

GENERAL ASSEMBLY OF NORTH CAROLINA
1987 SESSION

CHAPTER 516
SENATE BILL 480

AN ACT TO PERMIT REAL ESTATE LICENSE SURRENDER, TO SIMPLIFY
RECOVERY FUND CLAIMS, AND TO MAKE CERTAIN VIOLATIONS OF
THE TIME SHARE ACT CRIMINAL OFFENSES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 93A-6(a) is amended by deleting the first sentence of the second paragraph which reads:

"All such hearings shall be conducted in accordance with the provisions of Chapter 150A of the General Statutes."

Sec. 2. G.S. 93A-6 is amended by adding a new subsection to read:

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

Sec. 3. G.S. 93A-16 is amended by adding a new subsection to read:

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

Sec. 4. G.S. 93A-16(a) is amended by deleting from the last sentence the phrase "person licensed" and substituting the phrase "real estate broker or salesman licensed".

Sec. 5. G.S. 93A-16(b) is amended by rewriting the second sentence to read:

"Thereafter, the Commission may transfer to the Real Estate Recovery Fund additional sums of money from whatever funds the Commission may have, provided that, if on December 31 of any year the amount remaining in the fund is less than fifty thousand dollars (\$50,000), the Commission may determine that each person or entity licensed under this Chapter, when renewing his or its license, shall pay in addition to his license renewal fee, a fee not to exceed ten dollars (\$10.00) per broker and five dollars (\$5.00) per salesman as shall be determined by the Commission for the purpose of replenishing the fund."

Sec. 6. G.S. 93A-17 is rewritten to read:

"§ 93A-17. Grounds for payment; notice and application to Commission.—(a) An aggrieved person who has suffered a direct monetary loss by reason of the conversion of trust funds by a real estate broker or salesman licensed under this Chapter shall be eligible to recover, subject to the limitations of this Article, the amount of trust funds converted and which is otherwise unrecoverable provided that:

- (1) The act or acts of conversion which form the basis of the claim for recovery occurred on or after September 1, 1979;
- (2) The aggrieved person has sued the real estate broker or salesman in a court of competent jurisdiction and has filed with the Commission written notice of such lawsuit within 60 days after its commencement unless the claim against the Real Estate Recovery Fund is for an amount less than one thousand five hundred dollars (\$1,500), excluding attorneys fees, in which case the notice may be filed within 60 days after the termination of all judicial proceedings including appeals;
- (3) The aggrieved person has obtained final judgment in a court of competent jurisdiction against the real estate broker or salesman on grounds of conversion of trust funds arising out of a transaction which occurred when such broker or salesman was licensed and acting in a capacity for which a license is required; and
- (4) Execution of the judgment has been attempted and has been returned unsatisfied in whole or in part.

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

(b) For the purposes of this Article, the term 'trust funds' shall include all earnest money deposits, down payments, sales proceeds, tenant security deposits, undisbursed rents and other such monies which belong to another or others and are held by a real estate broker or salesman acting in that capacity. Trust funds shall also include all time share purchase monies which are required to be held in trust by G.S. 93A-45(c) during the time they are, in fact, so held. Trust funds shall not include, however, any funds held by an independent escrow agent under G.S. 93A-42 or any funds which the court may find to be subject to an implied, constructive or resulting trust.

(c) For the purposes of this Article, the terms 'licensee', 'broker', and 'salesman' shall include only individual persons licensed under this Chapter as brokers and salesmen and shall not include a time share developer, time share project, independent escrow agent, corporation or other entity licensed under this Chapter."

Sec. 7. G.S. 93A-18 is amended by deleting from the first sentence the word "court" and inserting in place thereof the word "Commission" and by inserting in subdivision (2) the word "judicial" between the words "all" and "proceedings".

Sec. 8. G.S. 93A-19(a) is rewritten to read:

"§ 93A-19. Response and defense by Commission and judgment debtor; proof of conversion.—(a) Whenever the Commission proceeds upon an application as set forth in this Article, counsel for the Commission may defend such action on behalf of the fund and shall have recourse to all appropriate means of defense, including the examination of witnesses. The judgment debtor may defend such action on his own behalf and shall have recourse to all appropriate means of defense, including the examination of witnesses. Within 30 days after service of the application, counsel for the Commission and the judgment debtor may file responses thereto setting forth answers and defenses. Responses shall be filed with the Commission and copies shall be served upon every party by the filing party. If at any time it appears there are no triable issues of fact and the application for payment from the fund is without merit, the Commission shall dismiss the application. A motion to dismiss may be supported by affidavit of any person or persons having knowledge of the facts and may be made on the basis that the application or the judgment referred to therein do not form a basis for meritorious recovery within the purview of G.S. 93A-17, that the applicant has not complied with the provisions of this Article, or that the liability of the fund with regard to the particular licensee or transaction has been exhausted; provided, however, notice of such motion shall be given at least 10 days prior to the time fixed for hearing."

Sec. 9. G.S. 93A-20 is rewritten to read:

"§ 93A-20. Order directing payment out of fund; compromise of claims.—Applications for payment from the Real Estate Recovery Fund shall be heard and decided by a majority of the members of the Commission. If, after a hearing, the Commission finds the claim should be paid from the fund, the Commission shall enter an order requiring payment from the fund of whatever sum the Commission shall find to be payable upon the claim in accordance with the limitations contained in this Article.

Subject to Commission approval, a claim based upon the application of an aggrieved person may be compromised; however, the Commission shall not be bound in any way by any compromise or stipulation of the judgment debtor."

Sec. 10. G.S. 93A-21(a) is amended by deleting from the catch line the words "Maximum Liability;" and inserting in their place the word "Limitations;" and by inserting into subsection (a) a new subdivision, (4), as follows:

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

Sec. 11. The first sentence of G.S. 93A-21(b) is amended by deleting the word "court" and inserting in its place the word "Commission".

Sec. 12. The second sentence of G.S. 93A-21(b) is amended by deleting the words "court", "action" and "adjudicated and settled" and inserting in their places the words "Commission", "proceeding" and "resolved", respectively.

Sec. 13. The first sentence of G.S. 93A-21(c) is amended by deleting the words and figures "one thousand dollars (\$1,000)" and the word "court" and inserting in their places the words and figures "one thousand five hundred dollars (\$1,500)" and "Commission", respectively.

Sec. 14. G.S. 93A-22 is amended by deleting the words "an order by the court" and inserting in their place the words "the order".

Sec. 15. G.S. 93A-23 is amended by deleting the words "When, upon the order of the court," and inserting in their place the word "When".

Sec. 16. G.S. 93A-40 is amended by inserting an "(a)" before the first sentence and by adding a new subsection, (b), as follows:

"(b) A person responsible as general partner, corporate officer, joint venturer or sole proprietor who intentionally acts as a time share developer, allowing the offering of sale or the sale of time shares to a purchaser, without first obtaining registration of the time share project under this Article shall be guilty of a Class I felony."

Sec. 17. G.S. 93A-54(a) is hereby amended by deleting the fourth sentence which reads:

"All such hearings shall be conducted in accordance with the provisions of Chapter 150A of the General Statutes."

Sec. 18. G.S. 93A-54 is amended by adding a new subsection, as follows:

"(e) When a licensee is accused of any act, omission, or misconduct under this Article which would subject the licensee to disciplinary action, the licensee may, with the consent and approval of the Commission, surrender his or its license and all the rights and privileges pertaining to it for a period of time to be established by the Commission. A licensee who surrenders his or its license shall not be eligible for, or submit any application for, licensure as a real estate broker or salesman or registration of a time share project during the period of license surrender. For the purposes of this section, the term licensee shall include a time share developer."

Sec. 19. G.S. 93A-56 is amended by inserting the words and figures "G.S. 93A-40(b) and" between the words "in" and "G.S. 93A-58,".

Sec. 20. G. S. 93A-58(b) is amended by adding a new sentence at the end to read:

"A person responsible as general partner, corporate officer, joint venturer or sole proprietor of the developer of a time share project shall be guilty of a Class I felony if he intentionally allows the offering for sale or the sale of time share to purchasers without first designating a time share registrar."

Sec. 21. This act shall become effective October 1, 1987, except Section 5 which is effective upon ratification.

In the General Assembly read three times and ratified this the 30th day of June, 1987.