

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 386*

Short Title: Real Estate License Law Amendments.-AB (Public)

Sponsors: Representatives Howard and Brubaker (Primary Sponsors).
For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to: Commerce and Job Development, if favorable, Finance.

March 17, 2011

A BILL TO BE ENTITLED

AN ACT TO MODERNIZE THE NORTH CAROLINA REAL ESTATE LICENSE LAW.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 93A-2 reads as rewritten:

"§ 93A-2. Definitions and exceptions.

...

(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 ~~real estate salespersons~~ 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.

...

(c) The provisions of this Chapter do not apply to and do not include:

- (1) Any ~~person~~, partnership, corporation, limited liability company, association, or other business entity ~~who, 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.
- (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) ~~The acts or services of an attorney at law.~~ 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 G.S. 84-2.1, excluding, however, finding and introducing the parties to a real estate transaction.
- (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



1 prospective tenants; providing the prospective tenants with information
 2 about the lease of the units; accepting applications for lease of the units;
 3 completing and executing preprinted form leases; and accepting security
 4 deposits and rental payments for the units only when the deposits and rental
 5 payments are made payable to the owner or the broker employed by the
 6 owner. The salaried employee shall not negotiate the amount of security
 7 deposits or rental payments and shall not negotiate leases or any rental
 8 agreements on behalf of the owner or broker. However, in a vacation rental
 9 transaction as defined by G.S. 42A-4(3), the employee may offer a
 10 prospective tenant a rental price and term from a schedule setting forth
 11 prices and terms and the conditions and limitations under which they may be
 12 offered. The schedule shall be written and provided by the employee's
 13 employing broker with the written authority of the landlord.

- 14 (7) Any individual owner who personally leases or sells the owner's own
 15 property.
- 16 (8) Any housing authority organized in accordance with the provisions of
 17 Chapter 157 of the General Statutes and any regular salaried employees of
 18 the housing authority when performing acts authorized in this Chapter ~~as to~~
 19 ~~any property owned or leased by the housing authority with regard to the~~
 20 ~~sale or lease of property owned by the housing authority or the subletting of~~
 21 ~~property which the housing authority holds as tenant.~~ This exception shall
 22 not apply to any person, partnership, corporation, limited liability company,
 23 association, or other business entity that contracts with a housing authority to
 24 sell or manage property owned or leased by the housing authority."

25 **SECTION 2.** G.S. 93A-3(e) reads as rewritten:

26 "(e) The Commission shall be entitled to the services of the Attorney General of North
 27 Carolina, in connection with the affairs of the Commission ~~or may on approval of the Attorney~~
 28 ~~General, employ an attorney to assist or represent it in the enforcement of this Chapter, as to~~
 29 ~~specific matters, but the fee paid for such service shall be approved by the Attorney General.~~
 30 and may, with the approval of the Attorney General, employ attorneys to represent it or assist it
 31 in the enforcement of this Chapter. The Commission may prefer a complaint for violation of
 32 this Chapter before any court of competent jurisdiction, and it may take the necessary legal
 33 steps through the proper legal offices of the State to enforce the provisions of this Chapter and
 34 collect the penalties provided therein."

35 **SECTION 3.** G.S. 93A-4 reads as rewritten:

36 "**§ 93A-4. Applications for licenses; fees; qualifications; examinations; privilege licenses;**
 37 **renewal or reinstatement of license; power to enforce provisions.**

38 ...

39 (a1) Each person who is issued a real estate broker license on or after April 1, 2006, shall
 40 initially be classified as a provisional broker and shall, within three years following initial
 41 licensure, satisfactorily complete, at a school approved by the Commission, a postlicensing
 42 education program consisting of 90 hours of classroom instruction in subjects determined by
 43 the Commission or shall possess real estate education or experience in real estate transactions
 44 which the Commission shall find equivalent to the education program. The Commission may,
 45 by rule, establish a schedule for completion of the prescribed postlicensing education that
 46 requires provisional brokers to complete portions of the 90-hour postlicensing education
 47 program in less than three years, and provisional brokers must comply with this schedule in
 48 order to be entitled to actively engage in real estate brokerage. Upon completion of the
 49 postlicensing education program, the provisional status of the broker's license shall be
 50 terminated. When a provisional broker fails to complete all 90 hours of required postlicensing
 51 education within three years following initial licensure, the broker's license shall be ~~cancelled,~~

1 and the Commission may, in its discretion, require the person whose license was cancelled to
2 satisfy the ~~postlicensing education program and the requirements for original licensure~~
3 ~~prescribed in this Chapter as a condition of license reinstatement, including the examination~~
4 ~~requirements and the license reinstatement fee prescribed by subsection (c) of this~~
5 ~~section placed on inactive status. The broker's license shall not be returned to active status until~~
6 ~~he or she has satisfied such requirements as the Commission may by rule require. Every license~~
7 ~~cancelled after April 1, 2009, because the licensee failed to complete postlicensing education~~
8 ~~shall be reinstated on inactive status until such time as the licensee satisfies the requirements~~
9 ~~for returning to active status as the Commission may by rule require."~~

10 ...

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

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

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

1 **SECTION 4.** G.S. 93A-4.1(c) reads as rewritten:

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

- 4 (1) The content and subject matter of continuing education courses.
- 5 (2) The curriculum of courses required.
- 6 (3) The criteria, standards, and procedures for the approval of courses, course
7 sponsors, and course instructors.
- 8 (4) The methods of instruction.
- 9 (5) The computation of course credit.
- 10 (6) The ability to carry forward course credit from one year to another.
- 11 (7) The deferral of continuing education for brokers ~~and salespersons~~ not
12 engaged in brokerage.
- 13 (8) The waiver of or variance from the continuing education requirement for
14 hardship or other reasons.
- 15 (9) The procedures for compliance and sanctions for noncompliance."

16 **SECTION 5.** G.S. 93A-5 reads as rewritten:

17 "**§ 93A-5. Register of applicants; roster of brokers; financial report to Secretary of State.**
18 **applicants and roster of brokers.**

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

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

26 (c) ~~On or before the first day of September of each year, the Commission shall file with~~
27 ~~the Secretary of State a copy of the roster of real estate brokers holding certificates of license,~~
28 ~~and at the same time shall also file with the Secretary of State a report containing a complete~~
29 ~~statement of receipts and disbursements of the Commission for the preceding fiscal year ending~~
30 ~~June 30 attested by the affidavit of the Executive Director of the Commission.~~ The Commission
31 shall file reports annually as required by G.S. 93B-2."

32 **SECTION 6.** G.S. 93A-6 reads as rewritten:

33 "**§ 93A-6. Disciplinary action by Commission.**

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

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

- 43 (1) Making any willful or negligent misrepresentation or any willful or negligent
44 omission of material fact.
- 45 (2) Making any false promises of a character likely to influence, persuade, or
46 induce.
- 47 (3) Pursuing a course of misrepresentation or making of false promises through
48 agents, advertising or otherwise.
- 49 (4) Acting for more than one party in a transaction without the knowledge of all
50 parties for whom he or she acts.

- 1 (5) Accepting a commission or valuable consideration as a real estate
2 ~~salesperson~~broker on provisional status for the performance of any of the
3 acts specified in this Article or Article 4 of this Chapter, from any person
4 except his or her broker-in-charge or licensed broker by whom he or she is
5 employed.
- 6 (6) Representing or attempting to represent a real estate broker other than the
7 broker by whom he or she is engaged or associated, without the express
8 knowledge and consent of the broker with whom he or she is associated.
- 9 (7) Failing, within a reasonable time, to account for or to remit any monies
10 coming into his or her possession which belong to others.
- 11 (8) Being unworthy or incompetent to act as a real estate broker in a manner as
12 to endanger the interest of the public.
- 13 (9) Paying a commission or valuable consideration to any person for acts or
14 services performed in violation of this Chapter.
- 15 (10) Any other conduct which constitutes improper, fraudulent or dishonest
16 dealing.
- 17 (11) Performing or undertaking to perform any legal service, as set forth in
18 G.S. 84-2.1, or any other acts constituting the practice of law.
- 19 (12) Commingling the money or other property of his or her principals with his or
20 her own or failure to maintain and deposit in a trust or escrow account in ~~an~~
21 ~~insured bank or savings and loan association in North Carolina~~a bank as
22 provided by subsection (g) of this section all money received by him or her
23 as a real estate licensee acting in that capacity, or an escrow agent, or the
24 custodian or manager of the funds of another person or entity which relate to
25 or concern that person's or entity's interest or investment in real property,
26 provided, these accounts shall not bear interest unless the principals
27 authorize in writing the deposit be made in an interest bearing account and
28 also provide for the disbursement of the interest accrued.
- 29 (13) Failing to deliver, within a reasonable time, a completed copy of any
30 purchase agreement or offer to buy and sell real estate to the buyer and to the
31 seller.
- 32 (14) Failing, at the time ~~the a sales~~ transaction is consummated, to deliver to ~~the~~
33 ~~seller in every real estate transaction, a complete detailed closing statement~~
34 ~~showing all of the receipts and disbursements handled by him or her for the~~
35 ~~seller or failing to deliver to the buyer a complete statement showing all~~
36 ~~money received in the transaction from the buyer and how and for what it~~
37 ~~was disbursed,~~the broker's client a detailed and accurate closing statement
38 showing the receipt and disbursement of all monies relating to the
39 transaction about which the broker knows or reasonably should know. If a
40 closing statement is prepared by an attorney or lawful settlement agent, a
41 broker may rely on the delivery of that statement, but the broker must review
42 the statement for accuracy and notify all parties to the closing of any errors.
- 43 (15) Violating any rule ~~or regulation promulgated~~adopted by the Commission.

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

48 (b) ~~Following a hearing, the~~The Commission shall also have power ~~to~~may suspend or
49 revoke any license issued under the provisions of this Chapter or ~~to~~reprimand or censure any
50 licensee when:

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

- 1 (2) The licensee has been convicted or has entered a plea of guilty or no contest
2 upon which final judgment is entered by a court of competent jurisdiction in
3 this State, or any other state, of ~~the criminal offenses of: embezzlement,~~
4 ~~obtaining money under false pretense, fraud, forgery, conspiracy to~~
5 ~~defraud, any misdemeanor or felony that involves false swearing,~~
6 misrepresentation, deceit, extortion, theft, bribery, embezzlement, false
7 pretenses, fraud, forgery, larceny, misappropriation of funds or property,
8 perjury, or any other offense showing professional unfitness or involving
9 moral turpitude which would reasonably affect the licensee's performance in
10 the real estate business;
- 11 (3) The licensee has violated any of the provisions of G.S. 93A-6(a) when
12 selling, leasing, or buying the licensee's own property;
- 13 (4) The broker's unlicensed employee, who is exempt from the provisions of this
14 Chapter under G.S. 93A-2(c)(6), has committed, in the regular course of
15 business, any act which, if committed by the broker, would constitute a
16 violation of G.S. 93A-6(a) for which the broker could be disciplined; or
- 17 (5) ~~The licensee, who is also a State licensed or State certified real estate~~
18 ~~appraiser pursuant to Chapter 93E of the General Statutes, has violated any~~
19 ~~provisions of Chapter 93E of the General Statutes and has been reprimanded~~
20 ~~or has had an appraiser license or certificate suspended or revoked by the~~
21 ~~Appraisal Board. The licensee, who is also licensed as an appraiser, attorney,~~
22 home inspector, mortgage broker, general contractor, or member of another
23 licensed profession or occupation, has been disciplined for an offense under
24 any law involving fraud, theft, misrepresentation, breach of trust or fiduciary
25 responsibility, or willful or negligent malpractice.

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

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

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

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

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

1 (h) The Executive Director shall transmit a certified copy of all final orders of the
2 Commission suspending or revoking licenses issued under this Chapter to the clerk of superior
3 court of the county in which the licensee maintains his or her principal place of business. The
4 clerk shall enter the order upon the judgment docket of the county."

5 **SECTION 7.** G.S. 93A-6.1(b) reads as rewritten:

6 "(b) The Commission shall be exempt from the requirements of Chapter 53B of the
7 General Statutes with regard to subpoenas issued to compel the production of a licensee's trust
8 account records held by any financial institution. ~~Notwithstanding that exemption, the~~
9 ~~Commission shall serve, pursuant to G.S. 1A-1, Rule 4(j) of the N.C. Rules of Civil Procedure~~
10 ~~or by certified mail to the licensee's last known address, a copy of the subpoena and notice that~~
11 ~~the subpoena has been served upon the financial institution. Service of the subpoena and notice~~
12 ~~on the licensee shall be made within 10 days following service of the subpoena on the financial~~
13 ~~institution holding the trust account records.~~ Notwithstanding the exemption, whenever the
14 Commission issues a subpoena under this subsection, the Commission shall send a copy to the
15 licensee at his or her address of record by regular mail."

16 **SECTION 8.** G.S. 93A-9 reads as rewritten:

17 **"§ 93A-9. Licensing ~~nonresidents~~ foreign brokers.**

18 ~~(a) An applicant from another state, which offers licensing privileges to residents of~~
19 ~~North Carolina, may be licensed by conforming to all the provisions of this Chapter and, in the~~
20 ~~discretion of the Commission, such other terms and conditions as are required of North~~
21 ~~Carolina residents applying for license in such other state; provided that the Commission may~~
22 ~~exempt from the examination prescribed in G.S. 93A-4 a broker or salesperson duly licensed in~~
23 ~~another state if a similar exemption is extended to licensed brokers from North Carolina. A~~
24 ~~license applicant who has been a resident of North Carolina for not more than 90 days may be~~
25 ~~considered by the Commission as a nonresident for the purposes of this subsection.~~ The
26 Commission may issue a broker license to an applicant licensed in a foreign jurisdiction who
27 has satisfied the requirements for licensure set out in G.S. 93A-4 or such other requirements as
28 the Commission in its discretion may by rule require.

29 "

30 **SECTION 9.** G.S. 93A-11(a) reads as rewritten:

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

38 **SECTION 10.** G.S. 93A-16 reads as rewritten:

39 "Article 2.

40 "Real Estate Education and Recovery Fund.

41 **"§ 93A-16. Real Estate Education and Recovery Fund created; payment to fund;**
42 **management.**

43 (a) There is hereby created a special fund to be known as the "Real Estate Education
44 and Recovery Fund" which shall be set aside and maintained by the North Carolina Real Estate
45 Commission. The fund shall be used in the manner provided under this Article for the payment
46 of unsatisfied judgments where the aggrieved person has suffered a direct monetary loss by
47 reason of certain acts committed by ~~any real estate salesperson licensed before April 1, 2006, or~~
48 ~~by any real estate broker.~~ The Commission may also expend money from the fund to create
49 books and other publications, courses, forms, seminars, and other programs and materials, to
50 educate licensees and the public in real estate subjects. However, the Commission shall make

1 no expenditures from the fund for educational purposes if the expenditure will reduce the
2 balance of the fund to an amount less than two hundred thousand dollars (\$200,000).

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

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

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

19 **SECTION 11.** G.S.93A-17 reads as rewritten:

20 **"§ 93A-17. Grounds for payment; notice and application to Commission.**

21 (a) An aggrieved person who has suffered a direct monetary loss by reason of the
22 conversion of trust funds by ~~a real estate salesperson licensed before April 1, 2006, or by any~~
23 ~~licensed real estate broker~~ shall be eligible to recover, subject to the limitations of this Article,
24 the amount of trust funds converted and which is otherwise unrecoverable provided that:

- 25 (1) The act or acts of conversion which form the basis of the claim for recovery
26 occurred on or after September 1, 1979;
- 27 (2) The aggrieved person has sued the real estate broker ~~or salesperson~~ in a
28 court of competent jurisdiction and has filed with the Commission written
29 notice of such lawsuit within 60 days after its commencement unless the
30 claim against the Real Estate Education and Recovery Fund is for an amount
31 less than three thousand dollars (\$3,000), excluding ~~attorneys~~ attorney's fees,
32 in which case the notice may be filed within 60 days after the termination of
33 all judicial proceedings including appeals;
- 34 (3) The aggrieved person has obtained final judgment in a court of competent
35 jurisdiction against the real estate broker ~~or salesperson~~ on grounds of
36 conversion of trust funds arising out of a transaction which occurred when
37 such broker ~~or salesperson~~ was licensed and acting in a capacity for which a
38 license is required; and
- 39 (4) Execution of the judgment has been attempted and has been returned
40 unsatisfied in whole or in part.

41 Upon the termination of all judicial proceedings including appeals, and for a period of one
42 year thereafter, a person eligible for recovery may file a verified application with the
43 Commission for payment out of the Real Estate Education and Recovery Fund of the amount
44 remaining unpaid upon the judgment which represents the actual and direct loss sustained by
45 reason of conversion of trust funds. A copy of the judgment and return of execution shall be
46 attached to the application and filed with the Commission. ~~The applicant shall serve upon the~~
47 ~~judgment debtor a copy of the application and shall file with the Commission an affidavit or~~
48 ~~certificate of such service.~~

49 (b) For the purposes of this Article, the term "trust funds" shall include all earnest
50 money deposits, down payments, sales proceeds, tenant security deposits, undisbursed rents
51 and other such monies which belong to another or others and are held by a real estate broker or

1 salesperson acting in that capacity. Trust funds shall also include all time share purchase
2 monies which are required to be held in trust by G.S. 93A-45(c) during the time they are, in
3 fact, so held. Trust funds shall not include, however, any funds held by an independent escrow
4 agent under G.S. 93A-42 or any funds which the court may find to be subject to an implied,
5 constructive or resulting trust.

6 (c) For the purposes of this Article, the terms "licensee", "broker", and
7 "~~salesperson~~" "licensee" and "broker" shall include only individual persons licensed under this
8 Chapter as ~~brokers or individual persons who were licensed under this Chapter as salespersons~~
9 ~~prior to April 1, 2006.~~brokers. The terms "licensee", "broker", and "~~salesperson~~" "licensee" and
10 "~~broker~~" shall not include a time share developer, time share project, independent escrow agent,
11 corporation or other entity licensed under this Chapter."

12 **SECTION 12.** G.S. 93A-18(8) reads as rewritten:

13 "(8) Knows of no assets of the judgment debtor and has attempted collection
14 from all other persons who may be liable for the transaction for which the
15 aggrieved person seeks payment from the Real Estate Education and
16 Recovery Fund if there be any such other persons."

17 **SECTION 13.** G.S. 93A-20 reads as rewritten:

18 "**§ 93A-20. Order directing payment out of fund; compromise of claims.**

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

24 Subject to Commission approval, a claim based upon the application of an aggrieved person
25 may be compromised; however, the Commission shall not be bound in any way by any
26 compromise or stipulation of the judgment debtor. If a claim appears to be otherwise
27 meritorious, the Commission may waive procedural defects in the application for payment."

28 **SECTION 14.** G.S. 93A-21 reads as rewritten:

29 "**§ 93A-21. Limitations; pro rata distribution; attorney fees.**

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

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

35 (2) The fund shall not be liable for more than ~~twenty five thousand dollars~~
36 ~~(\$25,000)~~ fifty thousand dollars (\$50,000) per transaction regardless of the
37 number of persons aggrieved or parcels of real estate involved in such
38 ~~transaction;~~ and transaction.

39 (3) ~~The liability of Payment from~~ the fund shall not exceed in the aggregate
40 twenty-five thousand dollars (\$25,000) for any one licensee within a single
41 calendar year, and in no event shall it exceed in the aggregate ~~fifty thousand~~
42 ~~dollars (\$50,000)~~ seventy-five thousand dollars (\$75,000) for any one
43 licensee.

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

48 (b) If the maximum liability of the fund is insufficient to pay in full the valid claims of
49 all aggrieved persons whose claims relate to the same transaction or to the same licensee, the
50 amount for which the fund is liable shall be distributed among the claimants in a ratio that their
51 respective claims bear to the total of such valid claims or in such manner as the Commission, in

1 its discretion, deems equitable. Upon petition of counsel for the Commission, the Commission
2 may require all claimants and prospective claimants to be joined in one proceeding to the end
3 that the respective rights of all such claimants to the Real Estate Education and Recovery Fund
4 may be equitably resolved. A person who files an application for payment after the maximum
5 liability of the fund for the licensee or transaction has been exhausted shall not be entitled to
6 payment and may not seek judicial review of the Commission's award of payment to any party
7 except upon a showing that the Commission abused its discretion.

8 (c) In the event an aggrieved person is entitled to payment from the fund in an amount
9 ~~of one thousand five hundred dollars (\$1,500) or less, which is equal to or less than the~~
10 maximum amount of money which may be awarded in small claims court under G.S. 7A-210,
11 the Commission may allow such person to recover from the fund reasonable attorney's fees
12 incurred in effecting such recovery. Reimbursement for attorney's fees shall be limited to those
13 fees incurred in effecting recovery from the fund and shall not include any fee incurred in
14 obtaining judgment against the licensee."

15 **SECTION 15.** G.S. 93A-22 reads as rewritten:

16 "**§ 93A-22. Repayment to fund; automatic suspension of license.**

17 Should the Commission pay from the Real Estate Education and Recovery Fund any
18 amount in settlement of a claim or toward satisfaction of a judgment against a licensed real
19 estate ~~broker or salesperson, broker,~~ any license issued to the broker ~~or salesperson~~ shall be
20 automatically suspended upon the effective date of the order authorizing payment from the
21 fund. No such broker ~~or salesperson~~ shall be granted a reinstatement until the fund has been
22 repaid in full, including interest at the legal rate as provided for in G.S. 24-1."

23 **SECTION 16.** G.S. 93A-23 reads as rewritten:

24 "**§ 93A-23. Subrogation of rights.**

25 When the Commission has paid from the Real Estate Education and Recovery Fund any
26 sum to the judgment creditor, the Commission shall be subrogated to all of the rights of the
27 judgment creditor to the extent of the amount so paid and the judgment creditor shall assign all
28 right, title, and interest in the judgment to the extent of the amount so paid to the Commission
29 and any amount and interest so recovered by the Commission on the judgment shall be
30 deposited in the Real Estate Education and Recovery Fund."

31 **SECTION 17.** G.S. 93A-25 reads as rewritten:

32 "**§ 93A-25. Persons ineligible to recover from fund.**

33 No real estate broker ~~or real estate salesperson~~ who suffers the loss of any commission from
34 any transaction in which he or she was acting in the capacity of a real estate broker ~~or real~~
35 ~~estate salesperson~~ shall be entitled to make application for payment from the Real Estate
36 Education and Recovery Fund for the loss."

37 **SECTION 18.** G.S. 93A-35(b) reads as rewritten:

38 "(b) Licenses shall be renewable annually on July 1, provided that a renewal application
39 accompanied by the appropriate renewal fees has been filed not later than June 1 in the form
40 and manner prescribed by the Commission, and provided further that the applicant and school
41 are found to be in compliance with the standards established for issuance of an original license.
42 The Commission may by rule set nonrefundable renewal fees not to exceed one hundred
43 twenty-five dollars (\$125.00) for each school location and twenty-five dollars (\$25.00) for each
44 real estate ~~salesperson or broker~~ prelicensing and postlicensing course."

45 **SECTION 19.** G.S. 93A-41(9) reads as rewritten:

46 "(9) "Time share" means a right to occupy a unit or any of several units during
47 five or more separated time periods over a period of at least five years,
48 including renewal options, whether or not coupled with a freehold estate or
49 an estate for years in a time share project or a specified portion ~~thereof,~~
50 including, but not limited to, of a time share project. "Time share" shall also
51 include a vacation license, prepaid hotel reservation, club membership,

1 limited partnership, vacation bond, or a plan or system where the right to use
2 a time share unit or units for periods of time is awarded or apportioned on
3 the basis of points, vouchers, split, divided, or floating ~~use~~use, even if on a
4 competitive basis with other purchasers;".

5 **SECTION 20.** G.S. 93A-42 reads as rewritten:

6 "**§ 93A-42. Time shares deemed real estate.**

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

10 (b) A purchaser of a time share which burdens or pertains to real property located in the
11 State may in accordance with G.S. 47-18 register the time share instrument by which the
12 purchaser acquired the interest and upon such registration shall be entitled to the protection
13 provided by Chapter 47 of the General Statutes for the recordation of other real property
14 instruments. A time share instrument transferring or encumbering a time share shall not be
15 rejected for recordation because of the nature or duration of that estate, provided all other
16 requirements necessary to make an instrument recordable are complied with. An instrument
17 concerning a time share which burdens or pertains to no real property located in this State shall
18 not be recorded in the office of the register of deeds in any county in this State.

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

- 20 (1) Not less than six days nor more than 45 days following the execution of the
21 contract of sale by the purchaser; or
22 (2) Not later than 180 days following the execution of the contract of sale by the
23 purchaser, provided that all payments made by the purchaser shall be placed
24 by the developer with an independent escrow agent upon the expiration of
25 the 10-day escrow period provided by G.S. 93A-45(c).

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

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

44 (f) Recordation under the provisions of this section of the time share instrument shall
45 constitute delivery of that instrument from the developer to the purchaser."

46 **SECTION 21.** G.S. 93A-53 reads as rewritten:

47 "**§ 93A-53. Register of applicants; roster of registrants; registered projects; financial**
48 **report to Secretary of State.**

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

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

4 (c) ~~On or before the first day of September of each year, the Commission shall file with~~
5 ~~the Secretary of State a copy of the roster of time share projects registered with the~~
6 ~~Commission and a report containing a complete statement of income received by the~~
7 ~~Commission in connection with the registration of time share projects for the preceding fiscal~~
8 ~~year ending June 30th attested by the affidavit of the Executive Director of the Commission.~~
9 ~~The report shall be made a part of those annual reports required under the provisions of~~
10 ~~G.S. 93A-5. The Commission shall include a copy of the roster of time share projects current on~~
11 ~~the preceding June 30 and a statement of the income received by the Commission in connection~~
12 ~~with the registration of time share projects during the fiscal year ending on June 30 with the~~
13 ~~report required by G.S. 93B-2."~~

14 **SECTION 22.** G.S. 93A-54(a) reads as rewritten:

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

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

28 ...

29 (9) ~~Failing to deposit and maintain in a trust or escrow account in an insured~~
30 ~~bank or savings and loan association in North Carolina~~ broker's trust or
31 escrow account as defined by G.S. 93A-6(g) all money received from others
32 in a time share transaction as may be required in G.S. 93A-45 of this Article
33 or failing to place with an independent escrow agent the funds of a time
34 share purchaser when required by G.S. 93A-42(c);

35"

36 **SECTION 23.** The Real Estate Commission shall adopt any rules necessary to
37 implement the provisions of Sections 3 and 8 of this act when the act becomes law.

38 **SECTION 24.** Section 22 of this act is effective when the act becomes law. The
39 remainder of this act becomes effective January 1, 2012.