

Calendar

TBA

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Estate License
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Disciplinary
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Rule Changes

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Do You know the Definition of Commercial Real Estate?

A real estate licensee in Georgia is permitted to practice any type of real estate brokerage activity. However, some laws that apply to commercial real estate do not apply to residential real estate and vice versa. When dealing in commercial real estate, it is important to understand the Georgia definition of commercial real estate. Why? Because the Commercial Broker's Lien Law allows the Broker (not a salesperson or associate broker) to file a lien on the subject real estate if he/she is not paid a valid commission that was due. The very existence of this law has virtually eliminated the need to file such a lien.

Before any closing on a commercial property, the broker(s) involved are required to sign an affidavit attesting to the commission due to him/her. Because of this affidavit, the issue of commission payment is addressed before the closing and this usually pre-empt the need to file a lien. This law applies only to commercial real estate, and property must meet the Georgia definition of commercial real estate, or the lien is not a viable solution for recovering a lost commission.

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2 Job Opportunities at the Georgia Real Estate Commission

Position of [Investigator](#) and Position of [Information Specialist](#)

For more information, go to

<https://grec.state.ga.us/job-opportunity-at-grec/>

March 2021 Meeting - Commission Actions Taken

Cases Sent to the Attorney General for Review and Disposition by Consent Order or by Hearing	2
Cease & Desist Orders Issued	0
Citations Issued	6
Letter of Findings Issued	0
Consent Orders Entered Into	1
Final Orders of Revocation of Licensure	0
Cases Closed for Insufficient Evidence or No Apparent Violation	11
Licensing Cases - Applicant has a Criminal Conviction - License Issued	8
Licensing Cases - Applicant has a Criminal Conviction - License Denied	2
Total	30

[Click here to review a legend of the disciplinary actions the Commission may impose.](#)

Commercial Real Estate...

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The majority of states have enacted a Commercial Broker Lien law. Georgia was one of the first to create and enact such a lien law. Whenever it is necessary to file a lien, an attorney should be involved, and the broker must be aware that certain conditions must be met to be entitled to file such a lien. The lien law even provides that the broker's court costs, and legal fees can be paid if the lien is found valid.

A rule-of-thumb summary of the Georgia definition of commercial real estate is all real estate except the 3 categories listed below.

1. 1-4 Multifamily units
2. Vacant land not zoned some form of commercial, retail, multifamily
3. Real estate classified as agricultural for tax purposes.

The entire commercial Broker Lien Law can be accessed at [Title 44 Chapter 14 Article 8 Part 15 Commercial Real Estate Broker Liens](#).



Absolutely Must Know Section

[43-40-25. Violations by licensees, schools, and instructors; sanctions; unfair trade practices](#)

Competency is a key factor in determining if a violation of a license law has occurred. If an investigation by the Georgia Real Estate Commission uncovers that the actions of a licensee indicate that he/she has performed brokerage services without the knowledge and experience needed to competently perform those services, it would be a violation of 43-40-25 (b) as quoted below. If a residential agent with no experience in commercial real estate performs brokerage services in commercial or any other aspect of real estate brokerage, it is the licensee's responsibility to either obtain the necessary knowledge or to involve a licensee experienced in that service, such as commercial real estate.

A broker cannot file a lien on a property without a valid claim for a commission. To do so would be a violation of 43-40-(b) 24 of the unfair trade practices of the Georgia Real Estate License Law, as quoted below.

(b) (25) Having demonstrated incompetency to act as a real estate licensee in such manner as to safeguard the interest of the public or any other conduct whether of the same or a different character than heretofore specified which constitutes dishonest dealing;

(b) (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;



Focus on Terminology: "Lien"

Liens are monetary claims and are an encumbrance, or a burden on the real estate. A lien on a property must be paid and/or removed before the title is clear and considered marketable.

The definition of a lien by John W. Reilly, in *The Language of Real Estate*, is:

"A charge or claim that one person (lienor) has on the property of another (lienee) a security for a debt or obligation. A lien always arises from a debt and can be created by an agreement of the parties (e.g., a mortgage) or by operation of law (e.g., a tax lien): A lien may be general or specific. The procedure is based on each state's statutes."

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