



CAMPBELL & BRANNON

LICENSE LAW

Continuing Education Class

WWW.CAMPBELLANDBRANNON.COM/LICENSELAW/

PURPOSE OF LICENSE LAW

Performance and disciplinary powers to shield agents from unfair competition

Designed to protect the public from dishonest or incompetent agents

Show others that agents have knowledge and integrity to serve the public in a reliable and professional manner

GREC

Has the authority to:

- Issue licenses
- Set fees
- Pass rules and regulations
- Take disciplinary actions

Power: first passed in 1925, Georgia legislature has police powers to enact rules to protect consumers

GREC is the government agency tasked with implementing these rules and have power over all licensees

GREC Powers

- A broker (the brokerage firm) is the only licensee authorized by law to enter into a contract with another person who has promised to pay the broker a fee or commission
- Doesn't have to be money! Could be exchanging one property for another
- Performing the services of a broker (without being one) is a crime! That person would be guilty of a misdemeanor
- GA Real Estate Commission can issue "cease and desist" orders and issue fines but not authority to send to jail.

GREC - GA Statute 43-40-2

- Creation of commission; members; meetings; recusal for conflict of interest; removal; compensation; annual report; budget unit
- Composed of six members, each who are appointed by the governor and confirmed by Senate for term of 5 years
- 5 members shall be licensees who are residents in the state and actively engaged in real estate business for five years
- 6th member is chosen for expertise in consumer affairs (no real estate experience)

GREC – GA STATUTES

STATUTE 43-40-4.

Obviously, the six Commission members cannot handle the day-to-day business affairs of the Commission. Therefore, the law allows the Commission to hire a full time employee to act as its Chief Executive Officer. This person is known as the Real Estate **Commissioner**. The Commissioner is charged with the duties and powers as delegated by the Commission including the hiring of all staff and the conduction of the day to day business of the department.

STATUTE 43-40-5.

If the Commissioner or any Commission employee has a license, it must be placed on inactive status. Also, the Commissioner does not have a voting

- Collecting fees, setting rules and regulations, providing for paperless processes.
- Running the office of the Commission.
- Members must be inactive.
- Utilization of an official seal.

Current Members

Commission

Chair: Jerry Warshaw, Atlanta

Vice Chair: Steve Graves, Rome

Member: Deeann Golden, Roswell

Member: Cedric Matheny, Atlanta

Member: Brenda Thompson, Athens

Public Member: Lee Dollar, Lindale

Executive Officers (commissioned to run office/hire staff)

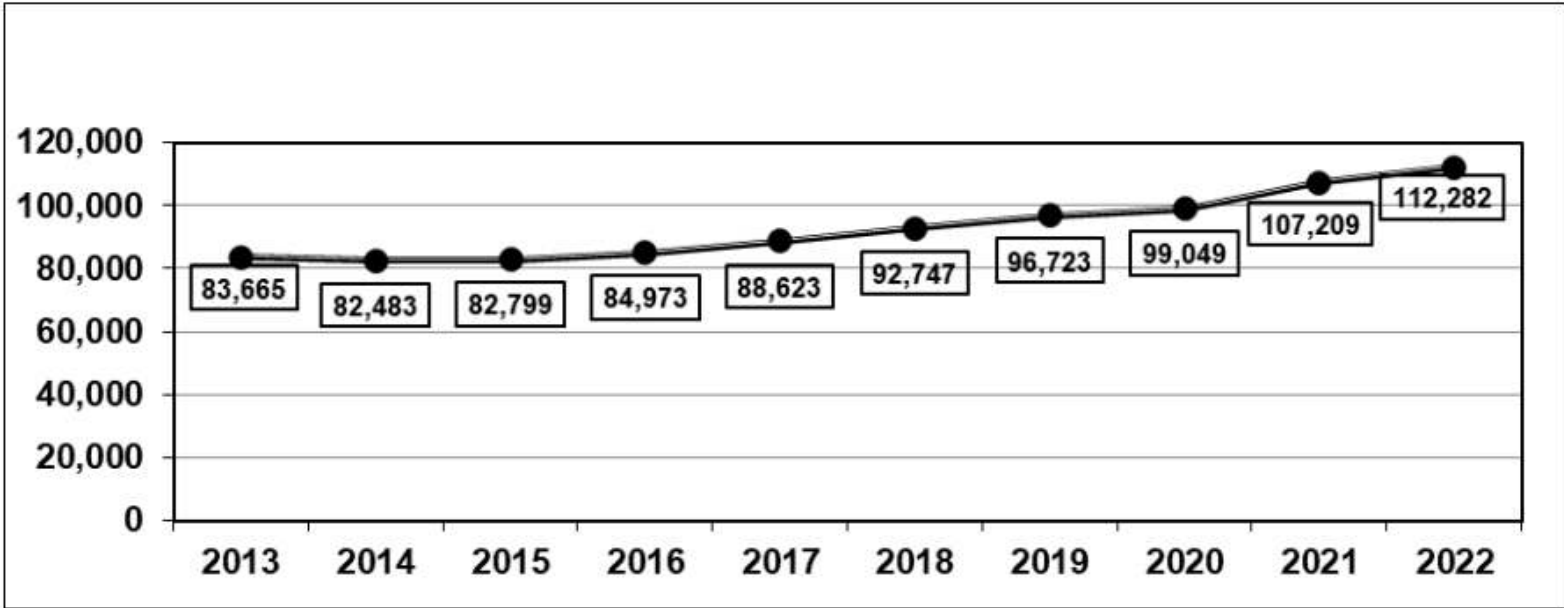
Real Estate Commissioner: Lynn Dempsey

Deputy Commissioner: Craig Coffee

*As of March 2023

Licenses Issued

Real Estate Licensees by Fiscal Year



Licenses Issued- Trends (11/22)

- The current total number of Licenses is the largest number for the state in the Commission's history. (86% active and 14% inactive.)
- Net increase of 4,763 Licenses in the last year.
- The Commission currently issues an average of 800 new licenses per month down from 1,200 licenses per month a year ago.
- Breakdown of the 97,070 Active Licensees:
 - Brokers, Salespersons, CAM 88 % (20% are Brokers.)
 - Real Estate Firms 12%

Types of Licenses

TYPES OF LICENSES

Statute 43-40-7

- The Commission issues licenses to qualified (1) applicants and (2) real estate businesses.
 - Applications include brokers, associate brokers, salespersons and community association managers.
 - Real Estate businesses include partnerships, LLCs and Inc's, real estate schools, and approved prelicense instructors.

Though the application is confidential, the licensee's name, address, phone, license held, and disciplinary record are made public.

TYPES OF LICENSES

Statute 43-40-8

- What can a broker do!?
- What are the difference types of licenses?!?
- Broker | Associate Broker | Salesperson | Community Association Manager

Example: A listing salesperson may have the authority to sign the broker's name to the listing contract. It is quite possible that the broker may never see the property or meet the seller; but legally, the contract is between the broker and the seller. The broker and the salesperson share the responsibility for performance.

LICENSEES

- All licensees (unless “grandfathered”) must show at time of license renewal that they have completed the minimum continuing education hours for each year of the renewal period.
- *Special Note – Luckily, CE classes do not require exams!!*

OUT OF STATE LICENSE

Statute 43-40-9 (Out of State Licenses)

If Not Licensed Elsewhere:

Would have to meet all the same requirements as a GA resident licensee (education, age, etc.)

If Licensed Elsewhere:

- Proof of license and clean disciplinary history; Payment of fees;
- Signed statement to obey rules; Affiliated with a broker;
- Appoint commission as being able to accept service on their behalf;
- Agree to assist in any investigation that may occur.

REQUIREMENTS FOR FIRM TO BE GRANTED A BROKER'S LICENSE AND FORM OF LICENSE

STATUTE 43-40-10

- **The company must name the person holding the broker's license as the qualifying broker**

STATUTE 43-40-11

- **Licenses are affixed with the seal of the Commission and held by their Broker**
- **Licensee will only receive a copy in the form of a pocket card.**

FEES

STATUTE 43-40-12

- Commission can charge for reasonable fees for issuance and for renewal of licenses, as well as examinations
- Lapse of License –
 - Can be reinstated anytime within two (2) years for a fee
 - Between 2-5 years – fees + educational requirements
 - >5 Years – must meet the requirements of a new licensee

STATUTE 43-40-13

- Budget of the Commission must be based on the fees collected (not provided by taxes!).

INACTIVE LICENSES

STATUTE 43-40-12G and 12H

- Can go inactive at anytime, but cannot conduct any real estate business except in connection with personally owned property

Note: This is different than surrendering your license, which would instead require you to start over like a new licensee.

ISSUE, CENSURE, REVOKE and SUSPEND LICENSES

STATUTE 43-40-14

- Commission has power to ISSUE, CENSURE, REVOKE and SUSPEND LICENSES for violating the Rules and Regulations

STATUTE 43-40-15

- Defining license issues

STATUTE 43-40-16

- Applicant is entitled to a hearing and appeal if denied.

43-40-15: PROHIBITED CONDUCT

Generally, the Commission will not provide a license to anyone with the following concerns:

1. Convicted felon (with exceptions) or crime of moral turpitude:
 - Immediately notify GREC – automatic 60-day revocation unless you request hearing;
 - Moral Turpitude: Bribery, perjury, fraud/forgery
2. Violates Fair Housing laws;
3. False statement on application;
 - Material fact
4. Disciplinary actions by GA occupational licensing body;
 - Profession with a state license (e.g. CPA, nursing) OR license lapsed/surrendered following an investigation
5. Failure to pay child support payments or in default of a student loan with no repayment plan in place

Management of a Firm

STATUTE 43-40-18

The Broker is responsible for all licensees who affiliate with the firm and shares liability if any agent violates the rules or laws.

UNLESS! The Broker may not be responsible if:

1. There was reasonable supervision;
2. The Broker did not have anything to do with the infraction;
and
3. The Broker did not ratify the infraction (i.e. cover up!).

Broker responsibilities include but are not limited to:

Review advertising for legal compliance, provide training programs on the Rules & Regulations and License Law, review all contracts within 30 days of the date of offer or contract, review trust account procedures and make proper withdrawals, ensure only licensees perform acts that require licensure, safe keeping of all records, give all licensees a written policies and procedures manual, make all licensees sign written affiliation contracts regarding compensation, and have managerial authority reasonably available.

STATUTE 43-40-19

WHAT HAPPENS WHEN YOU MOVE BROKERAGES DURING A TRANSACTION???

Generally, a licensee can only act on behalf of one broker at a time. However, that licensee might be allowed to continue to work for and be paid by the former broker if:

1. Both Brokers agree in writing; See GAR Form C013
2. The specific transaction(s) are identified;
3. The former broker agrees to take full responsibility; and
4. The agreement states how the licensee will be compensated by the former broker (i.e. Affiliation Agreement).

NOTE: When your license is released from the prior brokerage, you may not engage in activities of a licensee until you deliver a signed GREC change form

STATUTE 43-40-19

WHAT HAPPENS TO PENDING PURCHASE AND SALE AGREEMENTS, COMMISSIONS AND EXISTING BROKERAGE AGREEMENTS?

1. GREC 520.01.07: ICA must include compensation terms for during affiliation, and on transactions started prior to you leaving. This defines your compensation.
2. All contracts are written in your Broker's name. Thus, pending contracts stay with FORMER.
 - Many brokers will release existing brokerage agreements to new broker.
 - You would need to sign a termination with FORMER brokerage and sign a new brokerage agreement with NEW brokerage IN ADDITION to transferring FMLS.
3. Commission- Permission needed from NEW broker for FORMER broker to pay you. Otherwise- FORMER broker would pay the commission to NEW Broker and new broker pays you according to your new ICA.

NOTE: Please notify closing attorney ASAP. We need confirmation from the brokers regarding your agreement for payment of commission.

When you leave a brokerage...

Forms:

- When you leave a brokerage, you must complete a GREC change form. The broker then releases your license.
- If you are not joining another brokerage right away, you have 30 days to notify GREC that you want to be inactive (\$25 fine)
- Keep GREC advised of your info: name change and address change form (\$25 fine)

Trust Accounts

TRUST ACCOUNTS

What is a Trust Account??

An account in trust or trust account refers to any type of financial account that is opened by an individual and managed by a designated trustee for the benefit of a third party in accordance with agreed-upon terms.

1. There may be multiple trust accounts;
2. All trust accounts must be disclosed to the Commission within 30 days;
3. Regular audits are required (or CPA report);

TRUST ACCOUNTS

Statute 43-40-20

- Trust account required when handling client funds.

Statute 43-40-21

- If funds are accepted, the Broker has 1 business day to establish a trust account (FDIC insured).

GREC 520-1-.08(1b): When should Licensee forward EM to the broker? As soon after receipt as practically possible.

TRUST ACCOUNTS FAQs

1. Who gets the interest?

- The Broker

2. Can EM be paid by personal check?

- In most cases, YES. Most escrow holders have check policies in place.
- You must have “good funds” before you can disburse the funds!
 - Consider: Termination prior to check clearing
 - Check with the brokerage (or closing attorney)
 - In most cases: Wire or ACH

3. Can a buyer’s EM automatically be moved from one contract to another if buyer terminates and goes under contract right away?

- Must have written authorization from the parties.

When should broker should disburse trust funds?

1. Upon the rejection of an offer to buy, sell, rent, lease, exchange, or option real estate
2. Upon the withdrawal of an offer not yet accepted
3. At the closing of the transaction
4. Upon securing a written agreement which is signed by all parties having an interest in the trust funds and is separate from the contract which directs the broker to hold the funds
5. Upon the filing of an interpleader action in a court of competent jurisdiction
6. Upon the order of a court of competent jurisdiction; OR
7. Upon the reasonable interpretation of the contract which directed the broker to deposit the funds

When there is no agreement over disbursement

10 DAY LETTER:

Step 1: Broker makes reasonable interpretation of contract.

- Why did it not close?
- Did a party terminate under a contingency or during due diligence?
- Is someone in default?

Step 2: Broker sends letter and the party who is not receiving the funds has 10 days to object.

- Maybe there was information/amendment not provided to Broker.

Step 3: If no objection- the Broker can disburse pursuant to the 10 Day Letter.

When there is no agreement over disbursement

INTERPLEADER:

Broker can file a petition to have the court determine who gets the EM.

NOTE: Attorneys Fees and court costs for this come out of the earnest money!!!

Your property – extra rules apply

When pertaining to the property of the licensee:

- Must deposit all earnest money or security deposits into the broker's trust account or one approved by the Broker and register with the Commission;
- Required to provide Broker quarterly reconciliation of trust account;

GREC 520.1.08(4c)

If licensee owns 100% of property (no spouse, no LLC, etc.)- must hold in trust and no bond in lieu.

In the event there appears to be a violation of these trust account rules, the Attorney General may impound the account or issue an injunction to appoint a receiver.

Education, Research and Recovery Fund

Education, Research and Recovery Fund

STATUTE 43-40-20

WHAT IS IT: Special fund held in trust by GREC.

FUNDING: a one-time \$20.00 fee for each original real estate license issued and any interest earned in the fund.

MINIMUM BALANCE REQUIRED: \$1,000,000.00 At the end of FY 2022, the Recovery Fund balance was \$2,171,095.00.

Education, Research and Recovery Fund

STATUTE 43-40-20

USE OF FUNDS:

- to reimburse non-licensees who have been harmed by a licensee but cannot recover from the licensee after obtaining a judgment against the licensee through the courts

- to underwrite the cost of developing real estate courses, conducting real estate seminars, conducting real estate research projects, publishing and distributing real estate educational material, and for education research programs for the benefit of real estate licensees and the public.

Violations & Unfair Practices

Licensees shall not engage in any of the following unfair trade practices: OCGA 43-40-25b

- (1) Because of race, color, religion, sex, disability, familial status, or national origin:
 - a. Refusing to sell/rent after the making of a bona fide offer, or refusing to negotiate for the sale or rental of, or otherwise making unavailable or denying real estate to any person
 - b. Discriminating against any person in the terms, conditions, or privileges of sale or rental of real estate or in the provision of services or facilities in connection therewith
 - c. Making, printing or publishing any advertisement that indicates any preference, limitation, or discrimination
 - d. Representing to any person that any real estate is not available for inspection, sale, or rental which such real estate is in fact so available; or
 - e. Representing explicitly or implicitly that a change has or will or may occur in a block, neighborhood, or area in order to induce or discourage the listing, purchasing, selling or renting of real estate

**Licensees shall not engage in any of the following
unfair trade practices: OCGA 43-40-25b**

(2) Intentionally advertising material which is misleading or inaccurate or which in any way misrepresents any property, terms, values, policies, or services of the business conducted;

(3) Failing to account for and remit money coming into the licensee's possession;

(4) Comingling money/property of the licensee's principles;

(5) Failing to maintain and deposit in a separate bank account all money received as escrow agent/temporary custodian unless all parties have agreed in writing

**Licensees shall not engage in any of the following
unfair trade practices: OCGA 43-40-25b**

(6) Failing to disclose in writing to a principal in a real estate transaction any of the following:

- (A) The receipt of a fee, rebate, or other thing of value on expenditures made on behalf of the principal for which the principal is reimbursing the licensee;**
- (B) The payment to another broker of a Commission or fee for a referral**
- (C) The receipt of anything of value for the referral of any service or product in a real estate transaction to a principal**

**Licenseses shall not engage in any of the following
unfair trade practices: OCGA 43-40-25b**

(7) Representing a real estate broker, other than the broker holding the licensee's license, without the express knowledge and consent of the broker holding the licensee's license

(8) Accepting a Commission by a licensee from anyone other than the broker holding that licensee's license without the consent of that broker

(9) Acting in the dual capacity of agent and undisclosed principal in any transaction

(10) Guaranteeing future profits which may result from the resale of property

**Licensees shall not engage in any of the following
unfair trade practices: OCGA 43-40-25b**

(11) Placing a for sale/for rent sign on property without the written consent of the owner and failing to remove the sign within ten days after the expiration of listing

(12) Offering real estate for sale/lease without the knowledge and consent of the owner or on terms other than those authorized by the owner

(13) Inducing any party to a contract of sale/lease or to a brokerage agreement to break such contract in order to substitute another contract

**Licensees shall not engage in any of the following
unfair trade practices: OCGA 43-40-25b**

(14) Negotiating a sale, exchange, or lease directly with an owner, a lessor, a purchaser, or a tenant if the licensee knows that such person has a written contract in connection with such property

(15) Indicating that an opinion given to a potential seller, purchaser, landlord, or tenant is an appraisal unless such licensee holds an appraiser classification

(16) Performing any of the acts of a licensee on property located in another state without being properly licensed in that state

Licensees shall not engage in any of the following unfair trade practices: OCGA 43-40-25b

(17) Paying a Commission to any person for performing the services of a real estate licensee who is not licensed

(18) Failing to include a fixed expiration date in any written listing agreement and failing to leave a copy of said agreement with the principal

(19) Failing to deliver within a reasonable time a completed copy of any purchase agreement or offer to buy or sell real estate to the purchaser and seller

(20) Failure by a broker to deliver to the seller a closing statement showing all of the receipts/disbursements handled by such broker for the seller or failure to deliver to the buyer a complete statement showing all money received in said transaction

**Licensees shall not engage in any of the following
unfair trade practices: OCGA 43-40-25b**

(21) Making any substantial misrepresentations

(22) Acting for more than one party in a transaction without express written consent of all parties

(23) Failure of an associate broker or salesperson to place in the custody of the broker holding their license any deposit money or other money entrusted to the licensee

(24) Filing a listing contract or any document or instrument purporting to create a lien based on a listing contract for the purpose of casting a cloud upon the title to real estate when no valid claim under said listing contract exists

**Licensees shall not engage in any of the following
unfair trade practices: OCGA 43-40-25b**

(25) Having demonstrated incompetency to act as a real estate licensee in such a manner as to safeguard the interest of the public or any other conduct which constitutes dishonest dealing

(26) Obtaining a brokerage agreement, sales contract, or lease while knowing that another broker has an exclusive brokerage agreement with said person unless obtaining written permission from the first broker

(27) Failing to keep for a period of three years a true and correct copy of all sales contracts, closing statements, any offer or other document that resulted in the depositing of trust funds, accounting records required, and other documents relating to real estate closing transactions

**Licensees shall not engage in any of the following
unfair trade practices: OCGA 43-40-25b**

(28) Being a party to any falsification of any contract or other document

(29) Failing to obtain the written agreement of the parties indicating to whom the broker shall pay any interest earned on trust funds deposited into an interest-bearing account

(30) Failing to disclose in a timely manner any agency relationship that the licensee may have with any of the parties

(31) Attempting to perform any act authorized by this chapter to be performed only by a broker, associate broker, or salesperson while licensed as a community associate manager

Licensees shall not engage in any of the following unfair trade practices: OCGA 43-40-25b

(32) Attempting to sell, lease, or exchange the property of any member of a community association to which a licensee is providing community association management services without the express written consent of that association

(33) Failure to deliver to a community association terminating a management contract within 30 days of the termination, or within such other time period as the management shall provide: (a) complete record of all transactions and funds handled (b) all records and documents received on the association's behalf (c) any funds held

(34) Failure to deliver to a property owner terminating a management contract within 30 days of the termination, or within such other time period as the contract shall provide: (a) complete record of all transactions and funds handled (b) all records and documents received on the owner's behalf (c) any funds held

**Licensees shall not engage in any of the following
unfair trade practices: OCGA 43-40-25b**

(35) Inducing any person to change another licensee's fee or Commission for real estate brokerage services without that licensee's consent

(36) Failing to obtain a person's written agreement to refer that person to another licensed broker for brokerage or relocation services and to inform such person being referred whether or not the licensee will receive a valuable consideration for such referral

NOTE: GAR C016 Broker to Broker form
GAR F843 Prospect's Acknowledgement and Consent to Referral

Brokerage Relationships

Brokerage Relationships

- Each exclusive brokerage agreement must fully set forth its terms and have a definite expiration date GREC 520-1-.06(1)
- At the time of securing a brokerage engagement, the licensee securing it must furnish each person signing it a true copy thereof GREC 520-1-.06(1)
- The Commission prohibits the acceptance by brokers of net brokerage engagements and hereby makes it obligatory upon the broker, when securing the brokerage engagement, to add the broker's fee thereby notifying the client of the gross price of the property and the broker's services GREC 520-1-.06(1)
 - The fees to be paid have to be established at the time of signing.

Brokerage Relationships

- No licensee shall buy or lease, nor take an option to buy or lease, any interest in property listed with the licensee/licensee's firm acting as broker unless the licensee clearly discloses the licensee's position as a buyer to the seller or as a tenant to the landlord, and inserts a clause to that effect in the contract. Same requirements for a licensee selling property owned by the licensee. GREC 520-1.06(4a)

“Purchaser is a duly licensed agent in Georgia, RE License #___.”

- A licensee shall make a written disclosure to buyer/seller or lessor/lessee revealing the party/parties for whom that licensee's firm is acting as agent or dual agent and from whom that licensee's firm will receive any valuable consideration for its efforts as agent. Must disclose no later than the time that any party first makes an offer. GREC 520-1.06(4b)
- Real estate licensees shall not pay a fee or Commission to a licensee representing another party to a transaction except with the full knowledge and written consent of all parties. GREC 520-1.06(4c)

Brokerage Relationships – Support Personnel

- Support personnel may only handle ministerial duties- those that do not require discretion or judgment- unless support personnel holds a real estate license. GREC 520-1.07(6a)
- Individual licensed with one firm may work as support for a different firm with permission from both brokers. You can also work as support personnel when your license is inactive. GREC 520-1.07(6c)
- Need broker permission to hire support personnel and contract signed. GREC 520-1.07(6d)

Brokerage Relationships – Support Personnel Tasks

1. Answer phone/forward calls
2. Submit data to MLS
3. Check status of loans on files under contract
4. Assemble closing documents
5. Obtain documents that are public information
6. Have keys made and install/remove lock boxes
7. Write ads/promotional materials (to be approved by broker)
8. Place ads in magazines/media at broker's request.
9. Receive, record and deposit EM.
10. Type contract forms- must be directed by broker/licensee.
11. Monitor personnel files
12. Compute commission checks
13. Place/remove signs at properties
14. Order routine repair items at direction of licensee
15. Act a courier (for keys, etc.)
16. Schedule listing appts
17. Arrange inspections
18. Arrange mortgage applications/walk through/closing times
19. Schedule open house
20. Accompany licensee to open house or showing (for security)
21. Perform physical maintenance on the property.

Advertising

Advertising

Rule 520-1-.09 (7) Provides the specific requirements for advertisements of any real estate for sale, rent, or exchange in any media:

- (a) name and telephone number of the licensed firm must be included
- (b) name of firm shall appear in equal or greater size, prominence, and frequency than the name of any affiliated licensee
- (c) firm's telephone number shall appear in equal or greater size, prominence, and frequency than the telephone number of any affiliated licensee, and it must be a number at which the public can reach the broker or a manager without going through the affiliated licensee(s) listed in the advertisement

Advertising – Online

- Every viewable web page of a website must disclose the name and telephone number of the licensee's firm, except:

when advertising electronic messages of limited info/characters, you may provide a direct link to a display in compliance with this requirement - One click away.

***Note:** You are not responsible for information that is taken without your consent from your website and placed on another website that is out of your control

Advertising

- Any advertising that is misleading or inaccurate in any material fact or in any way misrepresents any real estate is prohibited
- A licensee shall not advertise until the licensee has first secured the written permission of the owner
- A licensee shall not use an advertisement that is directed at or referred to persons of a particular race, color, religion, sex, handicap, familial status, or national origin

Handling Real Estate Transactions

Handling Real Estate Transactions

A licensee shall promptly tender to any client any signed offer to purchase, sell, lease, or exchange property made to such client. GREC 520-1.10(1)

Doesn't matter what form it is on! Can you require a GAR form?

A licensee preparing or signing a brokerage engagement or an offer to purchase, sell, lease, or exchange real property shall include the license number issued by the Commission of each firm and of each licensee participating in the transaction. GREC 520-1.10(2) *Watch non-GAR forms*

A licensee shall provide a copy of any document utilized in a real estate transaction to any individual signing such document. GREC 520-1.10(3)

If an offer is accepted and signed by all parties, copies shall be properly distributed, one to each party signing and one to each brokerage firm involved. GREC 520-1.10(3)

Copies of sales contracts, brokerage engagements, closing statements, and leases must be maintained in a broker's file for three years and shall be made available to authorized agents of the Commission upon reasonable request GREC 520-1.10(4)

Falsification of Documents/Misleading Representations

No Licensee shall falsify a document involved in a real estate transaction or knowingly represent to a principal:

an amount other than the true and actual price

an amount other than the true and actual down payment

An amount other than the true and actual earnest money

A payment of trust funds in cash when in fact some other method is made; or

An artifice with the intent to deceive

GREC 520-1.10(5)

Disclosure of Commission

Disclosure of Commission must be made in advance of the payment or receipt of a Commission. GREC 520-1.10(6a)

In a transaction where a licensee refers a principal to another broker for service, the payment of a Commission by the broker working with the principal shall be disclosed in writing to the principal by the broker to whom the referral was made no later than at the closing. GREC 520-1.10(6b) (Use proper forms.)

The disclosure for requirement for referral fees is in addition to requirements under RESPA. GREC 520-1.10(6c)

Unfair trade practices- Licensee's Principal includes both clients and customers (without buyer brokerage agreement). GREC 520-1.10(6d)

Rebates are OKAY but must be shown on settlement statement and paid through the closing and must not mislead the other side. GREC 520-1.10(6e)

Closing gifts are OKAY but cannot be contingent on closing. GREC 520-1.10(6)

Licensee of Principal

Licensee as Principal Statute 43-40-29(c)

A licensee must comply with the required provisions whether acting as an agent or as a principal.

Brokers must monitor the activities of agents in their own transactions.

What about properties in other states?

GREC Rules apply only to properties in the State of Georgia. So, no set rules for property owned by licensee in another state.

When a licensee offers to purchase

Offers to Buy Associated with a Brokerage Relationship

Whenever a licensee offers to purchase a property as a condition to obtaining a brokerage engagement or on which the licensee is extending the expiration date of an existing brokerage engagement, the licensee must enter into a written contract to purchase which expresses all the terms and conditions of the licensee's purchase prior to or at the time of entering into the proposed brokerage engagement or into the extension of the existing brokerage engagement

Whenever a licensee offers to purchase a property in order to enable a party to purchase, sell, lease, or exchange another property, the licensee must enter into a written contract to purchase which expresses all the terms and conditions of the licensee's purchase prior to or at the time of the other party's entering into a contract to purchase, sell, lease, or exchange the new property

Fair Housing and Citations

Fair Housing and Citations

7 Protected Classes- Fair Housing Act

1. Race
 2. Color
 3. National Origin
 4. Religion
 5. Sex
 6. Familial Status
 7. Disability
-
8. Sexual Orientation* – Pursuant to a 2017 Case decided by a Federal Court; not officially on Georgia's books as a protected class.

Fair Housing and Citations – Best Practices

Focus on the property and its amenities, not on your “ideal” buyer or renter.

Do not make statements that have the effect of excluding individuals of a protected class from your advertising initiative.

Avoid restricting your advertisements from only reaching certain individuals or audiences by, for example, using platform features that allow advertisers to restrict who sees the advertisements based on certain characteristics like race, religion or age.

If you use pictures of people in your advertisements, make sure the advertisement includes individuals reflective of the population in the area where the advertisement is placed.

Include the phrase “Equal Housing Opportunity” or the fair housing logo in your advertisements. Not required- check with your Broker.

Fair Housing Act - Violations

An example from HUD.gov

John, who is an Asian man, meets with a real estate broker to discuss purchasing a house for his family. When John names the neighborhood that he is interested in, the broker asks John if he is sure that his family will feel comfortable there. The broker tells John that she has a wonderful listing in another neighborhood where there are more “people like them.” When the broker takes John to see the house, John notices that the residents of the neighborhood appear to be mostly Asian. John files a complaint with HUD because steering someone to a certain neighborhood because of his race is a form of race discrimination.

Fair Housing Act - Problematic Statements - NAR

“Ideal for a single professional” or “perfect apartment for a student.”

Discriminates against couples, single parents, seniors.

“No pets.”

Discriminates against people with disabilities who use service animals.

“Not soundproof.”

Shows preference for tenants without children.

Other statements that show preference to certain classes of people include:

“Great for students or working folks.”

“Suitable for a mature couple or individual.”

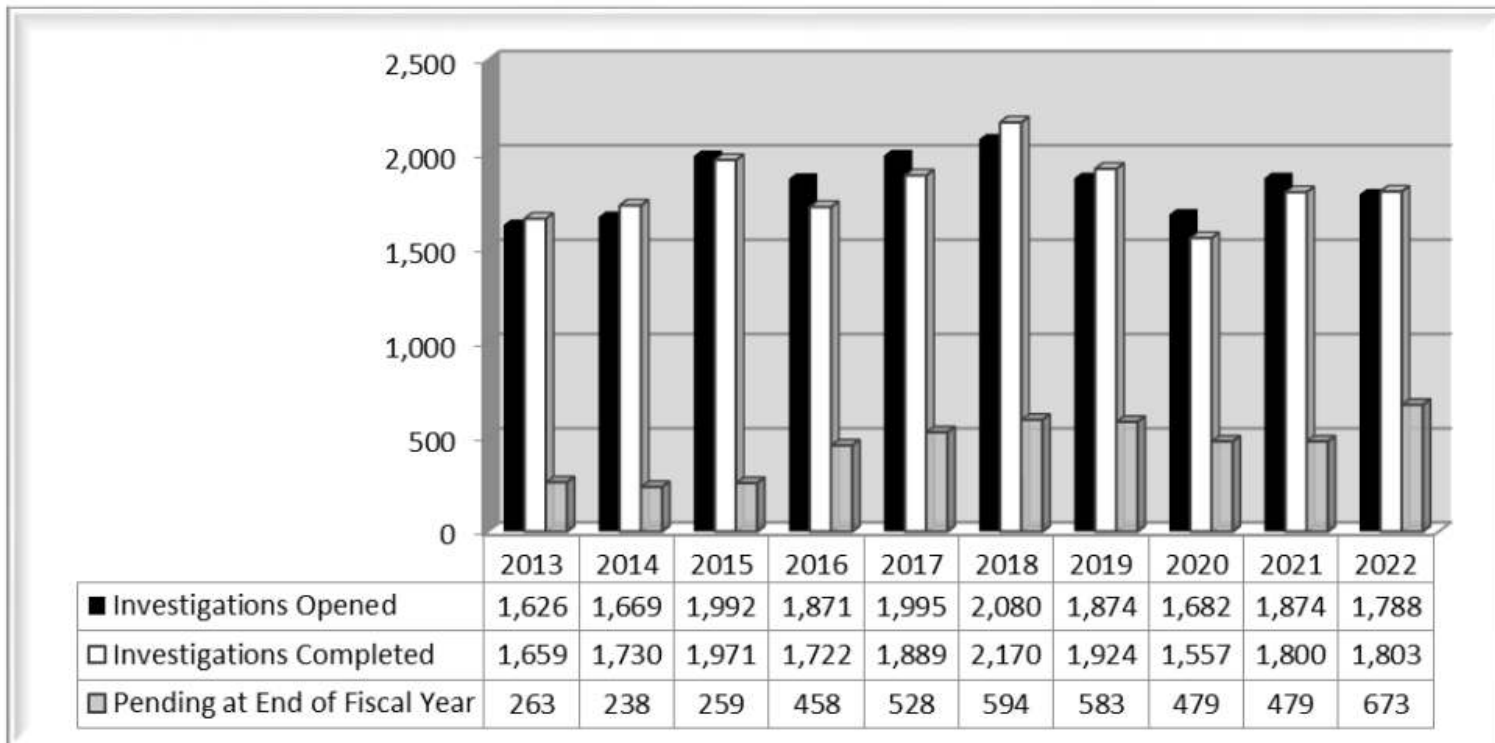
“Perfect for a female student.”

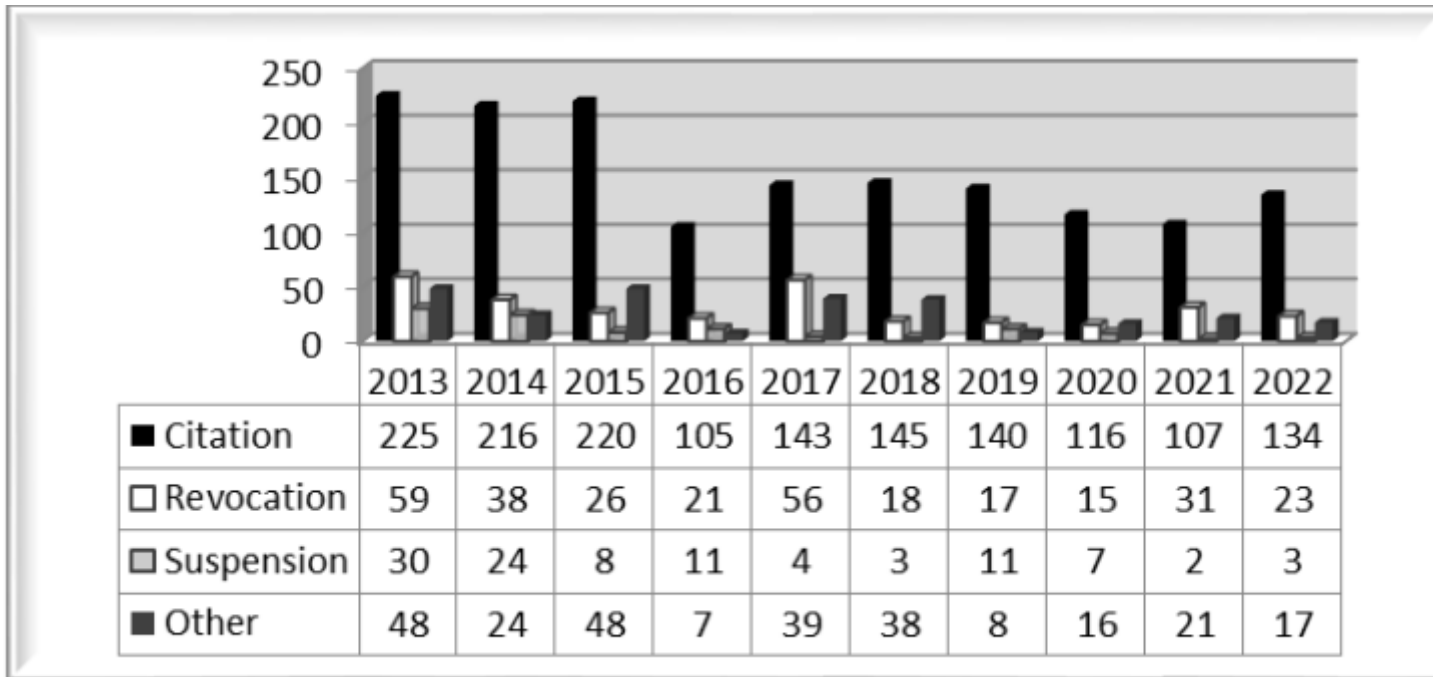
“Suits a single professional.”

“Ideal for a quiet couple.”

Agency Investigative Statistics by Fiscal Year

(Includes Real Estate Commission and Appraisers Board Cases)





Disciplinary Actions include Citations (generally for less serious violations – 134 in FY22) or Sanctions (for more serious violations – 26 in FY22).

The Commission also has an option to send “Letters of Findings” to licensees when an investigation reveals only technical license law violations that involve no harm to the public.

Case Summaries

Case Summaries – Expensive Typographical errors

Defendant: Lakeshore Estate Marketing and Services, a real estate broker firm.

Used the name “Lakeshore Real Estate Broker” and “Lakeshore Real Estate Brokerage” in signing a purchase agreement for a parcel of real property, as opposed to the name registered with the Commission, and for omitting Lakeshore’s license number on the purchase agreement.

RESULT: Georgia Real Estate Commission imposed a fine of \$1000 plus \$500 per violation as well as a public written reprimand.

Case Summaries- Character is everything

Petitioner applied for a real estate salesperson's license. 5 years prior, Petitioner pled guilty to felony possession of cocaine. Petitioner was sentenced to three years of probation and was discharged from the program 3 years prior. Petitioner testified that a passenger in his car had cocaine and that he was charged with possession even though his drug screen was negative. Petitioner has worked in the real estate industry for years without a problem. Petitioner brought several character witnesses who all testified Petitioner was trustworthy, honest, and competent.

RESULT: The Judge found that Petitioner's criminal conviction was inconsistent with his character and that Petitioner had a good reputation for integrity, honesty and trustworthiness among, friends, peers, and co-workers. Petition GRANTED.

Case Summaries – Own your mistakes

Petitioner built custom homes and bounced several checks to contractors. Subsequently, he was charged with felony deposit account fraud. Petitioner was sentenced to two years of probation and ordered to pay a fine. Three years later, Petitioner was arrested because he failed to make payments on his fine. Petitioner presented five witnesses who testified that Petitioner was honest and trustworthy.

RESULT: The Judge determined that the Commission had the discretion to deny the application and that Petitioner failed to present sufficient evidence to rebut the Commission's decision. Specifically, he failed to adequately explain the circumstances surrounding the bounced checks and did not take responsibility for his actions. Petitioner was denied real estate salesperson's license.

Case Summaries – Broker Supervision Required

A married couple practiced real estate together in the metro Atlanta area. The husband is the Qualifying Broker of the Firm. An Investigation was initiated against the Firm and the Qualifying Broker when the Georgia Real Estate Commission received a written complaint.

1. A Salesperson (the wife of the Broker) was allowed by the Qualifying Broker to conduct brokerage activity while her license was on lapsed status and again later while her license was on inactive status with the Commission.
2. While her license was inactive, the Salesperson prepared and signed the Purchase and Sale Agreement for property located at Smith Street in Atlanta, GA.
3. The Salesperson continued to negotiate said Agreement until the closing date, while her license was lapsed.
4. The Broker allowed the Salesperson to sign said documents utilizing the name "Jane Doe," when, in fact, her name at the time of said transaction was licensed by the Commission as "Jane Smith".
5. The Broker failed to notify the Commission of the Salesperson's violations of the Georgia License Law, Rules, and Regulations.
6. By failing to supervise the affiliated Licensee, the Broker knowingly allowed the violations made by the Licensee and therefore ratified and became a party to those violations.

Case Summaries – Broker Supervision Required - RESULTS

Both the Broker and the Salesperson violated the rules.

- BOTH were cited in separate cases, and EACH was required to pay GREC \$800.00, consisting of (1) a fine against the Broker of \$400.00 and (2) \$400.00 to reimburse the Commission for its administrative, investigative, and legal costs and expenses.
- BOTH required to complete within 45 days, a Commission approved coursed titled “Being a Broker and Staying out of Trouble.”

Case Summaries – Broker Supervision Required

Jane Doe, an Associate Broker Licensee

- 1) Advertised on her personal website and Facebook© seven (7) properties under the company name of “Jane Doe Real Estate”, a name not registered or licensed by the Commission; and
- 2) Failed to include the name and telephone number of her Firm;
- 3) Failed to remove said advertisements after the listings were sold or expired.

RESULT: Required to pay \$400 within 45 days to include \$200 fine and \$200 reimbursement to the Commission for administrative investigative, and legal costs. Required to complete a 3-hour course approved by the Commission titled “Being a Broker and Staying Out of Trouble” within 60 days.

Case Summaries – Broker Supervision Required

A Salesperson Licensee:

- 1) Advertised specific properties on the Internet under the company name “Fast Realty,” a company name not licensed by the Commission and while his license was affiliated with another Firm;
- 2) Failed to include his Firm’s name and telephone number in said advertisements.
- 3) Failed to submit said advertising to his Broker for review prior to its posting.

RESULT: Required to pay \$300 within 45 days to include a \$150 fine and \$150 reimbursement to the Commission for administrative investigative, and legal costs. Required to complete a 3-hour course approved by the Commission titled “Practicing Real Estate and Staying Out of Trouble” within 60 days.

Case Summaries – Education is key

Salesperson unlawfully engaged in real estate brokerage activities while her license was on inactive status when she worked as a property manager for an apartment complex.

The Commission issued a fine and she refused to pay it, stating that she did not violate any laws. Under applicable Georgia law, real estate brokerage activity specifically includes property management services.

RESULT: Judge **SUSPENDED** her license until she attends a course of study in real estate brokerage.

Case Summaries- Multiple infractions

Defendant was found to have engaged in improper advertisement of real properties

1. Advertised 11 properties on his website without first obtaining proper authorization
2. Failed to include his firm's name and telephone number on an advertisement
3. Listed a firm on an advertisement with whom he was not affiliated
4. Failed to timely notify the Commission of a change of address

Commission ordered Defendant to pay fine of \$400 and complete a 3 hour educational course. Respondent failed to comply with the citation or respond within 30 days

RESULT: Respondent's license was suspended indefinitely

THANK YOU!

Email: attorney@cb.law if you have any questions

