or attempting to represent a real estate broker other than the broker by whom he or she is engaged or associated, without the express knowledge and consent of the broker with whom he or she is associated.

(7) Failing, within a reasonable time, to account for or to remit any monies coming into his or her possession which belong to others.

(8) Being unworthy or incompetent to act as a real estate broker in a manner as to endanger the interest of the public.

(9) Paying a commission or valuable consideration to any person for acts or services performed in violation of this Chapter.

(10) Any other conduct which constitutes improper, fraudulent or dishonest dealing.

(11) Performing or undertaking to perform any legal service, as set forth in G.S. 84-2.1, or any other acts constituting the practice of law.

(12) Commingling the money or other property of his or her principals with his or her own or failure to maintain and deposit in a trust or escrow account in a bank as provided by subsection (g) of this section all money received by him or her as a real estate licensee acting in that capacity, or an escrow agent, or the custodian or manager of the funds of another person or entity which relate to or concern that person's or entity's interest or investment in real property, provided, these accounts shall not bear interest unless the principals authorize in writing the deposit be made in an interest bearing account and also provide for the disbursement of the interest accrued.

(13) Failing to deliver, within a reasonable time, a completed copy of any purchase agreement or offer to buy and sell real estate to the buyer and to the seller.

(14) Failing, at the time a sales transaction is consummated, to deliver to the broker's client a detailed and accurate closing statement showing the receipt and disbursement of all monies relating to the transaction about which the broker knows or reasonably should know. If a closing statement is prepared by an attorney or lawful settlement agent, a broker may rely on the delivery of that

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

(15) Violating any rule adopted by the Commission.

(b) The Commission may suspend or revoke any license issued under the provisions of this Chapter or reprimand or censure any licensee when:

(1) The licensee has obtained a license by false or fraudulent representation;

(2) The licensee has been convicted or has entered a plea of guilty or no contest upon which final judgment is entered by a court of competent jurisdiction in this State, or any other state, of any misdemeanor or felony that involves false swearing, misrepresentation, deceit, extortion, theft, bribery, embezzlement, false pretenses, fraud, forgery, larceny, misappropriation of funds or property, perjury, or any other offense showing professional unfitness or involving moral turpitude which would reasonably affect the licensee's performance in the real estate business;

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

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

(5) The licensee, who is also licensed as an appraiser, attorney, home inspector, mortgage broker, general contractor, or member of another licensed profession or occupation, has been disciplined for an offense under any law involving fraud, theft, misrepresentation, breach of trust or fiduciary responsibility, or willful or negligent malpractice.

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

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

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

(f) In any contested case in which the Commission takes disciplinary action authorized by any provision of this Chapter, the Commission may also impose reasonable conditions, restrictions, and limitations upon the license, registration, or approval issued to the disciplined person or entity. In any contested case concerning an application for licensure, time share project registration, or school, sponsor, instructor, or course approval, the Commission may impose

reasonable conditions, restrictions, and limitations on any license, registration, or approval it may issue as a part of its final decision.

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

(h) The Executive Director shall transmit a certified copy of all final orders of the Commission suspending or revoking licenses issued under this Chapter to the clerk of superior court of the county in which the licensee maintains his or her principal place of business. The clerk shall enter the order upon the judgment docket of the county. (1957, c. 744, s. 6; 1967, c. 281, s. 4; c. 853, s. 3; 1969, c. 191, s. 5; 1971, c. 86, s. 2; 1973, c. 1112; c. 1331, s. 3; 1975, c. 28; 1979, c. 616, ss. 6, 7; 1981, c. 682, s. 15; 1983, c. 81, s. 13; 1987, c. 516, ss. 1, 2; 1989, c. 563, s. 2; 1993, c. 419, s. 10; 1999-229, s. 6; 2000-149, s. 19(b); 2001-487, s. 23(b); 2002-168, s. 5; 2005-374, s. 2; 2005-395, s. 9; 2011-217, s. 6.)

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

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

(b) The Commission shall be exempt from the requirements of Chapter 53B of the General Statutes with regard to subpoenas issued to compel the production of a licensee's trust account records held by any financial institution. Notwithstanding the exemption, whenever the Commission issues a subpoena under this subsection, the Commission shall send a copy to the licensee at his or her address of record by regular mail. (1999-229, s. 7; 2005-395, s. 10; 2011-217, s. 7.)

§ 93A-7. Power of courts to revoke.

Whenever any person, partnership, association or corporation claiming to have been injured or damaged by the gross negligence, incompetency, fraud, dishonesty or misconduct on the part of any licensee following the calling or engaging in the business herein described and shall file suit upon such claim against such licensee in any court of record in this State and shall recover judgment thereon, such court may as part of its judgment or decree in such case, if it deem it a proper case in which so to do, order a written copy of the transcript of record in said case to be

forwarded by the clerk of court to the chairman of the said Commission with a recommendation that the licensee's certificate of license be revoked. (1957, c. 744, s. 7; 1983, c. 81, s. 2.)

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

Any person violating G.S. 93A-1 shall upon conviction thereof be deemed guilty of a Class 1 misdemeanor. (1957, c. 744, s. 8; 1993, c. 539, s. 657; 1994, Ex. Sess., c. 24, s. 14(c); 2019-198, s. 7.)

§ 93A-9. Licensing foreign brokers.

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

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

(1) Is of good moral character and licensed as a real estate broker or salesperson in good standing in another state or territory of the United States.

(2) Only engages in business as a real estate broker in North Carolina in transactions involving commercial real estate and while the person or entity is affiliated with a resident North Carolina real estate broker.

(3) Complies with the laws of this State regulating real estate brokers and rules adopted by the Commission.

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

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

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

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

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

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

(b) Nothing in this section shall affect a requirement under any other law to provide workers' compensation coverage or in any manner exclude from coverage any person, firm, or corporation otherwise subject to the provisions of Article 1 of Chapter 97 of the General Statutes. (1995, c. 127, s. 1.; 2000-140, s. 19(b); 2011-217, s. 9.)

§ 93A-12. Disputed monies.

(a) An escrow agent may deposit with the clerk of court in accordance with this section monies, other than a residential security deposit, the ownership of which are in dispute and that were received while the escrow agent was acting in a fiduciary capacity.

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

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

(d) An escrow agent shall not deposit disputed monies with the clerk of court until 90 days following notification of the persons claiming ownership of the disputed monies.

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

(f) As used in this section, "escrow agent" means any of the following:

(1) A real estate broker licensed under this Chapter.

(2) An attorney licensed to practice law in this State.

(3) A title insurance company or title insurance agent licensed to conduct business in this State. (2005-395, s. 12; 2011-350, s. 1; 2021-91, s. 11.)

§ 93A-13. Contracts for broker services.

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

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

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

Article 2.

Real Estate Education and Recovery Fund.

§ 93A-16. Real Estate Education and Recovery Fund created; payment to fund; management.

(a) There is hereby created a special fund to be known as the "Real Estate Education and Recovery Fund" which shall be set aside and maintained by the North Carolina Real Estate Commission. The fund shall be used in the manner provided under this Article for the payment of unsatisfied judgments where the aggrieved person has suffered a direct monetary loss by reason of certain acts committed by any real estate broker. The Commission may also expend money from the fund to create books and other publications, courses, forms, seminars, and other programs and materials to educate licensees and the public in real estate subjects. However, the Commission shall make no expenditures from the fund for educational purposes if the expenditure will reduce the balance of the fund to an amount less than two hundred thousand dollars ($200,000).

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

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

(d) The Commission shall have the authority to adopt rules and procedures not inconsistent with the provisions of this Article, to provide for the orderly, fair and efficient administration and payment of monies held in the Real Estate Education and Recovery Fund. (1979, c. 614, s. 1; 1983, c. 81, ss. 1, 2; 1987, c. 516, ss. 3-5.; 2000-140, s. 19(b); 2001-487, s. 23(c); 2005-395, s. 13; 2011-217, s. 10.)

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

(a) An aggrieved person who has suffered a direct monetary loss by reason of the conversion of trust funds by any licensed real estate broker shall be eligible to recover, subject to the limitations of this Article, the amount of trust funds converted and which is otherwise unrecoverable provided that:

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

(2) The aggrieved person has sued the real estate broker in a court of competent jurisdiction and has filed with the Commission written notice of such lawsuit within 60 days after its commencement unless the claim against the Real Estate Education and Recovery Fund is for an amount less than three thousand dollars ($3,000), excluding attorneys' fees, in which case the notice may be filed within 60 days after the termination of all judicial proceedings including appeals;

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

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

Upon the termination of all judicial proceedings including appeals, and for a period of one year thereafter, a person eligible for recovery may file a verified application with the Commission for payment out of the Real Estate Education and Recovery Fund of the amount remaining unpaid upon the judgment which represents the actual and direct loss sustained by reason of conversion of trust funds. A copy of the judgment and return of execution shall be attached to the application and filed with the Commission.

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

(c) For the purposes of this Article, the terms "licensee" and "broker" shall include only individual persons licensed under this Chapter as brokers. The terms "licensee" and "broker" shall not include a time share developer, time share project, independent escrow agent, corporation or other entity licensed under this Chapter. (1979, c. 614, s. 1; 1983, c. 81, ss. 2, 14; 1987, c. 516, s. 6; 1999-229, s. 8.; 2000-140, s. 19(b); 2005-395, s. 14; 2011-217, s. 11.)

§ 93A-18. Hearing; required showing.

Upon application by an aggrieved person, the Commission shall conduct a hearing and the aggrieved person shall be required to show that the aggrieved person:

(1) Is not a spouse of the judgment debtor or a person representing the spouse;

(2) Is making application not more than one year after termination of all judicial proceedings, including appeals, in connection with the judgment;

(3) Has complied with all requirements of this Article;

(4) Has obtained a judgment as described in G.S. 93A-17, stating the amount owing thereon at the date of application;

(5) Has made all reasonable searches and inquiries to ascertain whether the judgment debtor is possessed of real or personal property or other assets liable to be sold or applied in satisfaction of the judgment;

(6) After searching as described in subdivision (5) of this section, has discovered no real or personal property or other assets liable to be sold or applied, or has discovered certain of them, describing them, but the amount so realized was insufficient to satisfy the judgment, stating the amount realized and the balance remaining due on the judgment after application of the amount realized;

(7) Has diligently pursued the aggrieved person's remedies, which include attempting execution on the judgment against all the judgment debtors, which execution has been returned unsatisfied; and

(8) Knows of no assets of the judgment debtor and has attempted collection from all other persons who may be liable for the transaction for which the aggrieved person seeks payment from the Real Estate Education and Recovery Fund if there be any such other persons. (1979, c. 614, s. 1; 1987, c. 516, s. 7; 2001-487, s. 23(d); 2011-217, s. 12.)

§ 93A-19. Response and defense by Commission and judgment debtor; proof of conversion.

(a) Whenever the Commission proceeds upon an application as set forth in this Article, counsel for the Commission may defend such action on behalf of the fund and shall have recourse to all appropriate means of defense, including the examination of witnesses. The judgment debtor may defend such action on his or her own behalf and shall have recourse to all appropriate means of defense, including the examination of witnesses. Counsel for the Commission and the judgment debtor may file responses to the application, setting forth answers and defenses. Responses shall be filed with the Commission and copies shall be served upon every party by the filing party. If at any time it appears there are no triable issues of fact and the application for payment from the fund is without merit, the Commission shall dismiss the application. A motion to dismiss may be supported by affidavit of any person or persons having knowledge of the facts and may be made on the basis that the application or the judgment referred to therein do not form a basis for meritorious recovery within the purview of G.S. 93A-17, that the applicant has not complied with the provisions of this Article, or that the liability of the fund with regard to the particular licensee or transaction has been exhausted; provided, however, notice of the motion shall be given at least 10 days prior to the time fixed for hearing. If the applicant or judgment debtor fails to appear at the hearing after receiving notice of the hearing, the applicant or judgment debtor waives the person's rights unless the absence is excused by the Commission.

(b) Whenever the judgment obtained by an applicant is by default, stipulation, or consent, or whenever the action against the licensee was defended by a trustee in bankruptcy, the applicant, for purposes of this Article, shall have the burden of proving the cause of action for conversion of trust funds. Otherwise, the judgment shall create a rebuttable presumption of the conversion of trust funds. This presumption is a presumption affecting the burden of producing evidence. (1979, c. 614, s. 1; 1983, c. 81, s. 2; 1987, c. 516, s. 8; 1999-229, s. 9; 2001-487, s. 23(e).)

§ 93A-20. Order directing payment out of fund; compromise of claims.

Applications for payment from the Real Estate Education and Recovery Fund shall be heard and decided by a majority of the members of the Commission. If, after a hearing, the Commission finds the claim should be paid from the fund, the Commission shall enter an order requiring payment from the fund of whatever sum the Commission shall find to be payable upon the claim in accordance with the limitations contained in this Article.

Subject to Commission approval, a claim based upon the application of an aggrieved person may be compromised; however, the Commission shall not be bound in any way by any compromise or stipulation of the judgment debtor. If a claim appears to be otherwise meritorious, the Commission may waive procedural defects in the application for payment. (1979, c. 614, s. 1; 1983, c. 81, s. 2; 1987, c. 516, s. 9; 1999-229, s. 10; 2011-217, s. 13.)

§ 93A-21. Limitations; pro rata distribution; attorney fees.

(a) Payments from the Real Estate Education and Recovery Fund shall be subject to the following limitations:

(1) The right to recovery under this Article shall be forever barred unless application is made within one year after termination of all proceedings including appeals, in connection with the judgment.

(2) The fund shall not be liable for more than fifty thousand dollars ($50,000) per transaction regardless of the number of persons aggrieved or parcels of real estate involved in such transaction.

(3) Payment from the fund shall not exceed in the aggregate twenty-five thousand dollars ($25,000) for any one licensee within a single calendar year, and in no event shall it exceed in the aggregate seventy-five thousand dollars ($75,000) for any one licensee.

(4) The fund shall not be liable for payment of any judgment awards of consequential damages, multiple or punitive damages, civil penalties, incidental damages, special damages, interest, costs of court or action or other similar awards.

(b) If the maximum liability of the fund is insufficient to pay in full the valid claims of all aggrieved persons whose claims relate to the same transaction or to the same licensee, the amount for which the fund is liable shall be distributed among the claimants in a ratio that their respective claims bear to the total of such valid claims or in such manner as the Commission, in its discretion, deems equitable. Upon petition of counsel for the Commission, the Commission may require all claimants and prospective claimants to be joined in one proceeding to the end that the respective rights of all such claimants to the Real Estate Education and Recovery Fund may be equitably resolved. A person who files an application for payment after the maximum liability of the fund for the licensee or transaction has been exhausted shall not be entitled to payment and may not seek

judicial review of the Commission's award of payment to any party except upon a showing that the Commission abused its discretion.

(c) In the event an aggrieved person is entitled to payment from the fund in an amount which is equal to or less than the maximum amount of money which may be awarded in small claims court under G.S. 7A-210, the Commission may allow such person to recover from the fund reasonable attorney's fees incurred in effecting such recovery. Reimbursement for attorney's fees shall be limited to those fees incurred in effecting recovery from the fund and shall not include any fee incurred in obtaining judgment against the licensee. (1979, c. 614, s. 1; 1983, c. 81, ss. 2, 15; 1987, c. 516, ss. 10-13; 1999-229, s. 11; 2011-217, s. 14.)

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

Should the Commission pay from the Real Estate Education and Recovery Fund any amount in settlement of a claim or toward satisfaction of a judgment against a licensed real estate broker, any license issued to the broker shall be automatically suspended upon the effective date of the order authorizing payment from the fund. No such broker shall be granted a reinstatement until the fund has been repaid in full, including interest at the legal rate as provided for in G.S. 24-1. (1979, c. 614, s. 1; 1983, c. 81, s. 2; 1987, c. 516, s. 14.; 2000-140, s. 19(b); 2001-487, s. 23(f); 2005-395, s. 15; 2011-217, s. 15.)

§ 93A-23. Subrogation of rights.

When the Commission has paid from the Real Estate Education and Recovery Fund any sum to the judgment creditor, the Commission shall be subrogated to all of the rights of the judgment creditor to the extent of the amount so paid and the judgment creditor shall assign all right, title, and interest in the judgment to the extent of the amount so paid to the Commission and any amount and interest so recovered by the Commission on the judgment shall be deposited in the Real Estate Education and Recovery Fund. (1979, c. 614, s. 1; 1983, c. 81, s. 2; 1987, c. 516, s. 15; 2001-487, s. 23(g); 2011-217, s. 16.)

§ 93A-24. Waiver of rights.

The failure of an aggrieved person to comply with this Article shall constitute a waiver of any rights hereunder. (1979, c. 614, s. 1.)

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

No real estate broker who suffers the loss of any commission from any transaction in which he or she was acting in the capacity of a real estate broker shall be entitled to make application for payment from the Real Estate Education and Recovery Fund for the loss. (1979, c. 614, s. 1.; 2000-140, s. 19(b); 2001-487, s. 23(h); 2011-217, s. 17.)

§ 93A-26. Disciplinary action against licensee.

Nothing contained in this Article shall limit the authority of the Commission to take disciplinary action against any licensee under this Chapter, nor shall the repayment in full of all obligations to the fund by any licensee nullify or modify the effect of any other disciplinary proceeding brought under this Chapter. (1979, c. 614, s. 1; 1983, c. 81, s. 2.)

§§ 93A-27 through 93A-31. Reserved for future codification purposes.

Article 3.

Private Real Estate Education Providers and Continuing Education Requirements.

§ 93A-32. Definitions.

As used in this Article:

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

(2) "Private real estate education provider" or "education provider" means any individual or real estate educational entity which is privately owned and conducting, for a profit or tuition charge, real estate broker prelicensing, postlicensing, or continuing education courses prescribed by G.S. 93A-4(a) or (a1) or G.S. 93A-38.5, provided that a proprietary business or trade school licensed by the State Board of Community Colleges under G.S. 115D-90 to conduct courses other than those real estate courses described herein shall not be considered to be a private real estate education provider. (1979, 2nd Sess., c. 1193, s. 1; 1983, c. 81, ss. 1, 2; 1989, c. 563, s. 3; 1993, c. 419, s. 11; c. 553, s. 29.1.; 2000-140, s. 19(b); 2005-395, s. 16; 2019-195, s. 3.)

§ 93A-33. Commission to administer Article.

The Commission shall have authority to administer and enforce this Article and to certify private real estate education providers as defined herein which have complied with the requirements of this Article and regulations promulgated by the Commission. Through certification applications, periodic reports required of education providers, periodic investigations, and appropriate regulations, the Commission shall exercise general supervisory authority over private real estate education providers, the object of such supervision being to protect the public interest and to assure the conduct of quality real estate education programs. To this end the Commission is authorized and directed to promulgate such regulations as it deems necessary which are not inconsistent with the provisions of this Article and which relate to the subject areas set out in G.S. 93A-34(c). (1979, 2nd Sess., c. 1193, s. 1; 1983, c. 81, s. 2; 2019-195, s. 3.)

§ 93A-34. Certification required; application for certification; fees; requirements for certification.

(a) No person, partnership, corporation, association, individual, or other entity shall operate or offer to operate in this State, whether live or in any online format, as a private real estate education provider as defined herein unless a certification is first obtained from the Commission in accordance with the provisions of this Article and the rules and regulations promulgated by the Commission under this Article. For certification purposes, each branch location where an education provider conducts courses shall be considered a separate location requiring a separate certification.

(b) Application for certification shall be filed in the manner and upon the forms prescribed by the Commission for that purpose. The Commission may by rule set nonrefundable application fees not to exceed two hundred fifty dollars ($250.00) for each education provider and fifty dollars ($50.00) for each real estate broker prelicensing or postlicensing course. The application for certification shall be accompanied by the appropriate fees.

(b1) Applications for education providers utilizing methods other than only distance education shall contain all of the following:

(1) Name and address of the applicant.

(2) Names, biographical data, and qualifications of director, administrators, and instructors.
(3) Description of education provider school facilities and equipment, if any.
(4) Description of course or courses to be offered and instructional materials to be utilized.
(5) Information on policies and procedures regarding administration, record keeping, entrance requirements, registration, tuition and fees, grades, student progress, attendance, and student conduct.
(6) Copies of bulletins, catalogues, and other official publications.
(7) Repealed by Session Laws 2021-163, s. 1(a), effective October 6, 2021.
(8) Any additional information as the Commission may deem necessary to enable it to determine the adequacy of the instructional program and the ability of the applicant to operate in such a manner as would best serve the public interest.

(c) After due investigation and consideration by the Commission, certification shall be issued to the applicant when it is shown to the satisfaction of the Commission that the applicant and school are in compliance with the following standards, as well as the requirements of any supplemental regulations of the Commission regarding these standards:

(1) The program of instruction is adequate in terms of quality, content and duration.
(2) The director, administrators and instructors are adequately qualified by reason of education and experience.
(3) There are adequate facilities, equipment, instructional materials and instructor personnel to provide instruction of good quality.
(4) The education provider has adopted adequate policies and procedures regarding administration, instruction, record keeping, entrance requirements, registration, tuition and fees, grades, student progress, attendance, and student conduct.
(5) The education provider publishes and provides to all students upon enrollment a bulletin, catalogue or similar official publication which is certified as being true and correct in content and policy by an authorized school official, and which contains all of the following information:
    a. Identifying data and publication date.
    b. Name or names of education provider or providers and its full-time officials and faculty.
    c. Education provider's policies and procedures relating to entrance requirements, registration, grades, student progress, attendance, student conduct and refund of tuition and fees.
    d. Detailed schedule of tuition and fees.
    e. Detailed course outline of all courses offered.
(6) Adequate records as prescribed by the Commission are maintained in regard to grades, attendance, registration and financial operations.
(7) Institutional standards relating to grades, attendance and progress are enforced in a satisfactory manner.
(8) The applicant is financially sound and capable of fulfilling educational commitments made to students.
(9) The education provider's owner(s), director, administrators and instructors are of good reputation and character.

(10) The education provider's facilities and equipment comply with all applicable local, State and federal laws and regulations regarding health, safety, and welfare, including the Americans with Disabilities Act and other laws relating to accessibility standards for places of public accommodation.

(11) The education provider does not utilize advertising of any type which is false or misleading, either by actual statement, omission or intimation.

(12) Such additional standards as may be deemed necessary by the Commission to assure the conduct of adequate instructional programs and the operation of education providers in a manner which will best serve the public interest. (1979, 2nd Sess., c. 1193, s. 1; 1983, c. 81, ss. 1, 2; 1989, c. 563, s. 4; 1993, c. 419, s. 12; 2000-140, s. 19(b); 2005-395, s. 17; 2019-195, s. 3; 2021-163, s. 1(a).)

§ 93A-35. Duration and renewal of certifications; transfer of school ownership.

(a) All certifications issued shall expire on June 30 following the date of issuance.

(b) Certifications shall be renewable annually on July 1, provided that a renewal application accompanied by the appropriate renewal fees has been filed not later than June 1 in the form and manner prescribed by the Commission, and provided further that the applicant and education provider are found to be in compliance with the standards established for issuance of an original certification. The Commission may by rule set nonrefundable renewal fees not to exceed one hundred twenty-five dollars ($125.00) for each education provider location and twenty-five dollars ($25.00) for each real estate broker prelicensing and postlicensing course.

(c) In the event an education provider entity is sold or ownership is otherwise transferred, the certification issued to the original owner is not transferable to the new owner. The new owner must apply for an original certification as prescribed by this Article and Commission regulations. (1979, 2nd Sess., c. 1193, s. 1; 1983, c. 81, ss. 1, 2; 1989, c. 563, s. 5; 1993, c. 419, s. 13; 2000-140, s. 19(b); 2011-217, s. 18; 2019-195, s. 3.)

§ 93A-36. (Repealed) Execution of bond required; applicability to branch schools; actions upon bond. (1979, 2nd Sess., c. 1193, s. 1; 1983, c. 81, s. 2; 1999 229, s. 12; 2019 195, s. 3; repealed by 2021 163, s. 1(b), effective October 6, 2021.)

§ 93A-37: Repealed by Session Laws 2019-195, s. 3, effective July 1, 2020.

§ 93A-38. Suspension, revocation or denial of certification.

The Commission shall have the power to suspend, revoke, deny issuance, or deny renewal of certification of a private real estate education provider. In all proceedings to suspend, revoke or deny a certification, the provisions of Chapter 150B of the General Statutes shall be applicable. The Commission may suspend, revoke, or deny such certification or renewal thereof when it finds that the applicant or principal thereof or holder of such certification has done any of the following:

(1) Refused or failed to comply with any of the provisions of this Article or the rules or regulations promulgated thereunder.

(2) Knowingly presented to the Commission false or misleading information relating to matters within the purview of the Commission under this Article.

(3) Presented to its students or prospective students false or misleading information relating to its instructional program, to the instructional programs of other institutions or to employment opportunities.
(4) Failed to comply with the provisions of any contract or agreement entered into with a student.
(5) At any time refused to permit authorized representatives of the Commission to inspect the school, or failed to make available to them upon request full information relating to matters within the purview of the Commission under the provisions of this Article or the rules or regulations promulgated thereunder.
(6) Pleaded guilty, entered a plea of nolo contendere or been found guilty of a crime involving moral turpitude in any state or federal court. (1979, 2nd Sess., c. 1193, s. 1; 1983, c. 81, s. 2; 1987, c. 827, s. 1; 2005-395, s. 18; 2019-195, s. 3.)

§ 93A-38.5. Continuing education.

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

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

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

(d) The Commission may adopt rules not inconsistent with this Chapter to implement the continuing education requirement, including rules that govern:
(1) The content and subject matter of continuing education courses.
(2) The curriculum of courses required.
(3) The criteria, standards, and procedures for the approval of courses, real estate education providers, and course instructors.
(4) The methods of instruction.
(5) The computation of course credit.
(6) The ability to carry forward course credit from one year to another.
(7) The deferral of continuing education for brokers not engaged in brokerage.
(8) The waiver of or variance from the continuing education requirement for hardship or other reasons.
(9) The procedures for compliance and sanctions for noncompliance.

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

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

The Commission shall not charge a course application fee, a course renewal fee, or any other fee for a continuing education course sponsored by a community college, junior college, college, or university located in this State and accredited by a preferred accrediting agency, as defined in G.S. 115D-21.2 and G.S. 116-11.4, respectively.

(f) The Commission may award continuing education credit for an unapproved course or related educational activity. The Commission may prescribe procedures for a licensee to submit information on an unapproved course or related educational activity for continuing education credit. The Commission may charge a fee to the licensee for each course or activity submitted. The fee shall not exceed fifty dollars ($50.00). (2019-195, s. 3; 2023-132, s. 3.4(c); 2025-56, s. 2(e); 2025-92, s. 2.11(h).)

Article 4.

Timeshares.

§ 93A-39. Title.

This Article shall be known and may be cited as the "North Carolina Timeshare Act." (1983, c. 814, s. 1; 2021-163, s. 1(c); 2021-192, s. 5(a).)

§ 93A-40. Registration required of timeshare programs; real estate license required.

(a) Unless exempt under this Article, it shall be unlawful for any person in this State to engage or assume to engage in the business of a timeshare salesperson without first obtaining a real estate broker license issued by the North Carolina Real Estate Commission under the provisions of Article 1 of this Chapter unless the timeshare salesperson (i) meets the requirement for exemption set forth in G.S. 93A-2(c)(1) or (ii) is an employee of the registered timeshare developer whose income is reported on IRS Form W-2 of the registered timeshare's developer. It shall be unlawful for a timeshare developer to sell or offer to sell a timeshare required to be registered in this State pursuant to this Article without first obtaining a certificate of registration issued by the North Carolina Real Estate Commission under the provisions of this Article.

(b) A person responsible as general partner, corporate officer, joint venture, or sole proprietor who intentionally acts as a timeshare developer, allowing the offering of sale or the sale of timeshares to a purchaser, without first obtaining registration of the timeshare project under this Article shall be guilty of a Class I felony.

(c) The provisions of this Article shall not apply to the following:

(1) Any arrangement, plan, scheme, or method, including a timeshare program, wherein the contractually specified maximum total financial obligation on the owner's part is three thousand dollars ($3,000) or less during the entire term of the plan.

(2) Any arrangement, plan, scheme, or method, including a timeshare program, if the initial term and any renewal term are each for a period of five years or less, regardless of the owner's contractually specified maximum total financial obligation, if any; provided, however, that (i) the period of any optional renewal term which the owner, in the owner's sole discretion, may affirmatively elect to exercise, whether or not for additional consideration, shall not be included, and (ii) the period of any automatic renewals shall be included unless an owner has

the right to terminate the membership at any time and receive a pro rata refund or the owner receives a notice no less than 30 days and no more than 60 days prior to any renewal term informing the owner of the right to terminate at any time prior to the date of automatic renewal.

(3) The offering or sale, in another jurisdiction, of a timeshare program containing timeshare units located in this State; provided, however, that the timeshare program has been registered with the Commission.

(4) The offering or sale, in this State, of a timeshare program containing only timeshare units located in another jurisdiction or jurisdictions.

(5) The offering or sale of no more than seven timeshares within a five-year period by a consumer timeshare reseller who has acquired the timeshares for their own use and occupancy and who later offers it for resale, provided that the owner complies with the provisions of G.S. 93A-67.

(6) The offering or sale by a managing entity, not otherwise a developer, or a third party engaged by the managing entity, of 50 or fewer timeshares in the timeshare program which it manages in a given calendar year to purchasers who are not existing owners of that timeshare program, provided that the managing entity complies with the provisions of G.S. 93A-67.

(7) The conveyance, assignment, or transfer of more than seven timeshares to a purchaser who subsequently conveys, assigns, or transfers all acquired timeshares to a single purchaser in a single transaction, which transaction may occur in stages.

(8) A purchaser's acquisition, or the right to acquire, more than seven timeshare interests from an owner in connection with a loan, securitization, conduit, or similar financing arrangement transaction and who subsequently arranges for all or a portion of the timeshares to be offered by a developer in the ordinary course of business on its own behalf or on behalf of the purchaser.

(9) The offering of an accommodation, product, service, discount, or other benefit which is incidental to the timeshare program and which is not necessary for any accommodation of the timeshare program to be available for use by an owner in a manner consistent in all material respects with the manner portrayed by any promotional material, advertising, or public offering statement. (1983, c. 814, s. 1; 1987, c. 516, s. 16; 2000-140, s. 19(b); 2005-395, s. 19; 2019-195, s. 4; 2021-163, s. 1(c); 2021-192, s. 5(a).)

§ 93A-41. Definitions.

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

(1) Assessment. – The share of funds required for the payment of common expenses which is assessed from time to time against each owner by the managing entity.

(2) Board. – The board of directors of a timeshare owners' association.

(3) Closing or close. – One of the following:

a. For the sale and purchase of a timeshare estate, conveyance of the legal or beneficial title to the timeshare estate as evidenced by the delivery of a timeshare instrument for conveyance of legal title or beneficial title to

the purchaser or to the clerk of superior court in the county where the timeshare estate is located for recording.

b. For the sale and purchase of a timeshare use, the final execution and delivery by all parties of the last document necessary for vesting in the purchaser the full rights available under the timeshare program.

(4) Commission. – The North Carolina Real Estate Commission.

(5) Common expense. – All of the following:

a. Those expenses, fees, or taxes properly incurred for the maintenance, operation, and repair of the timeshare units or facilities, or both, constituting the timeshare program.

b. Any other expenses, fees, or taxes designated as common expenses in a timeshare declaration.

(6) Conspicuous type. – A print type that is separated on all sides from other type and print and that is either (i) print type in upper- and lowercase letters two point sizes larger than the largest non-conspicuous type, exclusive of headings, on the page on which it appears, but not less than 10-point type, or (ii) where the use of 10-point type would be impractical or impossible, a different style of type or print that is conspicuous under the circumstances.

(7) Consumer resale timeshares. – One of the following:

a. A timeshare owned by an owner.

b. One or more reserved occupancy rights relating to a timeshare owned by an owner.

c. One or more reserved occupancy rights relating to, or arranged through, an exchange program in which an owner is a member.

(8) Consumer timeshare reseller. – An owner who acquires a timeshare for their own use and occupancy and later offers the timeshare or the occupancy rights associated with the timeshare for resale or rental, or who contracts with a transfer service provider.

(9) Developer. – Any person or entity which (i) creates a timeshare, timeshare project, or timeshare program, (ii) purchases a timeshare for purpose of resale, or (iii) is engaged in the business of selling timeshares it owns or controls and shall include any person or entity who controls, is controlled by, or is in common control with the developer which is engaged in creating or selling timeshares for the developer.

(10) Electronic. – Relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(11) Enrolled. – Membership in an exchange program.

(12) Exchange company. – Any person operating an exchange program.

(13) Exchange program. – Any method, arrangement, or procedure for the voluntary exchange of the right to use and occupy timeshare units among owners, even if enrollment is not voluntary.

(14) Foreclosing party. – A trustee, mortgagee, managing entity, or their authorized agent who has the designated authority to pursue a nonjudicial foreclosure proceeding pursuant to G.S. 93A-62.

(15) Independent escrow agent. – A licensed attorney located in this State, or a federally insured depository institution or licensed title insurance underwriter

or agency, lawfully doing business in this State, which agrees to make its records of the account available for inspection by the Commission's representative; provided, however, that (i) the independent escrow agent is not a relative or an employee of the developer or managing entity, or of any officer, director, affiliate, or subsidiary thereof, (ii) there is no financial relationship, other than the payment of fiduciary fees, between the independent escrow agent and the developer or managing entity, or any officer, director, affiliate, or subsidiary thereof, and (iii) compensation paid by the developer to an independent escrow agent is not paid from funds in the escrow account unless and until the developer is otherwise entitled to receive the disbursement of such funds from the escrow account in accordance with this Article. A person shall not be disqualified to serve as an independent escrow agent solely because of any of the following:

a. A nonemployee, attorney-client relationship exists between the developer or managing entity and the independent escrow agent or any officer, director, affiliate, or subsidiary thereof.
b. The independent escrow agent provides the developer or managing entity with routine banking services which do not include construction or receivables financing or any other lending activities.
c. The independent escrow agent performs closings for the developer or issues owner's or lender's title insurance commitments or policies in connection with such closings.
d. The independent escrow agent is a licensed attorney or a licensed title insurance underwriter or agency and performs timeshare transfer services.

(16) Interest holder. – A developer, a mortgagee, judgment creditor, or other lienor, or any other person having an interest in or lien or encumbrance against the real property or personal property comprising or underlying the timeshare property, including the timeshares and the timeshare units, but excluding the timeshare declaration and any encumbrance placed against an owner's timeshare securing the owner's payment of purchase money financing for the purchase. With respect to a multisite timeshare program which contains timeshare units that are also part of an underlying timeshare program or condominium or other property regime, the term does not include a developer, a mortgagee, judgment creditor, or other lienor, or any other person having an interest in or lien or encumbrance against a timeshare in an underlying timeshare program or against a timeshare unit or other accommodation in an underlying condominium or property regime, except as to any timeshare, timeshare unit, or other accommodation that is specifically subject to, or otherwise dedicated to, the multisite timeshare program.

(17) Lead dealer. – A person who sells or otherwise provides a resale service provider or any other person with personal contact information for five or more purchasers or owners. If a lead dealer is not a natural person, the term shall also include the natural person providing personal contact information to a resale service provider or other person on behalf of the lead dealer entity. The term does not include developers, managing entities, or exchange companies to the

extent they provide others with personal contact information about purchasers or owners of timeshares in their own timeshare programs or members of their own exchange programs. The term does not include persons providing personal contact information that is not designed specifically or primarily to identify owners of timeshares even though the information provided may include five or more purchasers or owners.

(18) Managing entity. – Any developer, timeshare owners' association, or third-party management firm that has the duties, responsibilities, and obligations of managing a timeshare project or timeshare program.

(19) Multisite timeshare program. – A timeshare program under which an owner obtains, by any means, a recurring right to reserve, use, or occupy timeshare units of more than one timeshare project through the mandatory use of a reservation system in competition with other owners in the same timeshare program.

(20) One-to-one use night to use right ratio. – The ratio of the number of owners eligible to use the timeshare units on a given night to the number of timeshare units available for use within the timeshare program on that night, such that the total number of owners eligible to use the timeshare units during a given calendar year never exceeds the total number of timeshare units available for use in the timeshare program during that year. For purposes of the calculation under this definition, each owner must be counted at least once, and no individual timeshare units may be counted more than 365 times per calendar year or more than 366 times per leap year. An owner who is delinquent in the payment of timeshare program assessments shall continue to be considered eligible to use the timeshare units of the timeshare program for purposes of calculating the one-to-one use night to use right ratio.

(21) Owner. – Any person, other than a developer, who has acquired a timeshare.

(22) Person. – One or more natural persons, corporations, partnerships, associations, trusts, other entities, or any combination thereof.

(23) Personal contact information. – Any information that can be used to contact a purchaser or an owner, including, but not limited to, the purchaser's or owner's name, address, telephone number, and email address.

(24) Program broker. – A natural person licensed as a real estate broker and designated by the developer to supervise brokers at the timeshare program.

(25) Purchaser. – Any person, other than a developer, who is advertised or solicited to acquire a timeshare, offered a timeshare, or enters into a timeshare instrument to acquire a timeshare.

(26) Regulated party. – Any developer, exchange company, managing entity, timeshare owners' association, timeshare owners' association director or officer, third-party management firm, independent escrow agent, lead dealer, resale broker, resale service provider, resale advertiser, timeshare transfer provider, timeshare registrar, any other person having duties or obligations pursuant to this Article, and any of their respective assignees or agents.

(27) Resale advertiser. – Any person who offers, personally or through an agent, resale advertising services to consumer timeshare resellers for compensation or other valuable consideration, regardless of whether the offer is made in person,

by mail, by telephone, through the internet, or by any other medium of communication. The term does not include any of the following:

a. A resale broker to the extent that resale advertising services are offered in connection with timeshare resale brokerage services and no fee for the resale advertising service is collected in advance.

b. A developer or managing entity to the extent that either of them offers resale advertising services to owners of timeshares in their own timeshare programs.

c. A newspaper, periodical, or website owner, operator, or publisher, unless the newspaper, periodical, or website owner, operator, or publisher derives more than ten percent (10%) of its gross revenue from providing resale advertising services.

(28) Resale advertising service. – The provision of any good or service relating to advertising or promoting the resale or rental of a consumer resale timeshare located or offered within this State, including any offer to advertise or promote the sale or purchase of any such interest.

(29) Resale broker. – Any person who is issued a broker's license by the North Carolina Real Estate Commission under the provisions of Article 1 of this Chapter and who offers or provides resale brokerage services to consumer timeshare resellers for compensation or other valuable consideration, regardless of whether the offer is made in person, by mail, by telephone, through the internet, or by any other medium of communication. The term includes any agent or employee of a resale broker.

(30) Resale brokerage services. – With respect to a consumer resale timeshare located or offered within this State, any activity that directly or indirectly consists of any of the activities regulated under G.S. 93A-1.

(31) Resale service provider. – Any resale advertiser, or other person or entity, including any agent or employee of that person or entity, who offers resale brokerage or resale advertising services to consumer timeshare resellers. The term does not include (i) developers or managing entities to the extent they offer resale brokerage or resale advertising services to owners of timeshares in their own timeshare programs or (ii) resale brokers to the extent that resale advertising services are offered in connection with resale brokerage services and no fee for the advertising service is collected in advance.

(32) Reservation system. – The method, arrangement, procedure, rules, and regulations by which an owner reserves the use and occupancy of a timeshare unit for one or more timeshare periods.

(33) Reservation system operator. – The person who has the responsibility for operating any reservation system for the timeshare program. Unless the timeshare declaration provides otherwise, the operator of the reservation system is the managing entity of a timeshare program. The reservation system operator may be a third-party entity that has contracted with the developer or managing entity to provide the reservation system for the timeshare program, provided that the third party shall be deemed a managing entity as to the operation of the reservation system for purposes of this Article.

(34) Timeshare. – A timeshare estate or timeshare use.

(35) Timeshare declaration. – One or more documents, by whatever name denominated, establishing, creating, or governing the operation of a timeshare program.

(36) Timeshare estate. – The right to occupy a timeshare unit coupled with ownership of any of the following real property interests:

a. A freehold estate or an estate for years with a future interest in property.

b. An ownership interest in a condominium unit.

c. A direct or indirect beneficial interest in a trust, provided that both of the following conditions are met:

1. The timeshare instrument contains a provision declaring that such interests are real property interests.

2. The trust does not contain any timeshares created in personal property.

(37) Timeshare instrument. – An instrument transferring a timeshare or any interest, legal or beneficial, in a timeshare to a purchaser, including a contract, installment contract, lease, deed, or other instrument.

(38) Timeshare owners' association. – An association made up of all owners of timeshares in a timeshare program, including developers.

(39) Timeshare period. – The period or periods of time when an owner is afforded the opportunity to use a timeshare unit under the terms of the timeshare program.

(40) Timeshare program. – Any arrangement, plan, program, scheme, or similar device, other than an exchange program, whether by membership, agreement, tenancy in common, sale, lease, deed, rental agreement, license, or right-to-use agreement, or by any other means whereby an owner receives the right to use timeshare units for a period of time less than a full year during any given year, but not necessarily for consecutive years.

(41) Timeshare project. – A specific geographic site where all or a portion of the timeshare units of a timeshare program are located. If phased development is permitted under applicable law, separate phases operated as a single development located at a specific geographic site under common management may be deemed a single timeshare project by the developer.

(42) Timeshare property. – The property included in or subject to a timeshare program, including timeshares in an underlying timeshare program, one or more timeshare units, any amenities, any other property, and appurtenant property or rights.

(43) Timeshare registrar. – A natural person who is designated by the developer to record or cause timeshare instruments and lien releases to be recorded and to fulfill the other duties imposed by this Article.

(44) Timeshare salesperson. – A person who sells or offers to sell on behalf of a developer a timeshare to a purchaser.

(45) Timeshare transfer services. – Any service provided in this State that provides assistance in the resale, transfer, relinquishment, or other disposition of a consumer timeshare reseller's timeshare, including a reconveyance or other transfer to a developer or managing entity, whether referred to as timeshare exit,

timeshare cancellation, timeshare relief, or any similar phrase. The term does not include resale advertising services.

(46) Timeshare transfer services agreement. – A contract or other agreement between a transfer service provider and a consumer timeshare reseller in which the transfer service provider agrees to provide such services.

(47) Timeshare unit. – The real property or real property improvement in a project which is divided into timeshares and designated for separate occupancy and use.

(48) Timeshare use. – The right to occupy a timeshare unit that is not coupled with ownership of a real property interest.

(49) Transfer service provider. – Any person, including any agent, representative, subsidiary, successor, or employee of that person or entity, unless otherwise exempt, who offers or uses telemarketing, direct mail, email, or any other means of communication in connection with the offering of timeshare transfer services. (1983, c. 814, s. 1; 1985, c. 578, s. 1; 1999-229, ss. 13, 14; 2000-140, s. 19(b); 2005-395, s. 20; 2011-217, s. 19; 2021-163, s. 1(c); 2021-192, s. 5(a); 2022-75, s. 17(a).)

§ 93A-42. Timeshare estates deemed real estate; timeshare uses.

(a) A timeshare estate is deemed to be an interest in real estate and shall be governed by the law of this State relating to real estate.

(b) An owner of a timeshare located in the State may, in accordance with G.S. 47-18, register the timeshare instrument by which the owner acquired the interest and upon such registration shall be entitled to the protection provided by Chapter 47 of the General Statutes for the recordation of other real property instruments. A timeshare instrument transferring or encumbering a timeshare estate shall not be rejected for recordation because of the nature or duration of that estate, provided all other requirements necessary to make an instrument recordable are complied with. An instrument concerning a timeshare use shall not be recorded in the office of the register of deeds in any county in this State.

(c) Unless the timeshare instrument provides otherwise, the developer shall close on the sale of a timeshare estate and record or cause to be recorded a timeshare instrument for timeshare estates located in this State no later than 180 days following the execution of the contract of sale by the purchaser, provided that all payments made by the purchaser have been placed by the developer with an independent escrow agent in accordance with G.S. 93A-45.

(d) Repealed by Session Laws 2021-163, s. 1(c), effective October 6, 2021.

(e) In no event shall the developer be required to close and record a timeshare instrument if the purchaser is in default of the purchaser's obligations under the contract of sale.

(f) Recordation under the provisions of this section of the timeshare instrument shall constitute delivery of that instrument from the developer to the purchaser.

(g) A timeshare use is not an interest in real property and shall be governed by the laws of this State relating to personal property. For each transfer of the legal title to a timeshare use by a developer, the developer shall deliver an instrument evidencing such transfer to the purchaser at closing. Unless the timeshare instrument provides otherwise, the developer shall close on the sale of a timeshare use no later than 180 days following the execution of the contract of sale by the purchaser, provided that all payments made by the purchaser shall be placed by the developer with an independent escrow agent in accordance with G.S. 93A-45. In no event shall the developer be

required to close on the sale of a timeshare use if the purchaser is in default of the purchaser's obligations under the contract of sale.

(h) A developer may not sell or close on the sale of any timeshare that would cause the total number of timeshares available for use in the timeshare program to exceed the one-to-one use night to use right ratio. (1983, c. 814, s. 1; 1985, c. 578, ss. 2, 3; 1989, c. 302; 2001-487, s. 23(i); 2011-217, s. 20; 2017-25, s. 1(k); 2021-163, s. 1(c); 2021-192, s. 5(a).)

§ 93A-42.1. Construction and validity of declarations adopted prior to the Timeshare Act.

(a) All provisions contained in timeshare declarations adopted and recorded at the appropriate register of deeds office prior to July 1, 1984, are severable.

(b) The rule against perpetuities may not be applied to defeat any provision of timeshare declarations or bylaws adopted and recorded at the appropriate register of deeds office prior to July 1, 1984.

(c) Except as otherwise provided in the timeshare declaration, the board of directors of a timeshare project may, by an affirmative vote of two-thirds of the board, amend a provision within the timeshare declaration, provided that the provision to be changed meets all of the following criteria:

(1) The provision was adopted as part of the original timeshare declaration recorded prior to July 1, 1984.

(2) The provision either converts or provides a mechanism to convert ownership of timeshare units to tenancy in common.

(d) Title or interest in a timeshare project or unit is not rendered unmarketable or otherwise affected by reason of an insubstantial failure of the timeshare declaration to comply with this section. Whether a substantial failure to comply with this section impairs marketability shall be determined by the laws of this State relating to marketability.

(e) This section shall not otherwise impair the ability of the individual timeshare owner's right under the timeshare declaration, bylaws, or the laws of this State to vote to terminate the timeshare project or to amend the declaration to provide for the termination of the timeshare project and interests. (2014-99, s. 1; 2021-163, s. 1(c); 2021-192, s. 5(a).)

§ 93A-43. Partition.

When a timeshare is owned by two or more persons as tenants in common or as joint tenants, either may seek a partition by sale of that interest under Chapter 46A of the General Statutes, but no owner of a timeshare shall maintain a proceeding for partition, whether by actual partition or by partition sale, of the timeshare unit, timeshare project, or timeshare program in which the timeshare is held. (1983, c. 814, s. 1; 2020-23, s. 15; 2021-163, s. 1(c); 2021-192, s. 5(a).)

§ 93A-44. Contract of sale; public offering statement.

(a) The contract of sale between a developer and a purchaser for the sale and purchase of a timeshare must include the following:

(1) The name and address of the developer.

(2) The name and address of the timeshare program being offered.

(3) An identification or legal description of the timeshare being sold, including whether any interest in real property or personal property is being conveyed and the number of years constituting the term of the timeshare program or the timeshare if less than the term of the timeshare program.

(4) If the purchaser acquires a timeshare in a specific timeshare project, the name and location of the timeshare project to which the specific timeshare relates.

(5) A statement that the purchaser should refer to the timeshare public offering statement for more information required to be provided to the purchaser.

(6) The initial purchase price and all additional charges to which the purchaser may be subject in connection with the purchase of the timeshare, such as financing, or which will be collected from the purchaser on or before closing, such as the current year's annual assessment or any initial or special fee together with a description of the purpose of such initial or special fee.

(7) A statement disclosing the amount of the periodic assessments currently assessed against or collected from owners who own similar types of timeshares in that timeshare program.

(8) The name and address of the independent escrow agent required by G.S. 93A-45(d).

(9) The purchaser's address for the purposes of delivery of any notices.

(10) The date the purchaser signs the contract of sale.

(11) The following statement in conspicuous type:
"Any resale of this timeshare must be accompanied by certain disclosures in accordance with the North Carolina Timeshare Act."

(12) A statement in conspicuous type immediately prior to the purchaser's signature block in substantially the following form:
"You may cancel this contract of sale without any penalty or obligation before midnight five days after the date you sign this contract of sale or received the required public offering statement and all documents required to be delivered to you, whichever is later. If you decide to cancel this contract of sale, you must notify the developer in writing of your intent to cancel. Your notice of cancellation shall be effective upon the date sent and shall be sent to the developer at [insert address]. Any attempt to obtain a waiver of your cancellation right is void and of no effect. While you may execute all closing documents in advance, the closing on your purchase before expiration of your five-day cancellation period is prohibited."

(b) Prior to the execution of a contract of sale by a purchaser, each developer shall provide the purchaser with a public offering statement and shall obtain from the purchaser a written acknowledgement of receipt of the public offering statement and any documents required to be delivered to the purchaser. In addition to any other information that the developer discloses, the public offering statement must contain the following:

(1) A cover page stating only the name of the timeshare program and in conspicuous type, substantially the following statement:
"This public offering statement contains important matters to be considered in acquiring a timeshare. The statements contained in this public offering statement are only summary in nature. Purchaser should refer to all references, accompanying exhibits, contract documents, finance documents, and sales materials. Purchaser should not rely upon oral representations as being correct. The developer is prohibited from making any representations other than those contained in the contract of sale and this public offering statement."

(2) The name and principal address of the developer.

(3) A general description of the timeshare program, including the nature and types of timeshares in the timeshare program and if it is a multisite timeshare program.

(4) A description of the duration of the timeshare program and whether it includes timeshares having a shorter duration than the duration of the timeshare program.

(5) A description of the method by which an owner can reserve, use, and occupy the timeshare units, including the following:

a. The name and principal address of the entity that owns the reservation system and the entity responsible for operating the reservation system, their relationship to the developer, and the duration of any agreement for operating the reservation system.

b. A summary of the material rules governing access to and use of the reservation system, including (i) a description of the limitations, restrictions, or priorities applied in the operation of the timeshare program, (ii) if such limitations, restrictions, or priorities are not uniformly applied, a description of the manner in which they are applied, (iii) an explanation of any priority reservation features that affect an owner's ability to make reservations for the use of a given timeshare unit on a first-come, first-served basis, (iv) whether the owner must be in good standing with respect to payment of all sums due the managing entity in order to reserve, use, or occupy a timeshare unit, and (v) the terms and conditions for making, deferring, or cancelling reservations, including any transaction fees or other charges and, if applicable, a statement that such fees or charges are subject to change without owner approval.

c. Any periodic adjustment or amendment to the reservation system that may be conducted in order to respond to owner use patterns and changes in owner use demand for the timeshare units, timeshare projects, or timeshare periods. If ownership or use of the timeshare program is based on a point system, a statement indicating the circumstances by which the point values may change, the extent of such changes, and the person or entity responsible for the changes.

d. Whether and under what circumstances an owner may lose the right to reserve, use, or occupy a timeshare unit without being provided with a substitute reservation, use, or occupancy.

e. The disposition of timeshares or time periods that are not reserved by owners prior to the start of the timeshare period or prior to the start of any established point in time and who has the right to reserve and benefit from such unreserved timeshares or timeshare periods.

f. If the operator of the reservation system is going to exercise the right granted to it by G.S. 93A-63(d) to reserve, deposit, or rent the timeshare periods or timeshare units for the purpose of facilitating the use or future use of the timeshare periods or timeshare units or other benefits made available through the timeshare program by owners, a statement in conspicuous type, in substantially the following form, shall be included:

"The managing entity shall have the right to forecast anticipated reservation and use of the timeshare period or timeshare units and is authorized to reasonably reserve, deposit, or rent the timeshare period or timeshare units for the purpose of facilitating the use or future use of the accommodations or other benefits made available through the timeshare program by the owners."

g. Any use or transaction fees or charges to be paid by owners for the reservation, use, or occupancy of any timeshare units or amenities and, if applicable, a statement that the fees or charges are subject to change without owner approval.

h. The rules governing the making, cancelling, or transferring of reservations.

(6) For each timeshare project, the following information:

a. A description of the existing timeshare units and future timeshare units committed to be constructed or obtained, including the location of the timeshare project or timeshare projects in the timeshare program, and the number of bedrooms, number of bathrooms, sleeping capacity, and whether the timeshare unit contains a full kitchen for each timeshare project.

b. A description of any existing amenities and future amenities committed to be constructed or obtained, and whether such amenities are included as part of the ownership of a timeshare or made separately available and on what basis.

c. The estimated date that future timeshare units or amenities will be available as committed, and a description of financial arrangements for the completion or acquisition of future timeshare units or amenities as committed.

d. A description of the method and timing for performing maintenance of the timeshare units.

(7) A statement indicating that, on an annual basis, the one-to-one use night to use right ratio will be maintained through the duration of the timeshare program, except temporarily pursuant to G.S. 93A-61(g), or temporarily as a result of a casualty or eminent domain action.

(8) For multisite timeshare programs, a description of (i) any reserved rights to make additions, substitutions, or deletions of timeshare units, amenities, or timeshare projects, (ii) who has the authority to make such additions, substitutions, or deletions and whether owners have the right to consent, and (iii) the basis upon which such timeshare units, amenities, or timeshare projects may be added to, substituted for, or deleted from the timeshare program.

(9) With respect to the managing entity for the timeshare program, the following information, if applicable:

a. The name and principal address of the managing entity of the timeshare program.

b. Whether the managing entity for any timeshare project is different than the managing entity of the multisite timeshare program.

c. If there is a timeshare owners' association at a timeshare project or for a multisite timeshare program, whether owners are members of the timeshare owners' association, together with a general description of their rights and responsibilities with respect to the timeshare owners' association.

d. If there is a management firm, the term of the management agreement.

(10) A description of the method for calculating and apportioning assessments among owners, including the developer, together with a description of the consequences to the owner if assessments are not timely paid. The description shall also include whether reserves for the timeshare units and amenities have been established, and if not, or if any reserves are not fully funded, a statement to that effect in conspicuous type.

(11) If the developer intends to guarantee the level of assessments for the timeshare program, a statement disclosing that the developer may be excused from the payment of the developer's share of the assessments which would have been assessed against developer-owned timeshares during the guarantee period.

(12) A statement that the timeshare to be acquired by the purchaser and the timeshare property, on or before closing, (i) will be free and clear of any interest in or lien or encumbrance against the timeshare and the timeshare property by the developer or any interest holders or (ii) are the subject of a recorded subordination and notice to creditors instrument pursuant to G.S. 93A-57.

(13) A description of any civil or criminal suit or adjudication or disciplinary actions material to the timeshare program of which the developer has knowledge, including any bankruptcy of the developer that is pending or that has occurred within the past five years.

(14) A description of the insurance insuring the timeshare property for damage and destruction and insuring owners and, if applicable, the timeshare owners' association.

(15) A description of the requirements for, or restraint on, the transfer or rental of a timeshare, including any right of first refusal or the imposition of any fees or charges.

(16) A statement disclosing that any funds paid to the developer in connection with the purchase of a timeshare shall be held by an independent escrow agent in accordance with G.S. 93A-45(d) or that the developer has provided financial assurances in an amount equal to or in excess of the funds that would otherwise be held by the independent escrow agent, and that if the purchaser elects to exercise the right of cancellation or the developer defaults under the contract of sale, any funds paid to the developer shall be returned to the purchaser, as set forth in G.S. 93A-45(c).

(17) If the developer or managing entity provides purchasers with the opportunity to become a member of an exchange program in connection with the purchase of the timeshare, the name and address of the exchange company and the material terms of the opportunity.

(18) Any person who has or may have the right to alter, amend, or add to fees and charges to which the owner may be subject and the terms and conditions under which those fees and charges may be imposed.

(19) In conspicuous type, a statement in substantially the following form: "The purchase of a timeshare should be based upon its value as a vacation experience or for spending leisure time, and not considered for purposes of acquiring an appreciating investment or with an expectation that the timeshare may be rented or resold."

(20) A statement that under North Carolina law a timeshare instrument conveying a timeshare estate located in this State must be recorded in the register of deeds office at closing.

(21) Any other information which the Commission may by rule require. The Commission is also authorized to prescribe by rule the form of the public offering statement that must be furnished by the developer to each purchaser.

(c) Prior to the execution of a contract of sale by a purchaser, the following documents, including any amendments, shall also be provided to the purchaser either attached as an exhibit to the public offering statement or provided as a separate supplement with the public offering statement:

(1) The timeshare declaration.

(2) The timeshare owners' association articles of incorporation and bylaws, if applicable.

(3) Any timeshare unit or timeshare project rules and regulations.

(4) Timeshare program reservation system rules and regulations.

(5) An estimate of the current year's operating budget for the timeshare program.

(6) For multisite timeshare programs where a timeshare is provided in a particular timeshare unit or timeshare project, the applicable documents governing the timeshare unit or timeshare project set forth in subdivisions (1) through (5) of this subsection must also be separately provided as part of the public offering statement.

(d) Contemporaneously with the execution of a contract of sale by a purchaser, a copy of the contract of sale signed by the purchaser, receipt for the public offering statement signed by the purchaser, any financing documents signed by the purchaser, and any other document signed by the purchaser at the time of execution of the contract of sale shall be provided to the purchaser.

(e) If the purchaser receives documents electronically at the time of execution of a contract of sale, the developer shall provide the purchaser a separate paper or email copy of the purchaser's cancellation rights in conspicuous type as described in G.S. 93A-44(a)(12).

(f) The developer is prohibited from making any representations other than those contained in the contract of sale and the public offering statement. (1983, c. 814, s. 1; 2021-163, s. 1(c); 2021-192, s. 5(a).)

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

(a) A purchaser has the right to cancel the contract of sale until midnight of the fifth day after the later of the following events:

(1) The purchaser's execution of the contract of sale.

(2) The purchaser's receipt of the public offering statement pursuant to G.S. 93A-44 and all other documents required to be provided to the purchaser pursuant to G.S. 93A-44.

The purchaser may not waive this right of cancellation. Any oral or written declaration or instrument that purports to waive this right of cancellation is void. No closing may occur until the cancellation period of the purchaser has expired.

(b) Any notice of cancellation shall be considered given on the date postmarked if mailed, or when transmitted if delivered by electronic means, so long as the notice is actually received by the developer or independent escrow agent. If given by means of a writing transmitted other than by mail, the notice of cancellation shall be considered given at the time of delivery at the place for receipt of notice provided by the developer.

(c) Cancellation under this section is without penalty, and the refund of all monies received by the developer or timeshare salesperson shall be made within 20 days of demand therefor by the purchaser or within five days after receipt of cleared funds from the purchaser, whichever is later.

(d) Prior to a purchaser's execution of a contract of sale, the developer shall establish an escrow account with an independent escrow agent for the purpose of protecting the funds of purchasers required to be escrowed by this subsection. Any funds received prior to closing by a developer or timeshare salesperson in connection with the sale of the timeshare shall be immediately deposited by the developer or salesperson in a trust or escrow account in a federally insured depository institution or a trust institution authorized to do business in this State and shall only be disbursed in accordance with subsection (f) of this section. Payments held in such trust or escrow accounts shall be deemed to belong to the purchaser and not the developer. In lieu of escrow requirements, the Commission shall have the authority to accept, in its discretion, alternative financial assurances adequate to protect the purchaser's interest during the contract of sale cancellation period, including, but not limited to, a surety bond, corporate bond, cash deposit or irrevocable letter of credit in an amount equal to the escrow requirements or a financial assurance posted in another jurisdiction.

(e) A developer shall not be entitled to the release of any escrowed funds until the developer has provided the independent escrow agent with (i) an affidavit stating that the purchaser has defaulted under the contract of sale and the developer is entitled to the escrowed funds pursuant to the terms of the contract of sale or (ii) an affidavit that the developer has performed all of its obligations under the purchase contract, including completion of construction of all promised timeshare units and amenities or the posting of an alternate financial assurance acceptable to the Commission securing the completion of construction, and the developer and purchaser have closed on the contract of sale, together with evidence satisfactory to the independent escrow agent that the timeshare and the timeshare property is either free and clear of interests in or liens or encumbrances against the timeshare and timeshare property of any interest holder or the developer has met the requirements of G.S. 93A-57(a).

(f) An independent escrow agent shall maintain the accounts called for in this section only in such a manner as to be under the direct supervision and control of the independent escrow agent. The independent escrow agent shall have a fiduciary duty to each purchaser to maintain the escrow accounts in accordance with good accounting practices and to release the purchaser's funds or other property from escrow only in accordance with this section. The independent escrow agent shall retain all affidavits received pursuant to this section for a period of five years. Should the independent escrow agent receive conflicting demands for funds or other property held in escrow that remain unresolved for more than 30 days, the independent escrow agent shall notify the Commission of the dispute and either promptly submit the matter to arbitration or, by interpleader or otherwise, seek an adjudication of the matter by court.

(g) If the contract of sale does not include the cancellation notice as required by G.S. 93A-44(a)(12), the owner, in addition to any rights to damages or other relief, is entitled to void the transfer and receive from the developer all funds paid for the timeshare together with an amount equal to ten percent (10%) of the sales price of the timeshare not to exceed three thousand dollars ($3,000).

(h) A timeshare declaration or other instrument establishing or governing a timeshare program or an underlying timeshare property regime is not an encumbrance for purposes of this Chapter and does not create a requirement for a subordination and notice to creditors instrument for purposes of this section from any person.

(i) Any developer or independent escrow agent who intentionally fails to comply with the provisions of this Article concerning the establishment of an escrow account, deposits of funds into escrow, and withdrawal therefrom is guilty of a Class E felony. The failure to establish an escrow account or to place funds therein as required in this section is prima facie evidence of an intentional and purposeful violation of this subsection. (1983, c. 814, s. 1; 1985, c. 578, s. 4; 2000-140, s. 19(b); 2001-487, s. 23(j); 2017-25, s. 1(*l*); 2021-163, s. 1(c); 2021-192, s. 5(a).)

§ 93A-46. Prizes.

An advertisement of a timeshare which includes the offer of a prize or other inducement shall fully comply with the provisions of Chapter 75 of the General Statutes. (1983, c. 814, s. 1; 2021-163, s. 1(c); 2021-192, s. 5(a).)

§ 93A-47. Timeshare proxies.

No proxy, power of attorney or similar device given by the owner of a timeshare regarding voting in a timeshare owners' association shall exceed one year in duration, but the same may be renewed from year to year. (1983, c. 814, s. 1; 2021-163, s. 1(c); 2021-192, s. 5(a).)

§ 93A-48. Exchange programs.

(a) If a purchaser is offered the opportunity to subscribe to any exchange program, the developer shall, except as provided in subsection (b) of this section, deliver to the purchaser, prior to the execution of (i) any contract between the purchaser and the exchange company, and (ii) the contract for sale, at least the following information regarding the exchange program:

(1) The name and address of the exchange company.

(2) The names of all officers, directors, and shareholders owning five percent (5%) or more of the outstanding stock of the exchange company.

(3) Whether the exchange company or any of its officers or directors has any legal or beneficial interest in any developer or managing entity for any timeshare project participating in the exchange program and, if so, the name and location of the timeshare project and the nature of the interest.

(4) Unless the exchange company is also the developer a statement that the purchaser's contract with the exchange company is a contract separate and distinct from the contract for sale.

(5) Whether the purchaser's participation in the exchange program is dependent upon the continued affiliation of the timeshare project with the exchange program.

(6) Whether the purchaser's membership or participation, or both, in the exchange program is voluntary or mandatory.

(7) A complete and accurate description of the terms and conditions of the purchaser's contractual relationship with the exchange company and the procedure by which changes thereto may be made.

(8) A complete and accurate description of the procedure to qualify for and effectuate exchanges.

(9) A complete and accurate description of all limitations, restrictions, or priorities employed in the operation of the exchange program, including, but not limited to, limitations on exchanges based on seasonality, unit size, or levels of occupancy, expressed in conspicuous type, and, in the event that such limitations, restrictions, or priorities are not uniformly applied by the exchange program, a clear description of the manner in which they are applied.

(10) Whether exchanges are arranged on a space available basis and whether any guarantees of fulfillment of specific requests for exchanges are made by the exchange program.

(11) Whether and under what circumstances an owner, in dealing with the exchange company, may lose the use and occupancy of the owner's timeshare in any properly applied for exchange without being provided with substitute accommodations by the exchange company.

(12) The expenses, fees or range of fees for participation by owners in the exchange program, a statement whether any such fees may be altered by the exchange company, and the circumstances under which alterations may be made.

(13) The name and address of the site of each timeshare project or other property which is participating in the exchange program.

(14) The number of units in each timeshare project or other property participating in the exchange program which are available for occupancy and which qualify for participation in the exchange program, expressed within the following numerical groupings, 1-5, 6-10, 11-20, 21-50 and 51, and over.

(15) The number of owners with respect to each timeshare project or other property which are eligible to participate in the exchange program expressed within the following numerical groupings, 1-100, 101-249, 250-499, 500-999, and 1,000 and over, and a statement of the criteria used to determine those owners who are currently eligible to participate in the exchange program.

(16) The disposition made by the exchange company of timeshares deposited with the exchange program by owners eligible to participate in the exchange program and not used by the exchange company in effecting exchanges.

(17) The following information which, except as provided in subsection (b) of this section, shall be independently audited by a certified public accountant in accordance with the standards of the Accounting Standards Board of the American Institute of Certified Public Accountants and reported for each year no later than July 1, of the succeeding year:

a. The number of owners enrolled in the exchange program and such numbers shall disclose the relationship between the exchange company and owners as being either fee paying or gratuitous in nature.

b. The number of timeshare projects or other properties eligible to participate in the exchange program categorized by those having a contractual relationship between the developer or the association and

the exchange company and those having solely a contractual relationship between the exchange company and owners directly.

c. The percentage of confirmed exchanges, which shall be the number of exchanges confirmed by the exchange company divided by the number of exchanges properly applied for, together with a complete and accurate statement of the criteria used to determine whether an exchange requested was properly applied for.

d. The number of timeshares or other intervals for which the exchange company has an outstanding obligation to provide an exchange to an owner who relinquished a timeshare or interval during the year in exchange for a timeshare or interval in any future year.

e. The number of exchanges confirmed by the exchange company during the year.

(18) A statement in conspicuous type to the effect that the percentage described in sub-subdivision c. of subdivision (17) of this subsection is a summary of the exchange requests entered with the exchange company in the period reported and that the percentage does not indicate a purchaser's/owner's probabilities of being confirmed to any specific choice or range of choices, since availability at individual locations may vary.

The purchaser shall certify in writing to the receipt of the information required by this subsection and any other information which the Commission may by rule require.

(b) The information required by subdivisions (2), (3), (13), (14), (15), and (17) of subsection (a) of this section shall be accurate as of December 31 of the year preceding the year in which the information is delivered, except for information delivered within the first 180 days of any calendar year which shall be accurate as of December 31 of the year two years preceding the year in which the information is delivered to the purchaser. The remaining information required by subsection (a) of this section shall be accurate as of a date which is no more than 30 days prior to the date on which the information is delivered to the purchaser.

(c) In the event an exchange company offers an exchange program directly to the purchaser or owner, the exchange company shall deliver to each purchaser or owner, concurrently with the offering and prior to the execution of any contract between the purchaser or owner and the exchange company the information set forth in subsection (a) of this section. The requirements of this subsection shall not apply to any renewal of a contract between an owner and an exchange company.

(d) All promotional brochures, pamphlets, advertisements, or other materials disseminated by the exchange company to purchasers in this State which contain the percentage of confirmed exchanges described in sub-subdivision c. of subdivision (17) of subsection (a) of this section must include the statement set forth in subdivision (18) of subsection (a) of this section. (1983, c. 814, s. 1; 2001-487, s. 23(k); 2021-163, s. 1(c); 2021-192, s. 5(a).)

§ 93A-49. Service of process on exchange company.

Any exchange company offering an exchange program to a purchaser shall be deemed to have made an irrevocable appointment of the Commission to receive service of lawful process in any proceeding against the exchange company arising under this Article. (1983, c. 814, s. 1.)

§ 93A-50. Securities laws apply.

The North Carolina Securities Act, Chapter 78A, shall also apply, in addition to the laws relating to real estate, to timeshares deemed to be investment contracts or to other securities offered with or incident to a timeshare; provided, however, in the event of the applicability of the North Carolina Securities Act, any offer or sale of timeshares registered under this Article shall not be subject to the provisions of G.S. 78A-24 and any real estate broker registered under Article 1 of this Chapter shall not be subject to the provisions of G.S. 78A-36. (1983, c. 814, s. 1; 2000-140, s. 19(b); 2005-395, s. 21; 2021-163, s. 1(c); 2021-192, s. 5(a).)

§ 93A-51. Rulemaking authority.

The Commission shall have the authority to adopt rules and regulations that are not inconsistent with the provisions of this Article and the General Statutes of North Carolina. The Commission may prescribe forms and procedures for submitting information to the Commission. (1983, c. 814, s. 1; 2025-25, s. 29(6).)

§ 93A-52. Application for registration of timeshare program; denial of registration; renewal; reinstatement; and termination of developer's interest.

(a) Prior to the offering in this State of any timeshare located in this State, the developer of the timeshare program shall make written application to the Commission for the registration of the program.

(a1) The application shall be accompanied by a fee in an amount fixed by the Commission but not to exceed one thousand five hundred dollars ($1,500), and shall include (i) a description of the program, (ii) copies of proposed timeshare declaration, timeshare program governing documents, public offering statement, form timeshare instrument, form contract for sale, if different than the timeshare instrument, and other documents referred to in the public offering statement, (iii) information pertaining to any marketing or managing entity to be employed by the developer for the sale of timeshares in a timeshare program, (iv) information regarding any exchange program available to the owner, (v) an irrevocable appointment of the Commission to receive service of any lawful process in any proceeding against the developer or the developer's timeshare salespersons arising under this Article, and (vi) such other information as the Commission may by rule require.

(a2) Upon receipt of a properly completed application and fee and upon a determination by the Commission that the sale of the timeshares in the timeshare program will be directed and conducted by persons of good moral character, the Commission shall issue to the developer a certificate of registration authorizing the developer to offer timeshares in the program for sale. The Commission shall, within 30 days after receipt of an incomplete application, notify the developer by mail that the Commission has found specified deficiencies, and shall, within 60 days after the receipt of a properly completed application, either issue the certificate of registration or notify the developer by mail or by electronic means of any specific objections to the registration of the program. Once issued, the certificate shall be available for inspection upon request of the Commission, and a copy of the certificate shall be available for inspection by written request from any purchaser or owner.

(a3) The developer shall promptly report to the Commission any and all material changes in the information required to be submitted for the purpose of the registration. The developer shall also immediately furnish the Commission complete information regarding any change in its interest in a registered timeshare program, other than the transfer of timeshares to purchasers in the

ordinary course of its business. If a developer disposes of, or otherwise terminates its interest in a timeshare program, the developer shall cease all marketing and sales of timeshares, certify to the Commission in writing that its interest in the timeshare program is terminated, and shall return to the Commission for cancellation the certificate of registration.

(b) If the Commission finds that there is substantial reason to deny the application for registration as a timeshare program, the Commission shall notify the developer that such application has been denied and shall afford the developer an opportunity for a hearing before the Commission to show cause why the application should not be denied. In all proceedings to deny a certificate of registration, the provisions of Chapter 150B of the General Statutes shall be applicable.

(c) The acceptance by the Commission of an application for registration shall not constitute the approval of its contents or waive the authority of the Commission to take disciplinary action as provided by this Article.

(d) All certificates of registration granted and issued by the Commission under the provisions of this Article shall expire on the 30th day of June following issuance thereof, and shall become invalid after that date unless reinstated. A certificate may be renewed 45 days prior to the expiration date by filing an application with and paying to the Commission the timeshare registration renewal fee fixed by the Commission but not to exceed one thousand five hundred dollars ($1,500) for each timeshare program. Each certificate reinstated after the expiration date thereof shall be subject to a fee of fifty dollars ($50.00) in addition to the required renewal fee. If a developer fails to reinstate the registration within 12 months after the expiration date thereof, the Commission may, in its discretion, consider the timeshare program as not having been previously registered, and thereby subject to the provisions of this Article relating to the issuance of an original certificate. Duplicate certificates may be issued by the Commission upon payment of a fee of one dollar ($1.00) by the registrant developer. Except as prescribed by Commission rules, all fees paid pursuant to this Article shall be nonrefundable. (1983, c. 814, s. 1; 1985, c. 578, s. 5; 1987, c. 827, s. 1; 1999-229, s. 15; 2000-140, s. 19(b); 2005-395, s. 22; 2021-163, s. 1(c); 2021-192, s. 5(a).)

§ 93A-53. Register of applicants; roster of registrants; financial report to Secretary of State.

(a) The Executive Director of the Commission shall keep a register of all applicants for certificates of registration, showing for each the date of application, name, business address, and whether the certificate was granted or refused.

(b) The Executive Director of the Commission shall also keep a current roster showing the name and address of all timeshare programs registered with the Commission. The roster shall be kept on file in the office of the Commission and be open to public inspection.

(c) The Commission shall include a copy of the roster of timeshare programs current on the preceding June 30 and a statement of the income received by the Commission in connection with the registration of timeshare programs during the fiscal year ending on June 30 with the report required by G.S. 93B-2. (1983, c. 814, s. 1; 2011-217, s. 21; 2021-163, s. 1(c); 2021-192, s. 5(a).)

§ 93A-54. Disciplinary action by Commission.

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

Commission finds probable cause that a timeshare regulated party has violated any of the provisions of this Article, the Commission may hold a hearing on the allegations of misconduct.

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

(1) Making any willful or negligent misrepresentation or any willful or negligent omission of material fact about any timeshare or timeshare program.
(2) Making any false promises of a character likely to influence, persuade, or induce.
(3) Pursuing a course of misrepresentation or making of false promises through agents, salespersons, advertising or otherwise.
(4) Failing, within a reasonable time, to account for all money received from others in a timeshare transaction, and failing to remit such monies as may be required in G.S. 93A-45 of this Article.
(5) Acting in a manner as to endanger the interest of the public.
(6) Paying a commission, salary, or other valuable consideration to any person for acts or services performed in violation of this Article.
(7) Any other conduct which constitutes improper, fraudulent, or dishonest dealing.
(8) Performing or undertaking to perform any legal service as set forth in G.S. 84-2.1, or any other acts not specifically set forth in that section.
(9) Failing to deposit and maintain in an escrow account all money received from others in a timeshare transaction as may be required in G.S. 93A-42 or G.S. 93A-45.
(10) Failing to deliver to a purchaser a public offering statement containing the information required by G.S. 93A-44 and any other disclosures that the Commission may by regulation require.
(11) Failing to comply with the provisions of Chapter 75 of the General Statutes in the advertising or promotion of timeshares for sale, or failing to assure such compliance by persons engaged on behalf of a developer.
(12) Failing to comply with the provisions of G.S. 93A-48 in furnishing complete and accurate information to purchasers concerning any exchange program which may be offered to such purchaser or owner.
(13) Making any false or fraudulent representation on an application for registration.
(14) Violating any rule or regulation promulgated by the Commission.
(15) Failing to record or cause to be recorded a timeshare instrument as required by G.S. 93A-42(c1) [G.S. 93A-42(c)] or failing to provide an owner the protection against liens required by G.S. 93A-57(a).
(16) Failing as a timeshare program broker to exercise reasonable and adequate supervision of the conduct of sales at a project or location by the brokers and salespersons under the timeshare program broker's control.

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

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

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

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

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

§ 93A-55. Private enforcement.

The provisions of the Article shall not be construed to limit in any manner the right of a purchaser, owner, or other person injured by a violation of this Article to bring a private action. (1983, c. 814, s. 1; 2021-163, s. 1(c); 2021-192, s. 5(a).)

§ 93A-56. Penalty for violation of Article.

Except as specifically provided elsewhere in this Article, any person violating the provisions of this Article shall be guilty of a Class 1 misdemeanor. (1983, c. 814, s. 1; 1985, c. 578, s. 11; 1987, c. 516, s. 19; 1993, c. 539, s. 658; 1994, Ex. Sess., c. 24, s. 14(c); 2021-163, s. 1(c); 2021-192, s. 5(a).)

§ 93A-57. Release of liens or subordination and notice to creditors instrument.

(a) Prior to any closing, the developer shall record a release of all liens or encumbrances affecting the timeshare being acquired by the purchaser or the timeshare property or comply with one of the following:

(1) If there are any interest holders in the timeshare or timeshare property, the developer and any interest holders must execute and record a subordination and

notice to creditors instrument in the jurisdiction in which the timeshare or timeshare program is situated. The subordination and notice to creditors instrument shall contain the following:

a. Language sufficient to provide subsequent creditors of the developer and interest holder with notice of the existence of the timeshare program and of the rights of owners in order to protect the interests of the owners from any claims of subsequent creditors.

b. A statement that the instrument shall be effective as between the owner and the developer and interest holder despite any bankruptcy proceedings involving the developer.

c. A statement that so long as an owner remains in good standing with respect to the owner's obligations under the timeshare declaration, then the interest holder will honor all rights of the owner as reflected in the timeshare declaration.

(2) If there are any interest holders in the timeshare or the timeshare property, the developer must make alternative arrangements that are adequate to protect the rights of the owners of the timeshares and timeshare property, provided that any alternative arrangement is approved by the Commission.

(b) Unless a timeshare owner or a timeshare owner who [is] the owner's predecessor in title agree[s] otherwise with the lienor, if a lien other than a mortgage or deed of trust becomes effective against more than one timeshare in a timeshare program, any timeshare owner is entitled to a release of the owner's timeshare from a lien upon payment of the amount of the lien attributable to the owner's timeshare. The amount of the payment must be proportionate to the ratio that the owner's liability bears to the liabilities of all owners whose interests are subject to the lien. Upon receipt of payment, the lien holder shall promptly deliver to the owner a release of the lien covering that timeshare. After payment, the managing entity may not assess or have a lien against that timeshare for any portion of the expenses incurred in connection with that lien. (1983, c. 814, s. 1; 1985, c. 578, s. 12; 2021-163, s. 1(c); 2021-192, s. 5(a).)

§ 93A-58. Registrar required; criminal penalties; program broker.

(a) Every developer shall, by affidavit filed with the Commission, designate a natural person to serve as timeshare registrar for its registered timeshare program. The timeshare registrar shall be responsible for the recordation of timeshare instruments and the release of liens required by G.S. 93A-42(c) and G.S. 93A-57(a). A developer may, from time to time, change the designated timeshare registrar by proper filing with the Commission and by otherwise complying with this subsection. No sales or offers to sell shall be made until the registrar is designated for a timeshare program.

(a1) The timeshare registrar has the duty to ensure that the provisions of this Article are complied with in a timeshare program for which the person is the timeshare registrar. No timeshare registrar shall record a timeshare instrument except as provided by this Article.

(b) A timeshare registrar is guilty of a Class I felony if the timeshare registrar knowingly or recklessly fails to record or cause to be recorded a timeshare instrument as required by this Article. A person responsible as general partner, corporate officer, joint venturer, or sole proprietor of the developer of a timeshare project is guilty of a Class I felony if the person intentionally allows the offering for sale or the sale of a timeshare to purchasers without first designating a timeshare registrar.

(c) The developer shall designate for each timeshare program and other locations where timeshares are sold or offered for sale a program broker. The program broker shall act as supervising broker for all timeshare salespersons at the timeshare program or other location and shall directly, personally, and actively supervise all such persons at the timeshare program or other locations in a manner to reasonably ensure that the sale of timeshares will be conducted in accordance with the provisions of this Chapter. (1985, c. 578, s. 13; 1987, c. 516, s. 20; 1993, c. 539, s. 1289; 1994, Ex. Sess., c. 24, s. 14(c); 2000-140, s. 19(b); 2001-487, s. 23(m); 2005-395, s. 24; 2021-163, s. 1(c); 2021-192, s. 5(a).)

§ 93A-59. Preservation of an owner's claims and defenses.

(a) For one year following the execution of an instrument of indebtedness for the purchase of a timeshare use, the owner may assert against the developer, assignee of the developer, or other holder of the instrument of indebtedness, any claims or defenses available against the developer, and the owner may not waive the right to assert these claims or defenses in connection with a timeshare purchase. Any recovery by the owner on a claim asserted against an assignee of the developer or other holder of the instrument of indebtedness shall not exceed the amount paid by the developer under the instrument. A holder shall be the person or entity with the rights of a holder as set forth in G.S. 25-3-301.

(b) Every instrument of indebtedness for the purchase of a timeshare shall set forth in conspicuous type the following provision in substantially the following form:

"NOTICE

FOR A PERIOD OF ONE YEAR FOLLOWING THE EXECUTION OF THIS INSTRUMENT OF INDEBTEDNESS, ANY HOLDER OF THIS INSTRUMENT OF INDEBTEDNESS IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE OWNER COULD ASSERT AGAINST THE DEVELOPER OF THE TIMESHARE. RECOVERY BY THE OWNER SHALL NOT EXCEED AMOUNTS PAID BY THE OWNER UNDER THIS INSTRUMENT." (1985, c. 578, s. 13; 2021-163, s. 1(c); 2021-192, s. 5(a).)

§ 93A-60. Substantial compliance.

If a developer or managing entity has otherwise substantially complied with this Article, any nonmaterial errors or omissions shall not be the basis for any claims or defenses asserted by the purchaser; provided, however, that for purposes of this section, the developer or managing entity shall have the burden of proof. (2021-163, s. 1(c); 2021-192, s. 5(a).)

§ 93A-61. Management.

(a) For each timeshare program, the developer shall provide for a managing entity, which shall be either the developer, a third-party management firm, or timeshare owners' association.

(b) The managing entity may not furnish the name, address, email address, or contact information of any owner to any person, including any other owner or authorized agent of an owner, unless the owner whose name, address, email address, or contact information is requested first approves the disclosure in writing. The managing entity shall maintain among its records and provide to the Commission upon request a complete list of the names and addresses of all owners in the timeshare program. The managing entity shall update this list at least quarterly. The managing entity may not publish this owners' list or provide a copy of it to any owner or to any third party other than the Commission. However, the managing entity shall mail to those owners listed on the

owners' list materials provided by any owner, upon the written request of that owner, if the purpose of the mailing is to advance legitimate business of the timeshare program, including, but not limited to, a proxy solicitation for any purpose, including the recall of one or more directors elected by the owners or the discharge of the management firm. The managing entity shall be responsible for determining the appropriateness of any requested mailing. The owner who requests the mailing must reimburse the managing entity in advance for the actual, reasonable costs in performing the mailing. A mailing requested for the purpose of advancing legitimate business of the timeshare program shall occur within 30 days after receipt of a request from an owner.

(c) The predecessor in interest, or a transfer service provider for the predecessor in interest, shall deliver to the managing entity a copy of the timeshare instrument, which shall be a copy of the recorded timeshare instrument if the timeshare is a timeshare estate, together with the name and mailing address of the successor in interest within 15 days after the date of transfer, and after such delivery, the successor in interest shall be listed by the managing entity as the owner of the timeshare on the books and records. The managing entity shall not be liable to any person for any inaccuracy in the books and records arising from the failure of the predecessor in interest to timely and correctly notify the managing entity of the name and mailing address of the successor in interest.

(d) The managing entity shall make the books and records reasonably available for inspection by any owner or the authorized agent of an owner. The managing entity may charge the owner a reasonable fee for copying or providing the requested information; however, any owner or agent of an owner shall be permitted to personally inspect and examine the books and records wherever located at any reasonable time, under reasonable conditions, and under the supervision of the custodian of those records. All books and financial records of the timeshare program must be maintained in accordance with generally accepted accounting practices. The managing entity may require any owner or authorized agent of an owner to execute and provide a reasonable confidentiality or nondisclosure agreement prohibiting the disclosure of books and records to nonowners.

(e) All notices or other information sent by a managing entity may be delivered to an owner by email, provided that the owner first consents electronically to the use of email for notice purposes. The consent to receive notice by email is effective until revoked by the owner.

(f) An officer, director, or agent of a timeshare owners' association shall discharge their duties in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner they reasonably believe to be in the interests of the timeshare owners' association. An officer, director, or agent of a timeshare owners' association shall be exempt from liability for monetary damages unless the officer, director, or agent breached or failed to perform their duties and the breach of, or failure to perform, those duties constitutes a violation of criminal law, constitutes a transaction from which the officer, director, or agent derived an improper personal benefit, either directly or indirectly, or constitutes recklessness or an act or omission that was in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

(g) If a state of emergency is declared pursuant to the North Carolina Emergency Management Act or by any governmental agency with authority in the locale in which timeshare property is located, then the following apply:

(1) The managing entity may, but is not required to, exercise the following powers:

a. Conduct board meetings and owner meetings with notice given in any practicable manner, including publication, radio, conspicuous posting

on the timeshare property, electronic means, or any other means the board deems reasonable under the circumstances. Notice of board decisions may be communicated in the same manner as notice of the meetings is given.

b. Cancel and reschedule any timeshare owners' association meeting.

c. Name as assistant officers persons who are not directors of the board. Named assistant officers shall have the same authority as the executive officers to whom they are assistants during the state of emergency to accommodate the incapacity or unavailability of any officer of the timeshare owners' association.

d. Relocate the managing entity's principal office or designate alternative principal offices or conduct business remotely.

e. Enter into agreements with government agencies to assist in responding to the emergency.

f. Implement an emergency plan for which a state of emergency is declared. The emergency plan may include, but is not limited to, shutting down all or any portion of timeshare units, amenities, or timeshare projects, including shutting off systems or utilities.

g. Determine that all or any portion of the timeshare property is unavailable for entry or occupancy by owners or any other person to protect the health, safety, or welfare of owners or persons or to properly respond to the emergency. Should any person enter or occupy the timeshare property when the board has declared the timeshare property is unavailable for entry or occupancy for those persons, and without board approval, the board and the association shall be immune from liability or injury to persons or property arising from that failure or refusal.

h. Require occupancy of timeshare units to be aggregated in certain parts of the timeshare property even if other parts of the timeshare property are habitable.

i. Require the evacuation of all or any portion of the timeshare property in the event of a mandatory evacuation order or in order to respond to the emergency. Should any person fail or refuse to evacuate the timeshare property where the board has required evacuation, the board and the association shall be immune from liability or injury to persons or property arising from that failure or refusal.

j. Make a determination whether all or any portion of the timeshare property can be safely inhabited or occupied; provided, however, any determination is not conclusive as to any determination of habitability pursuant to applicable law or the timeshare declaration.

k. Temporarily suspend or modify rules and regulations concerning the physical use of all or any portion of the timeshare property.

l. Mitigate further damage, including taking action to contract for the removal of debris and to prevent or mitigate the spread of fungus or disease notwithstanding timeshare declaration provisions regarding owner approval of changes to the timeshare units or amenities.

m. Regardless of any provision to the contrary and even if such authority does not specifically appear in the timeshare declaration, levy special assessments without a vote of the owners.

n. Without owners' approval, borrow money and pledge association assets as collateral to fund emergency repairs, to respond to the emergency, or to carry out the duties of the association when operating funds are insufficient.

o. Temporarily suspend or modify timeshare program reservation system rules and regulations to manage owner reservations and use rights in the best interests of the owners as a whole, including cancelling existing reservations, extending expiring use rights, or suspending or modifying priority periods and priority reservation rights. A temporary suspension or modification shall be permitted even if owners must compete for reservation and use of timeshare periods and timeshare units on a more than one-to-one use night to use right ratio.

p. Toll the expiration of any claim of lien arising under G.S. 93A-62(d)(4) for the duration of the state of emergency, provided that the beginning and ending dates for each period of tolling are recorded in the public records and the owner is notified of the end of the tolling period.

q. Modify or suspend assessment and collection requirements and activity, including deferring due dates or waiving late charges and interest, provided that all owners are treated equally as of the date of modification and suspension, and owners who have previously made timely payments have their future assessments adjusted in a manner that fairly compensates them for making timely payments in advance of the modification or suspension.

(2) The emergency powers authorized and exercised shall be limited to that time reasonably necessary to protect the health, safety, and welfare of the managing entity and the owners and reasonably necessary to mitigate further damage and make emergency repairs, notwithstanding the termination of the state of emergency. Further, the managing entity may take any actions that are necessary to implement the exercised powers even if the implementation takes place after the termination of the state of emergency, provided that the implementation is necessary and does not go beyond the scope of the exercised power.

(3) In the exercise of emergency powers, the managing entity may take into account the economic consequences of the emergency to the owners; however, the managing entity shall give greater weight to the health, safety, and welfare of the managing entity and the owners and mitigation of further damage and adhere to the business judgment rule in balancing economic considerations with owner opportunity to enjoy the use of the timeshare property.

(4) In the exercise of the emergency powers, the managing entity will be deemed to have met any duty of care if the managing entity has relied upon advice of emergency management officials or upon the advice of licensed professionals with applicable expertise. (2021-163, s. 1(c); 2021-192, s. 5(a); 2025-25, s. 29(1).)

§ 93A-62. Delinquent assessments; developer guarantee.

(a) Delinquent assessments may bear interest at the highest rate permitted by law or at some lesser rate established by the managing entity. In addition to interest, the managing entity may charge a reasonable administrative late fee for each delinquent assessment. Any costs of collection, including reasonable collection agency fees and reasonable attorney's fees, incurred in the collection of a delinquent assessment shall be paid by the owner and shall be secured by a lien in favor of the managing entity upon the timeshare with respect to which the delinquent assessment has been incurred.

(b) The managing entity may deny the use of the timeshare units or facilities, including the denial of the right to make a reservation or the cancellation of a confirmed reservation for timeshare periods, to any owner who is delinquent in the payment of any assessments made by the managing entity against the owner for common expenses, in accordance with the following:

(1) The managing entity must, no less than 30 days after the date the assessment is due, notify the owner in writing of the total amount of any delinquency which then exists, including any accrued interest and late charges permitted to be imposed under the terms of the timeshare program or by law and including a per diem amount. The notice shall be sent to the owner at the owner's known address as recorded in the books and records of the timeshare program.

(2) The notice shall clearly state that the owner will not be permitted to use the owner's timeshare, that the owner will not be permitted to make a reservation in the timeshare program's reservation system, or that any confirmed reservation may be canceled until the total amount of such delinquency is satisfied in full or until the owner produces satisfactory evidence that the delinquency does not exist.

(3) The notice shall be effective to bar the use of the owner and those claiming use rights under the owner, including the owner's guests, lessees, and persons receiving use rights in the timeshare through an exchange program; provided, however, that (i) a managing entity desiring to deny the use of the timeshare to persons receiving use rights in the delinquent owner's timeshare through an exchange program that has an affiliation agreement with the managing entity shall notify the affiliated exchange company in writing of the denial of use at the time that the notice was sent to the owner and (ii) any person claiming through the affiliated exchange program who has received a confirmed assignment of the delinquent owner's use rights from the affiliated exchange company prior to the expiration of 48 hours after the receipt by the affiliated exchange company of the written notice from the managing entity shall be permitted by the managing entity to use the owner's use rights.

(4) Any costs reasonably incurred by the managing entity in connection with its compliance with the requirements of this section may be assessed by the managing entity against the delinquent owner and collected in the same manner as if those costs were common expenses of the timeshare program allocable solely to the delinquent purchaser.

(5) A managing entity may not enforce the denial of use against any one owner or group of owners without similarly enforcing it against all owners, including all developers.

(c) In addition to the denial of use pursuant to subsection (b) of this section, the managing entity may give further notice to the delinquent owner that the managing entity may rent the delinquent owner's timeshare, or any use rights appurtenant thereto, in accordance with the following:

(1) A further notice of intent to rent must be given no less than 30 days after the date the assessment is due and must be delivered to the purchaser in the manner required for notices under subsection (b) of this section.

(2) The notice shall state that unless the owner satisfies the delinquency in full, or unless the owner produces satisfactory evidence that the delinquency does not exist, the purchaser will be bound by the terms of any rental contract entered into by the managing entity with respect to the owner's timeshare or appurtenant use rights.

(3) The notice shall state that the owner will remain liable for any difference between the amount of the delinquency and the net amount produced by the rental contract and applied against the delinquency, and the managing entity shall not be required to provide any further notice to the owner regarding any residual delinquency.

(4) The managing entity's efforts to secure a rental shall not commence on a date earlier than 10 days after the date of the notice of intent to rent.

(5) The managing entity must apply the proceeds of any rental, net of any rental commissions, cleaning charges, travel agent commissions, or any other commercially reasonable charges reasonably and usually incurred by the managing entity in securing rentals to the delinquent owner's account.

(6) A managing entity may make a reasonable determination regarding the priority of rentals of timeshares and, if the delinquent owner whose timeshare is rented cannot be specifically determined due to the structure of the timeshare program, the managing entity may allocate any net rental proceeds in any reasonable manner.

(7) In securing a rental, the managing entity shall not be required to obtain the highest nightly rental rate available, nor any particular rental rate, and the managing entity shall not be required to rent the entire timeshare or appurtenant rights; however, the managing entity must use reasonable efforts to secure a rental that is commensurate with other rentals of similar timeshares or use rights generally secured at that time.

(d) For timeshare estates located in this State, the managing entity shall have a lien on a timeshare for any assessment levied against that timeshare from the date such assessment becomes due. The managing entity shall also have a lien on a timeshare estate of any owner for the cost of any maintenance, repairs, or replacement resulting from an act of the owner or the owner's guest or lessee that results in damage to the timeshare property. All of the following apply to a lien imposed under this section:

(1) The managing entity, or the holder of the lien, may bring a judicial action in its name to foreclose the lien in the nature of an action to foreclose a mortgage or deed of trust and may also bring an action to recover a money judgment for the unpaid assessments without waiving any claim of lien. As an alternative to initiating a judicial action, the managing entity, or the holder of the lien, may

initiate a timeshare trustee foreclosure proceeding pursuant to G.S. 93A-62.1 to foreclose the assessment lien.

(2) The lien is effective from the date of and shall relate back to the recording of the original timeshare declaration, or, in the case of lien on a timeshare located in a phase timeshare program, the last to occur of the recording of the original timeshare declaration or amendment creating the timeshare. However, as to first mortgages of record, the lien is effective from and after filing of the claim of lien in the office of the clerk of superior court in the county where the timeshare estate is located.

(3) The claim of lien shall state the name of the timeshare program and identify the timeshare for which the lien is effective, state the name of the owner, state the assessment amount due, and state the due dates. The claim of lien shall be signed and acknowledged by an officer or agent of the managing entity or the holder of the lien. The claim of lien shall contain the following statement in print that is in boldface, capital letters, and no smaller than the largest print used elsewhere in the document:

"THIS DOCUMENT CONSTITUTES A LIEN AGAINST YOUR PROPERTY, AND IF THE LIEN IS NOT PAID, THE ASSOCIATION MAY PROCEED WITH FORECLOSURE AGAINST YOUR TIMESHARE IN THE NATURE OF AN ACTION TO FORECLOSE A MORTGAGE OR DEED OF TRUST OR A TIMESHARE TRUSTEE FORECLOSURE UNDER NORTH CAROLINA LAW."

(4) The lien shall expire upon the earlier of:

a. The date it is satisfied.

b. Five years from the date the claim of lien is filed unless an action to enforce or foreclose the lien is commenced within that time.

(5) A claim of lien for assessments may include assessments which are due when the claim is recorded and all assessments that subsequently become due and are delinquent. Upon full payment, the person making the payment is entitled to receive a satisfaction of the lien.

(6) A judgment in any judicial action or suit brought to foreclose the claim of lien may include costs and reasonable attorney's fees for the substantially prevailing party. For a timeshare trustee foreclosure brought pursuant to this section, the managing entity or the holder of the lien shall be entitled to recover its costs, including reasonable attorney's fees and trustee's fees.

(e) Except in the event of a timeshare trustee foreclosure conducted in accordance with G.S. 93A-62.1, a successor in interest, regardless of how the timeshare has been acquired, including a purchaser at a judicial sale, is jointly and severally liable with their predecessor in interest for all unpaid assessments against the predecessor up to the time of transfer of the timeshare to a successor, without prejudice to any right a successor in interest may have to recover from their predecessor in interest any amounts assessed against the predecessor and paid by the successor; provided, however, a first mortgagee or its successor or assignee who acquires title to a timeshare as a result of the foreclosure of the mortgage or by deed in lieu of foreclosure of the mortgage shall be exempt from liability for all unpaid assessments attributable to the timeshare or chargeable to the previous owner which came due prior to acquisition of title by the first

mortgagee. In the event of a timeshare trustee foreclosure, owners who do not object to use of the timeshare trustee foreclosure procedure, as provided in G.S. 93A-62.1(e), shall not be subject to a deficiency judgment even if the proceeds from the sale of the timeshare are insufficient to offset the amounts secured by the lien, and any successor to the owner that acquires title to a timeshare as a result of a timeshare trustee foreclosure under G.S. 93A-62.1 shall be exempt from liability for all unpaid assessments attributable to the timeshare or chargeable to the previous owner that came due prior to acquisition of title by the successor.

(f) If the developer agrees to guarantee the level of assessments for the timeshare program for any period of time, the developer may be excused from the payment of the developer's share of the assessments that otherwise would have been assessed against developer-owned timeshares during the guarantee period, provided that the developer guarantees that (i) during the guarantee period the assessments against owner timeshares will not increase over the dollar amount stated in the adopted, good-faith budget of the timeshare program and (ii) the developer will pay any amount by which all common expenses incurred during the guarantee period exceed the total revenues of the timeshare program during the guarantee period. (2021-163, s. 1(c); 2021-192, s. 5(a); 2025-75, s. 1.)

§ 93A-62.1. Procedure for timeshare trustee foreclosure of assessment liens.

(a) This section is intended to provide, as an alternative to judicial foreclosure, a simple and inexpensive method of enforcing payment of assessments, to the knowledge of all persons, and recognize, in authorizing this timeshare trustee foreclosure proceeding, that all persons owning a timeshare know or should know that the assessment lien on their timeshare may be foreclosed and the timeshare sold for failure to pay assessments.

(b) A claim of lien complying with the requirements of G.S. 93A-62(d)(3) and subsection (d) of this section must be filed in the office of the clerk of the superior court of the county in which the timeshare is located in the manner provided in this section.

(c) No fewer than 15 days prior to filing the claim of lien, the managing entity or the holder of the lien shall mail a statement of the assessment amount due by first-class mail to the owner's address as recorded in the books and records of the timeshare program. If the record owner is a corporation or limited liability company, the statement shall also be sent by first-class mail to the mailing address of the registered agent for the corporation or limited liability company. Notwithstanding any provision of this Chapter to the contrary, there shall be no requirement that notice under this subsection be mailed to an owner's timeshare unit or otherwise posted at the timeshare project. The managing entity or the holder of the lien shall make diligent efforts to ensure that its records contain the unit owner's mailing address.

(d) The person signing the claim of lien on behalf of the holder shall attach to and file with the claim of lien a certificate, that has been signed and sworn to or affirmed before a notary public, certifying that notice of the lien was sent to the record owner and those entitled to receive notice, pursuant to both of the following methods: (i) by registered or certified mail, return receipt requested, or by designated delivery service pursuant to 26 U.S.C. § 7502(f)(2) with a delivery receipt requested and (ii) by mailing a copy of the lien by regular, first-class mail, postage prepaid to the owner's known address as recorded in the books and records of the timeshare program. As used in this section, "delivery receipt" includes an electronic or facsimile receipt.

(e) The managing entity, holder of the lien, or designated trustee filing the certificate provided for in subsection (h) of this section shall, at least 30 days prior to docketing the judgment, send notice of the assessment lien foreclosure to the owner in the same manner as a claim of lien

under subsection (d) of this section to the owner at the owner's known address as recorded in the books and records of the timeshare program and to all lienholders with liens that have attached after the effective date of the timeshare claim of lien filed in accordance with subsection (b) of this section. The notice required by this subsection shall (i) state that a judgment will be docketed and the proposed date of the docketing, (ii) state that the judgment will authorize a sale of the timeshare pursuant to a timeshare trustee foreclosure proceeding, (iii) provide a brief description of the timeshare affected, (iv) include the filing information for the claim of lien if previously filed with the clerk of the superior court, and (v) state that the lien may be satisfied prior to judgment being entered. The notice shall also include an objection form that the owner can use to object to use of the timeshare trustee foreclosure process within 30 days of receipt of the notice by signing and returning the objection form to the managing entity, holder of the lien, or designated trustee, and in such event the lien may thereafter only be foreclosed by filing a judicial foreclosure action. The objection form described in this subsection shall identify the owner, the timeshare interest, and the return address of the trustee and shall state: "The undersigned owner exercises the owner's right to object to the use of the timeshare trustee foreclosure procedure contained in G.S. 93A-62.1." The notice required by this subsection may be combined with the notice of lien required to be given pursuant to subsection (d) of this section and shall also contain a statement in substantially the following form:

> "You may choose to sign and send to the trustee the enclosed objection form, exercising your right to object to the use of the timeshare trustee foreclosure procedure. Upon the trustee's receipt of your signed objection form, the foreclosure of the lien with respect to the default specified in this notice shall be subject to the judicial foreclosure procedure only. If you do not object to the use of the timeshare trustee foreclosure procedure, you will not be subject to a deficiency judgment, even if the proceeds from the sale of your timeshare interest are insufficient to offset the amounts secured by the lien."

(f) If, within 10 days following the mailing of the notice required by subsection (e) of this section, a return receipt or delivery receipt has not been received by the managing entity, holder of the lien, or designated trustee indicating receipt of the notice, then the managing entity, holder of the lien, or designated trustee shall have a notice published in a newspaper of general circulation in the county where the timeshare is located once a week for two consecutive weeks directed to, and naming, all unnotified lienholders and the owner that a judgment will be docketed against the owner.

(g) All costs of mailing and publication, plus a charge of two hundred fifty dollars ($250.00) to defray administrative costs, shall be added to the amount of assessments that are a lien on the timeshare and shall be paid by the owner to the managing entity or holder of the lien at the time the assessments are collected or the timeshare is sold.

(h) Except as provided in subsection (s) of this section, no sooner than six months since the indebtedness described in the claim of lien became due and after filing the claim of lien, the managing entity, holder of the lien, or designated trustee may foreclose the lien by filing a certificate, that has been signed and sworn to or affirmed before a notary public, with the clerk of the superior court, showing the following: (i) the record owner of the timeshare on which there is a lien for unpaid assessments, together with the amount of assessments, including taxes, penalties, interest, and costs that are covered by the lien, (ii) the year or years for which the assessments are due, (iii) a description of the timeshare sufficient to permit its identification by parol testimony, and (iv) the filing information for the claim of lien if previously filed with the clerk of the superior

court. The fees for docketing and indexing of the certificate assessed pursuant to G.S. 7A-308(a)(11) are payable to the clerk of the superior court at the time the certificate is filed.

(i) Immediately upon the docketing and indexing of a certificate as provided in subsection (h) of this section, the assessments, including taxes, penalties, interest, and costs, constitute a valid judgment against the timeshare described in the judgment with the priority provided for claims of lien in G.S. 93A-62(d)(2). The judgment, except as expressly provided in this section, has the same force and effect as a duly rendered judgment of the superior court directing sale of the timeshare for the satisfaction of the assessment lien, and it shall bear interest at an annual rate of eight percent (8%).

(j) At any time prior to the issuance of a certificate of sale in accordance with subdivision (8) of subsection (*l*) of this section, any person entitled to notice under this section may appear before the clerk of superior court and move to set aside the judgment on the ground that the assessment has been paid or that the assessment lien on which the judgment is based is invalid.

(k) Upon payment in full of any judgment docketed under this section, together with interest and costs accrued to the date of payment, the managing entity, holder of the lien, or designated trustee receiving payment shall certify the fact of the payment to the clerk of superior court and cancel the judgment.

(*l*) At any time after 30 days and before one year from the indexing of the judgment as provided in subsection (h) of this section, at the request of the managing entity or holder of the lien, the timeshare shall be sold by a trustee in a public auction held in the county in which the timeshare project is located on the date, location, and starting time designated in the notice of sale sent in accordance with this subsection. The trustee's sale shall occur at a location consistent with G.S. 45-21.4. The timeshare trustee foreclosure sale shall be conducted in accordance with the following:

(1) The managing entity or the holder of the lien shall appoint a trustee, who shall conduct the sale and act as the auctioneer. The appointment of the trustee shall be included in the claim of lien or the certificate. The managing entity or the holder of the lien, at its option, may from time to time remove a trustee previously appointed and appoint a successor trustee by filing a substitution of trustee with the clerk of superior court. Counsel for the managing entity or for the holder of the lien may be appointed by the managing entity or by the holder of the lien to serve as the trustee and may serve in that capacity as long as the owner does not contest the obligation to pay the amount of any sums due the managing entity or the holder of the lien, or the validity, enforcement, or foreclosure of the claim of lien as provided in subsection (e) of this section. A trustee appointed pursuant to this subsection shall have the same fiduciary duties and obligations as a trustee in the foreclosure of a deed of trust and is a neutral third party. While serving as trustee in the foreclosure proceeding, a trustee may not advocate for the managing entity or the holder of the lien or the owner of the timeshare subject to foreclosure. The trustee shall be entitled to a commission for services rendered which shall include fees, costs, and expenses reasonably incurred by the trustee in connection with the timeshare trustee foreclosure procedure, whether or not a sale is held. The trustee's commission shall be paid without regard to any limitations on compensation otherwise provided by law, including, without limitation, the provisions of G.S. 45-21.15. The trustee may use a third party to conduct the sale on behalf of the trustee and

the trustee is liable for the conduct of the sale and the actions of the third party with respect to the conduct of the sale.

(2) At least 30 days prior to the day fixed for the timeshare trustee foreclosure, the trustee shall send notice by registered or certified mail, return receipt requested, or by designated delivery service pursuant to 26 U.S.C. § 7502(f)(2) with a delivery receipt requested, to the owner at the owner's known address as recorded in the books and records of the timeshare program, in lieu of personal service, and to all lienholders that received notice under subsection (e) of this section. If within 10 days following the mailing of the notice of the sale a return receipt or delivery receipt has not been received by the trustee indicating receipt of the notice, then the trustee shall have notice published in a newspaper in the same manner as described in subsection (f) of this section.

(3) The notice of sale shall contain at least all of the following:

a. The name and address of the owner and any junior interest holders.
b. The legal description of the timeshare.
c. The name and address of the trustee.
d. A description of the default that is the basis for the judgment.
e. The filing information for the claim of lien and judgment.
f. The amounts secured by the lien and a per diem amount to account for further accrual of the amounts secured by the lien.
g. The date, location, and starting time of the trustee's sale.
h. The right and method by which the owner may cure the default and the right of any junior interest holder to redeem its interest up to the date the trustee issues a certificate of sale in accordance with subdivision (8) of this subsection.

(4) The trustee shall add to the amount of the judgment as costs of the sale any postage or advertising expenses incurred by the managing entity, holder of the lien, or designated trustee in foreclosing under this section.

(5) The managing entity, holder of the lien, and any other person other than the trustee may bid at the sale. In lieu of participating in the sale, the lienholder may send the trustee written bidding instructions that the trustee shall announce as appropriate during the sale.

(6) The trustee may postpone the sale from time to time. In such case, notice of postponement must be given by the trustee at the date, time, and location contained in the notice of sale. The notice of postponed sale shall be given in accordance with subdivision (2) of this subsection.

(7) The highest bidder at the sale shall pay the price bid to the trustee in cash or certified funds on the day of the sale. If the managing entity or holder of the lien is the highest bidder, the lienholder shall receive a credit up to the amount set forth in the notice of sale, as described in subdivision (3) of this subsection.

(8) On the date of sale and upon receipt of the cash or certified funds due from the highest bidder, the trustee shall issue to the highest bidder a certificate of sale stating that a foreclosure conforming to the requirements of this section has occurred. The certificate shall include the time, location, and date of the sale, that the timeshare was sold, the amounts secured by the lien, and the amount of the highest bid. A copy of the certificate shall be mailed by first-class mail to the

owner's address as recorded in the books and records of the timeshare program. Upon issuance of a certificate of sale, all rights of redemption are foreclosed and shall terminate.

(m) A sale conducted under this section releases the owner from liability for all amounts secured by the lien. The managing entity or holder of the lien have no right to a deficiency judgment against the owner after a sale of the owner's timeshare under this section.

(n) Within 10 calendar days after the trustee conducts a sale under this section, the trustee shall execute and file with the clerk of superior court, a certificate of compliance that has been signed and sworn to or affirmed before a notary public. In furtherance of the execution of the certificate of compliance required under this subsection, the trustee is entitled to rely upon an affidavit or certification from the managing entity or holder of the lien as to the facts and circumstances of default and failure to cure the default. The certificate of compliance shall contain the following:

(1) A confirmation of delivery of the claim of lien and notice of timeshare trustee foreclosure.

(2) A statement that the default was not cured prior to the sale, that the trustee did not receive any written objection under subsection (e) of this section, and that the timeshare was not redeemed under sub-subdivision h. of subdivision (3) of subsection (*l*) of this section.

(3) A confirmation that the notice of sale was delivered to the owner or published prior to the sale.

(o) At least 10 calendar days after a sale conducted under this section, absent the prior filing and service on the trustee of a judicial action to enjoin issuance of the trustee's deed to the highest bidder, the trustee shall issue a trustee's deed to the highest bidder and record the trustee's deed in the public records of the county in which the timeshare is located. The trustee's deed shall include the name and address of the trustee, the name and address of the highest bidder, the name of the former owner, and a legal description of the timeshare. The trustee's deed shall contain no warranties of title from the trustee. The trustee's deed conveys to the highest bidder all rights, title, and interest in the timeshare that the former owner had, or had the power to convey, at the time of the recording of the claim of lien, together with all rights, title, and interest that the former owner or the owner's successors in interest acquired after the recording of the claim of lien.

(p) The trustee shall apply the proceeds of the sale as follows:

(1) To the expenses of the sale, including compensation of the trustee in accordance with this section.

(2) To the amount owed and set forth in the notice of sale.

(3) If there are junior interest holders, the trustee may pay the surplus to the clerk of superior court, naming the competing junior interest holders, and the payment to the clerk discharges the managing entity, holder of the lien, or trustee from liability to the extent of the amount paid. A special proceeding may be instituted in accordance with G.S. 45-21.32 to determine who may be entitled to the surplus.

(4) If there are no junior interest holders, or if all junior interest holders have been paid, any surplus shall be paid to the former owner.

(q) The certificate of compliance and the trustee's deed together are presumptive evidence of the truth of the matters set forth in them, and action to set aside the sale and void the trustee's deed may not be filed or otherwise pursued against any person acquiring the timeshare interest for

value. The issuance and recording of the trustee's deed is presumed valid and may be relied upon by third parties without actual knowledge of irregularities in the foreclosure proceedings. If for any reason there is an irregularity in the foreclosure proceedings, a purchaser becomes subrogated to all the rights of the lienholder to the indebtedness that it secured to the extent necessary to re-foreclose the assessment lien in order to correct the irregularity and becomes entitled to an action de novo for foreclosure of such assessment lien. Any subsequent re-foreclosure required to correct an irregularity may be conducted under G.S. 93A-62.1.

(r) The managing entity, holder of the lien, or designated trustee may combine the claim of lien, certificate, notice of sale, certificate of compliance, published notices and other documents part of the timeshare trustee foreclosure procedure against timeshares of different owners if both of the following criteria are met:

(1) All timeshares are part of the same timeshare project.

(2) The declaration giving rise to the right of the managing entity to collect assessments creates default and remedy obligations that are substantially the same for each owner named in the timeshare trustee foreclosure proceeding.

(s) A claim of lien securing a debt consisting solely of fines imposed by the managing entity, interest on unpaid fines, or attorneys' fees incurred by the managing entity solely associated with fines imposed by the managing entity may be enforced by judicial foreclosure, as provided in Article 29A of Chapter 1 of the General Statutes. In addition, any claim of lien securing a debt consisting solely of service, collection, consulting, or administration fees may only be enforced by judicial foreclosure, as provided in Article 29A of Chapter 1 of the General Statutes.

(t) All foreclosure proceedings commenced by a managing entity or the holder of the lien before March 1, 2026, and all sales and transfers of real property as part of those proceedings pursuant to the provisions of this Chapter, Chapter 47A of the General Statutes, or provisions contained in a timeshare declaration are declared to be valid unless an action to set aside the foreclosure is commenced on or before March 1, 2026, or within one year after the date of the foreclosure sale, whichever occurs last. (2025-75, s. 2.)

§ 93A-63. Reservation systems.

(a) The developer shall describe in the timeshare declaration any creation of a reservation system and shall establish rules and regulations for its operation. In establishing these rules and regulations, the developer shall take into account the location and anticipated relative use demand of each timeshare unit and timeshare project component site that is included in the timeshare program and, the developer shall use its best efforts, in good faith and based upon all reasonably available evidence under the circumstances, to further the best interests of the owners as a whole with respect to their opportunity to use and enjoy the timeshare units.

(b) The rules and regulations shall also provide for periodic adjustment or amendment of the reservation system by the reservation system operator from time to time in order to respond to actual owner use patterns and changes in owner use demand for the timeshare units existing at that time within the timeshare program. In addition to any other rights granted by the rules and regulations of the timeshare program, the reservation system operator is authorized to manage the reservation and use of the timeshare program using those processes, analyses, procedures, and methods that are in the best interests of the owners as a whole to efficiently manage the timeshare program.

(c) The reservation system operator shall have the right to forecast anticipated reservation and use of the timeshare units, including the right to take into account current and previous

reservation and use of the timeshare units, information about events that are scheduled to occur, seasonal use patterns, and other pertinent factors that affect the reservation or use of the timeshare program.

(d) The reservation system operator is authorized to reserve timeshare periods and timeshare units, in the best interests of the owners as a whole, for the purposes of depositing any reserved use with an affiliated exchange program or renting any reserved timeshare periods or timeshare units in order to facilitate the use or future use of the timeshare period or timeshare units or other benefits made available through the timeshare program to owners.

(e) If the reservation system operator is not the timeshare owners' association, the following provisions shall apply with respect to termination of the reservation system operator's management agreement or reservation agreement:

(1) No later than 90 days after the date of termination, or another date as set forth in the applicable management agreement or reservation agreement, the terminated reservation system operator shall transfer to the timeshare owners' association, or any designated successor reservation system operator, all relevant data held by the prior reservation system operator and related to any reservation system and any other records and information as is necessary to permit the uninterrupted operation and administration of the reservation system. However, the information required to be transferred does not include private information of the terminated reservation system operator that is not directly related to operation and management of the timeshare program.

(2) All reasonable costs incurred by the terminated reservation system operator in effecting the transfer of information shall be reimbursed to the terminated reservation system operator as a common expense of the timeshare program within 10 days after the completed transfer of the information.

(3) Nothing contained in this section shall preclude a reservation system operator from providing in its agreement with the timeshare owners' association or in the timeshare declaration that the reservation system operator owns the reservation system and that the reservation system operator shall continue to own the reservation system in the event that it is terminated. (2021-163, s. 1(c); 2021-192, s. 5(a).)

§ 93A-64. Multisite timeshare program additions, substitutions, and deletions.

(a) With respect to addition of timeshare units, amenities, or timeshare projects to the multisite timeshare program, the timeshare declaration must provide for the following:

(1) The basis upon which new timeshare units, amenities, or timeshare projects may be added, by whom additions may be made, and the fiscal impact, if any, of any additions on the owners.

(2) The extent, if any, to which owners will have the right to consent to any proposed additions.

(3) The person authorized to make additions during the term of the multisite timeshare program must comply with the one-to-one use night to use right ratio and the requirements of G.S. 93A-63 in ascertaining the desirability of the proposed addition and any impact of the proposed addition upon the demand for and availability of existing timeshare units, amenities, or timeshare projects.

(b) With respect to substitution of timeshare units, amenities, or timeshare projects for existing timeshare units, amenities, or timeshare projects in a multisite timeshare program, the timeshare declaration must provide for the following:

(1) The basis upon which timeshare units, amenities, or timeshare projects may be substituted for existing timeshare units, amenities, or timeshare projects, by whom substitutions may be made, and the fiscal impact, if any, of any substitutions on the owners.

(2) The replacement timeshare units, amenities, or timeshare projects must provide owners with an opportunity to enjoy a substantially similar or improved vacation experience as compared to the experience available at the replaced timeshare units, amenities, or timeshare projects. In determining whether the replacement timeshare units, amenities, or timeshare projects will provide a substantially similar or improved vacation experience, all relevant factors may be considered, including, but not limited to, some or all of the following: size; capacity; furnishings; maintenance; location, including geographic, topographic, and scenic considerations; demand and availability for owner use; and recreational capabilities.

(3) If a timeshare owned by the owner in a multisite timeshare program is a timeshare estate in a specific timeshare unit, no substitution may be made of that timeshare unit without the approval of that owner and all other owners of timeshare estates in that timeshare unit.

(4) If the timeshare declaration provides that the developer, acting unilaterally, or a managing entity under common ownership or control with the developer is the person who is authorized to make substitutions, the developer or managing entity may not substitute available timeshare units in the multisite timeshare program in a given calendar year pursuant to this subsection if the amount of the substituted timeshare units provides more than ten percent (10%) of the total annual use availability in the multisite timeshare program calculated in seven-day increments.

(5) If the timeshare declaration provides that the managing entity is the person authorized to make substitutions, and the managing entity is not under common ownership or control with the developer, the managing entity may not substitute available timeshare units in the multisite timeshare program in a given calendar year pursuant to this subsection if the amount of the substituted timeshare units provides more than twenty-five percent (25%) of the total annual use availability in the multisite timeshare program calculated in seven-day increments.

(6) If the owners have the right to consent to any proposed substitutions, and the person authorized to make substitutions receives, within 21 days after the date of the notice of substitution required by this subsection, a written objection to the proposed substitution from at least ten percent (10%) of all owners in the multisite timeshare program, a meeting of the owners must be conducted by the managing entity within 30 days after the end of the 21-day period. The proposed substitution is ratified unless it is rejected by a majority of owners voting in person or by proxy at the meeting, provided that at least twenty-five percent (25%) of all owners cast votes.

(7) The person authorized to make substitutions may make unlimited substitutions in a given year if a proposed substitution is approved in advance by a majority of owners of the multisite timeshare program voting in person or by proxy at a meeting called for that purpose, provided that at least twenty-five percent (25%) of the total number of owners cast votes.

(8) The person authorized to make substitutions shall notify all owners of the multisite timeshare program in writing of the decision to make a substitution. This notice must meet all of the following requirements:

a. The notice must be given at least six months in advance of the date that the proposed substitution will occur.

b. The notice must state the last day after the end of the six-month period on which reservations will be accepted from owners for use of the existing timeshare units that will be replaced.

c. The notice must state that owners shall have 21 days after the date of the notice of substitution to file a written objection with the person authorized to make substitutions.

(9) The person authorized to make substitutions may remove existing timeshare units for substitution only after those timeshare units have no pending purchaser use reservations.

(10) The person authorized to make substitutions must comply with the one-to-one use night to use right ratio and the requirements of G.S. 93A-63 in ascertaining the desirability of the proposed substitution and its impact upon the demand for and availability of existing timeshare units, amenities, or timeshare projects.

(c) With respect to deletion of timeshare units, amenities, or timeshare projects, the timeshare declaration must provide for the following:

(1) If the deletion is as a result of a casualty, the following apply:

a. The timeshare declaration must provide for casualty insurance for the timeshare units or amenities in an amount equal to the replacement cost of those timeshare units or amenities. The timeshare declaration must also provide that in the event of a casualty that results in timeshare units, amenities, or timeshare projects being unavailable for use by owners, the managing entity shall notify all affected owners of the unavailability of use within 30 days after the event of casualty.

b. The timeshare declaration must also provide for the application of any insurance proceeds arising from a casualty to either the replacement or acquisition of additional similar timeshare units or to the removal of owners from the multisite timeshare program so that owners will not be competing for available timeshare units or amenities on a greater than one-to-one use night to use right ratio.

c. If the timeshare instrument does not provide for business income insurance, or if it is unavailable, or if the declaration permits the developer, the managing entity, or the owners to elect not to reconstruct after casualty under certain circumstances or to secure replacement timeshare units in lieu of reconstruction, owners may temporarily compete for available accommodations on a greater than one-to-one use

night to use right ratio. The decision whether or not to reconstruct shall be made as promptly as possible under the circumstances.

d. Any replacement of timeshare units, amenities, or timeshare projects must comply with the one-to-one use night to use right ratio and the requirements of G.S. 93A-63 in ascertaining the desirability of the proposed addition and its impact upon the demand for and availability of existing timeshare units, amenities, or timeshare projects.

(2) If the deletion is as a result of an eminent domain proceeding, the following apply:

a. The timeshare declaration must provide for the application of any proceeds arising from a taking under eminent domain proceedings to either the replacement or acquisition of additional similar timeshare units or to the removal of owners so that owners will not be competing for available timeshare units on a greater than one-to-one use night to use right requirement ratio.

b. Any replacement of timeshare units, amenities, or timeshare projects must comply with the one-to-one use night to use right ratio and the requirements of G.S. 93A-63 in ascertaining the desirability of the proposed addition and its impact upon the demand for and availability of existing timeshare units, amenities, or timeshare projects.

(3) The timeshare declaration may provide that timeshare units, amenities, or timeshare projects will be deleted upon the expiration of the term of their availability or as otherwise provided in the timeshare declaration. However, the timeshare declaration must also provide that if a timeshare unit is deleted in this manner, a sufficient number of owners will also be deleted, or a sufficient number of substitute timeshare units will be substituted for the deleted timeshare units, so as to maintain no greater than a one-to-one use night to use right ratio. (2021-163, s. 1(c); 2021-192, s. 5(a).)

§ 93A-65. Resale purchase contracts; prohibition against advance listing fee.

(a) A consumer timeshare reseller, or any agent of a reseller, must use a resale purchase contract which must contain all of the following:

(1) An identification of the timeshare.

(2) The name and address of the timeshare program and of the managing entity of the timeshare program.

(3) Immediately prior to the disclosure required by subdivision (5) of this subsection, a statement in conspicuous type in substantially the following form: "The current year's assessment allocable to the timeshare you are purchasing is [insert amount]. This assessment, which may be increased from time to time by the managing entity of the timeshare program, is payable in full each year on or before [insert date]. This assessment [includes/does not include] yearly real estate taxes, which [are/are not] billed and collected separately. Each owner is personally liable for the payment of assessments, and failure to timely pay these assessments may result in restriction or loss of your use or ownership rights. There are many important documents relating to the timeshare program which you should review prior to purchasing a timeshare, including the timeshare

declaration, the timeshare owners' association articles and bylaws, the current year's operating and reserve budgets, and any rules and regulations affecting the use of timeshare units and amenities."

(4) If there are any delinquent assessments or real estate taxes outstanding with respect to the timeshare, the following statement must be included in the statement described in subdivision (3) of this subsection:
"A delinquency in the amount of [insert amount] for unpaid assessments or real estate taxes currently exists with respect to the timeshare you are purchasing, together with a per diem charge of [insert amount] for interest and late charges."

(5) A statement in conspicuous type located immediately prior to the space in the contract reserved for the signature of the purchaser in the following form:
"You may cancel this contract without any penalty or obligation within five days after the date you sign this contract. If you decide to cancel this contract, you must notify the seller in writing of your intent to cancel. Your notice of cancellation shall be effective upon the date sent and shall be sent to the seller at [insert address]. Any attempt to obtain a waiver of your cancellation right is void and of no effect. While you may execute all closing documents in advance, the closing before expiration of your five-day cancellation period is prohibited."

(6) The year in which the purchaser will first be entitled to reserve, use, or occupy a timeshare unit.

(b) If a resale purchase contract is not used or does not comply with the provisions of this section, the transaction shall be voidable at the option of the purchaser for a period of one year after the date of transfer.

(c) It is unlawful for any resale broker to collect any advance fee for the listing of any timeshare. (2021-163, s. 1(c); 2021-192, s. 5(a).)

§ 93A-66. Record keeping by resale service providers, transfer service providers, and lead dealers.

Resale service providers, lead dealers, and transfer service providers shall maintain the following records for a period of three years from the date each piece of personal contact information is obtained:

(1) A copy of all pieces of personal contact information obtained.

(2) Resale service providers, transfer service providers, and lead dealers who receive personal contact information from other lead dealers shall maintain records disclosing:

a. The full name, address, and telephone number of the lead dealer from which the personal contact information was obtained.

b. The date, time, and place of the transaction at which the personal contact information was obtained, along with the amount of consideration paid and a signed receipt from the lead dealer or copy of a canceled check.

(3) Resale service providers, transfer service providers, and lead dealers who obtained personal contact information by directly researching and assembling such information and did not obtain such information from a lead dealer shall maintain records disclosing:

a. A complete written description of the source from which each piece of personal contact information was obtained.

b. The methodologies used for researching and assembling the personal contact information.

c. The date, time, and place at which the piece of personal contact information was obtained.

d. The full name, address, and telephone number of each person who performed the work to obtain the piece of personal contact information. (2021-163, s. 1(c); 2021-192, s. 5(a).)

§ 93A-67. Resale service providers.

(a) Before engaging in resale advertising services, a resale service provider must provide to the consumer timeshare reseller in writing (i) a description of any fees or costs related to the services that the consumer timeshare reseller, or any other person, is required [to] pay to the resale service provider or to any third party and (ii) a description of when the fees or costs are due.

(b) A resale service provider may not engage in real estate broker activities described in Article 1 of this Chapter without being the holder of an active license in accordance with Article 1 of this Chapter.

(c) In the course of offering resale advertising services, a resale advertiser may not do any of the following:

(1) State or imply that the resale advertiser will provide or assist in providing any type of direct sales or resale brokerage services other than the advertising of the consumer resale timeshare for sale or rent by the consumer timeshare reseller.

(2) State or imply to a consumer timeshare reseller, directly or indirectly, that the resale advertiser has identified a person interested in buying or renting the timeshare resale interest without providing the name, address, and telephone number of the represented interested resale purchaser.

(3) State or imply to a consumer timeshare reseller, directly or indirectly, that sales or rentals have been achieved or generated as a result of its advertising services unless the resale advertiser, at the time of making that representation, possesses and is able to provide documentation to substantiate the statement or implication made to the consumer timeshare reseller. In addition, to the extent that a resale advertiser states or implies to a consumer timeshare reseller that the resale advertiser has sold or rented any specific number of timeshares, the resale advertiser must also provide the consumer timeshare reseller the ratio or percentage of all the timeshares that have resulted in a sale versus the number of timeshares advertised for sale by the resale advertiser for each of the previous two calendar years if the statement or implication is about a sale or sales, or the ratio or percentage of all the timeshares that have actually resulted in a rental versus the number of timeshares advertised for rental by the resale advertiser for each of the previous two calendar years if the statement or implication is about a rental or rentals.

(4) State or imply to a consumer timeshare reseller that the timeshare has a specific resale value.

(5) Make or submit any charge to a consumer timeshare reseller's credit card account, make or cause to be made any electronic transfer of consumer timeshare reseller funds, or collect any payment from a consumer timeshare

reseller that exceeds an aggregate total amount of seventy-five dollars ($75.00) or more in any 12-month period unless the following have occurred:

a. The consumer timeshare reseller has been provided a copy of the terms and conditions of the contract for resale advertising services and the consumer timeshare reseller has agreed to those terms and conditions by mail or electronic transmission.

b. The resale advertiser has received a written contract complying in all respects with this section and that has been signed by the consumer timeshare reseller.

(6) Engage in any resale advertising services for compensation or other valuable consideration without first obtaining a written brokerage agreement to provide resale advertising services signed by the consumer timeshare reseller. Notwithstanding any other law to the contrary, the contract must be printed in at least 12-point type and must contain the following information:

a. The name, address, telephone number, and internet address, if any, of the resale advertiser and a mailing address and email address to which a contract cancellation notice may be delivered at the consumer timeshare reseller's election.

b. A complete description of all resale advertising services to be provided, including, but not limited to, details regarding the publications, websites, and other media in or on which the consumer resale timeshare will be advertised; the dates or time intervals for such advertising or the minimum number of times such advertising will be run in each specific medium; the itemized cost to the consumer timeshare reseller of each resale advertising service to be provided; and a statement of the total cost to the consumer timeshare reseller of all resale advertising services to be provided.

c. A statement printed in conspicuous type immediately preceding the space in the contract provided for the consumer timeshare reseller's signature in substantially the following form:

"Timeshare Owner's Right of Cancellation

[Insert name of resale advertiser] will provide resale advertising services pursuant to this contract. If the resale advertiser represents that they have identified a person who is interested in purchasing or renting your timeshare, then the resale advertiser must provide you with the name, address, and telephone number of such represented interested resale purchaser.

You have an unwaivable right to cancel this contract for any reason within five days after the date you sign this contract. If you decide to cancel this contract, you must notify [insert name of resale advertiser] in writing of your intent to cancel. Your notice of cancellation shall be effective upon the date sent and shall be sent to [insert resale advertiser's physical address] or to [insert resale advertiser's email address]. Your refund will be made within 20 days after receipt of notice of cancellation or within five days after receipt of funds from your cleared check, whichever is later.

You are not obligated to pay [insert name of resale advertiser] any money unless you sign this contract and return it to the retail advertiser.

Important: Before signing this contract, you should carefully review your original purchase document and other timeshare program documents to determine whether the developer has reserved a right of first refusal or other option to purchase your timeshare or to determine whether there are any restrictions or special conditions applicable to the resale or rental of your timeshare."

d. A statement that any resale contract entered into by or on behalf of the consumer timeshare reseller must comply in all respects with G.S. 93A-65, including the provision of a five-day cancellation period for the prospective consumer resale purchaser.

(7) Fail to honor any cancellation notice sent by the consumer timeshare reseller within five days after the date the consumer timeshare reseller signs the contract for resale advertising services.

(8) Fail to provide a full refund of all money paid by a consumer timeshare reseller within 20 days after receipt of notice of cancellation or within five days after receipt of funds from a cleared check, whichever is later.

(d) If a resale service provider uses a contract for resale advertising services that fails to comply with the requirements of this section, the contract shall be voidable at the option of the consumer timeshare reseller for a period of one year after the date it is executed by the consumer timeshare reseller.

(e) Notwithstanding obligations placed upon any other persons by this section, it is the duty of a resale service provider to supervise, manage, and control all aspects of the offering of resale advertising services by any agent or employee of the resale service provider. Any violation of this section that occurs during that offering shall be deemed a violation by the resale service provider as well as by the person actually committing the violation.

(f) Providing resale advertising services with respect to a consumer resale timeshare in a timeshare property located or offered within this State, or in a multisite timeshare program registered or required to be registered to be offered in this State, including acting as an agent or third-party service provider for a resale service provider, constitutes operating, conducting, engaging in, or carrying on a business or business venture in this State.

(g) If a resale service provider also offers timeshare transfer services, the resale service provider must comply with G.S. 93A-68.

(h) Any violation of this section is an unfair or deceptive act or practice prohibited by G.S. 75-1.1. (2021-163, s. 1(c); 2021-192, s. 5(a); 2025-25, s. 29(5).)

§ 93A-68. Timeshare transfer services.

(a) In the course of advertising, marketing, promoting, offering, sale, or performance of any timeshare transfer services, no person shall do any of the following:

(1) Engage in any timeshare transfer services for compensation, or the expectation of receiving compensation, without first obtaining a written timeshare transfer services agreement signed by the consumer timeshare reseller that complies with this section.

(2) Fail to provide both the consumer timeshare reseller and the independent escrow agent required by this section with an executed copy of the timeshare transfer services agreement.

(3) Advise, suggest, or assist with advising or suggesting that a consumer timeshare reseller cease making any payment of assessments, ad valorem real estate taxes, or any other sums imposed against the consumer resale timeshare, or any payment of any amounts due to a mortgagee or other lienor under a mortgage or other lien or encumbrance secured by the consumer resale timeshare.

(4) Represent, expressly or by implication, that (i) a consumer timeshare reseller cannot or should not contact or communicate with the developer, managing entity, exchange company, mortgagee, or lienor or (ii) the developer, managing entity, exchange company, mortgagee, or lienor is prohibited from contacting or communicating with the consumer timeshare reseller.

(5) Offer, obtain, negotiate, arrange, or assist with offering, obtaining, negotiating, arranging a timeshare transfer service that disposes of the consumer resale timeshare through foreclosure of the consumer resale timeshare for (i) the nonpayment of assessments, ad valorem real estate taxes, or any other sums imposed against the consumer resale timeshare or (ii) nonpayment of amounts due to a mortgagee or other lienor under a mortgage or other lien encumbrance secured by the consumer resale timeshare.

(6) Charge or accept a fee for obtaining, negotiating, arranging, or assisting with obtaining, negotiating, or arranging the voluntary relinquishment of a consumer resale timeshare to a managing entity in lieu of payment of assessments or ad valorem real estate taxes.

(b) A consumer timeshare reseller has the right to cancel the timeshare transfer services agreement until midnight of the fifth day after the execution of the timeshare transfer services agreement. The consumer timeshare reseller may not waive this right of cancellation. Any oral or written declaration or instrument that purports to waive this right of cancellation is void. Cancellation under this section is without penalty, and the refund of all monies received by the transfer service provider shall be made within 20 days of demand therefor by the consumer timeshare reseller or within five days after receipt of cleared funds from the consumer timeshare reseller, whichever is later.

(c) Each timeshare transfer services agreement shall contain the following:

(1) A statement that no fee, cost, or other compensation may be received by or paid to the transfer service provider before the delivery to the consumer timeshare reseller of written evidence that all promised timeshare transfer services have been performed, including:

a. Delivery to both the consumer timeshare reseller and the timeshare program managing entity of a copy of the recorded timeshare instrument or other legal document evidencing the transfer of ownership of or legal title to the consumer resale timeshare to the transferee, accompanied by the full name, address, and other known contact information for the transferee.

b. Delivery to the consumer timeshare reseller of a copy of the legal document executed by the vendor or obligee evidencing the mutually

agreed upon termination of the timeshare instrument or timeshare loan obligation relating to the consumer resale timeshare.

(2) The name, address, current phone number, and current email address of the independent escrow agent required by this section.

(3) A specific, detailed description of each timeshare transfer service promised to be provided, including a statement of the last date by which each promised service will be fully performed, and including a statement that the transfer service provider will deliver to the consumer timeshare reseller written notice of the full performance of each timeshare transfer service, together with a copy of the legal document evidencing the completed performance of the service.

(4) The total cost to the consumer timeshare reseller of each timeshare transfer service promised to be provided pursuant to subdivision (3) of this subsection together with an itemized list of all of the fees and costs that comprise the total cost of that service.

(5) The terms or conditions of any refund, cancellation, exchange, or repurchase policy for a timeshare transfer service, including the circumstances under which a guaranteed or nonguaranteed, full or partial refund will be granted.

(6) A statement in conspicuous type that nonpayment of a timeshare loan obligation or assessment obligation may lead to a foreclosure action or other proceeding that could result in the loss of ownership of the timeshare and negative consequences for the consumer timeshare reseller's credit and tax liability.

(7) A statement in substantially the following form in conspicuous type immediately preceding the space in the timeshare transfer services agreement provided for the consumer timeshare reseller's signature:

[Insert transfer service provider name] has agreed to provide you with timeshare transfer services under this timeshare transfer services agreement. After those services have been fully performed, the transfer service provider is obligated to provide you with written notice of full performance and a copy of the recorded instrument or other legal document evidencing the transfer or assignment of your timeshare, the termination of your timeshare contract, or the release from a timeshare loan or assessment obligation. Any fee or other compensation paid by you under this agreement before full performance by [Insert transfer service provider name] must be held in escrow by the escrow agent specified in this agreement, and the transfer service provider is prohibited from receiving any such fee or other compensation until all promised timeshare transfer services have been performed.

Timeshare Owner's Right of Cancellation

You have an unwaivable right to cancel this agreement for any reason within five days after the date you sign this agreement. If you decide to cancel this contract, you must notify [insert name of transfer service provider] in writing of your intent to cancel. Your notice of cancellation shall be effective upon the date sent and shall be sent to [insert name and mailing address of transfer service provider] or to [insert transfer service provider's email address]. Your refund will be made within 20 days after receipt of notice of cancellation or within five days after receipt of funds from your cleared check, whichever is later.

IMPORTANT: It is recommended that you contact your developer, managing entity, mortgagee, or lienor before signing this agreement. Your developer, management entity, mortgagee, or lienor may be willing to negotiate a payment plan, restructure your debt obligation, or accept the transfer of your timeshare free of charge.

(d) If the timeshare transfer services to be provided include relief to be obtained from the consumer timeshare reseller's managing entity, mortgagee, or lienor, the timeshare transfer service provider may not do the following:

(1) Request or receive payment of any fee or other consideration until the consumer timeshare reseller has executed a written agreement between the consumer timeshare reseller and the consumer timeshare reseller's managing entity, mortgagee, or lienor incorporating the offer of relief the timeshare transfer service provider obtained from the managing entity, mortgagee, or lienor.

(2) Fail to disclose, on a separate page, in conspicuous type, substantially the following statement at the time the timeshare transfer service provider furnishes the consumer timeshare reseller with the written agreement specified in subsection (c) of this section, the following:

Important Notice

This is an offer of relief we obtained from your [insert name of managing entity, mortgagee, or lienor]. You may accept or reject the offer. If you reject the offer, you do not have to pay us for this service. If you accept the offer, you will have to pay us [insert total amount] for this service.

(e) Before entering into any timeshare transfer services agreement, a person providing timeshare transfer services shall establish an escrow account with an independent escrow agent for the purpose of protecting the funds or other property of consumer timeshare resellers required to be escrowed by this subsection. The independent escrow agent shall maintain the escrow account only in such a manner as to be under the direct supervision and control of the independent escrow agent. The independent escrow agent shall have a fiduciary duty to each consumer timeshare reseller to maintain the escrow account in accordance with good accounting practices and to release the consumer timeshare reseller's funds or other property from escrow only in accordance with this section.

(f) All funds that are received from or on behalf of a consumer timeshare reseller under a timeshare transfer services agreement shall be deposited into the escrow account. A fee, cost, or other compensation that is due or that will be paid to the transfer service provider must be held in the escrow account until the transfer service provider has fully complied with all of the obligations under the timeshare transfer services agreement and this section.

(g) The funds required to be escrowed may only be released from escrow as follows:

(1) On the order of the transfer service provider upon presentation of an affidavit by the transfer service provider that all promised timeshare transfer services have been performed as set forth in the timeshare transfer services agreement, including delivery to both the consumer timeshare reseller and the timeshare program managing entity of either, as applicable: (i) a copy of the recorded instrument or other legal document evidencing the transfer of ownership of or legal title to the consumer resale timeshare to the transferee or (ii) a copy of the legal document executed by the vendor or obligee evidencing the termination of

the timeshare instrument or timeshare loan obligation relating to the consumer resale timeshare.

(2) To a managing entity to pay any assessments, transfer fees, or other moneys owed with respect to the consumer resale timeshare or to pay a governmental agency for the purpose of completing and perfecting the transfer.

(h) The independent escrow agent shall retain all timeshare transfer services agreements, escrow account records, and affidavits received pursuant to this subsection for a period of five years.

(i) A transfer service provider, an agent or third-party service provider for the transfer services provider, or an independent escrow agent who intentionally fails to comply with the provisions of this subsection concerning the establishment of an escrow account, deposits of funds into escrow, withdrawal therefrom, and maintenance of records is guilty of a Class E felony.

(j) The provisions of this section that apply to transfer service providers do not apply to any of the following:

(1) A resale broker who offers timeshare transfer services to a consumer timeshare reseller, so long as the resale broker complies in all respects with the provisions of Article 1 of this Chapter.

(2) An attorney who is licensed in this State and a member in good standing or a title insurer or agent licensed in this State in good standing who offers timeshare transfer services to a consumer timeshare reseller.

(3) A mortgagee or servicer or lienor, or agent or contractor of a mortgagee or servicer or lienor, to the extent that any of them offers timeshare transfer services to an obligor related to a mortgage, lien, or other encumbrance of a mortgagee, servicer, or lienor against the obligor's timeshare.

(k) This section shall not apply to the transfer of ownership of a consumer resale timeshare from a consumer timeshare reseller to the developer or managing entity of that timeshare program unless and only to the extent the transfer includes the assistance of a transfer service provider.

(*l*) Only an attorney licensed in this State or any person authorized to perform nonjudicial foreclosures pursuant to this Article may offer services to a consumer timeshare reseller in connection with an involuntary transfer, or proposed involuntary transfer, of a consumer resale timeshare.

(m) Notwithstanding obligations placed upon any other persons by this section, it is the duty of a transfer service provider to supervise, manage, and control all aspects of the offering of timeshare transfer services by any agent or employee of the transfer service provider. Any violation of this section that occurs during such offering shall be deemed a violation by the transfer service provider as well as by the person actually committing the violation.

(n) Providing timeshare transfer services in this State, including acting as an agent or third-party service provider for a transfer service provider, constitutes operating, conducting, engaging in, or carrying on a business or business venture in this State.

(o) An owner, managing entity, or developer may bring an action for injunctive relief and recover their reasonable attorneys' fees and costs against a timeshare service provider for a violation of this section.

(p) Upon a consumer timeshare reseller's request, the developer or managing entity shall provide information regarding relinquishment or other disposition options of the consumer timeshare reseller's timeshare available to the timeshare reseller through the developer or managing entity, if available.

(q) Any violation of this section is an unfair or deceptive act or practice prohibited by G.S. 75-1.1. (2021-163, s. 1(c); 2021-192, s. 5(a); 2022-75, s. 17(b).)

§ 93A-69. Timeshare program extensions.

(a) Unless the timeshare declaration specifically provides a lower percentage, the vote or written consent, or both, of at least sixty-six percent (66%) of all eligible voting interests present in person or by proxy at a duly noticed, called, and constituted meeting of the owners may, at any time, extend the term of the timeshare program. If the term of a timeshare program is extended pursuant to this section, all rights, privileges, duties, and obligations created under applicable law or the timeshare declaration continue in full force to the same extent as if the extended termination date of the timeshare program were the original termination date of the timeshare program.

(b) Unless the timeshare declaration specifically provides for a lower quorum, the quorum for the timeshare owners' association meeting to extend the timeshare program is fifty percent (50%) of all eligible voting interests in the timeshare program.

(c) The owners' association meeting held pursuant to subsection (a) of this section may be held at any time before the termination of the timeshare program.

(d) The managing entity may determine that any voting interest that is delinquent in the payment of more than two years of assessments is ineligible to vote on any extension of the timeshare program unless such delinquency is paid in full before the vote.

(e) A proxy for a vote to extend a timeshare program pursuant to this section is valid for up to three years and is revocable unless the proxy states it is irrevocable.

(f) If an extension vote or consent pursuant to this section is proposed for a timeshare project of a multisite timeshare program located in this State, the proposed extension is effective only if the person authorized to make additions or substitutions of accommodations and facilities pursuant to the timeshare declaration also approves the extension. (2021-163, s. 1(c); 2021-192, s. 5(a).)

§ 93A-69.1. Timeshare program terminations.

(a) Unless the timeshare declaration provides otherwise, the vote or written consent, or both, of sixty percent (60%) of all voting interests in a timeshare program may terminate the term of the timeshare program at any time. If a timeshare program is terminated pursuant to this section, the termination has immediate effect pursuant to applicable law and the timeshare declaration as if the effective date of the termination were the original date of termination.

(b) If the timeshare property is managed by a timeshare owners' association that is separate from any underlying owners' association, the termination of a timeshare program does not change the corporate status of the timeshare owners' association. The timeshare owners' association continues to exist only for the purposes of concluding its affairs, prosecuting and defending actions by or against it, collecting and discharging obligations, disposing of and conveying its property, collecting and dividing its assets, and otherwise complying with this subsection.

(c) After termination of a timeshare program, the managing entity or the board, if there is a timeshare owners' association, shall serve as the termination trustee, and in a fiduciary capacity may bring an action in partition on behalf of the tenants in common in each former timeshare property or sell the former timeshare property in any manner and to any person who is approved by a majority of all tenants in common. The termination trustee shall have all other powers reasonably necessary to effect the partition or sale of the former timeshare property, including the power to maintain the property during the pendency of any partition action or sale.

(d) All reasonable expenses incurred by the termination trustee relating to the performance of its duties pursuant to this section, including reasonable attorneys' fees and other professionals, must be paid by the tenants in common of the former timeshare property subject to partition or sale proportionate to their respective ownership interests.

(e) The termination trustee shall adopt reasonable procedures to implement the partition or sale of the former timeshare property and comply with the requirements of this section.

(f) If a timeshare program is terminated in an underlying property regime and the underlying property regime is not simultaneously terminated, a majority of the tenants in common in each former timeshare unit present and voting in person or by proxy at a meeting of tenants in common conducted by the termination trustee, or conducted by the board of the owners' association of the underlying property regime, if the owners' association managed the former timeshare property, shall designate a voting representative for the timeshare unit and file a voting certificate with the owners' association for the underlying regime. The voting representative may vote on all matters at meetings of the owners' association for the underlying regime, including termination of the underlying regime.

(g) Unless the timeshare declaration provides otherwise, this section applies only to a timeshare program that has been in existence for at least 25 years as of the effective date of the termination vote or consent.

(h) If a termination vote or consent is proposed for a timeshare project of a multisite timeshare program located in this State, the proposed termination is effective only if the person authorized to make additions or substitutions of accommodations and facilities pursuant to the timeshare instrument also approves the termination. (2021-163, s. 1(c); 2021-192, s. 5(a).)

Article 5.

Real Estate Appraisers.

§§ 93A-70 through 93A-81: Repealed by Session Laws 1993, c. 419, s. 7.

Article 6.

Broker Price Opinions and Comparative Market Analyses.

§ 93A-82. Definitions.

As used in this Article, the terms "broker price opinion" and "comparative market analysis" mean an estimate prepared by a licensed real estate broker that details the probable selling price or leasing price of a particular parcel of or interest in property and provides a varying level of detail about the property's condition, market, and neighborhood, and information on comparable properties, but does not include an automated valuation model. (2012-163, s. 2.)

§ 93A-83. Broker price opinions and comparative market analyses for a fee.

(a) Authorized. – A person licensed under this Chapter, other than a provisional broker, may prepare a broker price opinion or comparative market analysis and charge and collect a fee for the opinion if:

(1) The license of that licensee is active and in good standing; and

(2) The broker price opinion or comparative market analysis meets the requirements of subsection (c) of this section.

(3) The requirements of this Article shall not apply to any broker price opinion or comparative market analysis performed by a licensee for no fee or consideration.

(b) For Whom Opinion May Be Prepared. – Notwithstanding any provision to the contrary, a person licensed under this Chapter may prepare a broker price opinion or comparative market analysis for any of the following:

(1) An existing or potential seller of a parcel of real property.
(2) An existing or potential buyer of a parcel of real property.
(3) An existing or potential lessor of a parcel of or interest in real property.
(4) An existing or potential lessee of a parcel of or interest in real property.
(5) A third party making decisions or performing due diligence related to the potential listing, offering, sale, option, lease, or acquisition price of a parcel of or interest in real property.
(6) An existing or potential lienholder or other third party for any purpose other than as the basis to determine the value of a parcel of or interest in property, for a mortgage loan origination, including first and second mortgages, refinances, or equity lines of credit.
(7) The provisions of this subsection do not preclude the preparation of a broker price opinion or comparative market analysis to be used in conjunction with or in addition to an appraisal.

(c) Required Contents of a Broker Price Opinion or Comparative Market Analysis. – A broker price opinion or comparative market analysis shall be in writing and conform to the standards provided in this Article that shall include, but are not limited to, the following:

(1) A statement of the intended purpose of the broker price opinion or comparative market analysis.
(2) A brief description of the subject property and property interest to be priced.
(3) The basis of reasoning used to reach the conclusion of the price, including the applicable market data or capitalization computation.
(4) Any assumptions or limiting conditions.
(5) A disclosure of any existing or contemplated interest of the broker issuing the broker price opinion, including the possibility of representing the landlord/tenant or seller/buyer.
(6) The effective date of the broker price opinion.
(7) The name and signature of the broker issuing the broker price opinion and broker license number.
(8) The name of the real estate brokerage firm for which the broker is acting.
(9) The signature date.
(10) A disclaimer stating that "This opinion is not an appraisal of the market value of the property, and may not be used in lieu of an appraisal. If an appraisal is desired, the services of a licensed or certified appraiser shall be obtained. This opinion may not be used by any party as the primary basis to determine the value of a parcel of or interest in real property for a mortgage loan origination, including first and second mortgages, refinances, or equity lines of credit."
(11) A copy of the assignment request for the broker price opinion or comparative market analysis.

(d) Rules. – The North Carolina Real Estate Commission shall have the power to adopt rules that are not inconsistent with the provisions in this Article.

(e) Additional Requirements for Electronic or Form Submission. – In addition to the requirement of subsection (c) of this section, if a broker price opinion is submitted electronically or on a form supplied by the requesting party, the following provisions apply:

(1) A signature required by subdivision (7) of subsection (c) of this section may be an electronic signature, as defined in G.S. 47-16.2.

(2) A signature required by subdivision (7) of subsection (c) of this section and the disclaimer required by subdivision (10) of subsection (c) of this section may be transmitted in a separate attachment if the electronic format or form supplied by the requesting party does not allow additional comments to be written by the licensee. The electronic format or form supplied by the requesting party shall do the following:

a. Reference the existence of a separate attachment.

b. Include a statement that the broker price opinion or comparative market analysis is not complete without the attachment.

(f) Restrictions. – Notwithstanding any provisions to the contrary, a person licensed pursuant to this Chapter may not knowingly prepare a broker price opinion or comparative market analysis for any purpose in lieu of an appraisal when an appraisal is required by federal or State law. A broker price opinion or comparative market analysis that estimates the value of or worth a parcel of or interest in real estate rather than sales or leasing price shall be deemed to be an appraisal and may not be prepared by a licensed broker under the authority of this Article, but may only be prepared by a duly licensed or certified appraiser, and shall meet the regulations adopted by the North Carolina Appraisal Board. A broker price opinion or comparative market analysis shall not under any circumstances be referred to as a valuation or appraisal.

(g) No Report of Predetermined Result. – A broker price opinion or comparative market analysis shall not include the reporting of a predetermined result. (2012-163, s. 2; 2012-194, s. 61.)

Article 7.

Prohibition of Unfair Real Estate Service Agreements.

§ 93A-88.1. Purpose; definitions.

(a) This Article is intended to prohibit the use of real estate service agreements that are unfair to an owner of residential real estate or to other persons who may become owners of that real estate in the future. This Article also prohibits the recording of such residential real estate service agreements so that the public records will not be clouded by them and provides remedies for owners who are inconvenienced or damaged by the recording of such agreements.

(b) For the purposes of this Article, the following definitions apply:

(1) Person. – A person as defined in G.S. 105-228.90(b)(23).

(2) Real estate service agreement. – A written contract between a service provider and the owner or potential buyer of residential real estate to provide services, current or future, in connection with the maintenance, purchase, or sale of residential real estate.

(3) Residential real estate. – Real property located in this State which is used primarily for personal, family, or household purposes.

(4) Service provider. – A person who provides a service related to residential real estate, including a real estate broker.

(5) Unfair real estate service agreement. – A real estate service agreement that violates G.S. 93A-88.2. (2023-117, s. 1.)

§ 93A-88.2. Unfair real estate service agreements.

(a) Unfair Real Estate Service Agreements. – A real estate service agreement is unfair, void, and in violation of this Article if the agreement is to be in effect for more than one year and either expressly or implicitly aims to do any of the following:

(1) Run with the land or bind future owners of residential real estate identified in the real estate service agreement.

(2) Allow for assignment of the right to provide services without notice or consent of the owner or buyer.

(3) Create a lien, encumbrance, or other real property security interest.

(b) No Right to Refund. – A service provider has no right to a refund of the consideration paid to the owner or buyer in connection with an unfair real estate service agreement.

(c) Exemptions. – This Article does not apply to the following types of agreements:

(1) A home warranty or other type of similar product that covers the cost of maintenance of a major housing system, such as plumbing or electrical wiring, for a set period of time from the date a house is sold.

(2) An insurance contract.

(3) Any transactions governed by Chapter 47G (Option to Purchase Contracts Executed with Lease Agreements) or Chapter 47H (Contracts for Deed) of the General Statutes.

(4) A declaration created pursuant to Chapter 47A (Unit Ownership), Chapter 47C (North Carolina Condominium Act), or Chapter 47F (North Carolina Planned Community Act) of the General Statutes.

(5) A maintenance or repair agreement entered into by a homeowners' association in a common interest community.

(6) A security agreement under the Uniform Commercial Code relating to the sale or rental of personal property or fixtures.

(7) Provision of water, sewer, electrical, telephone, cable, natural gas, propane, fuel oil, or other regulated utility service.

(8) A property management contract as defined in G.S. 105-164.3(189).

(9) Any actions arising from Part 2 of Article 2 of Chapter 44A of the General Statutes regarding mechanics', laborers', and materialmen's liens, or Part 4 of Article 2 of Chapter 44A of the General Statutes regarding commercial real estate broker liens. (2023-117, s. 1.)

§ 93A-88.3. Recording prohibited.

(a) Recording an unfair real estate service agreement is prohibited. If an unfair real estate service agreement, or notice or memorandum thereof, has been recorded, it is void.

(b) All of the following shall apply to a recording that is void under subsection (a) of this section:

(1) The recording shall not operate as a lien, encumbrance, or security interest.

(2) No owner or buyer shall be required to record any document voiding the recording.

(3) The recording shall not provide actual or constructive notice to any person interested in the residential real estate that is identified in the unfair real estate service agreement.

(4) The recording violates G.S. 14-118.6(a).

(c) In addition to any other rights provided by law, any person with an interest in residential real estate identified by a recording that is void under subsection (a) of this section may recover damages, costs, and attorney's fees that may be proved against the service provider named in the unfair real estate service agreement. Any actual damages, costs, and attorney's fees that are proved against the service provider will not be offset by the consideration paid by the service provider to the owner or buyer of the residential real estate. (2023-117, s. 1.)

§ 93A-88.4. Deceptive act.

A violation of any provision of this Article constitutes an unfair or deceptive trade practice under G.S. 75-1.1. Any party aggrieved by a violation of this Article may bring a cause of action against the service provider and is entitled to the relief available in Chapter 75 of the General Statutes. Any recoveries available under Chapter 75 of the General Statutes against the service provider will not be offset by the consideration paid by the service provider to the owner or buyer in connection with the unfair real estate service agreement. The Attorney General is hereby empowered to enforce this Article as allowed by Chapter 75 of the General Statutes. (2023-117, s. 1.)