

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

S

D

SENATE BILL 590
Commerce and Insurance Committee Substitute Adopted 6/26/19
PROPOSED COMMITTEE SUBSTITUTE S590-PCS35313-RBf-13

Short Title: Modify Continuing Ed for Real Estate Brokers.

(Public)

Sponsors:

Referred to:

April 4, 2019

1 A BILL TO BE ENTITLED
2 AN ACT TO MODIFY CONTINUING EDUCATION REQUIREMENTS FOR REAL
3 ESTATE BROKERS AND TO MODIFY REAL ESTATE LICENSING REQUIREMENTS
4 FOR TIME SHARE SALESPEOPLE.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 93A-4 reads as rewritten:

7 "§ 93A-4. Applications for licenses; fees; qualifications; examinations; privilege licenses;
8 renewal or reinstatement of license; power to enforce provisions.

9 (a) Any person, partnership, corporation, limited liability company, association, or other
10 business entity hereafter desiring to enter into business of and obtain a license as a real estate
11 broker shall make written application for such license to the Commission in the form and manner
12 prescribed by the Commission. Each applicant for a license as a real estate broker shall be at least
13 18 years of age. Each applicant for a license as a real estate broker shall, within three years
14 preceding the date the application is made, have satisfactorily completed, ~~at a school approved~~
15 through a real estate education provider certified by the Commission, an education program
16 consisting of at least 75 hours of instruction in subjects determined by the Commission, or shall
17 possess real estate education or experience in real estate transactions which the Commission shall
18 find equivalent to the education program. Each applicant for a license as a real estate broker shall
19 be required to pay a fee. The application fee shall be one hundred dollars (\$100.00) unless the
20 Commission sets the fee at a higher amount by rule; however, the Commission shall not set a fee
21 that exceeds one hundred twenty dollars (\$120.00). The application fee shall not increase by
22 more than five dollars (\$5.00) during a 12-month period.

23 (a1) Each person who is issued a real estate broker license on or after April 1, 2006, shall
24 initially be classified as a provisional broker and shall, within ~~three years~~ 18 months following
25 initial licensure, satisfactorily complete, ~~at a school approved through a real estate education~~
26 provider certified by the Commission, a postlicensing education program consisting of 90 hours
27 of instruction in subjects determined by the Commission or shall possess real estate education or
28 experience in real estate transactions which the Commission shall find equivalent to the education
29 program. The Commission may, by rule, establish a schedule for completion of the prescribed
30 postlicensing education that requires provisional brokers to complete portions of the 90-hour
31 postlicensing education program in less than ~~three years~~ 18 months, and provisional brokers
32 must comply with this schedule in order to be entitled to actively engage in real estate brokerage.
33 Upon completion of the postlicensing education program, the provisional status of the broker's
34 license shall be terminated. When a provisional broker fails to complete all 90 hours of required
35 postlicensing education within ~~three years~~ 18 months following initial licensure, the broker's



* S 5 9 0 - P C S 3 5 3 1 3 - R B F - 1 3 *

1 license shall be placed on inactive status. The broker's license shall not be returned to active
 2 status until he or she has satisfied such requirements as the Commission may by rule require.
 3 Every license cancelled after April 1, 2009, because the licensee failed to complete postlicensing
 4 education shall be reinstated on inactive status until such time as the licensee satisfies the
 5 requirements for returning to active status as the Commission may by rule require.

6 (a2) ~~An approved school~~ A certified real estate education provider shall pay a fee of ten
 7 dollars (\$10.00) per licensee to the Commission for each licensee completing a postlicensing
 8 education course conducted by the school, provided that these fees shall not be charged to a
 9 community college, junior college, college, or university located in this State and accredited by
 10 the Southern Association of Colleges and Schools.

11 ...

12 (d) The Commission is expressly vested with the power and authority to make and
 13 enforce any and all reasonable rules and regulations connected with license application,
 14 examination, renewal, and reinstatement as shall be deemed necessary to administer and enforce
 15 the provisions of this Chapter. The Commission is further authorized to adopt reasonable rules
 16 and regulations necessary for the ~~approval~~ certification of real estate ~~schools~~, education
 17 providers, instructors, and textbooks and rules that prescribe specific requirements pertaining to
 18 instruction, administration, and content of required education courses and programs.

19"

20 **SECTION 2.1.** G.S. 93A-4.1 is repealed.

21 **SECTION 2.2.** G.S. 93A-4.2 reads as rewritten:

22 **"§ 93A-4.2. Broker-in-charge qualification.**

23 To be qualified to serve as a broker-in-charge of a real estate office, a real estate broker shall
 24 possess at least two years of full-time real estate brokerage experience or equivalent part-time
 25 real estate brokerage experience within the previous five years or real estate education or
 26 experience in real estate transactions that the Commission finds equivalent to such experience
 27 and shall complete, within a time prescribed by the Commission, ~~a course of study~~ an education
 28 program prescribed by the Commission for brokers-in-charge not to exceed 12 ~~classroom~~ hours
 29 of instruction. A provisional broker may not be designated as a broker-in-charge.

30 **SECTION 3.** Article 3 of Chapter 93A of the General Statutes reads as rewritten:

31 "Article 3.

32 "Private Real Estate ~~Schools~~ Education Providers and Continuing Education Requirements.

33 **"§ 93A-32. Definitions.**

34 As used in this Article:

35 (1) "Commission" means the North Carolina Real Estate Commission.

36 (2) "Private real estate ~~school~~ education provider" or "education provider" means
 37 any individual or real estate educational entity which is privately ~~owned and~~
 38 ~~operated by an individual, partnership, corporation, limited liability company,~~
 39 ~~or association, and which conducts, owned and conducting,~~ for a profit or
 40 tuition charge, real estate broker ~~prelicensing or postlicensing~~ prelicensing,
 41 postlicensing, or continuing education courses prescribed by G.S. 93A-4(a) or
 42 ~~(a1), (a1)~~ or G.S. 93A-38.5, provided that a proprietary business or trade
 43 school licensed by the State Board of Community Colleges under
 44 G.S. 115D-90 to conduct courses other than those real estate courses described
 45 herein shall not be considered to be a private real estate ~~school~~ education
 46 provider.

47 **"§ 93A-33. Commission to administer ~~Article; authority of Commission to conduct~~**
 48 **investigations, issue licenses, and promulgate regulations. Article.**

49 The Commission shall have authority to administer and enforce this Article and to ~~issue~~
 50 ~~licenses to certify~~ private real estate ~~schools~~ education providers as defined herein which have
 51 complied with the requirements of this Article and regulations promulgated by the Commission.

1 Through ~~licensing~~ certification applications, periodic reports required of ~~licensed schools,~~
2 ~~education providers,~~ periodic ~~investigations and inspections of schools,~~ investigations, and
3 appropriate regulations, the Commission shall exercise general supervisory authority over private
4 real estate ~~schools,~~ education providers, the object of such supervision being to protect the public
5 interest and to assure the conduct of quality real estate education programs. To this end the
6 Commission is authorized and directed to promulgate such regulations as it deems necessary
7 which are not inconsistent with the provisions of this Article and which relate to the subject areas
8 set out in G.S. 93A-34(c).

9 "**§ 93A-34. License-Certification required; application for license; certification; fees;**
10 **requirements for issuance of license-certification.**

11 (a) No person, partnership, ~~corporation or association~~ corporation, association,
12 individual, or other entity shall operate ~~or maintain~~ or offer to operate in this ~~State~~ State, whether
13 live or in any online format, as a private real estate school-education provider as defined herein
14 unless a license-certification is first obtained from the Commission in accordance with the
15 provisions of this Article and the rules and regulations promulgated by the Commission under
16 this Article. For ~~licensing~~ certification purposes, each branch location where a ~~school-an~~
17 education provider conducts courses shall be considered a separate ~~school~~ location requiring a
18 separate license-certification.

19 (b) Application for a license-certification shall be filed in the manner and upon the forms
20 prescribed by the Commission for that purpose. The Commission may by rule set nonrefundable
21 application fees not to exceed two hundred fifty dollars (\$250.00) for each ~~school location~~
22 education provider and fifty dollars (\$50.00) for each real estate broker prelicensing or
23 postlicensing course. The application for a license-certification shall be accompanied by the
24 appropriate ~~fees and shall contain the following: fees.~~

- 25 (1) ~~Name and address of the applicant and the school;~~
- 26 (2) ~~Names, biographical data, and qualifications of director, administrators and~~
27 ~~instructors;~~
- 28 (3) ~~Description of school facilities and equipment;~~
- 29 (4) ~~Description of course(s) to be offered and instructional materials to be~~
30 ~~utilized;~~
- 31 (5) ~~Information on financial resources available to equip and operate the school;~~
- 32 (6) ~~Information on school policies and procedures regarding administration,~~
33 ~~record keeping, entrance requirements, registration, tuition and fees, grades,~~
34 ~~student progress, attendance, and student conduct;~~
- 35 (7) ~~Copies of bulletins, catalogues and other official publications;~~
- 36 (8) ~~Copy of bond required by G.S. 93A-36;~~
- 37 (9) ~~Such additional information as the Commission may deem necessary to enable~~
38 ~~it to determine the adequacy of the instructional program and the ability of the~~
39 ~~applicant to operate a school in such a manner as would best serve the public~~
40 ~~interest.~~

41 (b1) Applications for education providers utilizing methods other than only distance
42 education shall contain all of the following:

- 43 (1) Name and address of the applicant.
- 44 (2) Names, biographical data, and qualifications of director, administrators, and
45 instructors.
- 46 (3) Description of education provider school facilities and equipment, if any.
- 47 (4) Description of course or courses to be offered and instructional materials to
48 be utilized.
- 49 (5) Information on policies and procedures regarding administration, record
50 keeping, entrance requirements, registration, tuition and fees, grades, student
51 progress, attendance, and student conduct.

- 1 (6) Copies of bulletins, catalogues, and other official publications.
 2 (7) Copy of bond required by G.S. 93A-36.
 3 (8) Any additional information as the Commission may deem necessary to enable
 4 it to determine the adequacy of the instructional program and the ability of the
 5 applicant to operate in such a manner as would best serve the public interest.

6 (c) After due investigation and consideration by the Commission, ~~a license-certification~~
 7 shall be issued to the applicant when it is shown to the satisfaction of the Commission that the
 8 applicant and school are in compliance with the following standards, as well as the requirements
 9 of any supplemental regulations of the Commission regarding these standards:

- 10 ...
 11 (4) The ~~school-education provider~~ has adopted adequate policies and procedures
 12 regarding administration, instruction, record keeping, entrance requirements,
 13 registration, tuition and fees, grades, student progress, attendance, and student
 14 conduct.
 15 (5) The ~~school-education provider~~ publishes and provides to all students upon
 16 enrollment a bulletin, catalogue or similar official publication which is
 17 certified as being true and correct in content and policy by an authorized
 18 school official, and which contains all of the following information:
 19 a. Identifying data and publication ~~date;~~date.
 20 b. ~~Name(s)-Name or names of school-education provider or providers and~~
 21 its full-time officials and faculty;faculty.
 22 c. ~~School's-Education provider's~~ policies and procedures relating to
 23 entrance requirements, registration, grades, student progress,
 24 attendance, student conduct and refund of tuition and ~~fees;~~fees.
 25 d. Detailed schedule of tuition and ~~fees;~~fees.
 26 e. Detailed course outline of all courses offered.
 27 ...
 28 (9) The ~~school's-education provider's~~ owner(s), director, administrators and
 29 instructors are of good reputation and character.
 30 (10) The ~~school's-education provider's~~ facilities and equipment comply with all
 31 applicable local, State and federal laws and regulations regarding health,
 32 safety, and welfare, including the Americans with Disabilities Act and other
 33 laws relating to accessibility standards for places of public accommodation.
 34 (11) The ~~school-education provider~~ does not utilize advertising of any type which
 35 is false or misleading, either by actual statement, omission or intimation.
 36 (12) Such additional standards as may be deemed necessary by the Commission to
 37 assure the conduct of adequate instructional programs and the operation of
 38 ~~schools-education providers~~ in a manner which will best serve the public
 39 interest.

40 **"§ 93A-35. Duration and renewal of ~~licenses;~~ certifications; transfer of school ownership.**

41 (a) All ~~licenses-certifications~~ issued shall expire on June 30 following the date of
 42 issuance.

43 (b) ~~Licenses-Certifications~~ shall be renewable annually on July 1, provided that a renewal
 44 application accompanied by the appropriate renewal fees has been filed not later than June 1 in
 45 the form and manner prescribed by the Commission, and provided further that the applicant and
 46 ~~school-education provider~~ are found to be in compliance with the standards established for
 47 issuance of an original ~~license-certification.~~ The Commission may by rule set nonrefundable
 48 renewal fees not to exceed one hundred twenty-five dollars (\$125.00) for each ~~school-education~~
 49 provider location and twenty-five dollars (\$25.00) for each real estate broker prelicensing and
 50 postlicensing course.

1 (c) In the event ~~a school~~ an education provider entity is sold or ownership is otherwise
2 transferred, the ~~license~~ certification issued to the original owner is not transferable to the new
3 owner. ~~Such~~ The new owner must make application apply for an original ~~license~~ certification as
4 prescribed by this Article and Commission regulations.

5 **"§ 93A-36. Execution of bond required; applicability to branch schools; actions upon bond.**

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

21 (b) In any and all cases where the party licensed by the Commission fails to fulfill its
22 obligations under any contract or agreement, written or verbal, made and entered into with any
23 student, then the State of North Carolina, upon the relation of the student(s) entering into said
24 contract or agreement, shall have a cause of action against the principal and surety on the bond
25 herein required for the full amount of payments made to such party, plus court costs and six
26 percent (6%) interest from the date of payment of said amount. Such suits shall be brought in
27 Wake County Superior Court within one year of the alleged default.

28 **"§ 93A-37. Contracts with unlicensed schools and evidences of indebtedness made null and**
29 **void.**

30 ~~All contracts or agreements entered into on or after October 1, 1980, by private real estate~~
31 ~~schools, as defined in this Article, with students or prospective students, and all promissory notes~~
32 ~~or other evidence of indebtedness taken on or after October 1, 1980, in lieu of cash payments by~~
33 ~~such schools, shall be null and void unless such schools are duly licensed as required by this~~
34 ~~Article on the date of such contract or agreement or taking of any promissory note or other~~
35 ~~evidence of indebtedness.~~

36 **"§ 93A-38. Suspension, revocation or denial of license certification.**

37 The Commission shall have the power to suspend, revoke, deny issuance, or deny renewal of
38 ~~license to operate~~ certification of a private real estate school education provider. In all
39 proceedings to suspend, revoke or deny a ~~license~~ certification, the provisions of Chapter 150B
40 of the General Statutes shall be applicable. The Commission may suspend, revoke, or deny such
41 ~~license certification or renewal thereof~~ when it finds finds that the applicant or principal thereof
42 or holder of such certification has done any of the following:

- 43 (1) ~~That the applicant for or holder of such license has refused~~ Refused or failed
44 to comply with any of the provisions of this Article or the rules or regulations
45 promulgated ~~thereunder~~ thereunder.
- 46 (2) ~~That the applicant for or holder of such license has knowingly~~ Knowingly
47 presented to the Commission false or misleading information relating to
48 matters within the purview of the Commission under this ~~Article~~ Article.
- 49 (3) ~~That the applicant for or holder of such license has presented~~ Presented to its
50 students or prospective students false or misleading information relating to its

1 instructional program, to the instructional programs of other institutions or to
2 employment ~~opportunities;~~opportunities.

3 (4) ~~That the applicant for or holder of such license has failed~~Failed to comply
4 with the provisions of any contract or agreement entered into with a
5 ~~student;~~student.

6 (5) ~~That the applicant for or holder of such license has at~~At any time refused to
7 permit authorized representatives of the Commission to inspect the school, or
8 failed to make available to them upon request full information relating to
9 matters within the purview of the Commission under the provisions of this
10 Article or the rules or regulations promulgated ~~thereunder;~~or thereunder.

11 (6) ~~That the applicant for or holder of such license or any officer of a corporate~~
12 ~~licensee or corporation applying for a license, any partner of a partnership~~
13 ~~licensee or partnership applying for a license, or any member of a limited~~
14 ~~liability company licensee or limited liability company applying for a license~~
15 ~~has pleaded~~Pleaded guilty, entered a plea of nolo contendere or been found
16 guilty of a crime involving moral turpitude in any state or federal court.

17 **"§ 93A-38.5. Continuing education.**

18 (a) The Commission shall establish a program of continuing education for real estate
19 brokers. An individual licensed as a real estate broker is required to complete eight hours of
20 instruction a year during any license renewal period in subjects the Commission deems
21 appropriate. Any licensee who fails to complete continuing education requirements pursuant to
22 this section shall not actively engage in the business of real estate broker.

23 (a1) The Commission may, as part of the broker continuing education requirements,
24 require real estate brokers-in-charge to complete during each annual license period a special
25 continuing education course consisting of not more than four hours of instruction in subjects
26 prescribed by the Commission.

27 (b) The Commission shall establish procedures allowing for a deferral of continuing
28 education for brokers while they are not actively engaged in real estate brokerage.

29 (c) The Commission may adopt rules not inconsistent with this Chapter to implement the
30 continuing education requirement, including rules that govern:

31 (1) The content and subject matter of continuing education courses.

32 (2) The curriculum of courses required.

33 (3) The criteria, standards, and procedures for the approval of courses, real estate
34 education providers, and course instructors.

35 (4) The methods of instruction.

36 (5) The computation of course credit.

37 (6) The ability to carry forward course credit from one year to another.

38 (7) The deferral of continuing education for brokers not engaged in brokerage.

39 (8) The waiver of or variance from the continuing education requirement for
40 hardship or other reasons.

41 (9) The procedures for compliance and sanctions for noncompliance.

42 (d) The Commission may establish a nonrefundable course application fee to be charged
43 to private real estate education providers for the review and approval of a proposed continuing
44 education course. The fee shall not exceed one hundred twenty-five dollars (\$125.00) per course.
45 The Commission may charge the private real estate education providers of an approved course a
46 nonrefundable fee not to exceed seventy-five dollars (\$75.00) for the annual renewal of course
47 approval.

48 A private real estate education provider shall pay a fee of ten dollars (\$10.00) per licensee to
49 the Commission for each licensee completing an approved continuing education course
50 conducted by the sponsor.

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

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

10 **SECTION 4.** G.S. 93A-40(a) reads as rewritten:

11 "(a) It shall be unlawful for any person in this State to engage or assume to engage in the
12 business of ~~a time share salesperson without first obtaining a real estate broker license issued by~~
13 ~~the North Carolina Real Estate Commission under the provisions of Article 1 of this Chapter,~~
14 ~~and it shall be unlawful for a time share developer or time share salesperson to sell or offer to~~
15 ~~sell a time share located in this State without the time share developer first obtaining a certificate~~
16 ~~of registration for the time share project to be offered for sale issued by the North Carolina Real~~
17 ~~Estate Commission under the provisions of this Article.~~ Article. A time share salesperson shall be
18 a licensed real estate broker subject to the provisions of this Chapter unless the time share
19 salesperson (i) meets the requirement for exemption set forth in G.S. 93A-2(c)(1) or (ii) is an
20 employee of the registered time share developer, whose income is reported on IRS Form W-2 of
21 the registered time share developer."

22 **SECTION 5.** Section 4 and this section become effective when this act becomes law.

23 The remainder of this act becomes effective July 1, 2020.