Real Estate Principles of Georgia

Lesson 18:

Georgia Real Estate License Law

The Georgia Real Estate Commission: administers the real estate license law.
- May grant or deny licenses
- May hold disciplinary hearings and impose penalties
- May charge and collect fees

Real Estate Commission
- Composed of six commissioners appointed by Governor and confirmed by Senate
  - Five must be licensees with five years’ experience in Georgia
  - One must have background in consumer protection with no connection to real estate industry
  - Serve part-time for five-year terms

Real Estate Commissioner is hired by Commission to act as Commission’s executive
- Not a member of Commission itself
- May not have interest in any real estate business
- If Commissioner or any staff member has a real estate license, it must be inactive

Commission is authorized by law to implement rules and regulations in order to administer the license law.
- All rules and regulations implemented by the Commission must be based on existing license law.
- Anyone may petition the Commission to pass, amend, or repeal a rule.
- Anyone may request declaratory ruling.
- Requests must be in writing and notorized.

Authority of Commission does not extend to internal real estate company matters or disputes between brokers.

Real Estate Licensing
When license is required
- A real estate license is required when engaging in certain activities:
  - on behalf of another person,
• for compensation or in expectation of a fee, commission, or other compensation.

8 Real Estate Licensing
When license is required
Activities include:
• Negotiating for the listing, sale, purchase, exchange, rent, lease or option for any real estate;
• Acting as referral agent;
• Collecting rents, assessments, or other trust funds

9 Real Estate Licensing
When license is required
• Being employed by owner of lots or time-shares to sell real estate;
• Charging advance fees to promote the sale of real estate;
• Auctioning real estate;
• Buying or selling options in real estate;

10 Real Estate Licensing
When license is required
• Performing property management or community association management services;
• Providing consulting services to assist with negotiation or procurement of prospects for sale of real property; and
• Advertising or holding herself out as engaged in any of the above.

11 Real Estate Licensing
When license is not required

License law includes exemptions for:
• Property owners, spouses, general partners of partnerships, landlords, or prospective buyers, when buying, selling, or leasing their own property;
• Managers of federally-subsidized complexes;

12 Real Estate Licensing
When license is not required
• Person acting under recorded power of attorney;
• Attorney engaged in practice of law;
• Person acting under court order;
• Government official or employee, in performance of official duties;

13 Real Estate Licensing
When license is not required

- Employee of utility company, on behalf of company;
- Property manager authorized by owner;
- Full-time community association manager;
- Referral agent who receives no fee;

14 Real Estate Licensing
When license is not required

- Employee of broker hired to provide certain property management services;
- Manager of property with occupancy periods shorter than 90 days;
- Person performing only physical maintenance; or
- Certified public accountant performing his duties.

15 Real Estate Licensing
Acting without a license

- Exemptions do not apply to licensees or to persons using exemptions in order to evade licensing requirements.
- Acting as a licensee without a license (or exemption) is a misdemeanor.
- Real Estate Commission can issue a cease & desist order. Violating this order can result in a fine of $1,000 per transaction and each day person continues.

16 Real Estate Licensing
Out-of-state licensees

- A licensee licensed in another state may be able to obtain a Georgia license without taking the exam if that state has a reciprocal agreement with Georgia Real Estate Commission.
- Georgia Real Estate Commission makes final decision on requirements for out of state applicants.

17 Real Estate Licensing
Out-of-state licensees

- Out-of-state licensees may participate in Georgia transactions:
  - By referring a client for a fee, so long as no brokerage services are provided
  - By working with a Georgia broker in a single transaction, under written agreement

18 Summary

- License law
- Real estate activities
- Exempted activities

19 Real Estate Licensing
Types of licenses

Four types of real estate licenses:
- Broker’s license
- Associate broker’s license
- Salesperson’s license
- Community association manager’s license

20 Types of Licenses

Broker’s license

Broker’s license: Authorizes licensee to engage in all activities for which a license is required.
- Brokers may employ affiliated licensees (associate brokers and salespersons).

21 Types of Licenses

Broker’s license

- Broker may operate independently as qualifying broker of sole proprietorship.

22 Types of Licenses

Broker’s license

- Broker may act as qualifying broker of another business entity (partnership, corporation, etc.).
  - The firm will be issued two licenses: one in qualifying broker’s name, one in company’s name.

23 Types of Licenses

Associate broker’s license

Associate broker: Licensed broker who works for another broker, instead of operating her own brokerage.

24 Types of Licenses

Salesperson’s license

Salesperson’s license: Authorizes person to engage in activities under broker’s supervision.
- Salesperson can’t act directly for principal (buyer/seller) in transaction.
- Salesperson may only receive compensation from broker.

25 Types of Licenses

Community association managers

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Real Estate Licensing
Qualifications for license

Salesperson applicant must:
- be at least 18 years old;
- have a high school diploma or equivalent;
- have completed a 75-hour prelicensing course (or accredited college equivalent); and
- have passed a written examination.

Community association manager applicants take a 25-hour prelicensing course instead.

Real Estate Licensing
Qualifications for license
Broker’s applicant must:
- be at least 21 years old;
- have a high school diploma or equivalent;
- have been licensed for at least three years as a salesperson or community association manager in Georgia or a state with similar requirements;
- have taken a 60-hour broker’s prelicense course; and
- passed a written exam.

Real Estate Licensing
Real estate examination
- The salesperson and community association manager exams are objective multiple-choice questions and require a score of 75% to pass.
- The broker’s exam is based on simulation exercises.

Real Estate Licensing
Real estate examination
- Qualifying veterans may have a 5 point credit and disabled veterans may have a 10 point credit. Proof of service is required.

Real Estate Licensing
Applying for license
- A licensee may obtain a license on the day the exam is passed.
- An applicant for an active salesperson or community association manager’s license must have a Sponsoring Broker Statement.

Real Estate Licensing
Applying for license
- Broker’s licenses are always issued as inactive, until the broker starts his own firm or becomes a qualifying broker.
Applying for license

- All applicants must obtain and submit criminal history reports.
- Exam results are only good for one year.
- Salesperson candidate must apply for license within 3 months of exam or pay double fees.

A licensee cannot begin working until the broker receives a wall license certificate.

- The certificate must be displayed at the brokerage as long as the licensee works for that brokerage.

License renewal

License renewal will be required every four years at the end of the month in which the licensee's birthday occurs.

- Must pay a renewal fee and submit proof of continuing education.

Continuing education: Licensees must complete 24 hours of continuing education every four years.

- A new salesperson must also take a 25-hour post-license course within one year of becoming licensed for the first time.
- 25-hour post-license course equals 6 hours continuing education.

License Lapse

- If your Georgia license lapsed due to your failure to take the 1st year post-license course requirement:
  - Reinstall by completing the course within 6 months of lapse date IF applicant enrolled for post-license within 1st twelve months of licensure.
  - If not, applicant will have to first complete a post-license course then retake the state exam.

- If your Georgia license lapsed due to failure to pay renewal fees:
  - If lapsed for less than 10 years, applicant may elect to retake the exam or to complete certain education and pay penalty fees.
• If lapsed more than ten years, applicant must submit proof of having met the current education requirements and state exam must be retaken.

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Real Estate Licensing
Inactive Licenses
- Licensee may apply for inactive license status.
- Inactive licensee may not engage in real estate activities.
- Inactive licenses are held by RE Commission.
- Licensee may remain inactive indefinitely.
- If license was inactive for two years or more, additional continuing ed will be needed to reactivate.

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Real Estate Licensing
Change in address or name
- Licensees must notify Commission of any change in mailing address, residence address, or name.
  - Notice must be given within one month of change, even for inactive licenses.

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Summary
- Broker’s license
- Associate broker’s license
- Salesperson’s license
- Affiliated licensees
- License renewal
- Inactive status
- Continuing education

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Regulation of Business Practices
Georgia regulates business practices of broker and affiliated licensees in:
- brokerage offices
- affiliation and termination
- broker’s supervisory responsibilities
- trust funds
- recordkeeping
- advertising
- handling transactions

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Regulation of Business Practices
Brokerage offices
A Broker must conduct business under the name in which the license was issued.
A broker must maintain an office. If office location changes, the broker must notify Commission within 30
A brokerage may have an unlimited number of branch offices.

- The broker is responsible for acts of licensees in any branch office.
- Branch offices may or may not be run by a real estate licensee.

### Regulation of Business Practices

#### Affiliation and termination

- When a licensee affiliates with a broker, the parties must sign written employment agreement addressing:
  - compensation during employment;
  - compensation for unfinished transactions when leaving brokerage; and
  - what listings and clients the licensee may take when leaving brokerage.

#### Relationship between broker and affiliated licensee may be terminated at any time by either party.

- Broker must immediately return license to Commission or to the licensee’s new broker.
  - Once license is released, licensee has one month to affiliate with new brokerage or switch to inactive status.

### Regulation of Business Practices

#### Broker’s supervisory responsibilities

- A broker must establish procedures for:
  - reviewing all advertising for compliance with license law;
  - providing education about license law;

### Regulation of Business Practices

#### Broker’s supervisory responsibilities

- reviewing all contracts negotiated by licensees;
- reviewing trust accounts;
- ensuring that activities requiring a license are performed only by licensees;

### Regulation of Business Practices

#### Broker’s supervisory responsibilities

- ensuring that trust account disbursements are made properly;
- maintaining all records properly;

### Regulation of Business Practices

#### Broker’s supervisory responsibilities

- providing licensed staff with written policies and procedures;
ensuring that all licensees have written employment agreements; and
ensuring that someone with management authority is available to assist.

49 Regulation of Business Practices
Broker’s supervisory responsibilities

- A broker who fails to supervise affiliated licensees may be liable for their violations of license law, unless:
  - the broker had reasonable procedures for supervising the licensee;
  - the broker did not participate in the violation; and
  - the broker did not ratify the violation.

50 Independent Contractor
  vs.
Employee

51 Regulation of Business Practices
Real estate assistants

- A licensee may hire an assistant for administrative tasks, but an unlicensed assistant may not, among her activities:
  - cold call,
  - host open houses,
  - show property,
  - answer questions about a listing, or
  - handle trust funds.

- Real Estate assistant must have employment contract signed by assistant, licensee, and broker.

52 Regulation of Business Practices
Trust funds

Most common reason for disciplinary action is the mishandling of trust funds.

Trust funds: money or valuables temporarily entrusted to a broker by clients or customers.

53 Regulation of Business Practices
Trust funds
• Earnest money deposit is a common example of trust funds.

• Commissions and general operating funds are not trust funds.

54 Regulation of Business Practices

Trust funds
- When a licensee receives trust funds, she must turn the funds over to the broker as soon as practically possible.
  - The broker must deposit the funds into a trust account.
  - A licensee acting in her own transaction still must turn over any earnest money for deposit in trust account.

55 Trust Funds

Avoiding commingling
- Broker must maintain trust account (or escrow account) for funds held on behalf of clients and customers.
  - Trust funds must always be deposited into trust account.
  - Broker's own money may not be commingled, or deposited in trust account.

56 Trust Funds

Account requirements
- Requirements for trust accounts:
  - Federally insured checking account
  - Commission must be notified of account's location and number
  - Commission must be able to audit at any time
  - May be interest-bearing (parties must give written consent as to who receives the interest)

57 Trust Funds

Account requirements
- Exception to rule against commingling:
  - Broker may maintain enough personal funds in account to meet minimum balance requirement or to pay service charges (or leave commission funds in trust account for same purpose)

58 Trust Funds

Trust account procedures
- Broker must maintain manual or electronic accounting system that includes the following details for each deposit:
  - names of parties (buyer and seller),
  - amount and date of deposit,
  - identification of property involved, and
  - amount, payee, and date of each check.

59 Trust Funds

Trust account procedures
Trust Funds
Disbursements
Disbursement may be made:
- upon rejection or withdrawal of offer,
- at closing,
- with written consent of all parties,
- after making reasonable interpretation of contract, or as directed by court order.

Trust Funds
Commissions paid from accounts
A commission payable to a broker may be paid directly from a trust account if:
- in a sales transaction, the transaction has closed or the closing date has passed,
- in a lease transaction, possession has been delivered to the tenant, or
- by written agreement from all parties.

Trust Funds
Property Management
Two separate trust accounts:
1. Security deposits must be held in an independent trust account.
2. Rental payments & other operating funds must be held in separate trust account.

Regulation of Business Practices
Recordkeeping
Broker generally required to keep copies of all documents from real estate transactions:
- listing agreement
- buyer agency agreement
- purchase agreement
- lease or rental agreement
- trust account records
- closing statements
Regulation of Business Practices
Recordkeeping

Documents must be kept for three years after closing date.
- Must be available for inspection.
- Commission may audit the records.

Regulation of Business Practices
Advertising

False advertising is a violation of license law; no ad may be misleading or misrepresent any property, sale terms, services, or policies.

Regulation of Business Practices
Advertising

All advertising by licensees must be under direct supervision of broker, and the broker and property owner must give written consent to the advertisement.

Regulation of Business Practices
Advertising

**Blind ad:** Advertisement that fails to include name of broker and licensee, or fails to indicate ad was placed by licensee.

- Prohibited in Georgia.
- May not apply when licensee advertises her own property for sale, but she must disclose that she is a licensee.
- Active licensees must have written permission of broker to advertise own property without using broker’s name.

Regulation of Business Practices
Commissions

- A licensee must have a valid real estate license to collect a commission for real estate services.
  - Cannot bring suit for a commission without proof of licensure.
License law regulates how licensees serve clients and customers in a transaction.

During negotiations, licensee must present all written communications from one party to the other.

A licensee must give parties a copy of every document they sign.

**Regulation of Business Practices**

**Handling transactions**

License law states that all listing agreements and buyer agency agreements must contain a definite expiration date.

Brokers who manage properties must have written property management agreements with property owners.

**Regulation of Business Practices**

**Fidelity bond**

A broker who provides community association management services, and is responsible for $60,000 or more in community association funds, must maintain a fidelity bond.

**Regulation of Business Practices**

**Disclosure of relationships**

A licensee must disclose in writing, before offer is made, to all parties:
- for whom the licensee is working, and
- from whom the licensee will receive compensation.

**Regulation of Business Practices**

**Disclosure of relationships**

A licensee acting as a principal in a transaction must disclose that she is licensed.

**Summary**

- Brokerage offices
- Affiliation and termination
- Broker’s supervisory responsibilities
- Trust funds
- Commingling
- Recordkeeping
- Advertising

**Real Estate Licensing**
Disciplinary action
Real Estate Commission enforces license law through disciplinary action.

A licensee who fails to comply with the law, or any rules created under the law, may be subject to discipline.

Disciplinary Action
Grounds for disciplinary action
Unfair Practices
Grounds for disciplinary action include:
• acquiring license by fraud or misrepresentation;
• engaging in discriminatory behavior;
• intentional misrepresentation;

Disciplinary Action
Grounds for disciplinary action: Unfair Practices

• failing to account for trust funds;
• commingling trust and business funds;
• accepting or giving undisclosed commissions;

Disciplinary Action
Grounds for disciplinary action: Unfair Practices

• accepting compensation from anyone other than the licensee’s broker;
• acting as agent and undisclosed principal;
• indicating that an opinion of value is an appraisal (unless he is an appraiser);

Disciplinary Action
Grounds for disciplinary action: Unfair Practices

• paying a commission to unlicensed person;
• failing to include expiration date in listing;
• failing to deliver completed copy of offer;

Disciplinary Action
Grounds for disciplinary action: Unfair Practices

• failing to deliver completed closing statements;
• acting as a dual agent without consent;
• demonstrating incompetence or dishonesty;
Disciplinary Action
Grounds for disciplinary action: Unfair Practices

• failing to maintain records for three years;
• falsifying any portion of a contract; and
• failing to disclose an agency relationship.

Disciplinary Action
Procedures

Disciplinary action begins with investigation, either begun by the Commission on its own or in response to a complaint.

Disciplinary Action
Procedures

If a minor infraction occurred, the licensee will be issued a citation.

• A citation may order additional real estate education or impose a fine.
• A licensee may request hearing within 30 days of service to contest the citation.

Disciplinary Action
Procedures

A licensee charged with a serious infraction is entitled to a hearing.

Disciplinary Action
Procedures

• The licensee must receive written notice of date, time, and location of hearing, and a statement of charges.
• Licensee may be represented by counsel and may present evidence.

Disciplinary Action
Sanctions

¬ The Commission may impose sanctions, including:
• reprimand,
• refusal to grant or renew license,
• license suspension,
• license revocation,
Disciplinary Action
Criminal prosecution
- Violations of license law are misdemeanors.
- Prosecution will be handled by prosecuting attorney in county where violation occurred, not the Commission.

Disciplinary Action
Criminal prosecution
Anyone injured by a licensee’s actions may file a civil lawsuit for damages.
- The Commission cannot award damages to injured parties.

Disciplinary Action
Notification of legal action
- A licensee must notify the Commission after the final disposition of any court or administrative case that:
  - names the licensee, and
  - is related to a violation of license law.
- The licensee must notify the Commission within 10 days.

Disciplinary Action
Real Estate Education, Research & Recovery Fund
- Injured party may sue licensee in civil court, but judgment is worthless if licensee has no money or other assets.
- Georgia maintains Real Estate Education, Research, and Recovery Fund for reimbursing people injured by a licensee’s acts/omissions in real estate transaction.
  - Funded by portion of license application.

Disciplinary Action
Real Estate Education, Research & Recovery Fund
- Maintains minimum $1,000,000
  - If funds fall below, then all licensees would have to contribute

Disciplinary Action
Real Estate Recovery Fund
Injured party must first be awarded judgment in civil court. Injured party must then attempt to collect awarded damages from licensee. If injured party cannot collect appropriate damages from licensee, he or she may then appeal to real estate commission recovery fund.

93  Disciplinary Action
Real Estate Recovery Fund

The Recovery Fund will pay up to:
- $15,000 for losses in a single transaction, and
- $45,000 for losses caused by one licensee.
A licensee's license is revoked once payment from the Fund is made on his behalf. License cannot be reinstated until all of the money is returned to the Fund with interest.

94  Summary

- Grounds for disciplinary action
- Procedures
- Sanctions
- Real Estate Recovery Fund

95  Antitrust Laws

Federal antitrust laws impose restrictions on real estate agent's behavior towards clients, customers, and other agents.

Foundation of antitrust laws: competition is good for the economy and society.

96  Antitrust Laws

Sherman Act: federal antitrust law prohibiting any agreement, including conspiracy, that has the effect of restraining trade.

Conspiracy: when two or more people or entities participate in a common scheme that has effect of restraining trade.

97  Antitrust Laws

Activities prohibited by antitrust laws:
- price fixing
- group boycotts
- tie-in arrangements

98  Antitrust Laws

Price fixing

Price fixing: cooperative setting of price or price ranges by competing firms.
Agents should NEVER discuss their commission rates.
• Casual announcement of broker changing rates might be an antitrust violation.

Antitrust Laws

Group boycotts

Group boycott: Agreement between two or more people engaged in business to exclude another from fair participation.

Encouraging other brokers not to do business with a certain broker could be considered a group boycott.

Antitrust Laws

Tie-in arrangements

Tie-in arrangement: an agreement to sell one property, only on the condition that the buyer also purchases a different property.

Guaranteed sales plan: not a violation of anti-trust laws

Antitrust Laws

• Georgia has two (2) antitrust laws:
  • Fair Business Practice Act
  • Uniform Deceptive Trade Practices Act

Antitrust Laws

Penalties

Individual licensee guilty of violating Sherman Act may be:
• fined up to one million dollars and/or
• sentenced to up to 10 years in prison.

Corporation guilty of violating Sherman Act may be:
• fined up to one hundred million dollars

Antitrust Laws

Avoiding violations

To avoid antitrust violations, brokers should:
• establish fees and listing policies independently;
• never use forms with pre-printed commission rates or imply commission is non-negotiable;
• never discuss business plans with competitors; and
• never participate in group boycotts or tie-in arrangements.

Summary
Earning a Commission
- Sherman Act
- Conspiracy
- Price fixing
- Group boycotts
- Tie-in arrangements