

March 10, 2009

S 516. COMMUNITY ASSOCIATION MANAGERS LICENSURE. Filed 3/10/09. *ESTABLISHING THE COMMUNITY ASSOCIATION MANAGERS LICENSURE ACT.*

Enacts new Article 6, "Community Association Managers Licensure Act" of GS Chapter 93A. Provides that on or after October 1, 2010, it is unlawful for any person in the state to act as a community association manager, directly or indirectly engage in the business of community association management, hold himself or herself out to be a community association manager, or use the title "Licensed Community Association Manager," or "Community Association Manager" without being licensed by the NC Licensure Board for Community Association Managers. Provides that the Board may issue licenses only to individuals. Defines *community association* as an association of the owners of residential condominiums, time-shares, town houses, apartments, or lots in a planned community or subdivision that is subject to a uniform scheme of restrictive covenants in which owner membership is made mandatory and is authorized to collect dues, assessments, or other payments from owner members. Defines *community association manager* as any person who for valuable consideration or the expectation thereof, performs two or more of the following acts or services for a community association: (1) acts with the authority of a community association in its business, legal, financial, or other transactions with association members and nonmembers; (2) executes the resolutions and decisions of the government of a community association or, with the authority of the association, enforces the rights of the association secured by statute, contract, covenant, rule, or bylaw; (3) collects, disburses, or otherwise exercises dominion or control over money or other property belonging to a community association; (4) prepares budgets, financial statements, or other financial reports for a community association; (5) arranges, conducts, or coordinates meetings of a community association or the governing body of a community association; (6) negotiates contracts or otherwise coordinates or arranges for services or the purchase of property and goods for or on behalf of a community association; or (7) offers or solicits to perform any of the acts or services listed in 1-6 on behalf of a community association.

Specifies exemptions from the licensing requirement. Establishes the 7 member Board, with specified members to be appointed by the Governor, or by the General Assembly, upon the recommendation of the President Pro Tempore of the Senate and the Speaker of the House. Members serve 4 year staggered terms and may not serve more than two consecutive full terms. Provides for the filling of vacancies, removal, compensation, the election of officers, and meetings. Enumerates the Board's powers and duties. Establishes requirements for licensure, including passing a licensing exam and presenting evidence of the successful completion of specified programs. Provides that any person who submits proof within one year of the act's effective date that the person has been actively engaged in business as a community association manager for compensation in the state for at least 3 consecutive years before the act's effective date and pays the licensing fee is to be issued a license without having to satisfy the licensure requirements.

Allows an applicant to request a hearing before the Board within 60 days following the mailing of a notice that the applicant does not possess the character and fitness for licensure.

Requires every community association manager engaged in community association management to be covered at all times by a fidelity bond or an insurance policy in the amount of \$20,000. Sets out requirements for the fidelity bond. Establishes requirements that must be met by a community association manager with custody, dominion, or control of money belonging to a community association or money belonging to a member of a community association. Allows the Board to establish various fees and sets the maximum amounts for those fees, including a \$150 license issuance fee. Provides that licenses expire on September 30 of each year and establishes the renewal requirements. Provides for an inactive license. Allows the Board to establish programs for continuing education. Requires every community association whose membership includes the owners of 20 or more residential condominiums, town houses, apartments, or lots to register with the Board and provide specified information about the association. Provides for disciplinary action by the Board. Requires individuals licensed under this Article to maintain full and accurate business records, which must be furnished to the Board on demand without prior notice.

Violation of the Article is a Class 2 misdemeanor and each unlawful act constitutes a distinct and separate offense. Allows the Board to apply to an appropriate court for an order enjoining violations of the Article.

Amends GS 93A-6(a)(12) to provide that a real estate broker who is also a licensed community association manager is not subject to disciplinary action by the North Carolina Real Estate Commission for handling and accounting for money belonging to the community association in compliance with Article 6 of GS Chapter 93A.

Intro. by Hunt.

GS 93A

July 20, 2009

S 516. COMMUNITY ASSOCIATION MANAGERS LICENSURE. Filed 3/10/09. Senate committee substitute makes the following changes to 1st edition. Adds an exemption in proposed GS 93A-89 to the requirements of proposed Article 6 of GS Chapter 93A for a person, including a governmental agency, redevelopment authority, or redevelopment commission who (1) undertook the development, (2) has a legal or equitable interest in the property developed, and (3) provides community association management to unit or lot owners other than the declarant for a maximum of 30 days after the conveyance of all units or lots (including units or lots which may be created pursuant to special declarant rights).

Clarifies in proposed GS 93A-91 that the NC Licensure Board for Community Association Managers (Board) must adopt (was, adopt, amend, or repeal) rules as may be necessary to carry out the Article's provisions.

Adds proposed GS 93A-92 to the required criteria for licensure as a community association manager that, in lieu of passing the licensing examination, evidence may be presented of the successful completion of the Association Management Specialist designation administered by the Community Associations Institute. Also deletes that the applicant must *affirmatively* demonstrate to the Board that the applicant possesses good moral character and the honesty, truthfulness, and integrity necessary to protect the interests of the public and promote public confidence in licensed community association managers.

Clarifies in proposed GS 93A-93 that a fidelity bond must, in addition to meeting other conditions, cover the community association manager and all *or a portion of* the employees and protect all *or a portion of* the community association funds in custody of the manager or the manager's supervised employees.

Deletes the provision from proposed GS 93A-97 that prohibited an association that failed to register with the Board from suing in court or otherwise pursuing any legal remedy available to it until the association registers and pays any delinquent registration fees.

Clarifies in proposed GS 93A-98 that the Board may suspend or revoke a license, or reprimand a licensee, if following a hearing the Board finds the applicant engaged in (1) any other conduct that is fraudulent (was, dishonest or fraudulent) or (2) gross negligence or *gross* incompetence as a manager. Also deletes that commingling *other money* with money belonging to a community association is grounds for suspension, revocation, or reprimand, but retains the prohibition on commingling the manager's own money with association money. Provides that the Board may obtain access to records in accordance with GS 53B-5 (was, the Board is exempt from the provisions of GS Chapter 53B) when the Board's subpoena seeks the production of records of money belonging to a community association or an association member held by a financial institution.

Allows proof of active engagement as a community association manager to be shown by evidence of regular performance, over three or more years, of two or more of the acts or services enumerated in proposed GS 93A-87.

Makes various technical and clarifying changes throughout the act.