

Report of The

GEORGIA REAL ESTATE COMMISSION

2002 TASK FORCE

November 2002

**Georgia Real Estate Commission
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2002 Task Force Report

Summary of the Actions of the 2002 Task Force

The 2002 Georgia Real Estate Commission Task Force on the License Law and Rules met at 9:00 am on October 23, 2002 at the Hyatt Regency Atlanta to consider proposed and possible changes to the License Law and the Rules and a proposed reorganization of the License Law and the Commission's substantive and procedural Rules. [See Appendix for full text of proposed changes to the Law and the Rules.]

AGENDA

I. Opening Comments

II. Special Counsel Report

The Task Force reviewed the proposed simplification and reorganization of O.C.G.A. Chapter 43 of Title 40 and of the Commission's substantive and procedural Rules. The Task Force raised no objections.

III. Clarifications Previously Approved by GREC

The Task Force appeared to reach consensus on the following seven proposed changes to the Law previously approved by the Commission.

- A. Amend **43-40-1** and **43-40-9** to add a new definition "Brokerage Engagement" and include representation for buyers and sellers and tenants and landlords and a new broader definition of "state;"

Action No discussion

- B. Amend **43-40-9** to provide the Commission with more flexibility to enter into reciprocal agreements with other jurisdictions;

Action No discussion

- C. Amend **43-40-15, 16, 25(c), and 26** to allow the Commission to offer the "opportunity of a hearing" to persons whose licenses it disciplines or applicants whose applications it denies instead of requiring that it "hold a hearing;"

Action No discussion

- D. Amend **43-40-25(a)** to restructure the existing sanctions that the Commission may impose in a format similar to those of other professional licensing agencies in the state and to add authority for the Commission, after opportunity for a hearing, (a) to have the option of

imposing fees to cover the cost of administrative, investigative, and legal expenses incurred by the Commission in conducting an investigation and (b) to limit or to restrict the extent a licensee may practice;

Action Task Force members asked for clarification of when fees for legal expenses might be imposed. Upon being told that fees could only be imposed if the Commission were to bring formal charges and that the Commission only brings formal charges in approximately 10% of all investigative cases, the Task Force appeared to support the proposal.

- E. Amend **43-40-25(b)(13), (14), and (26)** in the light of current business practice in which both the seller and the buyer have representation so that these unfair trade practices clearly apply to both seller and buyer brokerage agreements;

Action No discussion

- F. Amend **43-40-25(b)(27)** to require licensees to keep any document that results in their depositing of trust funds for the three year retention period currently required for sales contracts and closing statements; and

Action Clarifying discussion only

- G. Amend **43-40-25.1** to replace the requirement that a licensee must include in sales and lease contracts “the date of acceptance” with a more generic requirement for indicating in the contract when the parties acted or agreed.

Action Clarifying discussion only

IV.&V. Language Review and Additional Recommendations

The Task Force also appeared to support nine other proposed changes that were recommended to the Commission in its discussions with various working groups:

- A. Amend **43-40-10** to allow community association managers to operate as corporations, limited liability companies, and partnerships;

Action No discussion

- B. Amend **43-40-11** to remove the requirement that brokers display wall certificates of licensure;

Action No discussion

- C. Repeal **43-40-17** since subsequent amendments to the Law have made its provisions unnecessary;

Action No discussion

- D. Amend **43-40-19** and **43-40-22.1** to suggest new language for headers that more accurately identifies the content of the Sections;

Action No discussion

- E. Add new subparagraphs **(b)(33.1)** and **(b)(33.2)** to **43-40-25** to require that community association managers and property managers, upon the termination of a management contract, tender to the association or owner a) accurate records of all transactions and funds managed during the period of the contract and not previously accounted for, b) all documents received on behalf of the association or owner during the term of the contract, and c) any funds being held on behalf of the association or owner

Action The original proposal was for one subparagraph applying both to property managers and community association managers that required delivery of all records to the association or owner. The Task Force proposed a) having a subparagraph for property managers and a separate subparagraph for community association managers, b) requiring the manager only to tender the records to the association or owner, and c) exempting from the tendering requirement records of transactions for which the licensee has already accounted.

Amended Proposal:

43-40-25 Violations by licensees, schools, and instructors; sanctions.

(b) Licensees may not engage in any of the following unfair trade practices:

(33.1) Failure to tender to a community association terminating a management contract within thirty days of the termination, or within such other time period as the management contract may provide:

(a) a complete and accurate record of all transactions and funds handled during the period of the contract and not previously accounted for,

(b) all records and documents received from the community association or received on the association's behalf, and

(c) any funds held on behalf of the community association;

(33.2) Failure to tender to a property owner terminating a management contract within thirty days of the termination, or within such other time period as the management contract may provide:

(a) a complete and accurate record of all transactions and funds handled during the period of the contract and not previously accounted for,

- (b) all records and documents received from the the property owner or received on the owner’s behalf, and
- (c) any funds held on behalf of the property owner;

F. Amend **43-40-27** to provide that the Commission publicize revocations and suspensions of licenses and surrenders of licenses in contested cases;

Action During the discussion, Task Force members asked that the term “contested cases” be clarified with language referring to the definition of the term in the Administrative Procedure Act.

Amended Proposal:

43-40-27 Investigation of complaints

(e) Whenever the commission revokes or suspends a license, a school approval, or an instructor approval or whenever a licensee, an approved school, or an approved instructor surrenders a license or an approval to the commission in a contested case as defined in Chapter 13 of Title 50, the “Georgia Administrative Procedure Act,” the commission ~~shall~~ may publish the name of such licensee, approved school, or approved instructor on its official web site or in its any other official newsletter publication of the agency.

G. Amend **43-40-29(a)(7)** to define “owner” in the exceptions to licensure by recognizing new forms of ownership;

Action No discussion

H. Amend **43-40-29(c)** to clarify the applicability to licensees of the exceptions to licensure; and

Action No discussion

I. Amend **520-2-.07** to clarify what college or university courses licensees may take to satisfy continuing education requirements.

Action A member of the Task Force suggested adding “finance” as a qualifying major for eligible course. The Task Force appeared to support the proposed change with the addition of the finance major.

Amended Proposal:

520-2-.07 Continuing Education Courses. Amended.

(3) The Commission shall deem a licensee to have met the continuing education requirement of O.C.G.A. § 43-40-8 (e) for a licensing period if the licensee successfully completes in a licensing period any of the following courses which have at least the total number hours of instruction the licensee is required to complete:

- (a) a Community Association Managers Prelicense, Salespersons Prelicense, Sales Postlicense, or Brokers Prelicense course except that a licensee may use the Sales Postlicense Course which such licensee took to meet the twenty-five hour education requirement for the first year of licensure as a salesperson only to meet six hours of his or her continuing education requirement for his or her first renewal period;
- (b) any course at an accredited college or university which counts toward obtaining a major in the field of real estate or courses dealing with principles, fundamentals, or essentials of real estate; any course which counts toward obtaining a major in business administration, accounting, finance, or marketing offered by a college or university accredited by one of the regional accrediting associations recognized by the United States Department of Education; and any course in agency, real property law, and contract law at an accredited school of law. College correspondence courses and courses which qualify for continuing education units may not be used to qualify under this Rule; or
- (c) any other course or courses which the Commission approves prior to a licensee's taking the course.

The Task Force discussed the issue of proposing to amend **43-40-22.1** so that in certain circumstances a community association would be allowed waive on behalf of its manager/broker the requirement that the broker provide fidelity coverage protecting the community association's funds. Representatives of the community association management industry generally supported the existing requirement. Some Task Force members argued that associations should have the right to waive the requirement. Others felt that the requirement should be in place at least as long as the original developer remained in control of the association. After considerable discussion, the Task Force failed to reach a consensus on any recommendation to change the existing language.

VI. Future Topics

The Task Force Chair asked each member to rank the following 17 other possible issues according to need to consider, urgency, and desirability.

- (1) Should the Commission keep records on licensees in large companies that identify the branch office with which they are affiliated?
- (2) Does the law's provisions allowing an associate broker to be the broker of a different firm create inappropriate confusion for the public?

- (3) Should the license law's provisions on the issuing or denying licenses as a result of convictions be revised?
- (4) What steps should be taken to prevent an attorney from collecting (or seeking to collect) part of the broker's leasing commission and if the broker does not accede to the request, sending the client to other property?
- (5) Should the license law provide ways to prevent licensees from transferring to a new firm when they owe bills incurred while with the releasing broker?
- (6) What help can the Commission give brokers in making proper interpretations of the law and in determining what actions by licensees brokers should report to the GREC?
- (7) Are new rules or laws needed or desirable to cover adequately new practices in which licensees advertise the listings of other firms?
- (8) Should the "grandfather" clause exempting some licensees from required continuing education be abandoned or modified?
- (9) What steps need to be taken to increase the ability of licensees to conduct business across state lines with minimal licensing requirements?
- (10) Should the Commission issue licenses by practice specialty (for example, commercial and residential licenses or sales and leasing licensees)?
- (11) Should Georgia have a system of mandatory errors and omissions insurance?
- (12) Do home inspectors need to be licensed by the Commission?
- (13) Should Georgia adopt a "single license" program similar to those in Colorado, North Carolina, and Oregon?
- (14) Does the license law's provision regarding broker's conducting closings need revision in light of the Bar Association's action against a North Georgia broker?
- (15) Should community association managers and property managers keep copies of trust account records for three years after a management contract ends?
- (16) Should the Commission further define in 43-40-29(a)(10) activities that an unlicensed person can perform when employed by a broker to assist in property management?
- (17) Should the Commission seek changes in the Licenses Law regarding its discretionary powers?

The results of those rankings are shown in the table on the following page.

Future Topic	Needs Action Now	Action w/in 2 Years	Study	Not Needed
1. Branch Offices		1	5	7
2. Multiple Broker Licenses	2		7	4
3. Denial for convictions	3	2	5	2
4. Attorneys and commissions	2	1	9	3
5. Transfers owing broker	4	2	5	3
6. Interpreting License Law	2	3	7	
7. Advertising listings of others	3	1	6	1
8. Grandfathering CE	4	2	2	5
9. Interstate practice	5	3	5	1
10. Specialty licensing	1	1	8	3
11. Mandatory E & O insurance	2	2	6	3
12. Licensing home inspectors	8	4	3	2
13. Single licensing		1	6	6
14. Brokers conducting closings	2	2	6	2
15. Trust account records	6	1	4	
16. Definition of manager's duties	1		4	
17. Discretionary powers of GREC			4	1
18. Rebating commissions		1	1	
19. Licensees and spouses's rentals	Listed by 1 TF member, not rated			

15 Responses