



## NORTH CAROLINA REAL ESTATE COMMISSION

# Real Estate Bulletin

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Number 1

## SPECIAL LICENSE LAW ISSUE

Unless you have just recently been licensed as a real estate broker or salesman, you probably do not have a current copy of the North Carolina Real Estate License Law (North Carolina General Statute 93A) or the Rules and Regulations adopted by the Real Estate Commission governing your acts and practices as a real estate agent. To remedy this situation, the License Law has been reprinted in this issue of the *Bulletin* and the Commission's Rules and Regulations will appear in the next issue.

As you probably recall from your study in preparation for your license examination, the Real Estate License Law was enacted by the North Carolina General Assembly in 1957. Article 1 of the License Law essentially enumerates those acts for which a real estate license is required; establishes the qualification requirements for licensure; sets forth those acts for which a real estate licensee can be disciplined; and creates and empowers the Real Estate Commission to administer and enforce the License Law.

Article 2 of the License Law which was enacted by the General Assembly effective September 1, 1979, created the Recovery Fund whereby real estate consumers (buyers, sellers, landlords, tenants, etc.) who suffer a direct monetary loss arising out of certain specific acts committed by a licensed broker or salesman, may apply to the Real Estate Commission for compensation for their losses. However, the consumer must first obtain a final judgment against the broker or salesman which cannot be satisfied, and the amount of payment for which the Fund is liable is limited to those amounts specified in Article 2.

Article 3, also enacted in 1979, conferred upon the Real Estate Commission complete authority to license and regulate private real estate schools. This Article is not reproduced in the *Bulletin*.

And Article 4, "Time Shares", was enacted by the General Assembly effective July 1, 1984 for the purpose of regulating the sale of time shares in real estate. Among other things, it requires time share salesmen to obtain real estate broker or salesman licenses; requires developers to register their time share projects; requires salesmen to furnish potential purchasers a public offering statement; affords purchasers a 5-day "cooling off period" within which they can cancel their time share purchase agreements; and sets forth those acts for which a time share developer or salesman can be disciplined by the Real Estate Commission. At the 1985 Session of the General Assembly, the Time Share Act was amended (effective July 1, 1986) to strengthen the requirements for recording time share instruments and releasing liens affecting such time shares, including a requirement that time share developers designate someone to act as Registrar to supervise these activities.

You are urged to carefully study or re-study the License Law (especially Article 1) and to retain this copy for your files. (You may wish to remove the outside pages of this *Bulletin*.) In addition, Brokers-In-Charge are encouraged to review the License Law with their salesmen and associates. □

## LICENSE RENEWALS IN THE MAIL

On May 9, real estate license renewal forms were mailed to North Carolina's 67,000 real estate brokers, salesmen, and corporations. If you have not received your renewal application by May 19, you should contact the Real Estate Commission office for a replacement form.

To renew your license, simply check to see that your name, address and license number are correctly shown on the renewal application (strike through and correct any incorrect information on the form), and return the form and your \$20 renewal fee check to the Commission in the return envelope provided. In addition, *Brokers-In-Charge* of real estate offices must verify that they are properly shown on the renewal application of each salesman working in their office, and *Principal Brokers* of real estate brokerage corporations must verify that they are properly shown on the renewal application of the corporation. For changes other than address, the Real Estate Commission will follow up and advise you as to any additional documentation which may be required in order to effect the change.

All real estate licenses expire on June 30. Therefore, *your properly completed renewal application and fee must be received in the Commission office by June 30* to avoid expiration of your license. Persons filing renewal applications which are received after June 30 must pay a \$5 late filing fee. And persons who fail to renew their licenses within one year following expiration are required to file a new Application for Real Estate License (including photo, character reference, etc.) if they wish to have their licenses reinstated; in addition, those persons may be required to re-take all real estate education and the licensing examination in order to have their licenses reinstated. □

**SAVE THIS ISSUE  
FOR FUTURE REFERENCE**

## REAL ESTATE BULLETIN

Published quarterly as a service to real estate licensees to promote a better understanding of the Real Estate License Law, Rules and Regulations, and proficiency in ethical real estate practice. The articles published herein shall not be reprinted or reproduced in any other publication without specific reference being made to their original publication in the North Carolina Real Estate Commission Real Estate Bulletin.

### NORTH CAROLINA REAL ESTATE COMMISSION

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James G. Martin, Governor

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### EXAM RESULTS

#### EXAMINATION — February, 1986

	Passed	Failed
Brokers	103	64
Salesmen	541	378

#### EXAMINATION — March, 1986

	Passed	Failed
Brokers	137	105
Salesmen	563	332

#### EXAMINATION — April, 1986

	Passed	Failed
Brokers	139	128
Salesmen	833	554

## ADMINISTRATOR'S NOTES



L. Ted Gayle has been named Director of Audits and Investigations by the Real Estate Commission. Ted joined the Commission staff in 1980 as its first Trust Account Auditor and was later made Director of Audits. In his new position, he will assume overall responsibility for the Commission's auditing and investigative programs.



Carrie Worthington has been promoted by the Commission from Receptionist to Assistant Records Clerk. Carrie has been with the Commission staff since 1979. As Assistant Records Clerk, she will maintain records regarding the supervision of salesmen by brokers-in-charge and will answer general inquiries regarding Commission policies and procedures.

## DISBURSING TRUST FUNDS AT CLOSING

*The following is an excerpt from a letter from the Real Estate Commission's Executive Director, Phillip T. Fisher, to Betsy Anne Bradshaw, President of the North Carolina Association of REALTORS, for presentation at an April meeting of the North Carolina Bar Association.*

Dear Ms. Bradshaw:

In preparation for your upcoming speech to the North Carolina Bar Association, you have inquired as to whether our office has observed any specific problems with regard to real estate agents and attorneys involved in closing real estate transactions. We have experienced one potential problem area which perhaps should be brought to the attention of your audience.

In certain areas of our State it appears to be the practice for real estate agents to

retain earnest money deposits in their trust accounts through the closing phase of real estate transactions rather than relinquishing such funds to the closing attorney for disbursement at closing. The closing attorney assumes that such funds are on deposit in the real estate broker's trust account based primarily upon provisions to this effect in the sales contract. The attorney, however, generally makes no independent inquiry to verify this fact other than perhaps receiving a verbal assurance from the broker or the broker's bookkeeper that such funds are, in fact, on deposit in the broker's trust account. Nevertheless, the attorney indicates on the closing statement and, in effect, certifies to the lender that the deposit or earnest money has been paid by or in behalf of the borrower/purchaser.

The potential problem has become all too apparent in recent investigations and

(Continued on Inside Back Page)

### TRUST ACCOUNT SHORT COURSE

#### Registration Form

#### Instructions

1. Any real estate licensee, trust account bookkeeper or other person who handles real estate trust funds or accounts may attend.
2. These free courses are held at the McKimmon Center, Raleigh, N. C., beginning at 1:00 p.m. and require 3-3½ hours to complete.
3. To register, complete and return this form to the N.C. Real Estate Commission, P.O. Box 17100, Raleigh, N.C. 27619-7100, Attn. Ms. Hamm.
4. Registration forms must be received in the Commission Office at least 10 days prior to the course. Registrations will be confirmed in writing by the Commission and registrants furnished more detailed information concerning the location and content of this course.

\*\*\*

I wish to attend the following Trust Account Short Course.

☐ June 17

☐ July 15

☐ August 19

Name: ..... Phone: .....

Address (inc. Zip) .....

# NORTH CAROLINA REAL ESTATE LICENSE LAW

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

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## Article 1

### Real Estate Brokers and Salesmen

#### Section

- 93A-1 Licenses required.
- 93A-2 Definitions and exceptions.
- 93A-3 Real Estate Commission created; compensation; organization.
- 93A-4 Applications for licenses; fees; qualifications; examinations; privilege licenses; renewal; reinstatement; power to enforce provisions.
- 93A-5 Register of applicants; roster of brokers and salesmen; financial report.
- 93A-6 Disciplinary action by Commission.
- 93A-7 Power of courts to revoke.
- 93A-8 Penalty for violation of Chapter.
- 93A-9 Licensing nonresidents.
- 93A-10 Nonresident licensees; Consent to Service.

## Article 2

### Real Estate Recovery Fund

- 93A-16 Fund created; payment to fund; management.
- 93A-17 Application for payment out of fund; grounds.
- 93A-18 Hearing; required showing.
- 93A-19 Answer and defense by Commission; proof of conversion.
- 93A-20 Order directing payment out of fund; compromise of claims.
- 93A-21 Maximum liability; pro rata distribution; attorney fees.
- 93A-22 Repayment; automatic suspension of license.
- 93A-23 Subrogation of rights.
- 93A-24 Waiver of rights.
- 93A-25 Persons ineligible to recover from fund.
- 93A-26 Disciplinary action against licensee.

## Article 3

### Private Real Estate Schools

## Article 4

### Time Shares

#### Section

- 93A-39 Title.
- 93A-40 Registration required of time share projects; real estate salesmen license required.

- 93A-41 Definitions.
- 93A-42 Time shares deemed real estate.
- 93A-43 Partition.
- 93A-44 Public offering statement.
- 93A-45 Purchaser's right to cancel; escrow; violation.
- 93A-46 Prizes.
- 93A-47 Time shares proxies.
- 93A-48 Exchange programs.
- 93A-49 Service of process on exchange company.
- 93A-50 Securities laws apply.
- 93A-51 Rule-making authority.
- 93A-52 Application for registration of time share project; denial of registration; renewal; reinstatement; and termination of developer's interest.
- 93A-53 Register of applicants; roster of registrants; registered projects; financial report to Secretary of State.
- 93A-54 Disciplinary action by Commission.
- 93A-55 Private enforcement.
- 93A-56 Penalty for violation of Article.
- 93A-57 Release of liens.
- 93A-58 Registrar required; criminal penalties; project broker.
- 93A-59 Preservation of time share purchaser's claims and defenses

# CHAPTER 744 OF THE 1957 SESSION LAWS

Codified as Chapter 93A of the General Statutes of North Carolina, entitled "Real Estate License Law"

## ARTICLE 1.

### REAL ESTATE BROKERS AND SALESMEN

SECTION 93A-1. LICENSE REQUIRED OF REAL ESTATE BROKERS AND REAL ESTATE SALESMEN.—From and after July 1, 1957, it shall be unlawful for any person, partnership, association or corporation in this State to act as a real estate broker or real estate salesman, or directly or indirectly to engage or assume to engage in the business of real estate broker or real estate salesman or to advertise or hold himself 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.

SECTION 93A-2. DEFINITIONS AND EXCEPTIONS.—(a) A real estate broker within the meaning of this chapter is any person, partnership, association, or corporation, 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 of 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.

(b) The term real estate salesman within the meaning of this chapter shall mean and include any person who under the supervision of a real estate broker, 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, association or corporation 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 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 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 pre-

printed 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; or

- (7) Any owner who personally leases or sells his own property.

SECTION 93A-3. REAL ESTATE COMMISSION CREATED; COMPENSATION; ORGANIZATION.—(a) There is hereby created the North Carolina Real Estate Commission for issuing licenses to real estate brokers and real estate salesmen, hereinafter called the Commission. The Commission shall consist of seven members to be appointed by the Governor; provided, that at least two members of the Commission shall be licensed real estate brokers, real estate salesmen, or otherwise directly engaged in the real estate business; and at least two members of the Commission must be persons who are not involved directly or indirectly in the real estate business. Members of the Commission shall serve three-year terms, so staggered that the terms of two members expire in one year, the terms of two 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 wilful neglect of duty. The Governor shall have the power to fill all vacancies occurring on the Commission.

(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 per cent (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. 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 promul-

gate. The Commission shall fix salaries and shall require employees to make good and sufficient surety bonds for the faithful performance of their duties.

(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 expend expense reserve funds as defined in G.S. 93A-3(b) for the purpose of conducting education and information programs relating to the real estate brokerage 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.

**SECTION 93A-4. APPLICATIONS FOR LICENSES; FEES; QUALIFICATIONS; EXAMINATIONS; PRIVILEGE LICENSES; RENEWAL OR REINSTATEMENT OF LICENSE; POWER TO ENFORCE PROVISIONS.**—(a) Any person, partnership, association, or corporation hereafter desiring to enter into business of and obtain a license as a real estate broker or real estate salesman shall make written application for such license to the Commission on such forms as are prescribed by the Commission. Each applicant for a license as a real estate broker or real estate salesman shall be at least 18 years of age. Each applicant for a license as a real estate salesman shall, within five 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 30 hours of classroom instruction in subjects determined by the Commission, or 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 five years preceding the date the application is made, either have been actively engaged on a full-time basis as a licensed real estate salesman for at least two years, or have satisfactorily completed, at a school approved by the Commission, advanced courses in Real Estate Law, Real Estate Finance, and Real Estate Brokerage Operations, each consisting of at least 30 hours of classroom instruction, these courses to be in addition to those required for a real estate salesman license, or possess real estate education or experience in real estate transactions which the Commission shall find equivalent to the above requirements. Each application for license as a real estate broker shall be accompanied by a fee, fixed by the Commission but not to exceed thirty dollars (\$30.00). Each application for license as a real estate salesman shall be accompanied by a fee, fixed by the Commission but not to exceed thirty dollars (\$30.00).

(b) Any person who files such application to the Commission in proper manner for a license as real estate broker or a license as real estate salesman shall be required to take an oral or written examination to determine his qualifications with due regard to the paramount interests of the public as to the honesty, truthfulness, integrity and competency of the applicant.

The Commission may make such investigation as it deems necessary into the ethical background of the applicant. If the

results of the examination and investigation shall be satisfactory to the Commission, then the Commission shall issue to such a person a license, authorizing such person to act as a real estate broker or real estate salesman in the State of North Carolina, upon the payment of privilege taxes now required by law or that may hereafter be required by law. Anyone failing to pass an examination may be re-examined without payment of additional fee, under such rules as the Commission may adopt in such cases.

Provided, however, that any person who, at the time of the passage or at the effective date of this chapter, has a license to engage in, and is engaged in business as a real estate broker or real estate salesman and who shall file a sworn application with the Commission setting forth his qualifications, including a statement that such applicant has not within 5 years preceding the filing of the application been convicted of any felony or any misdemeanor involving moral turpitude, shall not be required to take or pass such examination, but all such persons shall be entitled to receive such license from the Commission under the provisions of this chapter on proper application therefor and payment of a fee of ten dollars (\$10.00).

(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 fee required by the Commission, which may not exceed twenty-five dollars (\$25.00). 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. All licenses reinstated after the expiration date thereof shall be subject to a late filing fee. In the event a licensee fails to obtain a reinstatement of such license within twelve 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 such reasonable rules and regulations connected with the application for any license as shall be deemed necessary to administer and enforce the provisions of this chapter. The Commission is further authorized to adopt rules and regulations necessary for the approval of real estate schools and such rules and regulations may, in accordance with G.S. 93A-4 (a), prescribe specific requirements pertaining to the teaching of mechanics and law governing real estate transactions at such schools.

(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 whether by examination or under the grandfather clause or by comity 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.

SECTION 93A-5. REGISTER OF APPLICANTS; ROSTER OF BROKERS AND SALESMEN; 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 salesmen, 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 salesmen 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 30th attested by the affidavit of the Executive Director of the Commission.

SECTION 93A-6. 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 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.

All such hearings shall be conducted in accordance with the provisions of Chapter 150A of the General Statutes. 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, salesmen, advertising or otherwise;
- (4) Acting for more than one party in a transaction without the knowledge of all parties for whom he acts;
- (5) Accepting a commission or valuable consideration as a real estate salesman for the performance of any of the acts specified in this Chapter, from any person except the licensed broker by whom he is employed;
- (6) Representing or attempting to represent a real estate broker other than the broker by whom he is engaged or associated, without the express knowledge and consent of the broker with whom he is associated;
- (7) Failing, within a reasonable time, to account for or to remit any moneys coming into his possession which belong to others;
- (8) Being unworthy or incompetent to act as a real estate broker or salesman 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 not specifically set forth in that section;
- (12) Commingling the money or other property of his principals with his 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 as a real estate broker 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 as a broker, 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 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; or
- (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 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 own property; or
- (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.

(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 principals or held in escrow or in trust for his 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.

**SECTION 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.

**SECTION 93A-8. PENALTY FOR VIOLATION OF CHAPTER.**—Any person violating the provisions of this chapter shall upon conviction thereof be deemed guilty of a misdemeanor and shall be punished by a fine or imprisonment, or by both fine and imprisonment, in the discretion of the court.

**SECTION 93A-9. LICENSING NONRESIDENTS.**—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 salesman duly licensed in another state if a similar exemption is extended to licensed brokers and salesmen from North Carolina.

**SECTION 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 authenticated by its seal. An application from a corporation shall be accompanied by a duly certified copy of the resolution of the board of directors, authorizing the proper officers to execute it. 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.

**SECTIONS 93A-11 to 93A-15; Reserved for future codification purposes.**

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

**SECTION 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 person 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, if on December 31 of any year the amount remaining in the real estate recovery fund is less than fifty thousand dollars (\$50,000) the Commission may at its option replenish the fund from whatever funds it has or may determine that each licensee under this Chapter, when renewing his license, shall pay in addition to his license renewal fee, a fee not to exceed ten dollars (\$10.00) per broker and five dollars (\$5.00) per salesman as shall be determined by the Commission for the purpose of replenishing the fund.

(c) The Commission shall invest and reinvest the monies 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.

**SECTION 93A-17. APPLICATION FOR PAYMENT OUT OF FUND; GROUNDS.**—(a) When any aggrieved person obtains final judgment in any court of competent jurisdiction against any real estate broker or salesman licensed under this Chapter on grounds of conversion of trust funds arising directly out of any transaction which occurred when such broker or salesman was licensed and acted in a capacity for which a license is required under this Chapter and which transaction occurred on or after September 1, 1979, such person may, upon termination of all proceedings including appeals, file a verified application in the court in which judgment was entered for an order directing payment out of the real estate recovery fund of the amount remaining unpaid upon the judgment which represents an actual and direct loss sustained by reason of said conversion of trust funds.

In case of a judgment rendered by a magistrate in a small claims action, the aggrieved person shall file such verified application in the district court. The district court judge may then make a determination as to whether such judgment rendered by a magistrate was based on facts constituting grounds for recovery under this Article and may enter an order directing payment of such judgment out of the real estate recovery fund.

A copy of the verified application shall be served upon the Commission and the judgment debtor and a certificate or affidavit of such service filed with the court. Jurisdiction of the court against the fund or the Commission shall not attach under this Article until after judgment is obtained against a licensee and execution is returned unsatisfied.

(b) For purposes of this Chapter, the term "trust funds" shall include all down payments, earnest money deposits, advance listing fees and other monies received on behalf of his principal or any other person by a real estate broker or salesman licensed under this Chapter, under the terms of an express or implied agreement that the broker or salesman is not entitled to retain all or a portion of such monies until the occurrence of some future event.

(c) For the purposes of Article 2 of this Chapter, the terms "licensee", "broker", and "salesman" shall include only individual persons licensed under this Chapter as brokers and salesmen and shall not include a corporation or other entity licensed under this Chapter.

**SECTION 93A-18. HEARING; REQUIRED SHOWING.**—Upon such application by an aggrieved person, the court shall conduct a hearing and the aggrieved person shall be required to show:

- (1) he is not a spouse of the judgment debtor or a person representing such spouse; and
- (2) he is making application not more than one year after termination of all proceedings, including appeals, in connection with the judgment;
- (3) he has complied with all requirements of this Article;
- (4) he has obtained a judgment as described in G.S. 93A-17, stating the amount owing thereon at the date of application;
- (5) he 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 has discovered no real or personal property or other assets liable to be sold or applied, or that he 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 has diligently pursued his remedies including attempted execution on the judgment against all the judgment debtors which execution has been returned unsatisfied. In addition to that, he knows of no assets of the judgment debtor and that he has attempted collection from all other persons who may be liable to him in the transaction for which he seeks payment from the real estate recovery fund if there be any such other persons.

**SECTION 93A-19. ANSWER AND DEFENSE BY COMMISSION; PROOF OF CONVERSION.**—(a) Whenever the court proceeds upon an application as set forth in this Article the Commission may defend such action on behalf of the fund and shall have recourse to all appropriate means of defense and review, including examination of witnesses. The judgment debtor may defend such action on his own behalf and shall have recourse to all appropriate means of defense and review, including examination of witnesses. At any time it appears there are no triable issues of fact and the application for an order directing payment from the fund is without merit, the court shall dismiss the application. 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 and the judgment referred to therein do not form the basis for a meritorious recovery within the purview of G.S. 93A-17 or that the applicant has not complied with the provisions of G.S. 93A-18; provided, however, notice of such motion shall be given at least 10 days prior to the time fixed for hearing.

(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 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.

**SECTION 93A-20. ORDER DIRECTING PAYMENT OUT OF FUND; COMPROMISE OF CLAIMS.**—If the court finds after said hearing that the claim should be levied against the fund, the court shall enter an order directed to the Commission requiring payment from the fund of whatever sum the court shall find to be payable upon the claim in accordance with the limitations contained in this Article. The Commission may, subject to court approval, compromise a claim based upon the application of an aggrieved party; however, the Commission shall not be bound in any way by any prior compromise or stipulation of the judgment debtor.

**SECTION 93A-21. MAXIMUM LIABILITY; 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 ten thousand dollars (\$10,000) 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 ten thousand dollars (\$10,000) for any one licensee within a single calendar year, and in no event shall it exceed in the aggregate twenty thousand dollars (\$20,000) for any one licensee.

(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 court deems equitable. Upon petition of the Commission, the court may require all claimants and prospective claimants to be joined in one action to the end that the respective rights of all such claimants to the real estate recovery fund may be equitably adjudicated and settled.

(c) In the event an aggrieved person is entitled to payment from the fund in an amount of one thousand dollars (\$1,000) or less, the court 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.

**SECTION 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 salesman, the license of the broker or salesman shall be automatically suspended upon the effective date of an order by the court authorizing payment from the fund. No such broker or salesman shall be granted a reinstatement until he 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.

**SECTION 93A-23. SUBROGATION OF RIGHTS.**—When, upon order of the court, 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 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.

**SECTION 93A-24. WAIVER OF RIGHTS.**—The failure of an aggrieved person to comply with this Article shall constitute a waiver of any rights hereunder.

**SECTION 93A-25. PERSONS INELIGIBLE TO RECOVER FROM FUND.**—No real estate broker or real estate salesman who suffers the loss of any commission from any transaction in which he was acting in the capacity of a real estate broker or real estate salesman shall be entitled to make application for payment from the real estate recovery fund for such loss.

**SECTION 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 to 93A-31;** Reserved for future codification purposes.

*Applicants for real estate licenses will not be tested on Article 2 of the Real Estate License Law. However, applicants should be aware of the existence and purpose of the Real Estate Recovery Fund.*

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

*Applicants for real estate licenses will not be tested on Article 3 of the Real Estate License Law. Interested persons may obtain a copy of Article 3 by making written request to the North Carolina Real Estate Commission.*

### **ARTICLE 4. TIME SHARES**

**SECTION 93A-39. TITLE.**—This Article shall be known and may be cited as the "North Carolina Time Share Act."

**SECTION 93A-40. REGISTRATION REQUIRED OF TIME SHARE PROJECTS; REAL ESTATE SALESMEN 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 salesman without first obtaining a real estate broker or salesman license issued by the North Carolina Real Estate Commission under the provisions of Article 1 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.

**SECTION 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 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;

(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 salesmen 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, or vacation bond;

(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 salesman" 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.

**SECTION 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 timeshare may in accordance with G.S. 47-18 register the time share instrument by which he acquired his 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 120 days following the execution of the contract of sale by the purchaser, provided that all pay-

ments 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 independent escrow agent shall return all payments to the purchaser at the expiration of 120 days following the execution of the contract of sale by the purchaser, unless prior to that time the time share instrument has been recorded. 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.

(e) In no event shall the developer be required to record a time share instrument if the purchaser is in default of his 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.

SECTION 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.

SECTION 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.

SECTION 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 salesman. 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 salesman in connection with the sale of a time share shall be immediately deposited by such developer or salesman 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 has received the statement required by subsection (a) is *prima facie* evidence of delivery of such statement.

SECTION 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.

SECTION 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.

SECTION 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 time share in any properly applied for exchange without his 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 request 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).

**SECTION 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.

SECTION 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 salesman registered under Article 1 of this Chapter shall not be subject to the provisions of G.S. 78A-36.

SECTION 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.

SECTION 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 salesmen 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 authorizing 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 150A 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 project 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.

SECTION 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.

SECTION 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 salesman, 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 salesman, developer, or project broker has violated any of the provisions of this Article, the Commission may hold a hearing on the allegations of misconduct. All such hearings shall be conducted in accordance with the provisions of Chapter 150A of the General Statutes.

The Commission shall have the power to suspend or revoke at any time a real estate license issued to a time share salesman or project broker, or a certificate of registration of a time share project issued to a developer; or to reprimand or censure such salesman, 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 salesman, 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, salesmen, 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 salesman 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; or
- (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 project or location by the brokers and salesmen under his control.

(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.

SECTION 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.

SECTION 93A-56. PENALTY FOR VIOLATION OF ARTICLE.—Except as provided in G.S. 93A-58, any person violating the provisions of this Article shall be guilty of a misdemeanor and shall be punished by a fine, imprisonment, or both, in the discretion of the court.

SECTION 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 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 time share from a lien upon payment of the amount of the lien attributable to his 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.

SECTION 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 is registrar. No registrar shall record a time share instrument except as provided by this Article.

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

(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 salesmen at the project or other location and shall directly, personally, and actively supervise all persons licensed as brokers or salesmen 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.

SECTION 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:

*“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.”*

*Applicants for real estate licenses will **not** be tested on the following Sections of Article 4 “Time Shares”: Sections 93A-43, 93A-46, 93A-47, 93A-48, 93A-49, 93A-50, 93A-52, 93A-53, 93A-57 and 93A-59. However, applicants should be familiar with the information contained in these Sections.*

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## DISBURSING

(Continued from Inside Front Page)

audits of real estate brokers by our staff where we have found that some brokers have exploited this practice for the purpose of defrauding innocent lenders. They begin by preparing (with the consent or acquiescence of the buyer and seller) a false sales contract containing an inflated sales price sufficient to cover some or all of the purchaser's down payment required by the lender as a condition for making the loan. The contract also falsely recites that the purchaser has paid to the broker an earnest money deposit which is being held by the broker in his or her trust account, when, in fact, no deposit has been made. Assuming that the property which is being purchased is appraised for the amount of the inflated sales price, the lender then agrees to make the loan on the mistaken belief that the purchaser has made the required cash down payment. This false impression is further compounded by the closing attorney's settlement statement to the effect that such funds were paid by the borrower. These false statements initiated by the broker and neglected by the closing attorney will, if discovered, affect both the security of the lender and the negotiability of the mortgage instrument in the secondary mortgage market.

We recognize that this clearly improper practice cannot be entirely eliminated by the attorney's requirement that the broker pay to the attorney at or prior to closing all funds which are to be disbursed. However, the Real Estate Commission feels that this highly deceptive practice could be discouraged if closing attorneys required that they receive and account for all monies which brokers represent were received from purchasers/borrowers in real estate transactions.

Yours very truly,  
PHILLIP T. FISHER  
Executive Director  
N. C. Real Estate Commission

### CAVEAT

**Real estate brokers are urged to transfer to the closing attorney all earnest money deposits and other funds collected from the parties for disbursement at closing. Brokers are also strongly encouraged to utilize the services of attorneys experienced in closing real estate transactions rather than attempting to close transactions "in house". □**

## DISCIPLINARY ACTION

*Penalties for violations of the Real Estate License Law and Commission Rules and Regulations vary depending upon the particular facts and circumstances present in each case. Due to space limitations in the Bulletin, a complete description of such facts cannot be reported in the following Disciplinary Action summaries.*

ATLANTIC MANAGEMENT CORPORATION d/b/a A.G.P. MANAGEMENT CORPORATION (Chapel Hill, Raleigh) — The Commission revoked the corporate real estate broker's license of Atlantic Management Corporation effective March 11, 1986. The Commission found that the corporation had acted as leasing agent and rental manager for two North Carolina condominium projects prior to obtaining the necessary corporation real estate license. Subsequent to obtaining a corporate real estate license, the Commission found that Atlantic Management had engaged in real estate brokerage without a properly licensed principal broker. As leasing agent and administrator of the homeowners association for the two projects, the corporation was found by the Commission to have wrongfully retained rents; failed to maintain rents in a trust or escrow account; willfully failed to pay over \$31,000 in homeowners fees and assessments for units which it owned; and wrongfully paid from homeowners association funds approximately \$3,000 in expenses for a coin laundry from which the corporation received the profits. When audited by the Commission, a shortage of between \$28,000 and \$30,000 was found in their tenant security deposit trust account.

GARY L. BRIMMAGE (Durham) — By Consent, the Commission reprimanded Mr. Brimmage for erroneously furnishing a lender a sales contract other than the final sales contract executed by the buyer and seller. The Commission determined that Mr. Brimmage acted through negligence with no intent to defraud either the lending institution or the parties.

COASTAL MARKETING & DEVELOPMENT CORPORATION OF

NORTH CAROLINA (Wilmington) — The Commission revoked the corporate real estate broker's license of Coastal Marketing & Development Corporation effective March 6, 1986. The Commission found that the corporation through its president, James D. Couey, had obtained a real estate broker's license upon false representations made in the corporation's application for licensure.

JAMES D. COUEY (Wilmington) — The Commission suspended Mr. Couey's salesman's license for one year effective March 10, 1986 for making false statements in his application for licensure.

GLORIA H. ESTES (Boone) — The Commission suspended Ms. Estes' broker's license for six months effective April 1, 1986. The Commission then suspended its Order and placed Ms. Estes on probation for six months. The Commission found that Ms. Estes, while serving as principal broker and vice-president of Sugar Mountain Development Corporation and Spectrum Management & Real Estate Company, Inc., the developer and manager respectively of the Westridge at Sugar time share project, had knowingly sold a time share at the Westridge project after the project's registration certificate had been revoked by the Commission. The Commission also found that Ms. Estes had been convicted of a crime involving moral turpitude.

ANN SHAW HEWETT (Greensboro) — The Commission suspended Ms. Hewett's salesman's license for one year effective February 17, 1986. Three months of the suspension are to be active and the remaining nine months on probation. The Commission found that Ms. Hewett had made a false statement in her application for licensure.

DAVID L. JOYNER; BARNEY G. JOYNER; JOYNER REALTY COMPANY, INC. (Raleigh) — The Commission suspended for six months the broker's license of David L. Joyner and Barney G. Joyner and the corporate real estate broker's license of Joyner Realty Company, Inc. effective January 15,

(Continued on Next Page)

# DISCIPLINARY ACTION

(Continued from Previous Page)

1986. The Commission then suspended its Order and placed them on probation for one year on condition that all persons associated with Joyner Realty Company, Inc. who handle the funds of others, attend the Commission's Trust Account Short Course and that the company's accounts and records be audited by the Commission on or after June 30, 1986. The Commission found that while acting as property managers, they misrepresented to property owners the actual amount of charges paid for repairs to the owners' property; they failed to deposit the funds of others in accounts properly designated as trust or escrow accounts; and they deposited the funds of others in interest-bearing accounts and retained the interest thereon without the knowledge and the written authority of the persons for whom the funds were being held. The Commission noted that following an audit of their accounts, they began to employ written leases and management agreements which authorized them to earn interest on the funds of others.

**JULIUS J. LYON, III; LYON REALTY & INSURANCE COMPANY, INC., (Kinston)** — By Consent, the Commission revoked Mr. Lyon's broker's license effective February 5, 1986 and the corporate real estate broker's license of Lyon Realty & Insurance Company, Inc. effective March 7, 1986. The Commission found that Mr. Lyon, as

principal broker of Lyon Realty & Insurance Company, Inc., had failed to remit an earnest money deposit to the party entitled to such funds and had failed to produce his trust account records for examination by the Commission's investigator. In separate transactions, the Commission also found that Mr. Lyon had failed to account for and promptly remit certain tenant security deposits and rents collected on behalf of a property owner, and had failed to produce trust account records relating to these transactions.

**PAUL J. NEWTON (Winston-Salem)** — The Commission suspended Mr. Newton's broker's license for one year effective April 1, 1986. Three months of the suspension are to be active and the remaining nine months on probation on condition that he attend the Commission's Trust Account Short Course. The Commission found that Mr. Newton had, while acting as a rental agent and property manager, commingled the money of his principals with his own and had failed to deposit and maintain the funds of others in a trust account.

**PATRICIA L. PAYNE (Southport)** — The Commission revoked Ms. Payne's

salesman's license effective April 1, 1986. The Commission found that Ms. Payne, while acting as bookkeeper for a real estate firm, had failed in 29 instances to deposit in a trust account cash monies entrusted to her, and then altered the firm's copies of the deposit tickets to indicate that such funds had been deposited. The Commission noted that the owner/broker-in-charge of the office at which Ms. Payne was employed replaced all missing funds with his own funds.

**SPECTRUM MANAGEMENT & REAL ESTATE COMPANY, INC. (Boone)** — By Consent, the Commission revoked the corporate real estate broker's license of Spectrum Management & Real Estate Company, Inc. effective March 1, 1986 for using a listing contract that did not provide for termination in a definite period of time.

**SUGAR MOUNTAIN DEVELOPMENT CORPORATION (Boone)** — By Consent, the Commission revoked the corporate real estate broker's license of Sugar Mountain Development Corporation for contracting to sell a time share at the Westridge at Sugar time share project after the project's registration certificate had been revoked by the Commission.

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## YOUR REAL ESTATE LICENSE EXPIRES JUNE 30

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**ON THE INSIDE . . .**

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