

Real Estate Principles of Georgia

Lesson 18: Georgia Real Estate License Law

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Real Estate Commission

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

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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

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Real Estate Commission

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

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Real Estate Commission

- ▶ 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 notarized.

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Real Estate Commission

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

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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.



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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



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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;



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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.



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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;



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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;

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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;



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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.



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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.

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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.

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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



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Summary Real Estate Licenses

- ▶ License law
- ▶ Real estate activities
- ▶ Exempted activities

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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



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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).



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Types of Licenses Broker's license



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

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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.

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Types of Licenses

Associate broker's license

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



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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.

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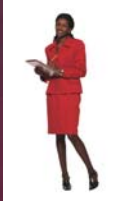


Types of Licenses

Community association managers

Authorizes licensee to provide only management services for community (i.e., homeowners) association.

- Cannot list or sell real estate.



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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 precursing course (or accredited college equivalent); and
- have passed a written examination.

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



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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.



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Real Estate Licensing Real estate examination

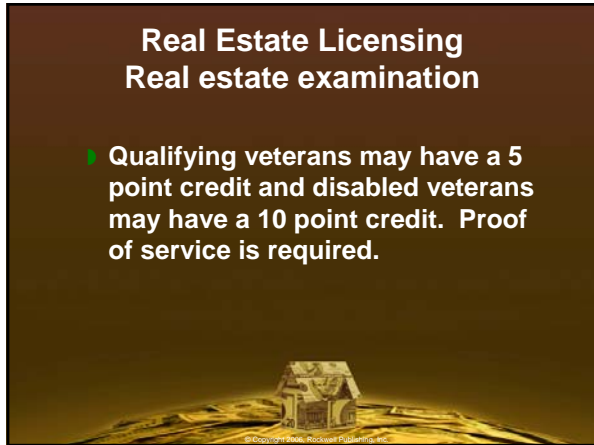
- ▶ The salesperson and community association manager exams are objective multiple-choice questions and require a score of 75% to pass.
- ▶ The broker's exam is based on simulation exercises.

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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.



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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.



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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.

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Real Estate Licensing 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.

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Real Estate Licensing Applying for license

- ▶ 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.



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Real Estate Licensing 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.



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Real Estate Licensing License renewal

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.



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Real Estate Licensing License Lapse

► If your Georgia license lapsed due to your failure to take the 1st year post-license course requirement:

- Reinstate 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.

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Real Estate Licensing License Lapse

- ▶ 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

Types of Licenses


- ▶ 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 days.

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.

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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.



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Regulation of Business Practices Affiliation and termination

- ▶ 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.

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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;



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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;



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Regulation of Business Practices Broker's supervisory responsibilities



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

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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.

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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.



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Independent Contractor vs. Employee



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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.

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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.



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Regulation of Business Practices Trust funds



- Earnest money deposit is common example of trust funds.
- Commissions and general operating funds are not trust funds.

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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.



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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.



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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)

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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)



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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.

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Trust Funds

Trust account procedures



- ▶ **Reconciliation:** process of comparing trust fund balance to individual transactions.
 - Georgia law requires brokers to reconcile trust account balances each month.
 - Reconciliation records must be maintained at least three years.

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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.



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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.



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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.



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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



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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.

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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.



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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.



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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.

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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.

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Regulation of Business Practices Handling transactions

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.

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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.

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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.



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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.

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Regulation of Business Practices Disclosure of Relationships

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



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Summary

Regulating Business Practices

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

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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.



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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;

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Disciplinary Action

Grounds for disciplinary action:

Unfair Practices

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



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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);



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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;



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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;



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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.



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Disciplinary Action Procedures

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



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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.



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Disciplinary Action Procedures

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



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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.

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Disciplinary Action Sanctions

- ▶ The Commission may impose sanctions, including:
 - reprimand,
 - refusal to grant or renew license,
 - license suspension,
 - license revocation,
 - fine of up to \$1,000 per violation or \$5,000 for multiple violations, or
 - completion of real estate courses.



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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.



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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.

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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.

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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.

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Disciplinary Action Real Estate Education, Research & Recovery Fund

- ▶ Maintains minimum \$1,000,000
 - If funds fall below, then all licensees would have to contribute



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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.



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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.

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Summary Disciplinary Actions

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

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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.

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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.

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Antitrust Laws



Activities prohibited by antitrust laws:

- price fixing
- group boycotts
- tie-in arrangements

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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.

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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.

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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

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Antitrust Laws

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



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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



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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.



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Summary Earning a Commission

- ▶ Sherman Act
- ▶ Conspiracy
- ▶ Price fixing
- ▶ Group boycotts
- ▶ Tie-in arrangements

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