

GENERAL ASSEMBLY OF NORTH CAROLINA
FOURTH EXTRA SESSION 2016

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HOUSE BILL 20

Short Title: Community Association Managers Licensing Act. (Public)

Sponsors: Representative J. Moore.

Referred to: Judiciary IV

December 14, 2016

A BILL TO BE ENTITLED

AN ACT ESTABLISHING THE COMMUNITY ASSOCIATION MANAGERS LICENSURE
ACT AND REQUIRING REGISTRATION OF ALL COMMUNITY ASSOCIATIONS.

The General Assembly of North Carolina enacts:

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

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

(a) There is hereby created the North Carolina Real Estate Commission, hereinafter called the Commission. The Commission shall consist of nine members, seven members to be appointed by the Governor, one member to be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121, and one member to be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121. At least three members of the Commission shall be licensed real estate brokers. At least two members of the Commission shall be licensed community association managers. At least two members of the Commission shall be persons who are not involved directly or indirectly in the real estate or real estate appraisal business. Members of the Commission shall serve three-year terms, so staggered that the terms of three members expire in one year, the terms of three members expire in the next year, and the terms of three members expire in the third year of each three-year period. The members of the Commission shall elect one of their members to serve as chairman of the Commission for a term of one year. The Governor may remove any member of the Commission for misconduct, incompetency, or willful neglect of duty. The Governor shall have the power to fill all vacancies occurring on the Commission, except vacancies in legislative appointments shall be filled under G.S. 120-122."

SECTION 1.(b) Chapter 93A of the General Statutes is amended by adding a new Article to read:

"Article 7.

"Community Association Managers.

"Part 1. Community Association Managers Licensure Act.

"§ 93A-100. Short title.

The provisions of this Article shall be known and may be cited as the "North Carolina Community Association Managers Licensure Act."

"§ 93A-101. Legislative findings and purpose.

The General Assembly finds that individuals or entities that provide community association management in North Carolina affect their public health, safety, and welfare and that the mandatory licensure of those who provide community association management for compensation is necessary to ensure minimum standards of competency. It is the purpose and intent of this Article to protect the public from individuals or entities unqualified to provide community



1 association management and from unprofessional conduct by individuals or entities licensed
2 pursuant to this Article.

3 **"§ 93A-102. Definitions.**

4 The following definitions apply in this Article:

- 5 (1) Community association. – An association or organization of the owners of
6 residential condominiums, time shares, townhouses, apartments, or lots in a
7 planned community or subdivision that is subject to a uniform scheme of
8 restrictive covenants, in which owner membership is made mandatory by
9 covenant, contract, or deed, and is authorized to collect dues, assessments, or
10 other payments from owner-members.
- 11 (2) Community association manager. – Any person, partnership, firm, corporation,
12 limited liability company, association, or other business entity who, for
13 compensation or other valuable consideration or promise thereof, performs any
14 of the following on behalf of a community association:
- 15 a. Acts with the authority of a community association in its business, legal,
16 financial, or other transactions and communications with association
17 members and nonmembers.
- 18 b. Executes the resolutions and decisions of the government of a
19 community association or, with the authority of the association, enforces
20 the rights of the association secured by statutes, contract, covenant, rule,
21 or bylaw.
- 22 c. Collects, disburses, or otherwise exercises dominion or control over
23 money or other property belonging to a community association.
- 24 d. Prepares budgets, financial statements, or other financial reports for a
25 community association.
- 26 e. Negotiates contracts or otherwise coordinates or arranges for services or
27 the purchase of property or goods for or on behalf of a community
28 association.
- 29 f. Offers or solicits to perform any of the acts or services in
30 sub-subdivisions a. through e. of this subdivision on behalf of a
31 community association.
- 32 (3) Private community association manager school. – Any community association
33 manager educational entity that is privately owned and operated by an
34 individual, partnership, corporation, limited liability company, or association,
35 and which conducts, for a profit or tuition charge, community association
36 manager pre-licensing or continuing education courses. A proprietary business
37 or trade school licensed by the State Board of Community Colleges under
38 G.S. 115D-90 to conduct courses other than the community association
39 manager courses described in this Article shall not be considered a private
40 community association manager school.

41 **"§ 93A-103. License required.**

42 On or after July 1, 2018, it shall be unlawful for any person, partnership, corporation, limited
43 liability company, association, firm, or other business entity in this State to act as a community
44 association manager, directly or indirectly engage in the business of community association
45 management, hold themselves out to be a community association manager, or use the title
46 "Community Association Manager," or any variation thereof, without first obtaining a community
47 association manager license issued by the Commission under the provisions of this Chapter. A
48 license must be obtained from the Commission even if the person, partnership, corporation,
49 limited liability company, firm, association, or other business entity is licensed in another state and
50 is affiliated or otherwise associated with a licensed community association manager in this State.

51 **"§ 93A-104. Exemptions.**

1 The provisions of this Article shall not apply to any of the following:

- 2 (1) An officer or member of a community association who, for no compensation or
3 expectation thereof, performs the acts or services of a community association
4 manager.
- 5 (2) The acts or services performed by an attorney who is an active member of the
6 North Carolina State Bar and is engaged as an attorney to represent a
7 community association or community association manager in matters that
8 constitute the practice of law under Chapter 84 of the General Statutes.
- 9 (3) The acts or services performed by a real estate broker who is actively licensed
10 by the Commission pursuant to Article 1 of this Chapter and is engaged as a
11 real estate broker on behalf of a community association in matters that
12 constitute real estate brokerage.
- 13 (4) A trustee in a bankruptcy proceeding, court-appointed receiver, or any other
14 person acting under the express authority of an order issued by a court of
15 competent jurisdiction.
- 16 (5) The acts or services of a certified public accountant acting solely in the capacity
17 of a certified public account pursuant to Chapter 93 of the General Statutes.
- 18 (6) A regular, salaried employee of a licensed community association manager who
19 performs any of the acts or services described in G.S. 93A-102(2) under the
20 supervision and control of a licensed community association manager.
- 21 (7) A declarant, or the declarant's successor-in-interest, governmental agency,
22 redevelopment authority or commission, or any entity that undertook the
23 development and who (i) has a legal or equitable interest in the property
24 developed and (ii) provides community association management for the
25 development, provided that the provision of community association
26 management does not continue for greater than 120 days after (i) the first
27 conveyance of a lot or parcel or (ii) the collection of fees or dues from any
28 person or entity other than the declarant, whichever occurs first.

29 **"§ 93A-105. Requirements for licensure.**

30 (a) To be licensed as a community association manager, an applicant shall make written
31 application for such license in the form and manner prescribed by the Commission. Each applicant
32 for licensure shall satisfy the following qualification requirements:

- 33 (1) The applicant must be at least 18 years of age.
- 34 (2) The applicant must satisfactorily complete within three years preceding the date
35 the application is made, at a school approved by the Commission, a course of
36 instruction prescribed by the Commission that may consist of at least 45 hours
37 of classroom instruction, or equivalent, in subjects determined by the
38 Commission. The Commission may waive the course requirement for
39 applicants upon a finding that the applicant possesses education or experience
40 in community association management equivalent to the prescribed education
41 program.
- 42 (3) After submitting a complete application, the Commission may require the
43 applicant to pass a licensing examination to demonstrate competency. The
44 examination may be provided by the Commission or by a vendor selected by
45 the Commission. An applicant who fails the examination shall be entitled to
46 know the result and score. An applicant who passes the examination shall be
47 notified only of the result. The result of the examination shall be a matter of
48 public record, however the score shall remain confidential. Nothing in this
49 subdivision shall limit the rights or procedures granted to applicants under
50 G.S. 93B-8.

1 (4) Each applicant for licensure as a community association manager shall be
2 required to pay an application fee for each application filed in an amount to be
3 determined by the Commission, but not to exceed two hundred dollars
4 (\$200.00). In addition to the application fee, the applicant may be required to
5 pay a fee for a license examination not to exceed the actual cost of
6 administering the examination.

7 (5) Before a license is issued, the applicant shall provide to the Commission
8 evidence of coverage by a fidelity bond in accordance with G.S. 93A-113.

9 (6) Each applicant shall demonstrate to the Commission that the applicant
10 possesses the competency, honesty, truthfulness, integrity, good moral
11 character, and general fitness, including mental and emotional fitness, necessary
12 to protect the public interest and promote public confidence in the community
13 association management business.

14 (7) An applicant may be required to provide the Commission with a criminal
15 record report from one or more reporting services designated by the
16 Commission, or to provide fingerprints and consent to a criminal history record
17 check to be conducted by the North Carolina Department of Public Safety. The
18 Commission shall be responsible for providing to the Department of Public
19 Safety the fingerprints of the applicant, a form signed by the applicant
20 consenting to the criminal record check and the use of fingerprints and other
21 identifying information required by the State or national Repositories, and any
22 additional information required by the Department of Public Safety. The
23 Department of Public Safety may charge the applicant a fee for conducting the
24 criminal history record check.

25 (b) The cost of the criminal history record check and the fingerprinting shall be borne by
26 the applicant.

27 (c) If the applicant meets all the requirements of this Article, the Commission shall issue a
28 license authorizing the applicant to act as a community association manager in the State of North
29 Carolina.

30 (d) Records, reports, papers, and other documentation containing personal information
31 collected or compiled by the Commission in connection with an application for examination,
32 licensure, certification, or renewal or reinstatement, or the subsequent update of information shall
33 not be considered public records within the meaning of Chapter 132 of the General Statutes unless
34 admitted into evidence in a hearing held by the Commission.

35 (e) The Commission shall have authority to enact rules related to the status of the license
36 issued to a community association manager. A license may be on active or inactive status.

37 **"§ 93A-106. Denial of licensure.**

38 (a) If the Commission determines that an applicant has not demonstrated that the applicant
39 possesses the character and fitness for licensure, the Commission shall defer action on the
40 applicant's application and shall notify the applicant in writing by first-class mail directed to the
41 address provided by the applicant in the application. Within 60 days following the mailing of the
42 notice, the applicant may make a written request for a hearing before the Commission.
43 Proceedings before the Commission shall be governed by Article 3A of Chapter 150B of the
44 General Statutes. At the hearing, the applicant shall have the burden of demonstrating the
45 applicant's good character and fitness for licensure. If the applicant does not make a timely written
46 request for a hearing, the application shall be deemed denied.

47 (b) Notwithstanding G.S. 150B-38(c), in a contested case commenced upon the request of
48 a party applying for licensure regarding the question of the moral character or fitness of the
49 applicant, if notice has been reasonably attempted, but cannot be given to the applicant personally
50 or by certified mail in accordance with G.S. 150B-38(c), the notice of hearing shall be deemed
51 given to the applicant when a copy of the notice is deposited in an official depository of the United

1 States Postal Service addressed to the applicant at the latest mailing address provided by the
2 applicant to the Commission or by any other means reasonably designed to achieve actual notice
3 to the applicant.

4 **"§ 93A-107. License is property of the Commission; display of license; address change**
5 **reporting.**

6 (a) A license issued by the Commission is the property of the Commission. If the
7 Commission suspends or revokes a license, the community association manager to whom the
8 license is issued shall return the license to the Commission upon demand.

9 (b) A community association manager licensed by the Commission shall display the
10 license in a manner prescribed by the Commission. A licensed community association that has
11 changed its address shall report the change to the Commission within 10 days of the change.

12 **"§ 93A-108. Licensing nonresident community association managers.**

13 (a) The Commission may issue a community association manager license to an applicant
14 licensed in a foreign jurisdiction who has satisfied the requirements for licensure set out in
15 G.S. 93A-105 or such other requirements as the Commission in its discretion may by rule require.

16 (b) Every nonresident applicant shall file an irrevocable consent allowing that suits and
17 actions may be commenced against such applicant in any of the courts of record of this State, by
18 the service of any process or pleading authorized by the laws of this State in any county in which
19 the plaintiff may reside, or by serving the same on the Executive Director of the Commission, said
20 consent stipulating and agreeing that such service of such process or pleadings on said Executive
21 Director shall be taken and held in all courts to be valid and binding as if due service had been
22 made personally upon the applicant in this State. This consent shall be duly acknowledged, and, if
23 made by a corporation, shall be executed by an officer of the corporation. The signature of the
24 officer on the consent to service instrument shall be sufficient to bind the corporation and no
25 further authentication is necessary. An application from a corporation or other business entity shall
26 be signed by an officer of the corporation or entity or by an individual designated by the
27 Commission. In all cases where process or pleadings shall be served, under the provisions of this
28 Chapter, upon the Executive Director of the Commission, such process or pleadings shall be
29 served in duplicate, one of which shall be filed in the office of the Commission and the other shall
30 be forwarded immediately by the Executive Director of the Commission, by registered mail, to the
31 last known business address of the nonresident licensee against which such process or pleadings
32 are directed.

33 **"§ 93A-109. Expiration of License, renewal, and reinstatement.**

34 (a) All licenses issued by the Commission under the provisions of this Article shall expire
35 on the 30th day of June following issuance or on any other date that the Commission may
36 determine and shall become invalid after that date unless reinstated. A license may be renewed 45
37 days prior to the expiration date by filing an application with and paying to the Commission the
38 license renewal fee and providing proof of having the required active fidelity bond as required by
39 G.S. 93A-113 for the upcoming license period. The license renewal fee is one hundred dollars
40 (\$100.00) unless the Commission sets the fee at a higher amount. The Commission may set the
41 license renewal fee at an amount that does not exceed two hundred dollars (\$200.00). The license
42 renewal fee may not increase by more than ten dollars (\$10.00) during a 12-month period.

43 (b) The Commission may adopt rules establishing a system of license renewal in which the
44 licenses expire annually with varying expiration dates. These rules shall provide for prorating the
45 annual fee to cover the initial renewal period so that no licensee shall be charged an amount
46 greater than the annual fee for any 12-month period.

47 (c) The fee for reinstatement of an expired license shall be one hundred fifty dollars
48 (\$150.00). In the event a licensee fails to obtain a reinstatement of such license within six months
49 after the expiration date thereof, the Commission may, in its discretion, consider such person as
50 not having been previously licensed, and thereby subject to the provisions of this Article relating
51 to the issuance of an original license, including the examination requirements set forth herein.

1 (d) Duplicate licenses may be issued by the Commission upon payment of a fee of five
2 dollars (\$5.00) by the licensee. Commission certification of a licensee's license history shall be
3 made only after the payment of a fee of ten dollars (\$10.00).

4 **"§ 93A-110. Register of applicants and roster of community association managers.**

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

9 (b) The Executive Director of the Commission shall keep a current roster showing the
10 names and places of business of all licensed community association managers, which roster shall
11 be kept on file in the office of the Commission and be open to public inspection.

12 **"§ 93A-111. Continuing education.**

13 (a) The Commission shall establish a program of continuing education for individual
14 persons licensed as community association managers. An individual licensed as a community
15 association manager shall complete continuing education requirements in an amount not to exceed
16 12 classroom hours of instruction a year during any license renewal period in subjects and at times
17 the Commission deems appropriate. Any licensee who fails to complete continuing education
18 requirements pursuant to this section shall not hold a license on active status and shall not actively
19 engage in the business of a community association manager.

20 (b) The Commission may adopt rules regarding continuing education requirements,
21 including rules that govern the following:

22 (1) The content and subject matter of continuing education courses.

23 (2) The criteria, standards, and procedures for the approval of courses, course
24 sponsors, and course instructors.

25 (3) The methods of instruction.

26 (4) The computation of course credit.

27 (5) The ability to carry forward course credit from one year to another.

28 (6) The waiver of or variance from the continuing education requirement for
29 hardship or other reasons.

30 (7) The procedures for compliance and sanctions for noncompliance.

31 (c) The Commission may establish a nonrefundable course application fee to be charged to
32 a course sponsor for the review and approval of a proposed continuing education course. Approval
33 of a continuing education course shall be renewed annually. The Commission may also require a
34 course sponsor to pay a fee for each licensee completing an approved continuing education course
35 conducted by the sponsor.

36 (d) The Commission may award continuing education credit for an unapproved course or
37 related educational activity. The Commission may prescribe procedures for a licensee to submit
38 information on an unapproved course or related educational activity for continuing education
39 credit. The Commission may charge a fee to the licensee for each unapproved course or activity
40 submitted. The fee shall not exceed fifty dollars (\$50.00).

41 (e) The Commission may create rules allowing for a deferral of continuing education for
42 community association managers while they are not actively engaged in community association
43 management.

44 (f) The Commission may establish a nonrefundable course application fee to be charged to
45 a course sponsor for the review and approval of a proposed continuing education course. The fee
46 shall not exceed one hundred twenty-five dollars (\$125.00) per course. The Commission may
47 charge the sponsor of an approved course a nonrefundable fee not to exceed seventy-five dollars
48 (\$75.00) for the annual renewal of course approval.

49 (g) An approved course sponsor shall pay a fee of ten dollars (\$10.00) per licensee to the
50 Commission for each licensee completing an approved continuing education course conducted by
51 the sponsor.

1 (h) The Commission shall not charge a course application fee, a course renewal fee, or any
2 other fee for a continuing education course sponsored by a community college, junior college,
3 college or university located in this State that is accredited by the Southern Association of
4 Colleges and Schools.

5 **"§ 93A-112. Rule-making authority.**

6 (a) The Commission is expressly vested with the power and authority to make and enforce
7 any and all reasonable rules and regulations connected with license application, examination,
8 education, renewal, and reinstatement as shall be deemed necessary to administer and enforce the
9 provisions of this Article.

10 (b) Nothing contained in this Article shall be construed as giving any authority to the
11 Commission or any licensee of the Commission authority to engage in the practice of law or to
12 render any legal service as specifically set out in Chapter 84 of the General Statutes. Nothing
13 contained in this Chapter shall be construed as giving any authority to the Commission or any
14 licensee of the Commission as authorizing any licensee to engage in the practice of a certified
15 public accountant or to render any certified public accounting service as specifically set out in
16 Chapter 93 of the General Statutes.

17 **"§ 93A-113. Fidelity bonds; segregation of accounts.**

18 (a) Every community association manager shall, at all times, be covered by a fidelity bond
19 or an insurance policy that complies with the provisions of this Article.

20 (b) The bond shall provide coverage in an amount at least equal to the amount of the
21 budgets of all clients of the community association manager but shall not exceed two million
22 dollars (\$2,000,000) and shall comply with the following conditions:

23 (1) The bond shall be written by an insurance company authorized to write
24 fidelity bonds in this State.

25 (2) The bond shall cover the association manager and all of the employees with
26 access to or who are engaged in any of the accounting related to any community
27 association funds, and protect all of the community association funds in the
28 custody of the community association manager or association employees
29 acting under the association manager's supervision.

30 (3) The bond shall provide that the insurance company issuing the bond may not
31 cancel, substantially modify, or refuse to renew the bond without giving 30
32 days prior written notice to the executive board of each community association
33 being managed and to the Commission, except in the case of nonpayment of
34 premiums, in which case 10 days prior written notice shall be given.

35 (4) Contain any other provisions as may be required by the executive board or the
36 Commission by rule.

37 (c) A licensee shall furnish the Commission proof of required bond coverage before
38 engaging in community association management activities and upon license renewal if the licensee
39 continues to engage in community association management activities.

40 (d) The fidelity bond may be issued to an individual licensee naming the licensee as the
41 insured party or may be issued to a community association management firm naming the firm, all
42 affiliated licensees, and any other insured parties.

43 (e) The Commission may establish rules related to the manner in which a community
44 association manager handles and accounts for monies coming into the manager's custody that
45 belong to a community association. A community association manager with custody, dominion, or
46 control of money belonging to a community association or money belonging to a member of a
47 community association shall comply with all the following:

48 (1) Safeguard and account for the money promptly and accurately.

49 (2) Promptly deposit the money into federally insured accounts in a bank, savings
50 institution, or credit union lawfully doing business in North Carolina that

1 consents to the jurisdiction of the Commission for the examination of its
2 records necessary to enforce this Article.

3 (3) Segregate the money in an account or accounts used exclusively for the deposit
4 and maintenance of funds belonging only to one association and not commingle
5 the money belonging to one association with money belonging to another
6 association, the manager, or another person or entity.

7 (4) Obtain written authorization if any interest or other income earned by the
8 money is to be paid to any person or party other than the association or member
9 to whom the money belongs.

10 (5) Create and maintain books and records sufficient to demonstrate compliance
11 with the provisions of this section and rules adopted by the Commission.

12 (6) Upon depositing the money as provided in this subsection, expend, remit, or
13 invest the money as directed by the association to whom the money belongs and
14 provide an accurate account of any expenditure, remittance, or investment.

15 **"§ 93A-114. Disciplinary action by the Commission; injunctions.**

16 (a) The Commission shall have the authority to take disciplinary action. Upon its own
17 initiative or upon the complaint of any person, the Commission may investigate the actions of any
18 person or entity licensed under this Article, or any other person or entity who shall assume to act
19 in such capacity. If the Commission finds probable cause that a licensee has violated any of the
20 provisions of this Article, the Commission may hold a hearing on the allegations of misconduct
21 under Article 3A of Chapter 150B of the General Statutes.

22 The Commission may suspend or revoke a license issued under the provisions of this Article
23 or reprimand a licensee if, following a hearing, the Commission adjudges the licensee to be guilty
24 of any of the following:

25 (1) Making any willful or negligent misrepresentation or any willful or negligent
26 omission of material fact.

27 (2) Pursuing a course of misrepresentation or making of false promises through
28 employees, advertising, or otherwise.

29 (3) Engaging in gross negligence or gross incompetence as a community
30 association manager.

31 (4) Engaging in any act or service for which an active community association
32 manager license is required with an expired or inactive license.

33 (5) Failing, within a reasonable time, to account for or remit any monies belonging
34 to a community association or others coming into the community association
35 manager's possession in his or her capacity as a community association
36 manager.

37 (6) Commingling funds belonging to one community association with funds
38 belonging to another community association, or with money belonging to the
39 community association manager, or failure to maintain, deposit, or safeguard
40 the money of a community association as required by G.S. 93A-113.

41 (7) Being unworthy or incompetent to act as a community association manager by
42 acting in a manner as to endanger the interest of the public.

43 (8) Paying or offering to pay valuable consideration to any person or entity for acts
44 or services performed in violation of this Article.

45 (9) Failing to adequately or reasonably supervise an employee in accordance with
46 G.S. 93A-104(6).

47 (10) Any other conduct which constitutes improper, fraudulent, or dishonest dealing.

48 (11) Performing or undertaking to perform any legal service, as set forth in Chapter
49 84 of the General Statutes or a certified public accounting service as set forth in
50 Chapter 93 of the General Statutes.

- 1 (12) Violating any rule adopted by the Commission or any provision of this Article,
2 or aiding and abetting any person or entity in such a violation.
- 3 (b) The Commission may suspend or revoke a license issued to a community association
4 manager or reprimand any licensee when any of the following occur:
- 5 (1) The licensee has obtained a license by false or fraudulent representations.
6 (2) The licensee has been convicted or has entered a plea of guilty or no contest
7 upon which a final judgment has been entered by a court of competent
8 jurisdiction, of any misdemeanor or felony that involves false pretenses,
9 misrepresentation, deceit, extortion, theft, bribery, fraud, embezzlement,
10 larceny, false pretenses, forgery, misappropriation of funds or property, perjury,
11 conspiracy, or any other offense involving dishonesty, breach of trust, or moral
12 turpitude or otherwise demonstrating professional unfitness or reasonably
13 affecting the licensee's performance in the community association management
14 business.
- 15 (3) The community association manager's unlicensed employee, who is exempt
16 from the provisions of this Article, has committed, in the regular course of
17 business, any act which, if committed by the community association manager,
18 would constitute a violation of this Article and for which the community
19 association manager could be disciplined.
- 20 (4) The licensee, who is also a member of another licensed profession or
21 occupation, has been disciplined by another licensing board for any offense
22 under any law involving fraud, theft, misrepresentation, breach of trust or
23 fiduciary responsibility, or willful or negligent malpractice.
- 24 (c) The Commission may appear in its own name in superior court in actions for injunctive
25 relief, a restraining order, or other appropriate action to prevent any person or entity from violating
26 the provisions of this Article or rules adopted by the Commission. The superior court shall have
27 the power to grant injunctive relief even if criminal prosecution has been or may be instituted as a
28 result of the violations, and regardless of whether the person or entity is a licensee of the
29 Commission.
- 30 (d) In any contested case pursuant to Chapter 150B of the General Statutes in which the
31 Commission takes disciplinary action authorized by this Article, the Commission may also impose
32 reasonable conditions, restrictions, limitations, and probation upon the license, registration, or
33 approval issued to the disciplined person or entity. In any contested case concerning an application
34 for licensure or school, sponsor, instructor or course approval, the Commission may impose
35 reasonable conditions, restrictions, and limitations on any license, registration, or approval it
36 might issue as part of its final decision.
- 37 (e) The Commission may assess and recover its reasonable costs for the investigation and
38 hearing as part of its order in any case where disciplinary action is taken against a licensee under
39 this Article.
- 40 (f) When a person or entity licensed under this Article is accused of any act, omission, or
41 misconduct which could subject the licensee to disciplinary action, the licensee, with the consent
42 and approval of the Commission, may surrender the license and all the rights and privileges
43 pertaining to it for a period of time established by the Commission. A person or entity who
44 surrenders a license shall not thereafter be eligible for or submit any application for licensure as a
45 community association manager during the period of license surrender.
- 46 (g) The Executive Director of the Commission shall transmit a certified copy of all final
47 orders of the Commission suspending or revoking licenses issued under this Article to the clerk of
48 superior court of the county in which the licensee maintains his, her or its principal place of
49 business. The clerk shall enter the order upon the judgment docket.
- 50 **"§ 93A-115. Subpoena authority.**

1 The Commission shall have authority to issue subpoenas as set forth in G.S. 93A-6.1(a). The
2 Commission shall be exempt from the requirements of Chapter 53B of the General Statutes with
3 regard to subpoenas issued to compel the production of community association accounts if the
4 community association is managed by a licensee that is the subject of an investigation or contested
5 case by the Commission. Notwithstanding the exemption, the Commission shall send a copy of the
6 subpoena to the licensee at the licensee's address of record by regular mail.

7 **§ 93A-116. Penalty for violations.**

8 Any person violating the provisions of this Article shall upon conviction thereof be deemed
9 guilty of a Class 1 misdemeanor. Each unlawful act or practice constitutes a distinct and separate
10 offense.

11 **§ 93A-117. Records; written contracts required.**

12 (a) No action between a community association manager and the manager's client for
13 recovery under an agreement for community association manager services is valid unless the
14 contract is reduced to writing and signed by the party to be charged or by some other person
15 lawfully authorized by the party to sign.

16 (b) All licensed community association managers shall maintain full and accurate records
17 of business the licensees have engaged in pursuant to their licenses. The Commission shall have
18 the authority to create rules relating to the types of records that must be maintained and shall
19 include, but not limited to, a written, signed community association management contract for each
20 community association managed and bank statements for each community association. Licensees
21 shall retain records for no less than three years. Licensees shall furnish their records to the
22 Commission on demand and without prior notice.

23 **§§ 93A-118 through 93A-149. Reserved for future codification purposes.**

24 "Part 2. Private Community Association Manager Schools.

25 **§ 93A-150. Authority of Commission to conduct investigations, issue licenses, and**
26 **promulgate regulations.**

27 The Commission shall have authority to issue licenses to private community association
28 manager schools as defined herein which have complied with the requirements of this Article and
29 regulations promulgated by the Commission. Through licensing applications, periodic reports
30 required of licensed schools, periodic investigations and inspections of schools, and appropriate
31 regulations, the Commission shall exercise general supervisory authority over private community
32 association manager schools, the object of such supervision being to protect the public interest and
33 to assure the conduct of quality community association manager education programs. The
34 Commission is authorized and directed to promulgate such regulations as it deems necessary
35 which are not inconsistent with the provisions and subject matter of this Part.

36 **§ 93A-151. License required; application for license; fees; requirements for issuance of**
37 **license.**

38 (a) No person, partnership, corporation, or association shall operate, maintain, or offer to
39 operate in this State a private community association manager school as defined herein unless a
40 license is first obtained from the Commission in accordance with the provisions of this Article and
41 the rules and regulations promulgated by the Commission under this Article. For licensing
42 purposes, each branch location where a school conducts courses shall be considered a separate
43 school requiring a separate license.

44 (b) Application for a license shall be filed in the manner and upon the forms prescribed by
45 the Commission for that purpose. The Commission may by rule set nonrefundable application fees
46 not to exceed two hundred fifty dollars (\$250.00) for each school location and fifty dollars
47 (\$50.00) for each community association manager pre-licensing or continuing education course.
48 The application for a license shall be accompanied by the appropriate fees and shall contain all of
49 the following:

- 50 (1) Name and address of the applicant and the school.

- 1 (2) Names, biographical data, and qualifications of directors, administrators, and
2 instructors.
- 3 (3) Description of school facilities and equipment.
- 4 (4) Description of courses to be offered and instructional materials to be utilized.
- 5 (5) Information on financial resources available to equip and operate the school.
- 6 (6) Information on school policies and procedures regarding administration, record
7 keeping, entrance requirements, registration, tuition and fees, grades, student
8 progress, attendance, and student conduct.
- 9 (7) Copies of bulletins, catalogues, and other official school publications.
- 10 (8) Copy of bond required by G.S. 93A-153.
- 11 (9) Such additional information as the Commission may deem necessary to enable
12 it to determine the adequacy of the instructional program and the ability of the
13 applicant to operate a school in such a manner as would best serve the public
14 interest.
- 15 (c) After due investigation and consideration by the Commission, a license shall be issued
16 to the school when it is shown to the satisfaction of the Commission that the school is in
17 compliance with the following standards, as well as the requirements of any supplemental
18 regulations of the Commission regarding these standards:
- 19 (1) The program of instruction is adequate in terms of quality, content, and
20 duration.
- 21 (2) The director, administrators, and instructors are adequately qualified by reason
22 of education and experience.
- 23 (3) There are adequate facilities, equipment, instructional materials, and instructor
24 personnel to provide quality instruction.
- 25 (4) The school has adopted adequate policies and procedures regarding
26 administration, instruction, record keeping, entrance requirements, registration,
27 tuition and fees, grades, student progress, attendance, and student conduct.
- 28 (5) The school publishes and provides to all students upon enrollment a bulletin,
29 catalogue, or similar official publication which is certified as being true and
30 correct in content and policy by an authorized school official, and which
31 contains the following information:
- 32 a. Identifying data and publication date.
- 33 b. The school name and its full-time officials and faculty.
- 34 c. The school's policies and procedures relating to entrance requirements,
35 registration, grades, student progress, attendance, student conduct, and
36 refund of tuition and fees.
- 37 d. A detailed schedule of tuition and fees.
- 38 e. A detailed outline of all courses offered.
- 39 (6) The school maintains adequate records as prescribed by the Commission in
40 regard to grades, attendance, registration, and financial operations.
- 41 (7) The school has established institutional standards relating to grades, attendance,
42 and progress and the standards are enforced in a satisfactory manner.
- 43 (8) The applicant is financially sound and capable of fulfilling educational
44 commitments made to students.
- 45 (9) The school's owners, directors, administrators, and instructors are of good
46 reputation and character.
- 47 (10) The school's facilities and equipment comply with all applicable local, State,
48 and federal laws and regulations regarding health, safety, and welfare, including
49 the Americans with Disabilities Act and other laws relating to accessibility
50 standards for places of public accommodation.

1 (11) The school does not utilize advertising of any type which is false or misleading,
2 either by actual statement, omission, or intimation.

3 (12) Such additional standards as may be deemed necessary by the Commission to
4 assure the conduct of adequate instructional programs and the operation of
5 schools in a manner which will best serve the public interest.

6 **"§ 93A-152. Duration and renewal of licenses; transfer of school ownership.**

7 (a) All licenses issued shall expire on June 30 following the date of issuance.

8 (b) Licenses shall be renewable annually on July 1, provided that a renewal application
9 accompanied by the appropriate renewal fees has been filed not later than June 1 in the form and
10 manner prescribed by the Commission, and provided further that the applicant and school are
11 found to be in compliance with the standards established for issuance of an original license. The
12 Commission may, by rule, set nonrefundable renewal fees not to exceed one hundred twenty-five
13 dollars (\$125.00) for each school location and twenty-five dollars (\$25.00) for each community
14 association manager pre-licensing and continuing education course.

15 (c) In the event a school is sold or ownership is otherwise transferred, the license issued to
16 the original owner is not transferable to the new owner. A new owner must make application for
17 an original license as prescribed by this Article and Commission regulations.

18 **"§ 93A-153. Execution of bond required; applicability to branch schools; actions upon bond.**

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

32 (b) In any case where the party licensed by the Commission fails to fulfill its obligations
33 under any contract or agreement, written or verbal, made and entered into with any student, upon
34 the relation of the student entering into said contract or agreement, the State of North Carolina, by
35 the Attorney General, shall have a cause of action against the principal and surety on the bond
36 herein required for the full amount of payments made to such party, plus court costs and six
37 percent (6%) interest from the date of payment of said amount. The action shall be brought in
38 Wake County Superior Court within one year of the alleged default.

39 **"§ 93A-154. Contracts with unlicensed schools and evidences of indebtedness made null and**
40 **void.**

41 All contracts or agreements entered into on or after July 1, 2018, by private community
42 association manager schools, as defined in this Article, with students or prospective students, and
43 all promissory notes or other evidence of indebtedness taken on or after July 1, 2018, in lieu of
44 cash payments by such schools, shall be null and void unless such schools are duly licensed as
45 required by this Article on the date of such contract or agreement or taking of any promissory note
46 or other evidence of indebtedness.

47 **"§ 93A-155. Suspension, revocation, or denial of license.**

48 The Commission shall have the power to suspend, revoke, deny issuance, or deny renewal of
49 license to operate a private community association manager school. In all proceedings to suspend,
50 revoke, or deny a license, the provisions of Chapter 150B of the General Statutes shall be

1 applicable. The Commission may suspend, revoke, or deny any license when it finds any of the
2 following:

- 3 (1) That the applicant for or holder of such license has failed to comply with any of
4 the provisions of this Article or the rules or regulations promulgated thereunder.
- 5 (2) That the applicant for or holder of such license has knowingly presented to the
6 Commission false or misleading information relating to matters within the
7 purview of the Commission under this Article.
- 8 (3) That the applicant for or holder of such license has presented to its students or
9 prospective students false or misleading information relating to its instructional
10 program, the instructional programs of other institutions, or employment
11 opportunities.
- 12 (4) That the applicant for or holder of such license has failed to comply with the
13 provisions of any contract or agreement entered into with a student.
- 14 (5) That the applicant for or holder of such license has, at any time, refused to
15 permit authorized representatives of the Commission to inspect the school, or
16 failed to make available information relating to matters within the purview of
17 the Commission under the provisions of this Article or any rules or regulations
18 promulgated pursuant to this Article.
- 19 (6) That the applicant for or holder of such license or any officer of a corporate
20 licensee or corporation applying for a license, any partner of a partnership
21 licensee or partnership applying for a license, or any member of a limited
22 liability company licensee or limited liability company applying for a license
23 has pleaded guilty, entered a plea of nolo contendere, or been found guilty of a
24 crime involving moral turpitude in any state or federal court."

25 **"§§ 93A-156 through 93A-174. Reserved for future codification purposes.**

26 **SECTION 2.** Chapter 93A of the General Statutes is amended by adding a new
27 Article to read:

28 "Article 8.

29 "Registration of Community Associations.

30 **"§ 93A-175. Registration of community associations.**

31 (a) Beginning January 1, 2018, and thereafter annually, every community association shall
32 register the association with the Commission and shall provide the Commission with the following
33 information about the association:

- 34 (1) The name, address, and contact information for the community association.
- 35 (2) The names, addresses, e-mail addresses, and telephone numbers for each of the
36 members of the community association's board of directors.
- 37 (3) The name and address of the agent for service of process for the community
38 association.
- 39 (4) The county or counties where the property governed by the community
40 association is located.
- 41 (5) The name, address, email address, and telephone number of the community
42 association's manager or management company, if any.
- 43 (6) Any other information the Commission may require by rule.

44 (b) The registration process and registration system shall be established in a manner
45 prescribed by the Commission by rule. The fee for annual registration, which must accompany
46 each annual registration, shall not exceed one hundred dollars (\$100.00). The registration fee may
47 not increase by more than ten dollars (\$10.00) during a 12-month period.

48 (c) Each community association required to register annually shall make any updates,
49 corrections or modifications to the information provided in the most recent registration with the
50 Commission within 15 days from the date of any such change.

1 (d) In the event an association required to register with the Commission fails to register,
2 the Commission may seek an order in the superior court of Wake County or in the county where
3 the association is located to compel registration. In any event, an association required to register
4 with the Commission shall be prohibited from pursuing any legal remedy otherwise available to it
5 until the association has registered with the Commission and paid in full any delinquent
6 registration fees.

7 (e) The Commission shall create, maintain, and make available to the public a directory of
8 registered community associations containing information about each association collected as part
9 of the registration.

10 (f) The Commission shall have the power to make reasonable rules and regulations that
11 are not inconsistent with the provisions of this Article and the General Statutes of North Carolina.
12 The Commission may prescribe forms and procedures for submitting information to the
13 Commission."

14 "§§ 93A-176 through 93A-190. Reserved for future codification purposes.

15 **SECTION 2.** Subpart D of Part 4 of Article 13 of Chapter 143B of the General
16 Statutes is amended by adding a new section to read:

17 **"§ 143B-966. Criminal record checks of applicants for community association manager**
18 **licensure.**

19 The Department of Public Safety may provide to the North Carolina Real Estate Commission
20 from the State and National Repositories of Criminal Histories the criminal history of any
21 applicant for licensure pursuant to Article 8 of Chapter 93A of the General Statutes. Along with
22 the request, the Commission shall provide to the Department of Public Safety the fingerprints of
23 the applicant, a form signed by the applicant consenting to the criminal record check and use of
24 fingerprints and other identifying information required by the State and National Repositories, and
25 any additional information required by the Department of Public Safety. The applicant's
26 fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's
27 criminal history record file, and the State Bureau of Investigation shall forward a set of
28 fingerprints to the Federal Bureau of Investigation for a national criminal history record check.
29 The Commission shall keep all information obtained pursuant to this section confidential. The
30 Department of Public Safety may charge a fee to offset the cost incurred by it to conduct a
31 criminal record check under this section. The fee shall not exceed the actual cost of locating,
32 editing, researching, and retrieving the information."

33 **SECTION 3.(a)** G.S. 47F-3-116(f)(1) is rewritten to read:

34 **"§ 47F-3-116. Lien for sums due the association; enforcement.**

35 ...

36 (f) Except as provided in subsection (h) of this section, the association, acting through the
37 executive board, may foreclose a claim of lien in like manner as a mortgage or deed of trust on
38 real estate under power of sale, as provided in Article 2A of Chapter 45 of the General Statutes, if
39 the assessment remains unpaid for 90 days or more. The association shall not foreclose the claim
40 of lien unless the executive board votes to commence the proceeding against the specific lot.

41 The following provisions and procedures shall be applicable to and complied with in every
42 nonjudicial power of sale foreclosure of a claim of lien, and these provisions and procedures shall
43 control to the extent they are inconsistent or in conflict with the provisions of Article 2A of
44 Chapter 45 of the General Statutes:

45 (1) The association shall be deemed to have a power of sale for purposes of
46 enforcement of its claim of ~~lien-lien~~, unless it has failed to maintain registration
47 with the North Carolina Real Estate Commission pursuant to Article 8 of
48 Chapter 93A of the General Statutes.

49 "

50 **SECTION 3.(b)** Article 3 of Chapter 47F of the General Statutes is amended by
51 adding a new section to read:

1 **"§ 47F-3-117. Registration with North Carolina Real Estate Commission; ability to enforce**
2 **liens.**

3 (a) Beginning January 1, 2018, the association shall annually register with the North
4 Carolina Real Estate Commission pursuant to Article 8 of Chapter 93A of the General Statutes.

5 (b) Notwithstanding G.S. 47F-3-116, if the association fails to maintain registration with
6 the North Carolina Real Estate Commission, then it shall not be able to enforce any liens filed
7 against a lot or lot owner."

8 **SECTION 4.(a)** G.S. 47C-3-116(f)(1) is rewritten to read:

9 **"§ 47C-3-116. Lien for sums due the association; enforcement.**

10 (f) Except as provided in subsection (h) of this section, the association, acting through the
11 executive board, may foreclose a claim of lien in like manner as a mortgage or deed of trust on
12 real estate under power of sale, as provided in Article 2A of Chapter 45 of the General Statutes, if
13 the assessment remains unpaid for 90 days or more. The association shall not foreclose the claim
14 of lien unless the executive board votes to commence the proceeding against the specific unit. The
15 following provisions and procedures shall be applicable to and complied with in every nonjudicial
16 power of sale foreclosure of a claim of lien, and these provisions and procedures shall control to
17 the extent they are inconsistent or in conflict with the provisions of Article 2A of Chapter 45 of
18 the General Statutes:

19 (1) The association shall be deemed to have a power of sale for purposes of
20 enforcement of its claim of ~~lien~~-lien, unless it has failed to maintain registration
21 with the North Carolina Real Estate Commission pursuant to Article 8 of
22 Chapter 93A of the General Statutes."

23 **SECTION 4.(b)** Article 3 of Chapter 47C of the General Statutes is amended by
24 adding a new section to read:

25 **"§ 47C-3-120. Registration with the North Carolina Real Estate Commission; ability to**
26 **enforce liens.**

27 (a) Beginning January 1, 2018, the association shall annually register with the North
28 Carolina Real Estate Commission pursuant to Article 8 of Chapter 93A of the General Statutes.

29 (b) Notwithstanding G.S. 47C-3-116, if the association fails to maintain registration with
30 the North Carolina Real Estate Commission, then it shall not be able to enforce any liens filed
31 against a lot or lot owner."

32 **SECTION 5.(a)** This act is effective when it becomes law. Section 3 and Section 4
33 apply to actions to enforce liens filed on or after that date.

34 **SECTION 5.(b)** The North Carolina Real Estate Commission shall promulgate rules
35 and create any forms and tracking systems necessary to implement the provisions of this act.