

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S

3

SENATE BILL 764
Judiciary I Committee Substitute Adopted 5/7/09
House Committee Substitute Favorable 7/7/09

Short Title: Real Estate/Settlement Agent Embezzlement.

(Public)

Sponsors:

Referred to:

March 24, 2009

1 A BILL TO BE ENTITLED
2 AN ACT AMENDING THE CRIMINAL STATUTES AND THE GOOD FUNDS
3 SETTLEMENT ACT TO CLARIFY THAT A SETTLEMENT AGENT IS GUILTY OF
4 EMBEZZLEMENT IN INSTANCES WHERE IT CANNOT BE SHOWN THAT THE
5 FUNDS WERE EMBEZZLED FROM A PARTICULAR PERSON OR ENTITY.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** G.S. 14-90 reads as rewritten:

8 "**§ 14-90. Embezzlement of property received by virtue of office or employment.**

9 (a) This section shall apply to ~~if any person~~ person:

10 (1) ~~exercising~~ Exercising a public trust or holding trust.

11 (2) ~~Holding a public office, or any office.~~

12 (3) Who is a guardian, administrator, executor, trustee, or any receiver, or any
13 other fiduciary, including, but not limited to, a settlement agent, as defined
14 in G.S. 45-3.

15 (4) ~~or~~ Who is an any officer or agent of a corporation, or any agent, consignee,
16 clerk, bailee or servant, except persons under the age of 16 years, of any
17 person, person.

18 (b) Any person who shall shall:

19 (1) ~~embezzle~~ Embezzle or fraudulently or knowingly and willfully misapply or
20 convert to his own use, or

21 (2) ~~shall take, Take,~~ make away with or secrete, with intent to embezzle or
22 fraudulently or knowingly and willfully misapply or convert to his own
23 useuse.

24 any money, goods or other chattels, bank note, check or order for the payment of money issued
25 by or drawn on any bank or other corporation, or any treasury warrant, treasury note, bond or
26 obligation for the payment of money issued by the United States or by any state, or any other
27 valuable security whatsoever ~~that (i) belonging~~ belongs to any other person or corporation,
28 unincorporated association or ~~organization~~ organization or (ii) are closing funds as defined in
29 G.S. 45A-3, which shall have come into his possession or under his care, ~~he~~ shall be guilty of a
30 felony.

31 (c) If the value of the property described in subsection (b) of this section is one hundred
32 thousand dollars (\$100,000) or more, the person is guilty of a Class C felony. If the value of the
33 property is less than one hundred thousand dollars (\$100,000), the person is guilty of a Class H
34 felony."

35 **SECTION 2.** Chapter 45A of the General Statutes is amended by adding a new
36 section to read:



1 "§ 45A-8. Embezzlement of closing funds by settlement agent.

2 (a) All closing funds received by a settlement agent are trust or escrow funds received
3 by the settlement agent in a fiduciary capacity.

4 (b) A settlement agent in the disbursement of settlement proceeds shall account for and
5 pay the closing funds to the parties or entities identified for payment of the closing funds
6 pursuant to the settlement agreement approved by the parties to the transaction.

7 (c) Except as to such portions of the closing funds representing the settlement agent's
8 fees and expenses, a settlement agent shall be subject to the embezzlement provisions of
9 G.S. 14-90."

10 **SECTION 3.** This act becomes effective December 1, 2009, and applies to
11 offenses committed on or after that date.