

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

SESSION LAW 2005-374
SENATE BILL 895

AN ACT TO CLARIFY REAL ESTATE BROKERS DUTIES RELATED TO REAL
ESTATE TRUST MONIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 93A-3 reads as rewritten:

"§ 93A-3. Commission created; compensation; organization.

...

(b) ~~Members~~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 per diem, subsistence and travel allowances as provided in G.S. 93B-5.~~ 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 not to exceed ten percent (10%) of the previous year's gross income; then any surplus shall go to the general fund of the State of North Carolina. 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).

...

(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).

..."

SECTION 2. G.S. 93A-6(a) reads as rewritten:

"(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, ~~salespersons~~, 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 salesperson 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 ~~or salesperson~~ 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 an insured bank or savings and loan association in North Carolina all money received by him or her as a real estate licensee acting in that capacity, or an escrow agent, or the ~~temporary custodian or manager~~ of the funds of ~~others, in a real estate transaction;~~ 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 the transaction is consummated, to deliver to the seller in every real estate transaction, a complete detailed closing statement showing all of the receipts and disbursements handled by him or her for the seller or failing to deliver to the buyer a complete statement showing all money received in the transaction from the buyer and how and for what it was disbursed.
- (15) Violating any rule or regulation promulgated by the Commission.

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 these orders upon the judgment docket of the county."

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 24th day of August, 2005.

s/ Beverly E. Perdue
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 1:41 p.m. this 8th day of September, 2005