

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 867

Judiciary II Committee Substitute Adopted 4/28/99

House Committee Substitute Favorable 5/26/99

Short Title: Real Estate Licensure Law Changes.

(Public)

Sponsors:

Referred to:

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~~ salespersons.

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

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

2 "(a1) The term broker-in-charge within the meaning of this Chapter shall mean a real
3 estate broker who has been designated as the broker having responsibility for the
4 supervision of real estate salesperson engaged in real estate brokerage at a particular real
5 estate office and for other administrative and supervisory duties as the Commission shall
6 prescribe by rule."

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

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

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

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

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

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

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

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

37 The Commission shall have power to suspend or revoke at any time a license issued
38 under the provisions of this Chapter, or to reprimand or censure any licensee, if,
39 following a hearing, the Commission adjudges the licensee to be guilty of one or more of
40 the following:

- 41 (1) Making any willful or negligent misrepresentation or any willful or
42 negligent omission of material ~~fact~~; fact.

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

1 statement showing all money received in the transaction from the buyer
2 and how and for what it was ~~disbursed, or disbursed.~~

3 (15) Violating any rule or regulation promulgated by the Commission.

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

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

10 "**§ 93A-6.1. Commission may subpoena witnesses, records, documents, or other**
11 **materials.**

12 (a) The Commission, Executive Director, or other representative designated by the
13 Commission may issue a subpoena for the appearance of witnesses deemed necessary to
14 testify concerning any matter to be heard before or investigated by the Commission. The
15 Commission may issue a subpoena ordering any person in possession of records,
16 documents, or other materials, however maintained, that concern any matter to be heard
17 before or investigated by the Commission to produce the records, documents, or other
18 materials for inspection. Upon written request, the Commission shall revoke a subpoena
19 if it finds that the evidence, the production of which is required, does not relate to a
20 matter in issue, or if the subpoena does not describe with sufficient particularity the
21 evidence, the production of which is required, or if for any other reason in law the
22 subpoena is invalid. If any person shall fail to fully and promptly comply with a
23 subpoena issued under this section, the Commission may apply to any judge of the
24 superior court resident in any county where a hearing before the Commission is pending
25 for an order compelling the person to show cause why he or she should not be held in
26 contempt of the Commission and its processes. The court shall have the power to impose
27 punishment for acts that would constitute direct or indirect contempt if the acts occurred
28 in an action pending in superior court.

29 (b) The Commission shall be exempt from the requirements of Chapter 53B of the
30 General Statutes with regard to subpoenas issued to compel the production of a licensee's
31 trust account records held by any financial institution. Notwithstanding that exemption,
32 the Commission shall serve, pursuant to G.S. 1A-1, Rule 4(j) of the N.C. Rules of Civil
33 Procedure or by certified mail to the licensee's last known address, a copy of the
34 subpoena and notice that the records have been furnished. Service of the subpoena and
35 notice on the licensee shall be made within 10 days following service of the subpoena on
36 the financial institution holding the trust account records."

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

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

42 (1) The act or acts of conversion which form the basis of the claim for
43 recovery occurred on or after September 1, 1979;

- 1 (2) The aggrieved person has sued the real estate broker or ~~salesman~~
2 salesperson in a court of competent jurisdiction and has filed with the
3 Commission written notice of such lawsuit within 60 days after its
4 commencement unless the claim against the Real Estate Recovery Fund
5 is for an amount less than ~~one thousand five hundred dollars (\$1,500)~~three
6 thousand dollars (\$3,000), excluding attorneys fees, in which case the
7 notice may be filed within 60 days after the termination of all judicial
8 proceedings including appeals;
- 9 (3) The aggrieved person has obtained final judgment in a court of
10 competent jurisdiction against the real estate broker or ~~salesman~~
11 salesperson on grounds of conversion of trust funds arising out of a
12 transaction which occurred when such broker or ~~salesman~~salesperson
13 was licensed and acting in a capacity for which a license is required; and
- 14 (4) Execution of the judgment has been attempted and has been returned
15 unsatisfied in whole or in part.

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

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

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

1 hearing, the applicant or judgment debtor shall waive his or her rights unless the absence
2 is excused by the Commission."

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

4 **"§ 93A-20. Order directing payment out of fund; compromise of claims.**

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

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

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

16 **"§ 93A-21. Limitations; pro rata distribution; attorney fees.**

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

- 19 (1) The right to recovery under this Article shall be forever barred unless
20 application is made within one year after termination of all proceedings
21 including appeals, in connection with the judgment;
- 22 (2) The fund shall not be liable for more than ~~ten~~ twenty-five thousand
23 dollars ~~(\$10,000)~~ (\$25,000) per transaction regardless of the number of
24 persons aggrieved or parcels of real estate involved in such transaction;
25 and
- 26 (3) The liability of the fund shall not exceed in the aggregate ~~ten~~ twenty-
27 five thousand dollars ~~(\$10,000)~~ (\$25,000) for any one licensee within a
28 single calendar year, and in no event shall it exceed in the aggregate
29 ~~twenty-five~~ thousand dollars ~~(\$20,000)~~ (\$50,000) for any one licensee.
- 30 (4) The fund shall not be liable for payment of any judgment awards of
31 consequential damages, multiple or punitive damages, civil penalties,
32 incidental damages, special damages, interest, costs of court or action or
33 other similar awards.

34 (b) If the maximum liability of the fund is insufficient to pay in full the valid
35 claims of all aggrieved persons whose claims relate to the same transaction or to the same
36 licensee, the amount for which the fund is liable shall be distributed among the claimants
37 in a ratio that their respective claims bear to the total of such valid claims or in such
38 manner as the ~~Commission~~ Commission, in its discretion, deems equitable. Upon petition
39 of counsel for the Commission, the Commission may require all claimants and
40 prospective claimants to be joined in one proceeding to the end that the respective rights
41 of all such claimants to the Real Estate Recovery Fund may be equitably resolved. A
42 person who files an application for payment after the maximum liability of the fund for
43 the licensee or transaction has been exhausted shall not be entitled to payment and may

1 not seek judicial review of the Commission's award of payment to any party except upon
2 a showing that the Commission abused its discretion.

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

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

10 "(a) Before the Commission shall issue a license the applicant shall execute a bond
11 in the sum of five thousand dollars (\$5,000), payable to the State of North Carolina,
12 signed by a solvent guaranty company authorized to do business in the State of North
13 Carolina, and conditioned that the principal in said bond will carry out and comply with
14 each and every contract or agreement, written or verbal, made and entered into by the
15 applicant's school acting by and through its officers and agents with any student who
16 desires to enter such school and to take any courses offered therein and that said
17 principal will refund to such students all amounts collected in tuition and fees in case of
18 failure on the part of the party obtaining a license from the Commission to open and
19 operate a private real estate school or to provide the instruction agreed to or contracted
20 for. Such bond shall be required for each school ~~or branch thereof~~ for which a license is
21 required and shall be first approved by the Commission and then filed with the clerk of
22 superior court of the county in which the school is located, to be recorded by such clerk
23 in a book provided for that purpose. A separate bond shall not be required for each
24 branch of a licensed school."

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

26 "(2) 'Developer' means any person or entity which creates a time share or a
27 time share project or program, purchases a time share for purpose of
28 resale, or is engaged in the business of selling its own time shares and
29 shall include any person or entity who controls, is controlled by, or is in
30 common control with the developer which is engaged in creating or
31 selling time shares for the ~~developer,~~ developer, but a person who
32 purchases a time share for his or her occupancy, use, and enjoyment
33 shall not be deemed a developer."

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

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

1 Section 15. G.S. 93A-52(d) reads as rewritten:
2 "(d) All certificates of registration granted and issued by the Commission under the
3 provisions of this Article shall expire on the 30th day of June following issuance thereof,
4 and shall become invalid after such date unless reinstated. Renewal of such certificate
5 may be effected at any time during the month of June preceding the date of expiration of
6 such registration upon proper application to the Commission and by the payment of a
7 renewal fee fixed by the Commission but not to exceed one thousand five hundred dollars
8 (\$1,500) for each time share project. The developer shall, when making application for
9 renewal, also provide a copy of the report required in G.S. 93A-48. Each certificate
10 reinstated after the expiration date thereof shall be subject to a late filing fee of fifty
11 dollars (\$50.00) in addition to the required renewal fee. In the event a time share
12 developer fails to reinstate the registration within 12 months after the expiration date
13 thereof, the Commission may, in its discretion, consider the time share project as not
14 having been previously registered, and thereby subject to the provisions of this Article
15 relating to the issuance of an original certificate. Duplicate certificates may be issued by
16 the Commission upon payment of a fee of one dollar (\$1.00) by the registrant developer.
17 Except as prescribed by Commission rules, all fees paid pursuant to this Article shall be
18 nonrefundable."
19 Section 16. This act shall have no effect on any cases pending in the courts in
20 this State.
21 Section 17. This act becomes effective October 1, 1999.