

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 867

Short Title: Real Estate Licensure Law Changes.

(Public)

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Sponsors: Senator Gulley.

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Referred to: Judiciary II.

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April 13, 1999

A BILL TO BE ENTITLED

AN ACT AMENDING CERTAIN PROVISIONS OF THE REAL ESTATE LICENSE LAW.

The General Assembly of North Carolina enacts:

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

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

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 real estate salesman, or directly or indirectly to engage or assume to engage in the business of real estate broker or real estate salesman 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 or salesman in this State."

Section 2. G.S. 93A-2 is amended by adding a new subsection to read:

"(a1) The term broker-in-charge within the meaning of this Chapter shall mean a real estate broker who has been designated as the broker having responsibility for the

1 supervision of real estate salesmen engaged in real estate brokerage at a particular real  
2 estate office and for other administrative and supervisory duties as the Commission shall  
3 prescribe by rule."

4 Section 3. G.S. 93A-2(b) reads as rewritten:

5 "(b) The term real estate salesman within the meaning of this Chapter shall mean  
6 and include any person who under the supervision of a real estate broker designated as  
7 broker-in-charge of a real estate office, for a compensation or valuable consideration is  
8 associated with or engaged by or on behalf of a licensed real estate broker to do, perform  
9 or deal in any act, acts or transactions set out or comprehended by the foregoing  
10 definition of real estate broker."

11 Section 4. G.S. 93A-3(d) reads as rewritten:

12 "(d) The Commission may employ an Executive Director and professional and  
13 clerical staff as may be necessary to carry out the provisions of this Chapter and to put  
14 into effect the rules and regulations that the Commission may promulgate. The  
15 Commission shall fix salaries and shall require employees to make good and sufficient  
16 surety bond for the faithful performance of their duties. The Commission may, when it  
17 deems it necessary or convenient, delegate to the Executive Director, legal counsel for  
18 the Commission, or other Commission staff, professional or clerical, the Commission's  
19 authority and duties under this Chapter, but the Commission may not delegate its  
20 authority to make rules or its duty to act as a hearing panel in accordance with the  
21 provisions of G.S. 150B-40(b)."

22 Section 5. G.S. 93A-4A is amended by adding a new subsection to read:

23 "(a1) In addition to the requirements of subsection (a) of this section, the  
24 Commission may require real estate brokers-in-charge to complete a special course of  
25 study, not to exceed six classroom hours every three years, in subjects prescribed by the  
26 Commission."

27 Section 6. G.S. 93A-6(a) reads as rewritten:

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

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

- 37 (1) Making any willful or negligent misrepresentation or any willful or  
38 negligent omission of material ~~fact~~, fact.
- 39 (2) Making any false promises of a character likely to influence, persuade,  
40 or ~~induce~~, induce.
- 41 (3) Pursuing a course of misrepresentation or making of false promises  
42 through agents, salesmen, advertising or ~~otherwise~~, otherwise.

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

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

1 Section 7. Article 1 of Chapter 93A of the General Statutes is amended by  
2 adding a new section to read:

3 **§ 93A-6.1. Commission may subpoena witnesses, records, documents, or other**  
4 **materials.**

5 The Commission, Executive Director, or other representative designated by the  
6 Commission may issue a subpoena for the appearance of witnesses deemed necessary to  
7 testify concerning any matter to be heard before or investigated by the Commission. The  
8 Commission may issue a subpoena ordering any person in possession of records,  
9 documents, or other materials, however maintained, that concern any matter to be heard  
10 before or investigated by the Commission to produce the records, documents, or other  
11 materials for inspection. Upon written request, the Commission shall revoke a subpoena  
12 if it finds that the evidence, the production of which is required, does not relate to a  
13 matter in issue, or if the subpoena does not describe with sufficient particularity the  
14 evidence, the production of which is required, or if for any other reason in law the  
15 subpoena is invalid. If any person shall fail to fully and promptly comply with a  
16 subpoena issued under this section, the Commission may apply to any judge of the  
17 superior court resident in Wake County or any county where a hearing before the  
18 Commission is pending for an order compelling the person to show cause why he or she  
19 should not be held in contempt of the Commission and its processes. The court shall  
20 have the power to impose punishment for acts that would constitute direct or indirect  
21 contempt if the acts occurred in an action pending in superior court. The Commission  
22 shall be exempt from the requirements of Chapter 53B of the General Statutes with  
23 regard to subpoenas issued to compel the production of a licensee's trust account records  
24 held by any financial institution."

25 Section 8. G.S. 93A-17(a) reads as rewritten:

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

- 30 (1) The act or acts of conversion which form the basis of the claim for  
31 recovery occurred on or after September 1, 1979;
- 32 (2) The aggrieved person has sued the real estate broker or salesman in a  
33 court of competent jurisdiction and has filed with the Commission  
34 written notice of such lawsuit within 60 days after its commencement  
35 unless the claim against the Real Estate Recovery Fund is for an amount  
36 less than ~~one thousand five hundred dollars (\$1,500)~~ three thousand dollars  
37 (\$3,000), excluding attorneys fees, in which case the notice may be filed  
38 within 60 days after the termination of all judicial proceedings including  
39 appeals;
- 40 (3) The aggrieved person has obtained final judgment in a court of  
41 competent jurisdiction against the real estate broker or salesman on  
42 grounds of conversion of trust funds arising out of a transaction which

1 occurred when such broker or salesman was licensed and acting in a  
2 capacity for which a license is required; and

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

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

13 Section 9. G.S. 93A-19(a) reads as rewritten:

14 "(a) Whenever the Commission proceeds upon an application as set forth in this  
15 Article, counsel for the Commission may defend such action on behalf of the fund and  
16 shall have recourse to all appropriate means of defense, including the examination of  
17 witnesses. The judgment debtor may defend such action on his own behalf and shall  
18 have recourse to all appropriate means of defense, including the examination of  
19 witnesses. ~~Within 30 days after service of the application, counsel~~ Counsel for the  
20 Commission and the judgment debtor may file responses ~~thereto to the application~~, setting  
21 forth answers and defenses. Responses shall be filed with the Commission and copies  
22 shall be served upon every party by the filing party. If at any time it appears there are no  
23 triable issues of fact and the application for payment from the fund is without merit, the  
24 Commission shall dismiss the application. A motion to dismiss may be supported by  
25 affidavit of any person or persons having knowledge of the facts and may be made on the  
26 basis that the application or the judgment referred to therein do not form a basis for  
27 meritorious recovery within the purview of G.S. 93A-17, that the applicant has not  
28 complied with the provisions of this Article, or that the liability of the fund with regard to  
29 the particular licensee or transaction has been exhausted; provided, however, notice of  
30 such motion shall be given at least 10 days prior to the time fixed for hearing. If the  
31 applicant or judgment debtor fails to appear at the hearing after receiving notice of the  
32 hearing, the applicant or judgment debtor shall waive his or her rights unless the absence  
33 is excused by the Commission."

34 Section 10. G.S. 93A-20 reads as rewritten:

35 "**§ 93A-20. Order directing payment out of fund; compromise of claims.**

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

41 Subject to Commission approval, a claim based upon the application of an aggrieved  
42 person may be compromised; however, the Commission shall not be bound in any way  
43 by any compromise or stipulation of the judgment debtor. If a claim appears to be

1 otherwise meritorious, the Commission may waive procedural defects in the application  
2 for payment."

3 Section 11. G.S. 93A-21 reads as rewritten:

4 **"§ 93A-21. Limitations; pro rata distribution; attorney fees.**

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

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

10 (2) The fund shall not be liable for more than ~~ten~~ twenty-five thousand  
11 dollars ~~(\$10,000)~~ (\$25,000) per transaction regardless of the number of  
12 persons aggrieved or parcels of real estate involved in such transaction;  
13 and

14 (3) The liability of the fund shall not exceed in the aggregate ~~ten~~ twenty-  
15 five thousand dollars ~~(\$10,000)~~ (\$25,000) for any one licensee within a  
16 single calendar year, and in no event shall it exceed in the aggregate  
17 ~~twenty-fifty~~ thousand dollars ~~(\$20,000)~~ (\$50,000) for any one licensee.

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

22 (b) If the maximum liability of the fund is insufficient to pay in full the valid  
23 claims of all aggrieved persons whose claims relate to the same transaction or to the same  
24 licensee, the amount for which the fund is liable shall be distributed among the claimants  
25 in a ratio that their respective claims bear to the total of such valid claims or in such  
26 manner as the ~~Commission~~ Commission, in its discretion, deems equitable. Upon petition  
27 of counsel for the Commission, the Commission may require all claimants and  
28 prospective claimants to be joined in one proceeding to the end that the respective rights  
29 of all such claimants to the Real Estate Recovery Fund may be equitably resolved. A  
30 person who files an application for payment after the maximum liability of the fund for  
31 the licensee or transaction has been exhausted shall not be entitled to payment and may  
32 not seek judicial review of the Commission's award of payment to any party except upon  
33 a showing that the Commission abused its discretion.

34 (c) In the event an aggrieved person is entitled to payment from the fund in an  
35 amount of one thousand five hundred dollars (\$1,500) or less, the Commission may allow  
36 such person to recover from the fund reasonable attorney's fees incurred in effecting such  
37 recovery. Reimbursement for attorney's fees shall be limited to those fees incurred in  
38 effecting recovery from the fund and shall not include any fee incurred in obtaining  
39 judgment against the licensee."

40 Section 12. G.S. 93A-36(a) reads as rewritten:

41 "(a) Before the Commission shall issue a license the applicant shall execute a bond  
42 in the sum of five thousand dollars (\$5,000), payable to the State of North Carolina,  
43 signed by a solvent guaranty company authorized to do business in the State of North

1 Carolina, and conditioned that the principal in said bond will carry out and comply with  
2 each and every contract or agreement, written or verbal, made and entered into by the  
3 applicant's school acting by and through its officers and agents with any student who  
4 desires to enter such school and to take any courses offered therein and that said  
5 principal will refund to such students all amounts collected in tuition and fees in case of  
6 failure on the part of the party obtaining a license from the Commission to open and  
7 operate a private real estate school or to provide the instruction agreed to or contracted  
8 for. Such bond shall be required for each school ~~or branch thereof~~ for which a license is  
9 required and shall be first approved by the Commission and then filed with the clerk of  
10 superior court of the county in which the school is located, to be recorded by such clerk  
11 in a book provided for that purpose. A separate bond shall not be required for each  
12 branch of a licensed school."

13 Section 13. G.S. 93A-41(2) reads as rewritten:

14 "(2) 'Developer' means any person or entity which creates a time share or a  
15 time share project or program, purchases a time share for purpose of  
16 resale, or is engaged in the business of selling its own time shares and  
17 shall include any person or entity who controls, is controlled by, or is in  
18 common control with the developer which is engaged in creating or  
19 selling time shares for the ~~developer;~~ developer, but a person who  
20 purchases a time share for his or her occupancy, use, and enjoyment  
21 shall not be deemed a developer;."

22 Section 14. G.S. 93A-41(9) reads as rewritten:

23 "(9) 'Time share' means a right to occupy a unit or any of several units  
24 during five or more separated time periods over a period of at least five  
25 years, including renewal options, whether or not coupled with a freehold  
26 estate or an estate for years in a time share project or a specified portion  
27 thereof, including, but not limited to, a vacation license, prepaid hotel  
28 reservation, club membership, limited partnership, ~~or vacation bond;~~  
29 bond, or a plan or system where the right to use is awarded or  
30 apportioned on the basis of points, vouchers, split, divided, or floating  
31 use;."

32 Section 15. G.S. 93A-52(d) reads as rewritten:

33 "(d) All certificates of registration granted and issued by the Commission under the  
34 provisions of this Article shall expire on the 30th day of June following issuance thereof,  
35 and shall become invalid after such date unless reinstated. Renewal of such certificate  
36 may be effected at any time during the month of June preceding the date of expiration of  
37 such registration upon proper application to the Commission and by the payment of a  
38 renewal fee fixed by the Commission but not to exceed one thousand five hundred dollars  
39 (\$1,500) for each time share project. The developer shall, when making application for  
40 renewal, also provide a copy of the report required in G.S. 93A-48. Each certificate  
41 reinstated after the expiration date thereof shall be subject to a late filing fee of fifty  
42 dollars (\$50.00) in addition to the required renewal fee. In the event a time share  
43 developer fails to reinstate the registration within 12 months after the expiration date

1 thereof, the Commission may, in its discretion, consider the time share project as not  
2 having been previously registered, and thereby subject to the provisions of this Article  
3 relating to the issuance of an original certificate. Duplicate certificates may be issued by  
4 the Commission upon payment of a fee of one dollar (\$1.00) by the registrant developer.  
5 Except as prescribed by Commission rules, all fees paid pursuant to this Article shall be  
6 nonrefundable."

7           Section 16. This act shall have no effect on any cases pending in the courts in  
8 this State.

9           Section 17. This act becomes effective August 1, 1999.