

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 867
Judiciary II Committee Substitute Adopted 4/28/99

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."

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

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

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

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

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

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

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

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

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

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

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

40 (1) Making any willful or negligent misrepresentation or any willful or
41 negligent omission of material ~~fact~~, fact.

42 (2) Making any false promises of a character likely to influence, persuade,
43 or ~~induce~~, induce.

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

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

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

7 "**§ 93A-6.1. Commission may subpoena witnesses, records, documents, or other**
8 **materials.**

9 The Commission, Executive Director, or other representative designated by the
10 Commission may issue a subpoena for the appearance of witnesses deemed necessary to
11 testify concerning any matter to be heard before or investigated by the Commission. The
12 Commission may issue a subpoena ordering any person in possession of records,
13 documents, or other materials, however maintained, that concern any matter to be heard
14 before or investigated by the Commission to produce the records, documents, or other
15 materials for inspection. Upon written request, the Commission shall revoke a subpoena
16 if it finds that the evidence, the production of which is required, does not relate to a
17 matter in issue, or if the subpoena does not describe with sufficient particularity the
18 evidence, the production of which is required, or if for any other reason in law the
19 subpoena is invalid. If any person shall fail to fully and promptly comply with a
20 subpoena issued under this section, the Commission may apply to any judge of the
21 superior court resident in any county where a hearing before the Commission is pending
22 for an order compelling the person to show cause why he or she should not be held in
23 contempt of the Commission and its processes. The court shall have the power to impose
24 punishment for acts that would constitute direct or indirect contempt if the acts occurred
25 in an action pending in superior court. The Commission shall be exempt from the
26 requirements of Chapter 53B of the General Statutes with regard to subpoenas issued to
27 compel the production of a licensee's trust account records held by any financial
28 institution."

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

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

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

36 (2) The aggrieved person has sued the real estate broker or ~~salesman~~
37 salesperson in a court of competent jurisdiction and has filed with the
38 Commission written notice of such lawsuit within 60 days after its
39 commencement unless the claim against the Real Estate Recovery Fund
40 is for an amount less than ~~one thousand five hundred dollars (\$1,500)~~ three
41 thousand dollars (\$3,000), excluding attorneys fees, in which case the
42 notice may be filed within 60 days after the termination of all judicial
43 proceedings including appeals;

- 1 (3) The aggrieved person has obtained final judgment in a court of
2 competent jurisdiction against the real estate broker or ~~salesman~~
3 salesperson on grounds of conversion of trust funds arising out of a
4 transaction which occurred when such broker or ~~salesman~~ salesperson
5 was licensed and acting in a capacity for which a license is required; and
6 (4) Execution of the judgment has been attempted and has been returned
7 unsatisfied in whole or in part.

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

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

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

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

38 **"§ 93A-20. Order directing payment out of fund; compromise of claims.**

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

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

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

7 "**§ 93A-21. Limitations; pro rata distribution; attorney fees.**

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

10 (1) The right to recovery under this Article shall be forever barred unless
11 application is made within one year after termination of all proceedings
12 including appeals, in connection with the judgment;

13 (2) The fund shall not be liable for more than ~~ten~~twenty-five thousand
14 dollars ~~(\$10,000)~~(\$25,000) per transaction regardless of the number of
15 persons aggrieved or parcels of real estate involved in such transaction;
16 and

17 (3) The liability of the fund shall not exceed in the aggregate ~~ten~~twenty-
18 five thousand dollars ~~(\$10,000)~~(\$25,000) for any one licensee within a
19 single calendar year, and in no event shall it exceed in the aggregate
20 ~~twenty-five~~ thousand dollars ~~(\$20,000)~~(\$50,000) for any one licensee.

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

25 (b) If the maximum liability of the fund is insufficient to pay in full the valid
26 claims of all aggrieved persons whose claims relate to the same transaction or to the same
27 licensee, the amount for which the fund is liable shall be distributed among the claimants
28 in a ratio that their respective claims bear to the total of such valid claims or in such
29 manner as the ~~Commission~~Commission, in its discretion, deems equitable. Upon petition
30 of counsel for the Commission, the Commission may require all claimants and
31 prospective claimants to be joined in one proceeding to the end that the respective rights
32 of all such claimants to the Real Estate Recovery Fund may be equitably resolved. A
33 person who files an application for payment after the maximum liability of the fund for
34 the licensee or transaction has been exhausted shall not be entitled to payment and may
35 not seek judicial review of the Commission's award of payment to any party except upon
36 a showing that the Commission abused its discretion.

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

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

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

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

17 "(2) 'Developer' means any person or entity which creates a time share or a
18 time share project or program, purchases a time share for purpose of
19 resale, or is engaged in the business of selling its own time shares and
20 shall include any person or entity who controls, is controlled by, or is in
21 common control with the developer which is engaged in creating or
22 selling time shares for the ~~developer;~~ developer, but a person who
23 purchases a time share for his or her occupancy, use, and enjoyment
24 shall not be deemed a developer."

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

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

35 Section 15. G.S. 93A-52(d) reads as rewritten:

36 "(d) All certificates of registration granted and issued by the Commission under the
37 provisions of this Article shall expire on the 30th day of June following issuance thereof,
38 and shall become invalid after such date unless reinstated. Renewal of such certificate
39 may be effected at any time during the month of June preceding the date of expiration of
40 such registration upon proper application to the Commission and by the payment of a
41 renewal fee fixed by the Commission but not to exceed one thousand five hundred dollars
42 (\$1,500) for each time share project. The developer shall, when making application for
43 renewal, also provide a copy of the report required in G.S. 93A-48. Each certificate

1 reinstated after the expiration date thereof shall be subject to a late filing fee of fifty
2 dollars (\$50.00) in addition to the required renewal fee. In the event a time share
3 developer fails to reinstate the registration within 12 months after the expiration date
4 thereof, the Commission may, in its discretion, consider the time share project as not
5 having been previously registered, and thereby subject to the provisions of this Article
6 relating to the issuance of an original certificate. Duplicate certificates may be issued by
7 the Commission upon payment of a fee of one dollar (\$1.00) by the registrant developer.
8 Except as prescribed by Commission rules, all fees paid pursuant to this Article shall be
9 nonrefundable."

10 Section 16. This act shall have no effect on any cases pending in the courts in
11 this State.

12 Section 17. This act becomes effective August 1, 1999.