

## **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 bank, savings and loan association, or trust company. 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.)

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

(a) **(Effective until July 1, 2017)** Any person, partnership, corporation, limited liability company, association, or other business entity hereafter desiring to enter into business of and obtain a license as a real estate broker shall make written application for such license to the Commission in the form and manner prescribed by the Commission. Each applicant for a license as a real estate broker shall be at least 18 years of age. Each applicant for a license as a real estate broker shall, within three years preceding the date the application is made, have satisfactorily completed, at a school approved by the Commission, an education program consisting of at least 75 hours of classroom 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, fixed by the Commission but not to exceed thirty dollars (\$30.00).

(a) **(Effective July 1, 2017)** Any person, partnership, corporation, limited liability company, association, or other business entity hereafter desiring to enter into business of and obtain a license as a real estate broker shall make written application for such license to the Commission in the form and manner prescribed by the Commission. Each applicant for a license as a real estate broker shall be at least 18 years of age. Each applicant for a license as a real estate broker shall, within three years preceding the date the application is made, have satisfactorily completed, at a school approved by the Commission, an education program consisting of at least 75 hours of instruction in subjects determined by the Commission, or shall possess real estate

education or experience in real estate transactions which the Commission shall find equivalent to the education program. Each applicant for a license as a real estate broker shall be required to pay a fee. The application fee shall be one hundred dollars (\$100.00) unless the Commission sets the fee at a higher amount by rule; however, the Commission shall not set a fee that exceeds one hundred twenty dollars (\$120.00). The application fee shall not increase by more than five dollars (\$5.00) during a 12-month period.

(a1) **(Effective until July 1, 2017)** Each person who is issued a real estate broker license on or after April 1, 2006, shall initially be classified as a provisional broker and shall, within three years following initial licensure, satisfactorily complete, at a school approved by the Commission, a postlicensing education program consisting of 90 hours of classroom instruction in subjects determined by the Commission or shall possess real estate education or experience in real estate transactions which the Commission shall find equivalent to the education program. The Commission may, by rule, establish a schedule for completion of the prescribed postlicensing education that requires provisional brokers to complete portions of the 90-hour postlicensing education program in less than three years, and provisional brokers must comply with this schedule in order to be entitled to actively engage in real estate brokerage. Upon completion of the postlicensing education program, the provisional status of the broker's license shall be terminated. When a provisional broker fails to complete all 90 hours of required postlicensing education within three years following initial licensure, the broker's license shall be placed on inactive status. The broker's license shall not be returned to active status until he or she has satisfied such requirements as the Commission may by rule require. Every license cancelled after April 1, 2009, because the licensee failed to complete postlicensing education shall be reinstated on inactive status until such time as the licensee satisfies the requirements for returning to active status as the Commission may by rule require.

(a1) **(Effective July 1, 2017)** Each person who is issued a real estate broker license on or after April 1, 2006, shall initially be classified as a provisional broker and shall, within three years following initial licensure, satisfactorily complete, at a school approved by the Commission, a postlicensing education program consisting of 90 hours of instruction in subjects determined by the Commission or shall possess real estate education or experience in real estate transactions which the Commission shall find equivalent to the education program. The Commission may, by rule, establish a schedule for completion of the prescribed postlicensing education that requires provisional brokers to complete portions of the 90-hour postlicensing education program in less than three years, and provisional brokers must comply with this schedule in order to be entitled to actively engage in real estate brokerage. Upon completion of the postlicensing education program, the provisional status of the broker's license shall be terminated. When a provisional broker fails to complete all 90 hours of required postlicensing education within three years following initial licensure, the broker's license shall be placed on inactive status. The broker's license shall not be returned to active status until he or she has satisfied such requirements as the Commission may by rule require. Every license cancelled after April 1, 2009, because the licensee failed to complete postlicensing education shall be reinstated on inactive status until such time as the licensee satisfies the requirements for returning to active status as the Commission may by rule require.

(a2) An approved school shall pay a fee of ten dollars (\$10.00) per licensee to the Commission for each licensee completing a postlicensing education course conducted by the school, provided that these fees shall not be charged to a community college, junior college,

college, or university located in this State and accredited by the Southern Association of Colleges and Schools.

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

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

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

(b1) The Department of Public Safety may provide a criminal record check to the Commission for a person who has applied for a license through the Commission. The Commission shall provide to the Department of Public Safety, along with the request, the fingerprints of the applicant, any additional information required by the Department of Public

Safety, and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The Commission shall keep all information pursuant to this subsection privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

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

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

(c) **(Effective until July 1, 2017)** 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 is thirty dollars (\$30.00) unless the Commission sets the fee at a higher amount. The Commission may set the license renewal fee at an amount that does not exceed fifty dollars (\$50.00). 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 license shall be fifty-five dollars (\$55.00). 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).

(c) **(Effective July 1, 2017)** All licenses issued by the Commission under the provisions of this Chapter shall expire on the 30th day of June following issuance or on any other date that the Commission may determine and shall become invalid after that date unless reinstated. A license may be renewed 45 days prior to the expiration date by filing an application with and paying to the Executive Director of the Commission the license renewal fee. The license renewal fee shall be forty-five dollars (\$45.00) unless the Commission sets the fee at a higher amount by rule; however, the Commission shall not set the license renewal fee at an amount that exceeds sixty dollars (\$60.00). The license renewal fee may not increase by more than five dollars (\$5.00) during a 12-month period. The Commission may adopt rules establishing a system of license renewal in which the licenses expire annually with varying expiration dates. These rules shall provide for prorating the annual fee to cover the initial renewal period so that no licensee



shall be charged an amount greater than the annual fee for any 12-month period. The fee for reinstatement of an expired, revoked, or suspended license shall be an amount equal to two times the license renewal fee at the time the application for reinstatement is submitted. In the event a licensee fails to obtain a reinstatement of such license within six months after the expiration date thereof, the Commission may, in its discretion, consider such person as not having been previously licensed, and thereby subject to the provisions of this Chapter relating to the issuance of an original license, including the examination requirements set forth herein. Duplicate licenses may be issued by the Commission upon payment of a fee of five dollars (\$5.00) by the licensee. Commission certification of a licensee's license history shall be made only after the payment of a fee of ten dollars (\$10.00).

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

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

#### **§ 93A-4.1. Continuing education.**

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

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

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

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

- (1) The content and subject matter of continuing education courses.
- (2) The curriculum of courses required.
- (3) The criteria, standards, and procedures for the approval of courses, course sponsors, and course instructors.
- (4) The methods of instruction.

- (5) The computation of course credit.
- (6) The ability to carry forward course credit from one year to another.
- (7) The deferral of continuing education for brokers not engaged in brokerage.
- (8) The waiver of or variance from the continuing education requirement for hardship or other reasons.
- (9) The procedures for compliance and sanctions for noncompliance.

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

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

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

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

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

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

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

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

(b) A provisional broker as contemplated in subsection (a) of this section who was issued a salesperson license prior to October 1, 2005, shall, not later than April 1, 2008, complete a broker transition course prescribed by the Commission, not to exceed 24 classroom hours of instruction, or shall demonstrate to the Commission that he or she possesses four years' full-time real estate brokerage experience or equivalent part-time real estate brokerage experience within the previous six years. If the provisional broker satisfies this requirement by April 1, 2008, the

provisional status of his or her broker license will be terminated, and the broker will not be required to complete the 90-classroom-hour broker postlicensing education program prescribed by G.S. 93A-4(a1). If the provisional broker fails to satisfy this requirement by April 1, 2008, his or her license will be placed on inactive status, if not already on inactive status, and he or she must complete the 90-classroom-hour broker postlicensing education program prescribed by G.S. 93A-4(a1) in order to terminate the provisional status of the broker license and to be eligible to return his or her license to active status.

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

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

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

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

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

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

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

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

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

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

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

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

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

- (1) Making any willful or negligent misrepresentation or any willful or negligent omission of material fact.
- (2) Making any false promises of a character likely to influence, persuade, or induce.
- (3) Pursuing a course of misrepresentation or making of false promises through agents, advertising or otherwise.
- (4) Acting for more than one party in a transaction without the knowledge of all parties for whom he or she acts.
- (5) Accepting a commission or valuable consideration as a real estate broker on provisional status for the performance of any of the acts specified in this Article or Article 4 of this Chapter, from any person except his or her broker-in-charge or licensed broker by whom he or she is employed.
- (6) Representing or attempting to represent a real estate broker other than the broker by whom he or she is engaged or associated, without the express knowledge and consent of the broker with whom he or she is associated.
- (7) Failing, within a reasonable time, to account for or to remit any monies coming into his or her possession which belong to others.
- (8) Being unworthy or incompetent to act as a real estate broker in a manner as to endanger the interest of the public.
- (9) Paying a commission or valuable consideration to any person for acts or services performed in violation of this Chapter.
- (10) Any other conduct which constitutes improper, fraudulent or dishonest dealing.
- (11) Performing or undertaking to perform any legal service, as set forth in G.S. 84-2.1, or any other acts constituting the practice of law.
- (12) Commingling the money or other property of his or her principals with his or her own or failure to maintain and deposit in a trust or escrow account in a bank as provided by subsection (g) of this section all money received by him or her as a real estate licensee acting in that capacity, or an escrow agent, or the custodian or manager of the funds of another person or entity which relate to or concern that person's or entity's interest or investment in real property, provided, these accounts shall not bear interest unless the principals authorize

in writing the deposit be made in an interest bearing account and also provide for the disbursement of the interest accrued.

- (13) Failing to deliver, within a reasonable time, a completed copy of any purchase agreement or offer to buy and sell real estate to the buyer and to the seller.
  - (14) Failing, at the time a sales transaction is consummated, to deliver to the broker's client a detailed and accurate closing statement showing the receipt and disbursement of all monies relating to the transaction about which the broker knows or reasonably should know. If a closing statement is prepared by an attorney or lawful settlement agent, a broker may rely on the delivery of that statement, but the broker must review the statement for accuracy and notify all parties to the closing of any errors.
  - (15) Violating any rule adopted by the Commission.
- (b) The Commission may suspend or revoke any license issued under the provisions of this Chapter or reprimand or censure any licensee when:
- (1) The licensee has obtained a license by false or fraudulent representation;
  - (2) The licensee has been convicted or has entered a plea of guilty or no contest upon which final judgment is entered by a court of competent jurisdiction in this State, or any other state, of any misdemeanor or felony that involves false swearing, misrepresentation, deceit, extortion, theft, bribery, embezzlement, false pretenses, fraud, forgery, larceny, misappropriation of funds or property, perjury, or any other offense showing professional unfitness or involving moral turpitude which would reasonably affect the licensee's performance in the real estate business;
  - (3) The licensee has violated any of the provisions of G.S. 93A-6(a) when selling, leasing, or buying the licensee's own property;
  - (4) The broker's unlicensed employee, who is exempt from the provisions of this Chapter under G.S. 93A-2(c)(6), has committed, in the regular course of business, any act which, if committed by the broker, would constitute a violation of G.S. 93A-6(a) for which the broker could be disciplined; or
  - (5) The licensee, who is also licensed as an appraiser, attorney, home inspector, mortgage broker, general contractor, or member of another licensed profession or occupation, has been disciplined for an offense under any law involving fraud, theft, misrepresentation, breach of trust or fiduciary responsibility, or willful or negligent malpractice.
- (c) The Commission may appear in its own name in superior court in actions for injunctive relief to prevent any person from violating the provisions of this Chapter or rules adopted by the Commission. The superior court shall have the power to grant these injunctions even if criminal prosecution has been or may be instituted as a result of the violations, or whether the person is a licensee of the Commission.
- (d) Each broker shall maintain complete records showing the deposit, maintenance, and withdrawal of money or other property owned by the broker's principals or held in escrow or in trust for the broker's principals. The Commission may inspect these records periodically, without prior notice and may also inspect these records whenever the Commission determines that they are pertinent to an investigation of any specific complaint against a licensee.
- (e) When a person or entity licensed under this Chapter is accused of any act, omission, or misconduct which would subject the licensee to disciplinary action, the licensee, with the

consent and approval of the Commission, may surrender the license and all the rights and privileges pertaining to it for a period of time established by the Commission. A person or entity who surrenders a license shall not thereafter be eligible for or submit any application for licensure as a real estate broker during the period of license surrender.

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

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

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

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

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

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

licensee at his or her address of record by regular mail. (1999-229, s. 7; 2005-395, s. 10; 2011-217, s. 7.)

**§ 93A-7. Power of courts to revoke.**

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

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

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

**§ 93A-9. Licensing foreign brokers.**

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

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

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

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

Any person or entity licensed under this subsection shall be affiliated with a resident North Carolina real estate broker, and the resident North Carolina real estate broker shall actively and personally supervise the licensee in a manner that reasonably assures that the licensee complies with the requirements of this Chapter and rules adopted by the Commission. A person or entity licensed under this subsection shall not, however, be affiliated with a resident North Carolina real estate provisional broker. The Commission may exempt applicants for licensure under this subsection from examination and the other licensing requirements under G.S. 93A-4. The

Commission may adopt rules as it deems necessary to give effect to this subsection, including rules establishing: (i) qualifications for licensure; (ii) licensure and renewal procedures; (iii) requirements for continuing education; (iv) conduct of persons and entities licensed under this subsection and their affiliated resident real estate brokers; (v) a definition of commercial real estate; and (vi) any requirements or limitations on affiliation between resident real estate brokers and persons or entities seeking licensure under this subsection. (1957, c. 744, s. 9; 1967, c. 281, s. 5; 1969, c. 191, s. 6; 1971, c. 86, s. 3; 1983, c. 81, s. 2.; 2000-140, s. 19(b); 2003-361, s. 3; 2005-395, s. 11; 2011-217, s. 8.)

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

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

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

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

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

**§ 93A-12. Disputed monies.**

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



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

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

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

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

#### **§ 93A-13. Contracts for broker services.**

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

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

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

### 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 Schools.

**§ 93A-32. Definitions.**

As used in this Article:

- (1) "Commission" means the North Carolina Real Estate Commission.
- (2) "Private real estate school" means any real estate educational entity which is privately owned and operated by an individual, partnership, corporation, limited liability company, or association, and which conducts, for a profit or tuition charge, real estate broker prelicensing or postlicensing courses prescribed by G.S. 93A-4(a) or (a1), 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 school. (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.)

**§ 93A-33. Commission to administer Article; authority of Commission to conduct investigations, issue licenses, and promulgate regulations.**

The Commission shall have authority to administer and enforce this Article and to issue licenses to private real estate schools as defined herein which have complied with the requirements of this Article and regulations promulgated by the Commission. Through licensing applications, periodic reports required of licensed schools, periodic investigations and inspections of schools, and appropriate regulations, the Commission shall exercise general supervisory authority over private real estate schools, 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.)

**§ 93A-34. License required; application for license; fees; requirements for issuance of license.**

(a) No person, partnership, corporation or association shall operate or maintain or offer to operate in this State a private real estate school as defined herein unless a license 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 licensing purposes, each branch location where a school conducts courses shall be considered a separate school requiring a separate license.

(b) Application for a license 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 school location and fifty dollars (\$50.00) for each real estate broker prelicensing or postlicensing course. The application for a license shall be accompanied by the appropriate fees and shall contain the following:

- (1) Name and address of the applicant and the school;
- (2) Names, biographical data, and qualifications of director, administrators and instructors;
- (3) Description of school facilities and equipment;
- (4) Description of course(s) to be offered and instructional materials to be utilized;
- (5) Information on financial resources available to equip and operate the school;
- (6) Information on school policies and procedures regarding administration, record keeping, entrance requirements, registration, tuition and fees, grades, student progress, attendance, and student conduct;
- (7) Copies of bulletins, catalogues and other official publications;
- (8) Copy of bond required by G.S. 93A-36;
- (9) Such 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 a school in such a manner as would best serve the public interest.

(c) After due investigation and consideration by the Commission, a license 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 school 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 school 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 the following information:

- a. Identifying data and publication date;
  - b. Name(s) of school and its full-time officials and faculty;
  - c. School'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 school's owner(s), director, administrators and instructors are of good reputation and character.
  - (10) The school'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 school 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 schools 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.)

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

- (a) All licenses issued shall expire on June 30 following the date of issuance.
- (b) Licenses 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 school are found to be in compliance with the standards established for issuance of an original license. The Commission may by rule set nonrefundable renewal fees not to exceed one hundred twenty-five dollars (\$125.00) for each school location and twenty-five dollars (\$25.00) for each real estate broker prelicensing and postlicensing course.
- (c) In the event a school is sold or ownership is otherwise transferred, the license issued to the original owner is not transferable to the new owner. Such new owner must make application for an original license 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.)

**§ 93A-36. Execution of bond required; applicability to branch schools; actions upon bond.**



(a) Before the Commission shall issue a license the applicant shall execute a bond in the sum of five thousand dollars (\$5,000), payable to the State of North Carolina, signed by a solvent guaranty company authorized to do business in the State of North Carolina, and conditioned that the principal in said bond will carry out and comply with each and every contract or agreement, written or verbal, made and entered into by the applicant's school acting by and through its officers and agents with any student who desires to enter such school and to take any courses offered therein and that said principal will refund to such students all amounts collected in tuition and fees in case of failure on the part of the party obtaining a license from the Commission to open and operate a private real estate school or to provide the instruction agreed to or contracted for. Such bond shall be required for each school for which a license is required and shall be first approved by the Commission and then filed with the clerk of superior court of the county in which the school is located, to be recorded by such clerk in a book provided for that purpose. A separate bond shall not be required for each branch of a licensed school.

(b) In any and all cases where the party licensed by the Commission fails to fulfill its obligations under any contract or agreement, written or verbal, made and entered into with any student, then the State of North Carolina, upon the relation of the student(s) entering into said contract or agreement, shall have a cause of action against the principal and surety on the bond herein required for the full amount of payments made to such party, plus court costs and six percent (6%) interest from the date of payment of said amount. Such suits shall be brought in Wake County Superior Court within one year of the alleged default. (1979, 2nd Sess., c. 1193, s. 1; 1983, c. 81, s. 2; 1999-229, s. 12.)

**§ 93A-37. Contracts with unlicensed schools and evidences of indebtedness made null and void.**

All contracts or agreements entered into on or after October 1, 1980, by private real estate schools, as defined in this Article, with students or prospective students, and all promissory notes or other evidence of indebtedness taken on or after October 1, 1980, in lieu of cash payments by such schools, shall be null and void unless such schools are duly licensed as required by this Article on the date of such contract or agreement or taking of any promissory note or other evidence of indebtedness. (1979, 2nd Sess., c. 1193, s. 1.)

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

The Commission shall have the power to suspend, revoke, deny issuance, or deny renewal of license to operate a private real estate school. In all proceedings to suspend, revoke or deny a license, the provisions of Chapter 150B of the General Statutes shall be applicable. The Commission may suspend, revoke, or deny such license when it finds:

- (1) That the applicant for or holder of such license has refused or failed to comply with any of the provisions of this Article or the rules or regulations promulgated thereunder;
- (2) That the applicant for or holder of such license has knowingly presented to the Commission false or misleading information relating to matters within the purview of the Commission under this Article;
- (3) That the applicant for or holder of such license has 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) That the applicant for or holder of such license has failed to comply with the provisions of any contract or agreement entered into with a student;
- (5) That the applicant for or holder of such license has 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; or
- (6) That the applicant for or holder of such license or any officer of a corporate licensee or corporation applying for a license, any partner of a partnership licensee or partnership applying for a license, or any member of a limited liability company licensee or limited liability company applying for a license has 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.)

#### Article 4.

#### Time Shares.

#### **§ 93A-39. Title.**

This Article shall be known and may be cited as the "North Carolina Time Share Act." (1983, c. 814, s. 1.)

#### **§ 93A-40. Registration required of time share projects; real estate license required.**

(a) It shall be unlawful for any person in this State to engage or assume to engage in the business of a time share 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, and it shall be unlawful for a time share developer to sell or offer to sell a time share located in this State without first obtaining a certificate of registration for the time share project to be offered for sale issued by the North Carolina Real Estate Commission under the provisions of this Article.

(b) A person responsible as general partner, corporate officer, joint venturer or sole proprietor who intentionally acts as a time share developer, allowing the offering of sale or the sale of time shares to a purchaser, without first obtaining registration of the time share project under this Article shall be guilty of a Class I felony. (1983, c. 814, s. 1; 1987, c. 516, s. 16.; 2000-140, s. 19(b); 2005-395, s. 19.)

#### **§ 93A-41. Definitions.**

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

- (1) "Commission" means the North Carolina Real Estate Commission;
- (2) "Developer" means any person or entity which creates a time share or a time share project or program, purchases a time share for purpose of resale, or is engaged in the business of selling its own time shares 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 time shares for the developer, but a person who purchases a time share for his or her occupancy, use, and enjoyment shall not be deemed a developer;

- (3) "Enrolled" means paid membership in exchange programs or membership in an exchange program evidenced by written acceptance or confirmation of membership;
- (4) "Exchange company" means any person operating an exchange program;
- (5) "Exchange program" means any opportunity or procedure for the assignment or exchange of time shares among purchasers in the same or other time share project;
- (5a) "Independent escrow agent" means a licensed attorney located in this State or a financial institution located in this State;
- (6) "Managing agent" means a person who undertakes the duties, responsibilities, and obligations of the management of a time share program;
- (7) "Person" means one or more natural persons, corporations, partnerships, associations, trusts, other entities, or any combination thereof;
- (7a) "Project broker" means a natural person licensed as a real estate broker and designated by the developer to supervise brokers at the time share project;
- (8) "Purchaser" means any person other than a developer or lender who owns or acquires an interest or proposes to acquire an interest in a time share;
- (9) "Time share" means a right to occupy a unit or any of several units during five or more separated time periods over a period of at least five years, including renewal options, whether or not coupled with a freehold estate or an estate for years in a time share project or a specified portion of a time share project. "Time share" shall also include a vacation license, prepaid hotel reservation, club membership, limited partnership, vacation bond, or a plan or system where the right to use a time share unit or units for periods of time is awarded or apportioned on the basis of points, vouchers, split, divided, or floating use, even if on a competitive basis with other purchasers;
- (9a) "Time share instrument" means an instrument transferring a time share or any interest, legal or beneficial, in a time share to a purchaser, including a contract, installment contract, lease, deed, or other instrument;
- (10) "Time share program" means any arrangement for time shares whereby real property has been made subject to a time share;
- (11) "Time share project" means any real property that is subject to a time share program;
- (11a) "Time share registrar" means a natural person who is designated by the developer to record or cause time share instruments and lien releases to be recorded and to fulfill the other duties imposed by this Article;
- (12) "Time share salesperson" means a person who sells or offers to sell on behalf of a developer a time share to a purchaser; and
- (13) "Time share unit" or "unit" means the real property or real property improvement in a project which is divided into time shares and designated for separate occupancy and use. (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.)

**§ 93A-42. Time shares deemed real estate.**

(a) A time share which in whole or in part burdens or pertains to real property in this State is deemed to be an interest in real estate, and shall be governed by the law of this State relating to real estate.

(b) A purchaser of a time share which burdens or pertains to real property located in the State may in accordance with G.S. 47-18 register the time share instrument by which the purchaser 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 time share instrument transferring or encumbering a time share 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 time share which burdens or pertains to no real property located in this State shall not be recorded in the office of the register of deeds in any county in this State.

(c) The developer shall record or cause to be recorded a time share instrument:

- (1) Not less than six days nor more than 45 days following the execution of the contract of sale by the purchaser; or
- (2) Not 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 upon the expiration of the 10-day escrow period provided by G.S. 93A-45(c).

(d) The independent escrow agent provided by G.S. 93A-42(c)(2) shall deposit and maintain the purchaser's payments in an insured trust or escrow account in a bank or savings and loan association located in this State. The trust or escrow account may be interest-bearing and the interest earned shall belong to the developer, if agreed upon in writing by the purchaser; provided, however, if the time share instrument is not recorded within the time periods specified in this section, then the interest earned shall belong to the purchaser. The independent escrow agent shall return all payments to the purchaser at the expiration of 180 days following the execution of the contract of sale by the purchaser, unless prior to that time the time share instrument has been recorded. However, if prior to the expiration of 180 days following the execution of the contract of sale, the developer and the purchaser provide their written consent to the independent escrow agent, the developer's obligation to record the time share instrument and the escrow period may be extended for an additional period of 120 days. Upon recordation of the time share instrument, the independent escrow agent shall pay the purchaser's funds to the developer. Upon request by the Commission, the independent escrow agent shall promptly make available to the Commission inspection of records of money held by the independent escrow agent.

(e) In no event shall the developer be required to record a time share instrument if the purchaser is in default of the purchaser's obligations.

(f) Recordation under the provisions of this section of the time share instrument shall constitute delivery of that instrument from the developer to the purchaser. (1983, c. 814, s. 1; 1985, c. 578, ss. 2, 3; 1989, c. 302; 2001-487, s. 23(i); 2011-217, s. 20.)

#### **§ 93A-42.1. Construction and validity of declarations adopted prior to the Time Share Act.**

(a) All provisions contained in time share 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 time share 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 time share declaration, the board of directors of a time share project may, by an affirmative vote of two-thirds of the board, amend a provision within the time share declaration, provided that the provision to be changed meets all of the following criteria:

- (1) The provision was adopted as part of the original time share declaration recorded prior to July 1, 1984.
- (2) The provision either converts or provides a mechanism to convert ownership of time share units to tenancy in common.

(d) Title or interest in a time share project or unit is not rendered unmarketable or otherwise affected by reason of an insubstantial failure of the time share 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 time share owner's right under the time share declaration, bylaws, or the laws of this State to vote to terminate the time share project or to amend the declaration to provide for the termination of the time share project and interests. (2014-99, s. 1.)

#### **§ 93A-43. Partition.**

When a time share 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 but no purchaser of a time share may maintain an action for partition by sale or in kind of the unit in which such time share is held. (1983, c. 814, s. 1.)

#### **§ 93A-44. Public offering statement.**

Each developer shall fully and conspicuously disclose in a public offering statement:

- (1) The total financial obligation of the purchaser, which shall include the initial purchase price and any additional charges to which the purchaser may be subject;
- (2) Any person who has or may have the right to alter, amend or add to charges to which the purchaser may be subject and the terms and conditions under which such charges may be imposed;
- (3) The nature and duration of each agreement between the developer and the person managing the time share program or its facilities;
- (4) The date of availability of each amenity and facility of the time share program when they are not completed at the time of sale of a time share;
- (5) The specific term of the time share;
- (6) The purchaser's right to cancel within five days of execution of the contract and how that right may be exercised under G.S. 93A-45;
- (7) A statement that under North Carolina law an instrument conveying a time share must be recorded in the Register of Deeds Office to protect that interest; and
- (8) Any other information which the Commission may by rule require.

The public offering statement shall also contain a one page cover containing a summary of the text of the statement. (1983, c. 814, s. 1.)

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

(a) A developer shall, before transfer of a time share and no later than the date of any contract of sale, provide a prospective purchaser with a copy of a public offering statement containing the information required by G.S. 93A-44. The contract of sale is voidable by the purchaser for five days after the execution of the contract. The contract shall conspicuously disclose the purchaser's right to cancel under this subsection and how that right may be exercised. 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.

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

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

(d) If a developer fails to provide a purchaser to whom a time share is transferred with the statement as required by subsection (a), the purchaser, in addition to any rights to damages or other relief, is entitled to receive from the developer an amount equal to ten percent (10%) of the sales price of the time share not to exceed three thousand dollars (\$3,000). A receipt signed by the purchaser stating that the purchaser has received the statement required by subsection (a) is prima facie evidence of delivery of the statement. (1983, c. 814, s. 1; 1985, c. 578, s. 4.; 2000-140, s. 19(b); 2001-487, s. 23(j).)

**§ 93A-46. Prizes.**

An advertisement of a time share 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.)

**§ 93A-47. Time shares proxies.**

No proxy, power of attorney or similar device given by the purchaser of a time share regarding the management of the time share program or its facilities shall exceed one year in duration, but the same may be renewed from year to year. (1983, c. 814, s. 1.)

**§ 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), deliver to the purchaser, prior to the

execution of (i) any contract between the purchaser and the exchange company, and (ii) the sales contract, 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 agent for any time share project participating in the exchange program and, if so, the name and location of the time share 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 sales contract;
- (5) Whether the purchaser's participation in the exchange program is dependent upon the continued affiliation of the time share 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 boldfaced 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 time share 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 time share project or other property which is participating in the exchange program;
- (14) The number of units in each 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 time share 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 time shares 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) below, 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 time share 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 time shares or other intervals for which the exchange company has an outstanding obligation to provide an exchange to an owner who relinquished a time share or interval during the year in exchange for a time share or interval in any future year; and
  - e. The number of exchanges confirmed by the exchange company during the year; and
- (18) A statement in boldfaced 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 (a)(2), (3), (13), (14), (15), and (17) 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) 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) above. The requirements of this paragraph 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 (a)(17)c. must include the statement set forth in (a)(18). (1983, c. 814, s. 1; 2001-487, s. 23(k).)

**§ 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 time shares deemed to be investment contracts or to other securities offered with or incident to a time share; provided, in the event of such applicability of the North Carolina Securities Act, any offer or sale of time shares 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.)

**§ 93A-51. Rule-making 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.)

**§ 93A-52. Application for registration of time share project; denial of registration; renewal; reinstatement; and termination of developer's interest.**

(a) Prior to the offering in this State of any time share located in this State, the developer of the time share project shall make written application to the Commission for the registration of the project. 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 a description of the project, copies of proposed time share instruments including public offering statements, sale contracts, deeds, and other documents referred to therein, information pertaining to any marketing or managing entity to be employed by the developer for the sale of time shares in a time share project or the management of the project, information regarding any exchange program available to the purchaser, an irrevocable appointment of the Commission to receive service of any lawful process in any proceeding against the developer or the developer's time

share salespersons arising under this Article, and such other information as the Commission may by rule require.

Upon receipt of a properly completed application and fee and upon a determination by the Commission that the sale and management of the time shares in the time share project 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 time shares in the project for sale. The Commission shall within 15 days after receipt of an incomplete application, notify the developer by mail that the Commission has found specified deficiencies, and shall, within 45 days after the receipt of a properly completed application, either issue the certificate of registration or notify the developer by mail of any specific objections to the registration of the project. The certificate shall be prominently displayed in the office of the developer on the site of the project.

The developer shall promptly report to the Commission any and all 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 time share project. In the event a developer disposes of, or otherwise terminates its interest in a time share project, the developer shall certify to the Commission in writing that its interest in the time share project is terminated and shall return to the Commission for cancellation the certificate of registration.

(b) In the event the Commission finds that there is substantial reason to deny the application for registration as a time share project, the Commission shall notify the applicant that such application has been denied and shall afford the applicant 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 such date unless reinstated. Renewal of such certificate may be effected at any time during the month of June preceding the date of expiration of such registration upon proper application to the Commission and by the payment of a renewal fee fixed by the Commission but not to exceed one thousand five hundred dollars (\$1,500) for each time share project. The developer shall, when making application for renewal, also provide a copy of the report required in G.S. 93A-48. 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. In the event a time share developer fails to reinstate the registration within 12 months after the expiration date thereof, the Commission may, in its discretion, consider the time share project 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.)

**§ 93A-53. Register of applicants; roster of registrants; registered projects; 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 time share projects 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 time share projects current on the preceding June 30 and a statement of the income received by the Commission in connection with the registration of time share projects 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.)

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

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

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

- (1) Making any willful or negligent misrepresentation or any willful or negligent omission of material fact about any time share or time share project;
- (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 time share transaction, and failing to remit such monies as may be required in G.S. 93A-45 of this Article;
- (5) Acting as a time share salesperson or time share developer 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 a broker's trust or escrow account as defined by G.S. 93A-6(g) all money received from others in a time share transaction

as may be required in G.S. 93A-45 of this Article or failing to place with an independent escrow agent the funds of a time share purchaser when required by G.S. 93A-42(c);

- (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 time shares 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;
- (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 time share instrument as required by G.S. 93A-42(c), or failing to provide a purchaser the protection against liens required by G.S. 93A-57(a); or
- (16) Failing as a time share project broker to exercise reasonable and adequate supervision of the conduct of sales at a project or location by the brokers and salespersons under the time share project broker's control.

(a1) The clear proceeds of fines collected pursuant to subsection (a) 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 developer when the registrant 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 developer's performance in the time share 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 person or entity has been registered by the Commission.

(d) Each developer shall maintain or cause to be maintained complete records of every time share transaction including records pertaining to the deposit, maintenance, and withdrawal of money required to be held in a trust or 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 registrant.

(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 time share project during the period of license surrender. For the purposes of this section, the term licensee shall include a time share developer. (1983, c. 814, s. 1; 1985, c. 578, ss. 6-10; 1987, c. 516, ss. 17, 18; 1998-215, s. 138.; 2000-140, s. 19(b); 2001-487, s. 23(1); 2005-395, s. 23; 2011-217, s. 22.)

**§ 93A-55. Private enforcement.**

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

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

Except as provided in G.S. 93A-40(b) and G.S. 93A-58, 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).)

**§ 93A-57. Release of liens.**

(a) Prior to any recordation of the instrument transferring a time share, the developer shall record and furnish notice to the purchaser of a release or subordination of all liens affecting that time share, or shall provide a surety bond or insurance against the lien from a company acceptable to the Commission as provided for liens on real estate in this State, or such underlying lien document shall contain a provision wherein the lienholder subordinates its rights to that of a time share purchaser who fully complies with all of the provisions and terms of the contract of sale.

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

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

(a) Every developer of a registered project shall, by affidavit filed with the Commission, designate a natural person to serve as time share registrar for its registered projects. The registrar shall be responsible for the recordation of time share 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 time share 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 time share project.

The registrar has the duty to ensure that the provisions of this Article are complied with in a time share project for which the person is registrar. No registrar shall record a time share instrument except as provided by this Article.

(b) A time share registrar is guilty of a Class I felony if he or she knowingly or recklessly fails to record or cause to be recorded a time share instrument as required by this Article.

A person responsible as general partner, corporate officer, joint venturer or sole proprietor of the developer of a time share project is guilty of a Class I felony if the person intentionally allows the offering for sale or the sale of time share to purchasers without first designating a time share registrar.

(c) The developer shall designate for each project and other locations where time shares are sold or offered for sale a project broker. The project broker shall act as supervising broker for all time share salespersons at the project or other location and shall directly, personally, and actively supervise all such persons at the project or other location in a manner to reasonably ensure that the sale of time shares 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.)

**§ 93A-59. Preservation of time share purchaser's claims and defenses.**

(a) For one year following the execution of an instrument of indebtedness for the purchase of a time share, the purchaser of a time share may assert against the seller, assignee of the seller, or other holder of the instrument of indebtedness, any claims or defenses available against the developer or the original seller, and the purchaser may not waive the right to assert these claims or defenses in connection with a time share purchase. Any recovery by the purchaser on a claim asserted against an assignee of the seller or other holder of the instrument of indebtedness shall not exceed the amount paid by the purchaser 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 time share shall set forth the following provision in a clear and conspicuous manner:

**"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 PURCHASER COULD ASSERT AGAINST THE SELLER OF THE TIME SHARE. RECOVERY BY THE PURCHASER SHALL NOT EXCEED AMOUNTS PAID BY THE PURCHASER UNDER THIS INSTRUMENT."

(1985, c. 578, s. 13.)

**§§ 93A-60 through 93A-69. Reserved for future codification purposes.**

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.)