

AN ACT TO AMEND THE LAWS GOVERNING THE GOOD FUNDS
SETTLEMENT ACT TO ADD A NEW SECTION TO ADDRESS EMBEZZLEMENT
OF CLOSING FUNDS BY SETTLEMENT AGENT

G.S. § 45A-8

Proposed by the North Carolina Bar Association Real Property Section

Chair: Robert W. Allen
Robinson, Bradshaw & Hinson, P.A.
101 North Tryon Street, Suite 1900
Charlotte, North Carolina 28246

Legislative Chair: Katherine B. Wilkerson
Lynch & Eatman, L.L.P.
5400 Glenwood Avenue, Suite 201
Raleigh, North Carolina 27162

Executive Summary.

If a settlement agent embezzles funds from a transaction, the settlement agent may be prosecuted under G.S. § 14-90. However if the settlement agents embezzles funds from a trust account with funds that belong to multiple parties and the embezzlement cannot be linked to one particular owner of the funds, the prosecution will fail. This new provision G.S. § 45A-8 will allow prosecution of a settlement agent even if the funds cannot be tied to a particular owner.

Talking Points.

- Under current law it is difficult for a district attorney to prosecute a settlement agent for embezzlement of funds because the settlement agent must be shown to have embezzled the funds from a particular person or entity.
- The Real Property Section believes that embezzlement of funds by a settlement agent should be prosecuted even if the funds come from a trust account that holds funds for multiple parties.
- Real Estate trust accounts typically contain funds for multiple parties, making it difficult or impossible to tie the embezzled funds to a specific owner.
- This addition to the statute will allow embezzlement to be prosecuted even if the embezzlement cannot be tied to a specific owner of the funds.

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GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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The General Assembly of North Carolina enacts:

G.S. § 45A-8 reads:

§ 45A-8. Embezzlement of Closing Funds by Settlement Agent.

All closing funds received by a settlement agent are trust or escrow funds received by the settlement agent in a fiduciary capacity; and the settlement agent, in the disbursement of closing funds, shall account for and pay the closing funds to the persons or entities identified for payment of the closing funds pursuant to the settlement statement approved by the parties to the transaction as defined under this Act. Any settlement agent who shall embezzle or fraudulently or knowingly and willfully misapply or convert to his own use, or shall take, make away with or secrete, with intent to embezzle or fraudulently or knowingly and willingly misapply or convert to his own use the closing funds or any portion of the closing funds, other than closing funds representing the settlement agent's fee and expenses, shall be guilty of embezzlement under G.S. § 14-90 regardless of whether the embezzled, misapplied or converted closing funds have been proved to belong to a specific party.