

# NORTH CAROLINA REAL ESTATE LICENSE LAW

Codified as Chapter 93A of the General Statutes of North Carolina

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Please note: Certain "gender neutral" terms used in the Real Estate License Law as reprinted in this booklet are subject to final revision by the Revisor of Statutes.

# Real Estate License Law

[Codified as Chapter 93A of the General Statutes of North Carolina]

## ARTICLE 1.

### REAL ESTATE BROKERS AND SALESPERSONS.

#### 93A-1. License required of real estate brokers and real estate 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 salesperson, or directly or indirectly to engage or assume to engage in the business of real estate broker or real estate 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.

#### 93A-2. Definitions and exceptions.

- (a) A real estate broker within the meaning of this Chapter is any person, partnership, corporation, limited liability company, association, or other business entity who for a compensation or valuable consideration or promise thereof lists or offers to list, sells or offers to sell, buys or offers to buy, auctions or offers to auction (specifically not including a mere crier of sales), or negotiates the purchase or sale or exchange of real estate, or who leases or offers to lease, or who sells or offers to sell leases of whatever character, or rents or offers to rent any real estate or the improvement thereon, for others.
- (a1) The term broker-in-charge within the meaning of this Chapter shall mean a real estate broker who has been designated as the broker having responsibility for the supervision of real estate salespersons engaged in real estate brokerage at a particular real estate office and for other administrative and supervisory duties as the Commission shall prescribe by rule.
- (b) The term real estate salesperson within the meaning of this Chapter shall mean and include any person who under the supervision of a real estate broker designated as broker-in-charge of a real estate office, for a compensation or valuable consideration is associated with or engaged by or on behalf of a licensed real estate broker to do, perform or deal in any act, acts or transactions set out or comprehended by the foregoing definition of real estate broker.
- (c) The provisions of this Chapter shall not apply to and shall not include:
- (1) Any person, partnership, corporation, limited liability company, association, or other business entity who, as owner or lessor, shall perform any of the acts aforesaid with reference to property owned or leased by them, where the acts are performed in the regular course of or as incident to the management of that property and the investment therein.
  - (2) Any person acting as an attorney-in-fact under a duly executed power of attorney from the owner authorizing the final consummation of performance of any contract for the sale, lease or exchange of real estate.
  - (3) The acts or services of an attorney-at-law.
  - (4) Any person, while acting as a receiver, trustee in bankruptcy, guardian, administrator or executor or any person acting under order of any court.
  - (5) Any person, while acting as a trustee under a trust agreement, deed of trust or will, or his or her regular salaried employees.
  - (6) Any salaried person employed by a licensed real estate broker, for and on behalf of the owner of any real estate or the improvements thereon, which the licensed broker has contracted to manage for the owner, if the salaried employee is limited in his or her employment to: exhibiting units on the real estate to prospective tenants; providing the prospective tenants with information about the lease of the units; accepting applications for lease of the units; completing and executing preprinted form leases; and accepting security deposits and rental payments for the units only when the deposits and rental payments are made payable to the owner or the broker employed by the owner. The salaried employee shall not negotiate the amount of security deposits or rental payments and shall not negotiate leases or any rental agreements on behalf of the owner or broker.
  - (7) Any owner who personally leases or sells his or her own property.
  - (8) Any housing authority organized in accordance with the provisions of Chapter 157 of the General Statutes and any regular salaried employees of the housing authority when performing acts authorized in this Chapter as to any property owned or leased by the housing authority. This exception shall not apply to any person, partnership, corporation, limited liability company, association, or other business entity that contracts with a housing authority to sell or manage property owned or leased by the housing authority.

**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 or real estate salespersons. 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.
- (b) Members of the Commission shall receive as compensation for each day spent on work for the Commission the per diem, subsistence and travel allowances as provided in G.S. 93B-5. The total expense of the administration of this Chapter shall not exceed the total income therefrom; and none of the expenses of said Commission or the compensation or expenses of any office thereof or any employee shall ever be paid or payable out of the treasury of the State of North Carolina; and neither the Commission nor any officer or employee thereof shall have any power or authority to make or incur any expense, debt or other financial obligation binding upon the State of North Carolina. After all expenses of operation, the Commission may set aside an expense reserve each year not to exceed ten percent (10%) of the previous year's gross income; then any surplus shall go to the general fund of the State of North Carolina.
- (c) The Commission shall have power to make reasonable bylaws, rules and regulations that are not inconsistent with the provisions of this Chapter and the General Statutes; provided, however, the Commission shall not make rules or regulations regulating commissions, salaries, or fees to be charged by licensees under this Chapter.
- (c1) The provisions of G.S. 93A-1 and G.S. 93A-2 notwithstanding, the Commission may adopt rules to permit a real estate broker to pay a fee or other valuable consideration to a travel agent for the introduction or procurement of tenants or potential tenants in vacation rentals as defined in G.S. 42A-4. Rules adopted pursuant to this subsection may include a definition of the term 'travel agent', may regulate the conduct of permitted transactions, and may limit the amount of the fee or the value of the consideration that may be paid to the travel agent. However, the Commission may not authorize a person or entity not licensed as a broker or salesperson to negotiate any real estate transaction on behalf of another.
- (c2) The Commission shall adopt a seal for its use, which shall bear thereon the words "North Carolina Real Estate Commission." Copies of all records and papers in the office of the Commission duly certified and authenticated by the seal of the Commission shall be received in evidence in all courts and with like effect as the originals.
- (d) The Commission may employ an Executive Director and professional and clerical staff as may be necessary to carry out the provisions of this Chapter and to put into effect the rules and regulations that the Commission may promulgate. The Commission shall fix salaries and shall require employees to make good and sufficient surety bond for the faithful performance of their duties. The Commission may, when it deems it necessary or convenient, delegate to the Executive Director, legal counsel for the Commission, or other Commission staff, professional or clerical, the Commission's authority and duties under this Chapter, but the Commission may not delegate its authority to make rules or its duty to act as a hearing panel in accordance with the provisions of G.S. 150B-40(b).
- (e) The Commission shall be entitled to the services of the Attorney General of North Carolina, in connection with the affairs of the Commission or may on approval of the Attorney General, employ an attorney to assist or represent it in the enforcement of this Chapter, as to specific matters, but the fee paid for such service shall be approved by the Attorney General. The Commission may prefer a complaint for violation of this Chapter before any court of competent jurisdiction, and it may take the necessary legal steps through the proper legal offices of the State to enforce the provisions of this Chapter and collect the penalties provided therein.
- (f) The Commission is authorized to acquire, hold, convey, rent, encumber, alienate, and otherwise deal with real property in the same manner as a private person or corporation, subject only to the approval of the Governor and Council of State. The rents, proceeds, and other revenues and benefits of the ownership of real property

shall inure to the Commission. Collateral pledged by the Commission for any encumbrance of real property shall be limited to the assets, income, and revenues of the Commission. Leases, deeds, and other instruments relating to the Commission's interest in real property shall be valid when executed by the executive director of the Commission. The Commission may create and conduct education and information programs relating to the real estate business for the information, education, guidance and protection of the general public, licensees, and applicants for license. The education and information programs may include preparation, printing and distribution of publications and articles and the conduct of conferences, seminars, and lectures. The Commission may claim the copyright to written materials it creates and may charge fees for publications and programs.

**93A-4. Applications for licenses; fees; qualifications; examinations; privilege licenses; renewal or reinstatement of license; power to enforce provisions.**

- (a) Any person, partnership, corporation, limited liability company, association, or other business entity hereafter desiring to enter into business of and obtain a license as a real estate broker or real estate salesperson shall make written application for such license to the Commission in the form and manner prescribed by the Commission. Each applicant for a license as a real estate broker or real estate salesperson shall be at least 18 years of age. Each applicant for a license as a real estate salesperson shall, within three years preceding the date application is made, have satisfactorily completed, at a school approved by the Commission, a real estate fundamentals course consisting of at least 67 hours of classroom instruction in subjects determined by the Commission, or shall possess real estate education or experience in real estate transactions which the Commission shall find equivalent to the course. Each applicant for a license as a real estate broker shall, within three years preceding the date the application is made, have satisfactorily completed, at a school approved by the Commission, an education program consisting of at least 60 hours of classroom instruction in subjects determined by the Commission, which shall be in addition to the course required for a real estate salesperson license, or shall possess real estate education or experience in real estate transactions which the Commission shall find equivalent to the education program. Each applicant for a license as a real estate broker or real estate salesperson shall be required to pay a fee, fixed by the Commission but not to exceed thirty dollars (\$30.00).
- (b) Except as otherwise provided in this Chapter, any person who submits an application to the Commission in

proper manner for a license as real estate broker or a license as real estate salesperson shall be required to take an examination. The examination may be administered orally, by computer, or by any other method the Commission deems appropriate. The Commission may require the applicant to pay the Commission or a provider contracted by the Commission the actual cost of the examination and its administration. The cost of the examination and its administration shall be in addition to any other fees the applicant is required to pay under subsection (a) of this section. The examination shall determine the applicant's qualifications with due regard to the paramount interests of the public as to the applicant's competency. A person holding a real estate salesperson license in this State and applying for a real estate broker license shall not be required to take an additional examination under this subsection. A person who fails the license examination shall be entitled to know the result and score. A person who passes the exam shall be notified only that the person passed the examination. Whether a person passed or failed the examination shall be a matter of public record; however, the scores for license examinations shall not be considered public records. Nothing in this subsection shall limit the rights granted to any person under G.S. 93B-8.

An applicant for licensure under this Chapter shall satisfy the Commission that he or she possesses the competency, honesty, truthfulness, integrity, and general moral character necessary to protect the public interest and promote public confidence in the real estate brokerage business. The Commission may investigate the moral character of each applicant for licensure and require an applicant to provide the Commission with a criminal record report. All applicants shall obtain criminal record reports from one or more reporting services designated by the Commission to provide criminal record reports. Applicants are required to pay the designated reporting service for the cost of these reports.

If the results of any required competency examination and investigation of the applicant's moral character shall be satisfactory to the Commission, then the Commission shall issue to the applicant a license, authorizing the applicant to act as a real estate broker or real estate salesperson in the State of North Carolina, upon the payment of privilege taxes now required by law or that may hereafter be required by law.

- (b1) The Department of Justice may provide a criminal record check to the Commission for a person who has applied for a license through the Commission. The Commission shall provide to the Department of Justice, along with the request, the fingerprints of the applicant, any additional information required by the Department of Justice, and a form signed by the applicant consenting to the check of the criminal record and to

the use of the fingerprints and other identifying information required by the State or national repositories. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The Commission shall keep all information pursuant to this subsection privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

The Department of Justice may charge each applicant a fee for conducting the checks of criminal history records authorized by this subsection.

- (c) All licenses issued by the Commission under the provisions of this Chapter shall expire on the 30th day of June following issuance or on any other date that the Commission may determine and shall become invalid after that date unless reinstated. A license may be renewed 45 days prior to the expiration date by filing an application with and paying to the Executive Director of the Commission the license renewal fee. The license renewal fee is thirty dollars (\$30.00) unless the Commission sets the fee at a higher amount. The Commission may set the license renewal fee at an amount that does not exceed fifty dollars (\$50.00). The license renewal fee may not increase by more than five dollars (\$5.00) during a 12-month period. The Commission may adopt rules establishing a system of license renewal in which the licenses expire annually with varying expiration dates. These rules shall provide for prorating the annual fee to cover the initial renewal period so that no licensee shall be charged an amount greater than the annual fee for any 12-month period. The fee for reinstatement of an expired license shall be fifty-five dollars (\$55.00). In the event a licensee fails to obtain a reinstatement of such license within six months after the expiration date thereof, the Commission may, in its discretion, consider such person as not having been previously licensed, and thereby subject to the provisions of this Chapter relating to the issuance of an original license, including the examination requirements set forth herein. Duplicate licenses may be issued by the Commission upon payment of a fee of five dollars (\$5.00) by the licensee. Commission certification of a licensee's license history shall be made only after the payment of a fee of ten dollars (\$10.00).
- (d) The Commission is expressly vested with the power and authority to make and enforce any and all reasonable rules and regulations connected with license application, examination, renewal, and reinstatement as

shall be deemed necessary to administer and enforce the provisions of this Chapter. The Commission is further authorized to adopt reasonable rules and regulations necessary for the approval of real estate schools, instructors, and textbooks and rules that prescribe specific requirements pertaining to instruction, administration, and content of required education courses and programs.

- (e) Nothing contained in this Chapter shall be construed as giving any authority to the Commission nor any licensee of the Commission as authorizing any licensee to engage in the practice of law or to render any legal service as specifically set out in G.S. 84-2.1 or any other legal service not specifically referred to in said section.

#### **93A-4A. Continuing education.**

- (a) The Commission shall establish a program of continuing education for real estate brokers and salespersons. An individual licensed as a real estate broker or salesperson is required to complete continuing education requirements in an amount not to exceed eight classroom hours of instruction a year during any license renewal period in subjects and at times the Commission deems appropriate. Any licensee who fails to complete continuing education requirements pursuant to this section shall not actively engage in the business of real estate broker or salesperson.
  - (a1) In addition to the requirements of subsection (a) of this section, the Commission may require real estate brokers-in-charge to complete a special course of study, not to exceed six classroom hours every three years, in subjects prescribed by the Commission.
- (b) The Commission shall establish procedures allowing for a deferral of continuing education for brokers and salespersons while they are not actively engaged in real estate brokerage.
- (c) The Commission may adopt any reasonable rules not inconsistent with this Chapter to give purpose and effect to the continuing education requirement, including rules that govern:
  - (1) The content and subject matter of continuing education courses.
  - (2) The curriculum of courses required.
  - (3) The criteria, standards, and procedures for the approval of courses, course sponsors, and course instructors.
  - (4) The methods of instruction.
  - (5) The computation of course credit.
  - (6) The ability to carry forward course credit from one year to another.

- (7) The deferral of continuing education for brokers and salespersons not engaged in brokerage.
  - (8) The waiver of or variance from the continuing education requirement for hardship or other reasons.
  - (9) The procedures for compliance and sanctions for noncompliance.
- (d) The Commission may establish a nonrefundable course application fee to be charged to a course sponsor for the review and approval of a proposed continuing education course. The fee shall not exceed one hundred twenty-five dollars (\$125.00) per course. The Commission may charge the sponsor of an approved course a nonrefundable fee not to exceed seventy-five dollars (\$75.00) for the annual renewal of course approval.

The Commission may also require a course sponsor to pay a fee for each licensee completing an approved continuing education course conducted by the sponsor. The fee shall not exceed five dollars (\$5.00) per licensee.

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

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

**93A-4.3. Elimination of salesperson license; conversion of salesperson licenses to broker licenses.**

- (a) Effective April 1, 2006, the Commission shall discontinue issuing real estate salesperson licenses. Also effective April 1, 2006, all salesperson licenses shall become broker licenses, and each person holding a broker license that was changed from salesperson to broker on that date shall be classified as a provisional broker as defined in G.S. 93A-2(a2).
- (b) A provisional broker as contemplated in subsection (a) of this section who was issued a salesperson license prior to October 1, 2005, shall, not later than April 1, 2008, complete a broker transition course prescribed by the Commission, not to exceed 24 classroom hours of instruction, or shall demonstrate to the Commission that he or she possesses four years' full-time real estate brokerage experience or equivalent part-time real estate brokerage experience within the previous six years.

If the provisional broker satisfies this requirement by April 1, 2008, the provisional status of his or her broker license will be terminated, and the broker will not be required to complete the 90-classroom-hour broker postlicensing education program prescribed by G.S. 93A-4(a1). If the provisional broker fails to satisfy this requirement by April 1, 2008, his or her license will be placed on inactive status, if not already on inactive status, and he or she must complete the 90-classroom-hour broker postlicensing education program prescribed by G.S. 93A-4(a1) in order to terminate the provisional status of the broker license and to be eligible to return his or her license to active status.

- (c) An approved school or sponsor shall pay a fee of ten dollars (\$10.00) per licensee to the Commission for each licensee completing a broker transition course conducted by the school or sponsor, provided that these fees shall not be charged to a community college, junior college, college, or university located in this State and accredited by the Southern Association of Colleges and Schools.
- (d) A provisional broker as contemplated in subsection (a) of this section, who was issued a salesperson license between October 1, 2005, and March 31, 2006, shall, not later than April 1, 2009, satisfy the requirements of G.S. 93A-4(a1). Upon satisfaction of the requirements of G.S. 93A-4(a1), the provisional status of the broker's license will be terminated. If the provisional broker fails to satisfy the requirements of G.S. 93A-4(a1) by April 1, 2009, the broker's license shall be cancelled, and the person will be subject to the requirements for licensure reinstatement prescribed by G.S. 93A-4(a1).
- (e) A broker who was issued a broker license prior to April 1, 2006, shall not be required to complete either the 90-classroom-hour broker postlicensing education program prescribed by G.S. 93A-4(a1) or the broker transition course prescribed by subsection (b) of this section.
- (f) For the purpose of determining a licensee's status, rights, and obligations under this section, the Commission may treat a person who is issued a license on or after the October 1, 2005, or April 1, 2006, dates cited in subsections (a), (b), (d), or (e) of this section as though the person had been issued a license prior to those dates if the only reason the person's license was not issued prior to those dates was that the person's application was pending a determination by the Commission as to whether the applicant possessed the requisite moral character for licensure. If a license application is pending on April 1, 2006, for any reason other than a determination by the Commission as to the applicant's moral character for licensure, and if the applicant has not satisfied all education and examination requirements for licensing in effect on April 1, 2006, the applicant's application shall be cancelled and the

application fee refunded.

- (g) No applications for a real estate salesperson license shall be accepted by the Commission between September 1, 2005, and September 30, 2005.

**93A-5. Register of applicants; roster of brokers and salespersons; financial report to Secretary of State.**

- (a) The Executive Director of the Commission shall keep a register of all applicants for license, showing for each the date of application, name, place of residence, and whether the license was granted or refused. Said register shall be prima facie evidence of all matters recorded therein.
- (b) The Executive Director of the Commission shall also keep a current roster showing the names and places of business of all licensed real estate brokers and real estate salespersons, which roster shall be kept on file in the office of the Commission and be open to public inspection.
- (c) On or before the first day of September of each year, the Commission shall file with the Secretary of State a copy of the roster of real estate brokers and real estate salespersons holding certificates of license, and at the same time shall also file with the Secretary of State a report containing a complete statement of receipts and disbursements of the Commission for the preceding fiscal year ending June 30 attested by the affidavit of the Executive Director of the Commission.

**93A-6. Disciplinary action by Commission.**

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

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

- (1) Making any willful or negligent misrepresentation or any willful or negligent omission of material fact.
- (2) Making any false promises of a character likely to influence, persuade, or induce.
- (3) Pursuing a course of misrepresentation or making of false promises through agents, salespersons, advertising or otherwise.
- (4) Acting for more than one party in a transaction without the knowledge of all parties for whom

he or she acts.

- (5) Accepting a commission or valuable consideration as a real estate salesperson for the performance of any of the acts specified in this Article or Article 4 of this Chapter, from any person except his or her broker-in-charge or licensed broker by whom he or she is employed.
- (6) Representing or attempting to represent a real estate broker other than the broker by whom he or she is engaged or associated, without the express knowledge and consent of the broker with whom he or she is associated.
- (7) Failing, within a reasonable time, to account for or to remit any moneys coming into his or her possession which belong to others.
- (8) Being unworthy or incompetent to act as a real estate broker or salesperson in a manner as to endanger the interest of the public.
- (9) Paying a commission or valuable consideration to any person for acts or services performed in violation of this Chapter.
- (10) Any other conduct which constitutes improper, fraudulent or dishonest dealing.
- (11) Performing or undertaking to perform any legal service, as set forth in G.S. 84-2.1, or any other acts constituting the practice of law.
- (12) Commingling the money or other property of his or her principals with his or her own or failure to maintain and deposit in a trust or escrow account in an insured bank or savings and loan association in North Carolina all money received by him or her as a real estate licensee acting in that capacity, or an escrow agent, or the temporary custodian of the funds of others, in a real estate transaction; provided, these accounts shall not bear interest unless the principals authorize in writing the deposit be made in an interest bearing account and also provide for the disbursement of the interest accrued.
- (13) Failing to deliver, within a reasonable time, a completed copy of any purchase agreement or offer to buy and sell real estate to the buyer and to the seller.
- (14) Failing, at the time the transaction is consummated, to deliver to the seller in every real estate transaction, a complete detailed closing statement showing all of the receipts and disbursements handled by him or her for the seller or failing to deliver to the buyer a complete statement showing all money received in the transaction from the buyer and how and for what it was

disbursed.

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

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

- (b) Following a hearing, the Commission shall also have power to suspend or revoke any license issued under the provisions of this Chapter or to reprimand or censure any licensee when:
- (1) The licensee has obtained a license by false or fraudulent representation;
  - (2) The licensee has been convicted or has entered a plea of guilty or no contest upon which final judgment is entered by a court of competent jurisdiction in this State, or any other state, of the criminal offenses of: embezzlement, obtaining money under false pretense, fraud, forgery, conspiracy to defraud, or any other offense involving moral turpitude which would reasonably affect the licensee's performance in the real estate business;
  - (3) The licensee has violated any of the provisions of G.S. 93A-6(a) when selling, leasing, or buying his or her own property;
  - (4) The broker's unlicensed employee, who is exempt from the provisions of this Chapter under G.S. 93A-2(c)(6), has committed, in the regular course of business, any act which, if committed by the broker, would constitute a violation of G.S. 93A-6(a) for which the broker could be disciplined; or
  - (5) The licensee, who is also a State-licensed or State-certified real estate appraiser pursuant to Chapter 93E of the General Statutes, has violated any provisions of Chapter 93E of the General Statutes and has been reprimanded or has had his or her appraiser license or certificate suspended or revoked by the Appraisal Board.
- (c) The Commission may appear in its own name in superior court in actions for injunctive relief to prevent any person from violating the provisions of this Chapter or rules promulgated by the Commission. The superior court shall have the power to grant these injunctions even if criminal prosecution has been or may be instituted as a result of the violations, or whether the person is a licensee of the Commission.
- (d) Each broker shall maintain complete records showing

the deposit, maintenance, and withdrawal of money or other property owned by his or her principals or held in escrow or in trust for his or her principals. The Commission may inspect these records periodically, without prior notice and may also inspect these records whenever the Commission determines that they are pertinent to an investigation of any specific complaint against a licensee.

- (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 her 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 her or its license shall not thereafter be eligible for or submit any application for licensure as a real estate broker or salesperson during the period of license surrender.
- (f) In any contested case in which the Commission takes disciplinary action authorized by any provision of this Chapter, the Commission may also impose reasonable conditions, restrictions, and limitations upon the license, registration, or approval issued to the disciplined person or entity. In any contested case concerning an application for licensure, time share project registration, or school, sponsor, instructor, or course approval, the Commission may impose reasonable conditions, restrictions, and limitations on any license, registration, or approval it may issue as a part of its final decision.

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

- (a) The Commission, Executive Director, or other representative designated by the Commission may issue a subpoena for the appearance of witnesses deemed necessary to testify concerning any matter to be heard before or investigated by the Commission. The Commission may issue a subpoena ordering any person in possession of records, documents, or other materials, however maintained, that concern any matter to be heard before or investigated by the Commission to produce the records, documents, or other materials for inspection. Upon written request, the Commission shall revoke a subpoena if it finds that the evidence, the production of which is required, does not relate to a matter in issue, or if the subpoena does not describe with sufficient particularity the evidence, the production of which is required, or if for any other reason in law the subpoena is invalid. If any person shall fail to fully and promptly comply with a subpoena issued under this section, the Commission may apply to any judge of the superior court resident in any county where the person to whom the subpoena is issued maintains a residence or place of business for an order compelling

the person to show cause why he or she should not be held in contempt of the Commission and its processes. The court shall have the power to impose punishment for acts that would constitute direct or indirect contempt if the acts occurred in an action pending in superior court.

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

#### **93A-7. Power of courts to revoke.**

Whenever any person, partnership, association or corporation claiming to have been injured or damaged by the gross negligence, incompetency, fraud, dishonesty or misconduct on the part of any licensee following the calling or engaging in the business herein described and shall file suit upon such claim against such licensee in any court of record in this State and shall recover judgment thereon, such court may as part of its judgment or decree in such case, if it deem it a proper case in which so to do, order a written copy of the transcript of record in said case to be forwarded by the clerk of court to the chairman of the said Commission with a recommendation that the licensee's certificate of license be revoked.

#### **93A-8. Penalty for violation of Chapter.**

Any person violating the provisions of this Chapter shall upon conviction thereof be deemed guilty of a Class 1 misdemeanor.

#### **93A-9. Licensing nonresidents.**

- (a) An applicant from another state, which offers licensing privileges to residents of North Carolina, may be licensed by conforming to all the provisions of this Chapter and, in the discretion of the Commission, such other terms and conditions as are required of North Carolina residents applying for license in such other state; provided that the Commission may exempt from the examination prescribed in G.S. 93A-4 a broker or salesperson duly licensed in another state if a similar exemption is extended to licensed brokers and salespersons from North Carolina.
- (b) The Commission may issue a limited broker's or salesperson's license to a person or an entity from another state or territory of the United States without regard to

whether that state or territory offers similar licensing privileges to residents in North Carolina if the person or entity satisfies all of the following:

- (1) Is of good moral character and licensed as a real estate broker or salesperson in good standing in another state or territory of the United States.
- (2) Only engages in business as a real estate broker or salesperson in North Carolina in transactions involving commercial real estate and while the person or entity is affiliated with a resident North Carolina real estate broker or salesperson.
- (3) Complies with the laws of this State regulating real estate brokers and salespersons and rules adopted by the Commission.

The Commission may require an applicant for licensure under this subsection to pay a fee not to exceed three hundred dollars (\$300.00). All licenses issued under this subsection shall expire on June 30 of each year following issuance or on a date that the Commission deems appropriate unless the license is renewed pursuant to the requirements of G.S. 93A-4. A person or entity licensed under this subsection may be disciplined by the Commission for violations of this Chapter as provided in G.S. 93A-6 and G.S. 93A-54.

Any person or entity licensed under this subsection shall be affiliated with a resident North Carolina real estate broker or salesperson, and the resident North Carolina real estate broker or salesperson shall actively and personally supervise the licensee in a manner that reasonably assures that the licensee complies with the requirements of this Chapter and rules adopted by the Commission. The Commission may exempt applicants for licensure under this subsection from examination and the other licensing requirements under G.S. 93A-4. The Commission may adopt rules as it deems necessary to give effect to this subsection, including rules establishing: (i) qualifications for licensure; (ii) licensure and renewal procedures; (iii) requirements for continuing education; (iv) conduct of persons and entities licensed under this subsection and their affiliated resident real estate brokers or salespersons; (v) a definition of commercial real estate; and (vi) any requirements or limitations on affiliation between resident real estate brokers or salespersons and persons or entities seeking licensure under this subsection.

#### **93A-10. Nonresident licensees; filing of consent as to service of process and pleadings.**

Every nonresident applicant shall file an irrevocable consent that suits and actions may be commenced against such applicant in any of the courts of record of this State, by the service of any process or pleading authorized by the laws of

this State in any county in which the plaintiff may reside, by serving the same on the Executive Director of the Commission, said consent stipulating and agreeing that such service of such process or pleadings on said Executive Director shall be taken and held in all courts to be valid and binding as if due service had been made personally upon the applicant in this State. This consent shall be duly acknowledged, and, if made by a corporation, shall be executed by an officer of the corporation. The signature of the officer on the consent to service instrument shall be sufficient to bind the corporation and no further authentication is necessary. An application from a corporation or other business entity shall be signed by an officer of the corporation or entity or by an individual designated by the Commission.

In all cases where process or pleadings shall be served, under the provisions of this Chapter, upon the Executive Director of the Commission, such process or pleadings shall be served in duplicate, one of which shall be filed in the office of the Commission and the other shall be forwarded immediately by the Executive Director of the Commission, by registered mail, to the last known business address of the nonresident licensee against which such process or pleadings are directed.

#### **93A-11. Reimbursement by real estate independent contractor of brokers' workers' compensation.**

- (a) Notwithstanding the provisions of G.S. 97-21 or any other provision of law, a real estate broker may include in the governing contract with a real estate salesperson whose nonemployee status is recognized pursuant to section 3508 of the United States Internal Revenue Code, 26 U.S.C. § 3508, an agreement for the salesperson to reimburse the broker for the cost of covering that salesperson under the broker's workers' compensation coverage of the broker's business.
- (b) Nothing in this section shall affect a requirement under any other law to provide workers' compensation coverage or in any manner exclude from coverage any person, firm, or corporation otherwise subject to the provisions of Article 1 of Chapter 97 of the General Statutes.

#### **93A-12. Disputed monies.**

- (a) A real estate broker licensed under this Chapter may deposit with the clerk of court in accordance with this section monies, other than a residential security deposit, the ownership of which are in dispute and that the real estate broker received while acting in a fiduciary capacity.
- (b) The disputed monies shall be deposited with the clerk of court in the county in which the property for which the disputed monies are being held is located. At the time of depositing the disputed monies, the real estate broker shall certify to the clerk of court that the persons who are claiming ownership of the disputed

monies have been notified in accordance with subsection (c) of this section that the disputed monies are to be deposited with the clerk of court and that the persons may initiate a special proceeding with the clerk of court to recover the disputed monies.

- (c) Notice to the persons who are claiming ownership to the disputed monies required under subsection (b) of this section shall be provided by delivering a copy of the notice to the person or by mailing it to the person by first-class mail, postpaid, properly addressed to the person at the person's last known address.
- (d) A real estate broker shall not deposit disputed monies with the clerk of court until 90 days following notification of the persons claiming ownership of the disputed monies.
- (e) Upon the filing of a special proceeding to recover the disputed monies, the clerk shall determine the rightful ownership of the monies and distribute the disputed monies accordingly. If no special proceeding is filed with the clerk of court within one year of the disputed monies being deposited with the clerk of court, the disputed monies shall be deemed unclaimed and shall be delivered by the clerk of court to the State Treasurer in accordance with the provisions of Article 4 of Chapter 116B of the General Statutes.

**Sections 93A-13 through 93A-15:** Reserved for future codification purposes.

### **ARTICLE 2. REAL ESTATE RECOVERY FUND.**

#### **93A-16. Real Estate Recovery Fund created; payment to fund; management.**

- (a) There is hereby created a special fund to be known as the "Real Estate Recovery Fund" which shall be set aside and maintained by the North Carolina Real Estate Commission. Said fund shall be used in the manner provided under this Article for the payment of unsatisfied judgments where the aggrieved person has suffered a direct monetary loss by reason of certain acts committed by any real estate broker or salesperson licensed under this Chapter.
- (b) On September 1, 1979, the Commission shall transfer the sum of one hundred thousand dollars (\$100,000) from its expense reserve fund to the Real Estate Recovery Fund. 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 her or its license, shall pay in addition to his or her license renewal fee, a fee

not to exceed ten dollars (\$10.00) per broker and five dollars (\$5.00) per salesperson as shall be determined by the Commission for the purpose of replenishing the fund.

- (c) The Commission shall invest and reinvest the moneys in the Real Estate Recovery Fund in the same manner as provided by law for the investment of funds by the clerk of superior court. The proceeds from such investments shall be deposited to the credit of the fund.
- (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.

### **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 salesperson 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 salesperson 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 three thousand dollars (\$3,000), 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 salesperson on grounds of conversion of trust funds arising out of a transaction which occurred when such broker or salesperson 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 ex-

ecution 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 salesperson 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 "salesperson" shall include only individual persons licensed under this Chapter as brokers and salespersons and shall not include a time share developer, time share project, independent escrow agent, corporation or other entity licensed under this Chapter.

### **93A-18. Hearing; required showing.**

Upon such application by an aggrieved person, the Commission shall conduct a hearing and the aggrieved person shall be required to show:

- (1) He or she is not a spouse of the judgment debtor or a person representing such spouse; and
- (2) He or she is making application not more than one year after termination of all judicial proceedings, including appeals, in connection with the judgment;
- (3) He or she has complied with all requirements of this Article;
- (4) He or she has obtained a judgment as described in G.S. 93A-17, stating the amount owing thereon at the date of application;
- (5) He or she has made all reasonable searches and inquiries to ascertain whether the judgment debtor is possessed of real or personal property or other assets liable to be sold or applied in satisfaction of the judgment;
- (6) That by such search he or she has discovered no real or personal property or other assets liable to be sold or applied, or that he or she has discovered certain of them, describing them, but that the amount so realized was insufficient to satisfy the judgment, stating the amount realized and the balance remaining due on the judgment after application of the amount realized; and
- (7) He or she has diligently pursued his or her rem-

edies including attempted execution on the judgment against all the judgment debtors which execution has been returned unsatisfied. In addition to that, he or she knows of no assets of the judgment debtor and that he or she has attempted collection from all other persons who may be liable to him or her in the transaction for which he or she seeks payment from the Real Estate Recovery Fund if there be any such other persons.

**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 or her own behalf and shall have recourse to all appropriate means of defense, including the examination of witnesses. Counsel for the Commission and the judgment debtor may file responses to the application, 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. If the applicant or judgment debtor fails to appear at the hearing after receiving notice of the hearing, the applicant or judgment debtor shall waive his or her rights unless the absence is excused by the Commission.
- (b) Whenever the judgment obtained by an applicant is by default, stipulation, or consent, or whenever the action against the licensee was defended by a trustee in bankruptcy, the applicant, for purposes of this Article, shall have the burden of proving his or her cause of action for conversion of trust funds. Otherwise, the judgment shall create a rebuttable presumption of the conversion of trust funds. This presumption is a presumption affecting the burden of producing evidence.

**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. If a claim appears to be otherwise meritorious, the Commission may waive procedural defects in the application for payment.

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

- (a) Payments from the Real Estate Recovery Fund shall be subject to the following limitations:
- (1) The right to recovery under this Article shall be forever barred unless application is made within one year after termination of all proceedings including appeals, in connection with the judgment;
  - (2) The fund shall not be liable for more than twenty-five thousand dollars (\$25,000) per transaction regardless of the number of persons aggrieved or parcels of real estate involved in such transaction; and
  - (3) The liability of the fund shall not exceed in the aggregate twenty-five thousand dollars (\$25,000) for any one licensee within a single calendar year, and in no event shall it exceed in the aggregate fifty thousand dollars (\$50,000) for any one licensee.
  - (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.
- (b) If the maximum liability of the fund is insufficient to pay in full the valid claims of all aggrieved persons whose claims relate to the same transaction or to the same licensee, the amount for which the fund is liable shall be distributed among the claimants in a ratio that their respective claims bear to the total of such valid claims or in such manner as the Commission, in its discretion, deems equitable. Upon petition of counsel for the Commission, the Commission may require all claimants and prospective claimants to be joined in one proceeding to the end that the respective rights of all such claimants to the Real Estate Recovery Fund may be equitably resolved. A person who files an application for payment

after the maximum liability of the fund for the licensee or transaction has been exhausted shall not be entitled to payment and may not seek judicial review of the Commission's award of payment to any party except upon a showing that the Commission abused its discretion.

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

**93A-22. Repayment to fund; automatic suspension of license.**

Should the Commission pay from the Real Estate Recovery Fund any amount in settlement of a claim or toward satisfaction of a judgment against a licensed real estate broker or salesperson, the license of the broker or salesperson shall be automatically suspended upon the effective date of the order authorizing payment from the fund. No such broker or salesperson shall be granted a reinstatement until he or she has repaid in full, plus interest at the legal rate as provided for in G.S. 24-1, the amount paid from the Real Estate Recovery Fund.

**93A-23. Subrogation of rights.**

When the Commission has paid from the Real Estate Recovery Fund any sum to the judgment creditor, the Commission shall be subrogated to all of the rights of the judgment creditor to the extent of the amount so paid and the judgment creditor shall assign all his or her right, title, and interest in the judgment to the extent of the amount so paid to the Commission and any amount and interest so recovered by the Commission on the judgment shall be deposited in the Real Estate Recovery Fund.

**93A-24. Waiver of rights.**

The failure of an aggrieved person to comply with this Article shall constitute a waiver of any rights hereunder.

**93A-25. Persons ineligible to recover from fund.**

No real estate broker or real estate salesperson who suffers the loss of any commission from any transaction in which he or she was acting in the capacity of a real estate broker or real estate salesperson shall be entitled to make application for payment from the Real Estate Recovery Fund for such loss.

**93A-26. Disciplinary action against licensee.**

Nothing contained in this Article shall limit the authority of the Commission to take disciplinary action against any licensee under this Chapter, nor shall the repayment in full of all obligations to the fund by any licensee nullify or modify the effect of any other disciplinary proceeding brought under this Chapter.

**Sections 93A-27 through 93A-31:** Reserved for future codification purposes.

**ARTICLE 3.  
PRIVATE REAL ESTATE SCHOOLS.**

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**Interested persons may obtain a copy of Article 3 by making written request to the North Carolina Real Estate Commission.**

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**ARTICLE 4.  
TIME SHARES.**

**93A-39. Title.**

This Article shall be known and may be cited as the "North Carolina Time Share Act."

**93A-40. Registration required of time share projects; real estate salespersons license required.**

- (a) From and after July 1, 1984, it shall be unlawful for any person in this State to engage or assume to engage in the business of a time share salesperson without first obtaining a real estate broker or salesperson license issued by the North Carolina Real Estate Commission under the provisions of Article I of this Chapter, and it shall be unlawful for a time share developer to sell or offer to sell a time share located in this State without first obtaining a certificate of registration for the time share project to be offered for sale issued by the North Carolina Real Estate Commission under the provisions of this Article.
- (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.

**93A-41. Definitions.**

When used in this Article, unless the context otherwise requires, the term:

- (1) "Commission" means the North Carolina Real Estate Commission;
- (2) "Developer" means any person or entity which creates a time share or a time share project or program, purchases a time share for purpose of resale, or is engaged in the business of selling its own time shares and shall include any person or entity who controls, is controlled by, or is in common control with the developer which is engaged in creating or selling time shares for the developer, but a person who purchases a time share for his or her occupancy, use, and enjoyment shall not be deemed a developer;
- (3) "Enrolled" means paid membership in exchange

- programs or membership in an exchange program evidenced by written acceptance or confirmation of membership;
- (4) “Exchange company” means any person operating an exchange program;
- (5) “Exchange program” means any opportunity or procedure for the assignment or exchange of time shares among purchasers in the same or other time share project;
- (5a) “Independent escrow agent” means a licensed attorney located in this State or a financial institution located in this State;
- (6) “Managing agent” means a person who undertakes the duties, responsibilities, and obligations of the management of a time share program;
- (7) “Person” means one or more natural persons, corporations, partnerships, associations, trusts, other entities, or any combination thereof;
- (7a) “Project broker” means a natural person licensed as a real estate broker and designated by the developer to supervise brokers and salespersons at the time share project;
- (8) “Purchaser” means any person other than a developer or lender who owns or acquires an interest or proposes to acquire an interest in a time share;
- (9) “Time share” means a right to occupy a unit or any of several units during five or more separated time periods over a period of at least five years, including renewal options, whether or not coupled with a freehold estate or an estate for years in a time share project or a specified portion thereof, including, but not limited to, a vacation license, prepaid hotel reservation, club membership, limited partnership, vacation bond, or a plan or system where the right to use is awarded or apportioned on the basis of points, vouchers, split, divided, or floating use;
- (9a) “Time share instrument” means an instrument transferring a time share or any interest, legal or beneficial, in a time share to a purchaser, including a contract, installment contract, lease, deed, or other instrument;
- (10) “Time share program” means any arrangement for time shares whereby real property has been made subject to a time share;
- (11) “Time share project” means any real property that is subject to a time share program;
- (11a) “Time share registrar” means a natural person who is designated by the developer to record or cause time share instruments and lien releases to be recorded and to fulfill the other duties imposed by this Article;
- (12) “Time share salesperson” means a person who sells or offers to sell on behalf of a developer a time share to a purchaser; and
- (13) “Time share unit” or “unit” means the real property or real property improvement in a project which is divided into time shares and designated for separate occupancy and use.

**93A-42. Time shares deemed real estate.**

- (a) A time share is deemed to be an interest in real estate, and shall be governed by the law of this State relating to real estate.
- (b) A purchaser of a time share may in accordance with G.S. 47-18 register the time share instrument by which he or she acquired his or her interest and upon such registration shall be entitled to the protection provided by Chapter 47 of the General Statutes for the recordation of other real property instruments. A time share instrument transferring or encumbering a time share shall not be rejected for recordation because of the nature or duration of that estate, provided all other requirements necessary to make an instrument recordable are complied with.
- (c) The developer shall record or cause to be recorded a time share instrument:
- (1) Not less than six days nor more than 45 days following the execution of the contract of sale by the purchaser; or
- (2) Not later than 180 days following the execution of the contract of sale by the purchaser, provided that all payments made by the purchaser shall be placed by the developer with an independent escrow agent upon the expiration of the 10-day escrow period provided by G.S. 93A-45(c).
- (d) The independent escrow agent provided by G.S. 93A-42(c)(2) shall deposit and maintain the purchaser’s payments in an insured trust or escrow account in a bank or savings and loan association located in this State. The trust or escrow account may be interest-bearing and the interest earned shall belong to the developer, if agreed upon in writing by the purchaser; provided, however, if the time share instrument is not recorded within the time periods specified in this section, then the interest earned shall belong to the purchaser. The independent escrow agent shall return all payments to the purchaser at the expiration of 180 days following the execution of the contract of sale by the purchaser, unless prior to that time the time share instrument has been recorded. However, if prior to the expiration of 180 days following the execution of the contract of sale, the developer and the purchaser provide their written consent

to the independent escrow agent, the developer's obligation to record the time share instrument and the escrow period may be extended for an additional period of 120 days. Upon recordation of the time share instrument, the independent escrow agent shall pay the purchaser's funds to the developer. Upon request by the Commission, the independent escrow agent shall promptly make available to the Commission inspection of records of money held by him or her.

- (e) In no event shall the developer be required to record a time share instrument if the purchaser is in default of his or her obligations.
- (f) Recordation under the provisions of this section of the time share instrument shall constitute delivery of that instrument from the developer to the purchaser.

#### **93A-43. Partition.**

When a time share is owned by two or more persons as tenants in common or as joint tenants either may seek a partition by sale of that interest but no purchaser of a time share may maintain an action for partition by sale or in kind of the unit in which such time share is held.

#### **93A-44. Public offering statement.**

Each developer shall fully and conspicuously disclose in a public offering statement:

- (1) The total financial obligation of the purchaser, which shall include the initial purchase price and any additional charges to which the purchaser may be subject;
- (2) Any person who has or may have the right to alter, amend or add to charges to which the purchaser may be subject and the terms and conditions under which such charges may be imposed;
- (3) The nature and duration of each agreement between the developer and the person managing the time share program or its facilities;
- (4) The date of availability of each amenity and facility of the time share program when they are not completed at the time of sale of a time share;
- (5) The specific term of the time share;
- (6) The purchaser's right to cancel within five days of execution of the contract and how that right may be exercised under G.S. 93A-45;
- (7) A statement that under North Carolina law an instrument conveying a time share must be recorded in the Register of Deeds Office to protect that interest; and
- (8) Any other information which the Commission may by rule require.

The public offering statement shall also contain a one page cover containing a summary of the text of the statement.

#### **93A-45. Purchaser's right to cancel; escrow; violation.**

- (a) A developer shall, before transfer of a time share and no later than the date of any contract of sale, provide a prospective purchaser with a copy of a public offering statement containing the information required by G.S. 93A-44. The contract of sale is voidable by the purchaser for five days after the execution of the contract. The contract shall conspicuously disclose the purchaser's right to cancel under this subsection and how that right may be exercised. The purchaser may not waive this right of cancellation. Any oral or written declaration or instrument that purports to waive this right of cancellation is void.
- (b) A purchaser may elect to cancel within the time period set out in subsection (a) by hand delivering or by mailing notice to the developer or the time share salesperson. Cancellation under this section is without penalty and upon receipt of the notice all payments made prior to cancellation must be refunded immediately.
- (c) Any payments received by a time share developer or time share salesperson in connection with the sale of the time share shall be immediately deposited by such developer or salesperson in a trust or escrow account in an insured bank or savings and loan association in North Carolina and shall remain in such account for 10 days or cancellation by the purchaser, whichever occurs first. Payments held in such trust or escrow accounts shall be deemed to belong to the purchaser and not the developer. In lieu of such escrow requirements, the Commission shall have the authority to accept, in its discretion, alternative financial assurances adequate to protect the purchaser's interest during the contract cancellation period, including but not limited to a surety bond, corporate bond, cash deposit or irrevocable letter of credit in an amount equal to the escrow requirements.
- (d) If a developer fails to provide a purchaser to whom a time share is transferred with the statement as required by subsection (a), the purchaser, in addition to any rights to damages or other relief, is entitled to receive from the developer an amount equal to ten percent (10%) of the sales price of the time share not to exceed three thousand dollars (\$3,000). A receipt signed by the purchaser stating that he or she has received the statement required by subsection (a) is prima facie evidence of delivery of such statement.

#### **93A-46. Prizes.**

An advertisement of a time share which includes the offer of a prize or other inducement shall fully comply with the provisions of Chapter 75 of the General Statutes.

#### **93A-47. Time shares proxies.**

No proxy, power of attorney or similar device given by the purchaser of a time share regarding the management of the time

share program or its facilities shall exceed one year in duration, but the same may be renewed from year to year.

### **93A-48. Exchange programs.**

- (a) If a purchaser is offered the opportunity to subscribe to any exchange program, the developer shall, except as provided in subsection (b), deliver to the purchaser, prior to the execution of (i) any contract between the purchaser and the exchange company, and (ii) the sales contract, at least the following information regarding such exchange program:
- (1) The name and address of the exchange company;
  - (2) The names of all officers, directors, and shareholders owning five percent (5%) or more of the outstanding stock of the exchange company;
  - (3) Whether the exchange company or any of its officers or directors has any legal or beneficial interest in any developer or managing agent for any time share project participating in the exchange program and, if so, the name and location of the time share project and the nature of the interest;
  - (4) Unless the exchange company is also the developer a statement that the purchaser's contract with the exchange company is a contract separate and distinct from the sales contract;
  - (5) Whether the purchaser's participation in the exchange program is dependent upon the continued affiliation of the time share project with the exchange program;
  - (6) Whether the purchaser's membership or participation, or both, in the exchange program is voluntary or mandatory;
  - (7) A complete and accurate description of the terms and conditions of the purchaser's contractual relationship with the exchange company and the procedure by which changes thereto may be made;
  - (8) A complete and accurate description of the procedure to qualify for and effectuate exchanges;
  - (9) A complete and accurate description of all limitations, restrictions, or priorities employed in the operation of the exchange program, including, but not limited to, limitations on exchanges based on seasonality, unit size, or levels of occupancy, expressed in boldfaced type, and, in the event that such limitations, restrictions, or priorities are not uniformly applied by the exchange program, a clear description of the manner in which they are applied;
  - (10) Whether exchanges are arranged on a space available basis and whether any guarantees of fulfillment of specific requests for exchanges are made by the exchange program;
  - (11) Whether and under what circumstances an owner, in dealing with the exchange company, may lose the use and occupancy of his or her time share in any properly applied for exchange without his or her being provided with substitute accommodations by the exchange company;
  - (12) The expenses, fees or range of fees for participation by owners in the exchange program, a statement whether any such fees may be altered by the exchange company, and the circumstances under which alterations may be made;
  - (13) The name and address of the site of each time share project or other property which is participating in the exchange program;
  - (14) The number of units in each project or other property participating in the exchange program which are available for occupancy and which qualify for participation in the exchange program, expressed within the following numerical groupings, 1-5, 6-10, 11-20, 21-50 and 51, and over;
  - (15) The number of owners with respect to each time share project or other property which are eligible to participate in the exchange program expressed within the following numerical groupings, 1-100, 101-249, 250-499, 500-999, and 1,000 and over, and a statement of the criteria used to determine those owners who are currently eligible to participate in the exchange program;
  - (16) The disposition made by the exchange company of time shares deposited with the exchange program by owners eligible to participate in the exchange program and not used by the exchange company in effecting exchanges;
  - (17) The following information which, except as provided in subsection (b) below, shall be independently audited by a certified public accountant in accordance with the standards of the Accounting Standards Board of the American Institute of Certified Public Accountants and reported for each year no later than July 1, of the succeeding year:
    - a. The number of owners enrolled in the exchange program and such numbers shall disclose the relationship between the exchange company and owners as being either fee paying or gratuitous in nature;
    - b. The number of time share projects or other properties eligible to participate in the exchange program categorized by those having a contractual relationship between the developer or the association and the exchange company and those having solely a contractual relationship between the exchange company and owners directly;

- c. The percentage of confirmed exchanges, which shall be the number of exchanges confirmed by the exchange company divided by the number of exchanges properly applied for, together with a complete and accurate statement of the criteria used to determine whether an exchange requested was properly applied for;
- d. The number of time shares or other intervals for which the exchange company has an outstanding obligation to provide an exchange to an owner who relinquished a time share or interval during the year in exchange for a time share or interval in any future year; and
- e. The number of exchanges confirmed by the exchange company during the year; and

(18) A statement in boldfaced type to the effect that the percentage described in subparagraph (17)c. of subsection (a) is a summary of the exchange requests entered with the exchange company in the period reported and that the percentage does not indicate a purchaser's/owner's probabilities of being confirmed to any specific choice or range of choices, since availability at individual locations may vary.

The purchaser shall certify in writing to the receipt of the information required by this subsection and any other information which the Commissioners may by rule require.

- (b) The information required by subdivisions (a), (2), (3), (13), (14), (15), and (17) shall be accurate as of December 31 of the year preceding the year in which the information is delivered, except for information delivered within the first 180 days of any calendar year which shall be accurate as of December 31 of the year two years preceding the year in which the information is delivered to the purchaser. The remaining information required by subsection (a) shall be accurate as of a date which is no more than 30 days prior to the date on which the information is delivered to the purchaser.
- (c) In the event an exchange company offers an exchange program directly to the purchaser or owner, the exchange company shall deliver to each purchaser or owner, concurrently with the offering and prior to the execution of any contract between the purchaser or owner and the exchange company the information set forth in subsection (a) above. The requirements of this paragraph shall not apply to any renewal of a contract between an owner and an exchange company.
- (d) All promotional brochures, pamphlets, advertisements, or other materials disseminated by the exchange company to purchasers in this State which contain the percentage of confirmed exchanges described in (a)(17)c. must include the statement set forth in (a)(18).

**93A-49. Service of process on exchange company.**

Any exchange company offering an exchange program to a purchaser shall be deemed to have made an irrevocable appointment of the Commission to receive service of lawful process in any proceeding against the exchange company arising under this Article.

**93A-50. Securities laws apply.**

The North Carolina Securities Act, Chapter 78A, shall also apply, in addition to the laws relating to real estate, to time shares deemed to be investment contracts or to other securities offered with or incident to a time share; provided, in the event of such applicability of the North Carolina Securities Act, any offer or sale of time shares registered under this Article shall not be subject to the provisions of G.S. 78A-24 and any real estate broker or salesperson registered under Article 1 of this Chapter shall not be subject to the provisions of G.S. 78A-36.

**93A-51. Rule-making authority.**

The Commission shall have the authority to adopt rules and regulations that are not inconsistent with the provisions of this Article and the General Statutes of North Carolina. The Commission may prescribe forms and procedures for submitting information to the Commission.

**93A-52. Application for registration of time share project; denial of registration; renewal; reinstatement; and termination of developer's interest.**

- (a) Prior to the offering in this State of any time share located in this State, the developer of the time share project shall make written application to the Commission for the registration of the project. The application shall be accompanied by a fee in an amount fixed by the Commission but not to exceed fifteen hundred dollars (\$1500), and shall include a description of the project, copies of proposed time share instruments including public offering statements, sale contracts, deeds, and other documents referred to therein, information pertaining to any marketing or managing entity to be employed by the developer for the sale of time shares in a time share project or the management of the project, information regarding any exchange program available to the purchaser, an irrevocable appointment of the Commission to receive service of any lawful process in any proceeding against the developer or the developer's salespersons arising under this Article, and such other information as the Commission may by rule require.

Upon receipt of a properly completed application and fee and upon a determination by the Commission that the sale and management of the time shares in the time share project will be directed and conducted by persons of good moral character, the Commission shall issue to the developer a certificate of registration autho-

rizing the developer to offer time shares in the project for sale. The Commission shall within 15 days after receipt of an incomplete application, notify the developer by mail that the Commission has found specified deficiencies, and shall, within 45 days after the receipt of a properly completed application, either issue the certificate of registration or notify the developer by mail of any specific objections to the registration of the project. The certificate shall be prominently displayed in the office of the developer on the site of the project.

The developer shall promptly report to the Commission any and all changes in the information required to be submitted for the purpose of the registration. The developer shall also immediately furnish the Commission complete information regarding any change in its interest in a registered time share project. In the event a developer disposes of, or otherwise terminates its interest in a time share project, the developer shall certify to the Commission in writing that its interest in the time share project is terminated and shall return to the Commission for cancellation the certificate of registration.

- (b) In the event the Commission finds that there is substantial reason to deny the application for registration as a time share project, the Commission shall notify the applicant that such application has been denied and shall afford the applicant an opportunity for a hearing before the Commission to show cause why the application should not be denied. In all proceedings to deny a certificate of registration, the provisions of Chapter 150B of the General Statutes shall be applicable.
- (c) The acceptance by the Commission of an application for registration shall not constitute the approval of its contents or waive the authority of the Commission to take disciplinary action as provided by this Article.
- (d) All certificates of registration granted and issued by the Commission under the provisions of this Article shall expire on the 30th day of June following issuance thereof, and shall become invalid after such date unless reinstated. Renewal of such certificate may be effected at any time during the month of June preceding the date of expiration of such registration upon proper application to the Commission and by the payment of a renewal fee fixed by the Commission but not to exceed one thousand five hundred dollars (\$1,500) for each time share project. The developer shall, when making application for renewal, also provide a copy of the report required in G.S. 93A-48. Each certificate reinstated after the expiration date thereof shall be subject to a late filing fee of fifty dollars (\$50.00) in addition to the required renewal fee. In the event a time share developer fails to reinstate the registration within 12 months after the expiration date thereof, the Commission may, in its discretion, consider the time share proj-

ect as not having been previously registered, and thereby subject to the provisions of this Article relating to the issuance of an original certificate. Duplicate certificates may be issued by the Commission upon payment of a fee of one dollar (\$1.00) by the registrant developer. Except as prescribed by Commission rules, all fees paid pursuant to this Article shall be nonrefundable.

**93A-53. Register of applicants; roster of registrants; registered projects; financial report to Secretary of State.**

- (a) The Executive Director of the Commission shall keep a register of all applicants for certificates of registration, showing for each the date of application, name, business address, and whether the certificate was granted or refused.
- (b) The Executive Director of the Commission shall also keep a current roster showing the name and address of all time share projects registered with the Commission. The roster shall be kept on file in the office of the Commission and be open to public inspection.
- (c) On or before the first day of September of each year, the Commission shall file with the Secretary of State a copy of the roster of time share projects registered with the Commission and a report containing a complete statement of income received by the Commission in connection with the registration of time share projects for the preceding fiscal year ending June 30th attested by the affidavit of the Executive Director of the Commission. The report shall be made a part of those annual reports required under the provisions of G.S. 93A- 5.

**93A-54. Disciplinary action by Commission.**

- (a) The Commission shall have power to take disciplinary action. Upon its own motion, or on the verified complaint of any person, the Commission may investigate the actions of any time share salesperson, developer, or project broker of a time share project registered under this Article, or any other person or entity who shall assume to act in such capacity. If the Commission finds probable cause that a time share salesperson, developer, or project broker has violated any of the provisions of this Article, the Commission may hold a hearing on the allegations of misconduct.

The Commission shall have the power to suspend or revoke at any time a real estate license issued to a time share salesperson or project broker, or a certificate of registration of a time share project issued to a developer; or to reprimand or censure such salesperson, developer, or project broker; or to fine such developer in the amount of five hundred dollars (\$500.00) for each violation of this Article, if, after a hearing, the Commission adjudges either the salesperson, developer, or project broker to be guilty of:

- (1) Making any willful or negligent misrepresentation

- or any willful or negligent omission of material fact about any time share or time share project;
- (2) Making any false promises of a character likely to influence, persuade, or induce;
  - (3) Pursuing a course of misrepresentation or making of false promises through agents, salesperson, advertising or otherwise;
  - (4) Failing, within a reasonable time, to account for all money received from others in a time share transaction, and failing to remit such monies as may be required in G.S. 93A- 45 of this Article;
  - (5) Acting as a time share salesperson or time share developer in a manner as to endanger the interest of the public;
  - (6) Paying a commission, salary, or other valuable consideration to any person for acts or services performed in violation of this Article;
  - (7) Any other conduct which constitutes improper, fraudulent, or dishonest dealing;
  - (8) Performing or undertaking to perform any legal service as set forth in G.S. 84-2.1, or any other acts not specifically set forth in that section;
  - (9) Failing to deposit and maintain in a trust or escrow account in an insured bank or savings and loan association in North Carolina all money received from others in a time share transaction as may be required in G.S. 93A-45 of this Article or failing to place with an independent escrow agent the funds of a time share purchaser when required by G.S. 93A-42(c);
  - (10) Failing to deliver to a purchaser a public offering statement containing the information required by G.S. 93A-44 and any other disclosures that the Commission may by regulation require;
  - (11) Failing to comply with the provisions of Chapter 75 of the General Statutes in the advertising or promotion of time shares for sale, or failing to assure such compliance by persons engaged on behalf of a developer;
  - (12) Failing to comply with the provisions of G.S. 93A-48 in furnishing complete and accurate information to purchasers concerning any exchange program which may be offered to such purchaser;
  - (13) Making any false or fraudulent representation on an application for registration;
  - (14) Violating any rule or regulation promulgated by the Commission;
  - (15) Failing to record or cause to be recorded a time share instrument as required by G.S. 93A-42(c), or failing to provide a purchaser the protection against liens required by G.S. 93A-57(a); or
  - (16) Failing as a time share project broker to exercise reasonable and adequate supervision of the conduct of sales at his or her project or location by the brokers and salespersons under his or her control.
    - (a1) The clear proceeds of fines collected pursuant to subsection (a) of this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.
    - (b) Following a hearing, the Commission shall also have power to suspend or revoke any certificate of registration issued under the provisions of this Article or to reprimand or censure any developer when the registrant has been convicted or has entered a plea of guilty or no contest upon which final judgment is entered by a court of competent jurisdiction in this State, or any other state, of the criminal offenses of: embezzlement, obtaining money under false pretense, fraud, forgery, conspiracy to defraud, or any other offense involving moral turpitude which would reasonably affect the developer's performance in the time share business.
    - (c) The Commission may appear in its own name in superior court in actions for injunctive relief to prevent any person or entity from violating the provisions of this Article or rules promulgated by the Commission. The superior court shall have the power to grant these injunctions even if criminal prosecution has been or may be instituted as a result of the violations, or regardless of whether the person or entity has been registered by the Commission.
    - (d) Each developer shall maintain or cause to be maintained complete records of every time share transaction including records pertaining to the deposit, maintenance, and withdrawal of money required to be held in a trust or escrow account, or as otherwise required by the Commission, under G.S. 93A-45 of this Article. The Commission may inspect these records periodically without prior notice and may also inspect these records whenever the Commission determines that they are pertinent to an investigation of any specific complaint against a registrant.
    - (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 her 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 her or its license shall not be eligible for, or submit any application for, licensure as a real estate broker or salesperson or registration of a time share project during the period of license surrender. For the purposes

es of this section, the term licensee shall include a time share developer.

### **93A-55. Private enforcement.**

The provisions of the Article shall not be construed to limit in any manner the right of a purchaser or other person injured by a violation of this Article to bring a private action.

### **93A-56. Penalty for violation of Article.**

Except as provided in G.S. 93A-40(b) and G.S. 93A-58, any person violating the provisions of this Article shall be guilty of a Class 1 misdemeanor.

### **93A-57. Release of liens.**

- (a) Prior to any recordation of the instrument transferring a time share, the developer shall record and furnish notice to the purchaser of a release or subordination of all liens affecting that time share, or shall provide a surety bond or insurance against the lien from a company acceptable to the Commission as provided for liens on real estate in this State, or such underlying lien document shall contain a provision wherein the lienholder subordinates its rights to that of a time share purchaser who fully complies with all of the provisions and terms of the contract of sale.
- (b) Unless a time share owner or a time share owner who is his or her predecessor in title agree otherwise with the lienor, if a lien other than a mortgage or deed of trust becomes effective against more than one time share in a time share project, any time share owner is entitled to a release of his or her time share from a lien upon payment of the amount of the lien attributable to his or her time share. The amount of the payment must be proportionate to the ratio that the time share owner's liability bears to the liabilities of all time share owners whose interests are subject to the lien. Upon receipt of payment, the lien holder shall promptly deliver to the time share owner a release of the lien covering that time share. After payment, the managing agent may not assess or have a lien against that time share for any portion of the expenses incurred in connection with that lien.

### **93A-58. Registrar required; criminal penalties; project broker.**

- (a) Every developer of a registered project shall, by affidavit filed with the Commission, designate a natural person to serve as time share registrar for its registered projects. The registrar shall be responsible for the recordation of time share instruments and the release of liens required by G.S. 93A-42(c) and G.S. 93A-57(a). A developer may, from time to time, change the designated time share registrar by proper filing with the Commission and by otherwise complying with this subsection. No sales or offers to sell shall be made until the registrar is designated for a time share project.

The registrar has the duty to ensure that the provisions

of this Article are complied with in a time share project for which he or she is registrar. No registrar shall record a time share instrument except as provided by this Article.

- (b) A time share registrar shall be guilty of a Class I felony if he or she knowingly or recklessly fails to record or cause to be recorded a time share instrument as required by this Article.

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 or she intentionally allows the offering for sale or the sale of time share to purchasers without first designating a time share registrar.

- (c) The developer shall designate for each project and other locations where time shares are sold or offered for sale a project broker. The project broker shall act as supervising broker for all persons licensed as salespersons at the project or other location and shall directly, personally, and actively supervise all persons licensed as brokers or salespersons at the project or other location in a manner to reasonably ensure that the sale of time shares will be conducted in accordance with the provisions of this Chapter.

### **93A-59. Preservation of time share purchaser's claims and defenses.**

- (a) For one year following the execution of an instrument of indebtedness for the purchase of a time share, the purchaser of a time share may assert against the seller, assignee of the seller, or other holder of the instrument of indebtedness, any claims or defenses available against the developer or the original seller, and the purchaser may not waive the right to assert these claims or defenses in connection with a time share purchase. Any recovery by the purchaser on a claim asserted against an assignee of the seller or other holder of the instrument of indebtedness shall not exceed the amount paid by the purchaser under the instrument. A holder shall be the person or entity with the rights of a holder as set forth in G.S. 25-3-301.
- (b) Every instrument of indebtedness for the purchase of a time share shall set forth the following provision in a clear and conspicuous manner:

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**“NOTICE: FOR A PERIOD OF ONE YEAR FOLLOWING THE EXECUTION OF THIS INSTRUMENT OF INDEBTEDNESS, ANY HOLDER OF THIS INSTRUMENT OF INDEBTEDNESS IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE PURCHASER COULD ASSERT AGAINST THE SELLER OF THE TIME SHARE. RECOVERY BY THE PURCHASER SHALL NOT EXCEED AMOUNTS PAID BY THE PURCHASER UNDER THIS INSTRUMENT.”**

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**Sections 93A-60 through 93A-69:** Reserved for future codification purposes.

**Article 5.  
Real Estate Appraisers.  
[Repealed]**