

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE DRH11152-RU-1 (03/09)

Short Title: Supervise RE Closings/Settlement Funds.

(Public)

Sponsors: Representatives Stevens and Jordan (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT RESIDENTIAL REAL ESTATE CLOSINGS AND SETTLEMENTS UNDER THE GOOD FUNDS SETTLEMENT ACT BE SUPERVISED BY ATTORNEYS LICENSED IN THIS STATE, TO REQUIRE THAT INTEREST EARNED ON REAL ESTATE SETTLEMENT FUNDS HELD IN TRUST OR ESCROW ACCOUNTS BE PAID INTO THE NORTH CAROLINA STATE BAR'S INTEREST ON LAWYERS' TRUST ACCOUNT FUND, AND TO PROVIDE A PRIVATE CAUSE OF ACTION FOR PERSONS HARMED BY THE UNAUTHORIZED PRACTICE OF LAW.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 45A of the General Statutes is amended by adding the following new sections to read:

"§ 45A-9. Real estate closings and settlements to be supervised and conducted by attorneys licensed in this State.

(a) Except as provided in subsection (b) of this section, closings and settlements shall be supervised and conducted by an attorney licensed under Chapter 84 of the General Statutes in accordance with this Chapter.

(b) Notwithstanding subsection (a) of this section, a nonattorney employee of a corporation selling real property owned by the corporation in a seller-financed real estate transaction may prepare purchase money loan documents to secure the indebtedness of the purchaser incurred for the purchase of real estate owned by the seller corporation.

(c) An attorney who performs a closing or settlement under this Chapter shall have in force and maintain professional malpractice insurance coverage with an insurance company licensed to sell insurance in this State with policy limits of no less than five hundred thousand dollars (\$500,000) per incident and one million dollars (\$1,000,000) aggregate. An attorney conducting a closing or settlement under this Chapter shall provide proof of insurance coverage required under this subsection in accordance with rules adopted by the North Carolina State Bar. The North Carolina State Bar shall make available to the public a listing of all attorneys who have complied with the provisions of this subsection, including the amounts of liability coverage and the company providing the coverage for each attorney.

(d) The North Carolina State Bar shall adopt rules for compliance with the requirements of subsection (c) of this section.

"§ 45A-10. Interest on settlement agent real estate trust and escrow accounts.

(a) A settlement agent who maintains a trust or escrow account for purposes of receiving and disbursing closing funds and loan funds shall pay any interest earned on funds



1 held in those accounts to the North Carolina State Bar to be used for the purposes authorized by
2 the North Carolina State Bar under the Interest on Lawyers Trust Account Program.

3 (b) The North Carolina State Bar shall adopt rules for the collection and disbursement
4 of funds required to be paid to the North Carolina State Bar under subsection (a) of this
5 section."

6 SECTION 2. G.S. 84-8 reads as rewritten:

7 "**§ 84-8. Punishment for ~~violations; legal clinics of law schools and certain law students~~**
8 **~~and lawyers excepted.~~violations.**

9 (a) ~~Any~~ Except as provided in subsection (b) of this section, any person, corporation,
10 or association of persons violating the provisions of G.S. 84-4 to ~~G.S. 84-7~~ through G.S. 84-6
11 shall be guilty of a ~~Class 1 misdemeanor.~~ Class I felony.

12 (b) Any person who is in violation of the provisions of G.S. 84-4 through G.S. 84-6 due
13 solely to the person's license being inactive as a result of the person's failure to timely pay
14 annual State Bar dues as required or the failure to comply with the continuing legal education
15 requirements established by the North Carolina State Bar under this Chapter, shall be guilty of
16 a Class 1 misdemeanor. The failure to timely pay annual State Bar dues as required or the
17 failure to comply with the continuing legal education requirements established by the North
18 Carolina State Bar under this Chapter shall not constitute an offense under this section.

19 (c) No person shall be entitled to collect any fee for services performed in violation of
20 G.S. 84-4 through G.S. 84-6.

21 The provisions of G.S. 84-4 to G.S. 84-7 shall not apply to the following:

- 22 (1) ~~Any law school conducting a legal clinic and receiving as its clientage only~~
23 ~~those persons unable financially to compensate for legal advice or services~~
24 ~~rendered and any law student permitted by the North Carolina State Bar to~~
25 ~~act as a legal intern in such a legal clinic.~~
- 26 (2) ~~Any law student permitted by the North Carolina State Bar to act as a legal~~
27 ~~intern for a federal, state, or local government agency.~~
- 28 (3) ~~Any lawyer licensed by another state and permitted by the North Carolina~~
29 ~~State Bar to represent indigent clients on a pro bono basis under the~~
30 ~~supervision of active members employed by nonprofit corporations qualified~~
31 ~~to render legal services pursuant to G.S. 84-5.1. This provision does not~~
32 ~~apply to a lawyer whose license has been suspended or revoked in any state."~~

33 SECTION 3. Article 1 of Chapter 84 of the General Statutes is amended by adding
34 a new section to read:

35 "**§ 84-7.1. Legal clinics of law schools and certain law students and lawyers excepted.**

36 The provisions of G.S. 84-4 through G.S. 84-6 shall not apply to any of the following:

- 37 (1) Any law school conducting a legal clinic and receiving as its clientage only
38 those persons unable financially to compensate for legal advice or services
39 rendered and any law student permitted by the North Carolina State Bar to
40 act as a legal intern in such a legal clinic.
- 41 (2) Any law student permitted by the North Carolina State Bar to act as a legal
42 intern for a federal, state, or local government agency.
- 43 (3) Any lawyer licensed by another state and permitted by the North Carolina
44 State Bar to represent indigent clients on a pro bono basis under the
45 supervision of active members employed by nonprofit corporations qualified
46 to render legal services pursuant to G.S. 84-5.1. This provision does not
47 apply to a lawyer whose license has been suspended or revoked in any state."

48 SECTION 4. Article 1 of Chapter 84 of the General Statutes is amended by adding
49 a new section to read:

50 "**§ 84-10.1. Private cause of action for the unauthorized practice of law.**

1 If any person violates any of the provisions of G.S. 84-4 through G.S. 84-6, or fraudulently
2 holds himself or herself out as a North Carolina certified paralegal by use of the designations
3 set forth in G.S. 84-37(a), then in addition to any and all other liability imposed pursuant to this
4 Chapter, any person who is damaged shall be entitled to maintain a cause of action to recover
5 treble damages and reasonable attorneys' fees."

6 **SECTION 5.** G.S. 84-21 reads as rewritten:

7 "**§ 84-21. Organization of Council; publication of rules, regulations and bylaws.**

8 (a) The Council shall adopt the rules pursuant to G.S. 45A-9 and G.S. 45A-10.

9 (b) The rules and regulations adopted by the Council under this Article may be
10 amended by the Council from time to time in any manner not inconsistent with this Article.
11 Copies of all rules and regulations and of all amendments adopted by the Council shall be
12 certified to the Chief Justice of the Supreme Court of North Carolina, entered by the North
13 Carolina Supreme Court upon its minutes, and published in the next ensuing number of the
14 North Carolina Reports and in the North Carolina Administrative Code: Provided, that the court
15 may decline to have so entered upon its minutes any rules, regulations and amendments which
16 in the opinion of the Chief Justice are inconsistent with this Article."

17 **SECTION 6.** Sections 1 and 5 of this act become effective January 1, 2012.
18 Sections 2 and 3 of this act become effective December 1, 2011, and apply to offenses
19 committed on or after that date. The remainder of this act becomes effective October 1, 2011.