

APPENDIX

I. Opening Comments

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

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

A. 43-40-1 & 43-40-9 - defines "brokerage agreement" to include representation for both sellers and buyers; and recognizing the nature of international trade and that countries other than the United States and Canada now have license laws, broadens the definition of "state."

43-40-1 Definitions

"Brokerage agreement" means an express written contract wherein the client promises to pay the real estate broker a valuable consideration or agrees that the real estate broker may receive a valuable consideration from another in consideration of the broker's producing a seller, buyer, tenant, or landlord ready, able, and willing to sell, buy, or rent the property or in consideration of the broker's performing property management services or performing community association management services;

"State" means any state, district, territory, possession, or province of the United States or Canada and any sovereign nation or any political subdivision of such sovereign nation.

43-40-9 - removes definition of "state" from 43-40-9.

43-40-9 Nonresident licensees

~~(g) — As used in this code section, the term “state” means any state, district, territory, possession, or province of the United States or Canada. sovereign nation that has enacted a real estate license law to regulate the activities of real estate licensees or any political subdivision of such sovereign nation.~~

B. 43-40-9 - provides the Commission flexibility to enter into reciprocal agreements with other states whose license laws may not be identical to Georgia’s, but are substantially similar.

43-40-9 Nonresident licensees.

(c) In order to be licensed in this state, nonresidents who are licensed in another state must meet any requirements established by the Commission, which may include:

[The current law lists seven requirements related to: proof of licensure, paying fees, signing statement that the applicant has read our law, requiring salesperson-broker relationship if necessary, no prior disciplinary actions, naming Commissioner as agent for service, and agreeing to cooperate with any investigation.]

C. 43-40-15, 43-40-16, 43-40-25 (c), & 43-40-26 - allow the Commission to offer persons whose licenses it disciplines or applicants whose applications it denies the “opportunity of a hearing” instead of requiring that it hold a “hearing.” The wording of some sections of the current law appears to require a hearing regardless of whether the licensee or applicant wants one. The proposed change would place the option for a hearing with the licensee or applicant; but if the licensee or applicant does not want a hearing, the Commission would not be obligated to the expense of holding one.

43-40-15 Grant, revocation, or suspension of licenses.

(h) Whenever any occupational licensing body of this state, any other state, or any foreign country has sanctioned the license of an applicant for any license authorized by this chapter or whenever such an applicant has allowed a license to lapse or has surrendered a license

to any occupational licensing body of this state, any other state, or any foreign country after that body has initiated an investigation or a disciplinary process regarding such applicant's license, such sanction, lapsing, or surrender in itself may be a sufficient ground for refusal of a license. Whenever any occupational licensing body of this state, any other state, or any foreign country has revoked the license of an applicant for any license authorized by this chapter or whenever such an applicant has allowed a license to lapse or has surrendered a license to any occupational licensing body of this state, any other state, or foreign country after that body has initiated an investigation or a disciplinary process regarding such applicant's license, the commission may issue an associate broker's or a broker's license only if:

- (1) At least ten years have passed since the date that the applicant's occupational license was revoked or surrendered;
 - (2) No criminal charges are pending against the applicant at the time of application; and
 - (3) The applicant presents to the commission satisfactory proof that the applicant now bears a good reputation for honesty, trustworthiness, integrity, and competence to transact the business of a licensee in such a manner as to safeguard the interest of the public.
- (i) Whenever any licensee is convicted of any offense enumerated in subsection (b) of this Code section, the licensee must immediately notify the commission of that conviction. The licensee's license shall automatically be revoked 60 days after the licensee's conviction unless the licensee makes a written request to the commission for a hearing during that 60 day period. ~~The failure of a licensee to notify the commission of the licensee's conviction within 60 days of the date of that conviction shall be grounds for automatically revoking the licensee's license prior to any hearing at the time the commission receives evidence of that conviction.~~ Following any such hearing ~~held~~ requested pursuant to this subsection, the commission in its discretion may impose upon that licensee any sanction permitted by this chapter.

43-40-16. Nonacceptance of applications for licenses; hearings; judicial review.

- (a) If the commission, after an application in proper form has been filed with it, accompanied by the proper fee, shall refuse to ~~accept the application~~ issue a license to such applicant, the commission shall provide an opportunity for a hearing for such applicant in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

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

- (~~b~~c) When a licensee has previously been sanctioned by the commission or by any other state's real estate brokerage licensing authority, the commission, ~~through its hearing officers~~, may consider any such prior sanctions in determining the severity of a new sanction which may be imposed upon a finding that the licensee has committed an unfair trade practice, that the licensee has violated any provision of this chapter, or that the licensee has violated any of the rules and regulations of the commission. The failure of a licensee to comply with or to obey a final order of the commission may be cause for suspension or revocation of the individual's license after opportunity for a hearing.

43-40-26. Hearings before commission; judicial review.

- (a) Before the commission shall censure a licensee or before revoking or suspending a license, it shall provide an opportunity for a hearing for such holder of a license in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

D. 43-40-25 (a) - restructures the existing sanctions that the Commission may impose in a format similar to those of other professional licensing agencies in the state and add authority for the Commission, after opportunity for a hearing, (a) to have the option of imposing fees to cover the administrative, investigative, and legal expenses incurred by the Commission in conducting an investigation and (b) to limit or restrict the extent a licensee may practice (for example, a licensee who fails to handle property management activities properly might

be restricted to real estate sales or an approved school might be restricted in the types of courses it may offer);

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

(a) ~~In accordance with the hearing procedures established for contested cases by Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," the commission shall have the power to reprimand licensees and approved schools or instructors; to revoke or suspend any license issued under this chapter; to revoke the license of a real estate broker or qualifying broker and simultaneously issue such licensee a salesperson's license; to revoke or suspend approval of any school or instructor; to impose a fine not to exceed \$1,000.00 for each violation of this chapter or its rules and regulations with fines for multiple violations limited to \$5,000.00 in any one hearing; to require completion of a course of study in real estate brokerage or instruction; to require the filing of periodic reports by an independent accountant on a real estate broker's designated trust account; or to utilize any combination of these sanctions which the commission may deem appropriate whenever a licensee a school approval, or an instructor approval has been obtained by false or fraudulent representation or whenever a licensee, an approved school, or an approved instructor has been found guilty of a violation of this chapter, or of the rules and regulations promulgated by the commission, or of any unfair trade practices, including, but not limited to, the following:~~

(a) In accordance with the hearing procedures established for contested cases by Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," whenever a license, a school approval, or an instructor approval has been obtained by false or fraudulent representation; or whenever a licensee, an approved school, or an approved instructor has been found guilty of a violation of this chapter, or of the rules and regulations promulgated by the commission, or of any unfair trade practices, including, but not limited to, those listed in this Section; the commission shall have the power to take any one or more of the following actions:

- (1) Refuse to grant or renew a license to an applicant;
- (2) Administer a reprimand;
- (3) Suspend any license or approval for a definite period of time or for an indefinite period of time in connection with any condition that may be attached to the restoration of the license or approval;
- (4) Revoke any license or approval;
- (5) Revoke the license of a broker, qualifying broker, or associate broker and simultaneously issue such licensee a salesperson's license;
- (6) Impose on a licensee, applicant, school approval, or instructor approval monetary assessments in an amount necessary to reimburse the commission for the administrative, investigative, and legal costs and expenses incurred by the commission in conducting any proceeding authorized under O.C.G.A. § 43-40-1 et seq. or Chapter 13 Title 50 of the Georgia Administrative Procedure Act;
- (7) Impose a fine not to exceed \$1,000.00 for each violation of this chapter or its rules and regulations with fines for multiple violations limited to \$5,000.00 in any one disciplinary proceeding or such other amount as the parties may agree;
- (8) Require completion of a course of study in real estate brokerage or instruction;
- (9) Require the filing of periodic reports by an independent accountant on a real estate broker's designated trust account; and
- (10) Limit or restrict any license or approval as the commission deems necessary for the protection of the public.

E. 43-40-25 (b) (13), (14), & (26) - some unfair trade practices that address proper business conduct involving brokerage agreements (for example, listing agreements and buyer's brokers agreements) have language that limits them to brokerage agreements with sellers. Until the 1990s the usual practice in the industry was for the licensee to represent the seller, and the buyer most often was unrepresented. Thus, brokerage agreements were almost always between the licensee and the seller. The usual business practice now is that both the

seller and the buyer are represented by an agent. Recognizing this new practice, the Commission recommends changing unfair trade practices (13), (14), and (26) so that they clearly apply to both seller and buyer brokerage agreements.

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

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

- (1) Because of race, color, religion, sex, handicap, familial status, or national origin:
 - (A) Refusing to sell or 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 or causing to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of real estate, that indicates any preference, limitation, or discrimination or an intention to make any such preference, limitation, or discrimination;
 - (D) Representing to any person that any real estate is not available for inspection, sale, or rental when 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;

see also Rules 520-1-.04, 520-1-.18, & 520-1-.22.

- (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 any money coming into the licensee's possession which belongs to others;

see also O.C.G.A. §43-40-20 and Rules 520-1-.26, 520-1-.30, & 520-1-.34.

- (4) Commingling the money or other property of the licensee's principals with the licensee's own;
- (5) Failing to maintain and deposit in a separate, federally insured checking account all money received by said broker acting in said capacity, or as escrow agent or the temporary custodian of the funds of others, in a real estate transaction unless all parties having an interest in said funds have agreed otherwise in writing;

see also O.C.G.A. §43-40-20 and Rules 520-1-.26, 520-1-.30, & 520-1-.34.

- (6) Accepting, giving, or charging any undisclosed commission, rebate, or direct profit on expenditures made for a principal or any undisclosed commission, rebate, or direct profit for procuring a loan or insurance or for conducting a property inspection related to a real estate transaction;
- (7) Representing or attempting to represent 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;
see also O.C.G.A. §43-40-19(c) and Rules 520-1-.07 & 520-1-.11.
- (8) Accepting a commission or other valuable consideration by a licensee from anyone other than the broker holding that licensee's license without the consent of that broker;
see also O.C.G.A. §43-40-19(c) and Rules 520-1-.08 & 520-1-.11.
- (9) Acting in the dual capacity of agent and undisclosed principal in any transaction;
see also Rules 520-1-.04, 520-1-.08, 520-1-.15, & 520-1-.17.
- (10) Guaranteeing or authorizing any person to guarantee future profits which may result from the resale of real property;
- (11) Placing a sign on any property offering it for sale or rent without the written consent of the owner or the owner's authorized agent and failing to remove such sign within ten days after the expiration of listing;
see also Rule 520-1-.04.
- (12) Offering real estate for sale or lease without the knowledge and consent of the owner or the owner's authorized agent or on terms other than those authorized by the owner or the owner's authorized agent;
see also Rules 520-1-.03, 520-1-.04, & 520-1-.19.
- (13) Inducing any party to a contract of sale or lease, a listing contract, ~~an exclusive agency contract or agreement, or a management agreement~~ or a brokerage agreement to break such contract or ~~agreement~~ brokerage agreement for the purpose of substituting in lieu thereof any other contract or ~~agreement~~ brokerage agreement with another principal;
see also Rule 520-1-.11.
- (14) Negotiating a sale, exchange, or lease of real estate directly with an owner, ~~or a lessor, a purchaser, or a tenant~~ if the licensee knows that such owner or lessor has a written outstanding contract in connection with such property granting an exclusive agency or an exclusive right to sell to another broker or that such purchaser or tenant has a brokerage agreement with another broker;
- (15) Indicating that an opinion given to a potential seller, purchaser, landlord, or tenant regarding a listing, lease, rental, or purchase price is an appraisal unless such licensee holds an appraiser classification in accordance with Chapter 39A of this title;

- (16) Performing or attempting to perform any of the acts of a licensee on property located in another state without first having been properly licensed in that state or otherwise having complied fully with that state's laws regarding real estate brokerage;
see also Rule 520-1-.24.
- (17) Paying a commission or compensation to any person for performing the services of a real estate licensee who has not first secured the appropriate license under this chapter or is not cooperating as a nonresident who is licensed in such nonresident's state or foreign country of residence, provided that nothing contained in this subsection or any other provision of this Code section shall be construed so as to prohibit the payment of earned commissions:
- (A) To the estate or heirs of a deceased real estate licensee when such deceased real estate licensee had a valid Georgia real estate license in effect at the time the commission was earned and at the time of such person's death; or
 - (B) To a citizen of another country acting as a referral agent if that country does not license real estate brokers and if the Georgia licensee paying such commission or compensation obtains and maintains reasonable written evidence that the payee is a citizen of said other country, is not a resident of this country, and is in the business of brokering real estate in said other country;
see also Rules 520-1-.08, 520-1-.16, 520-1-.23, & 520-1-.35.
- (18) Failing to include a fixed date of expiration in any written listing agreement and failing to leave a copy of said agreement with the principal;
see also Rule 520-1-.03.
- (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 to the seller;
see also Rules 520-1-.03, 520-1-.06, & 520-1-.33.
- (20) Failure by a broker to deliver to the seller in every real estate transaction, at the time said transaction is consummated, a complete, detailed closing statement showing all of the receipts and 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 from such buyer and how and for what the same was disbursed; the broker shall retain true copies of such statements in the broker's files;
see also Rule 520-1-.26.
- (21) Making any substantial misrepresentations;
see also Rules 520-1-.04, 520-1-.17, 520-1-.18, & 520-1-.22.
- (22) Acting for more than one party in a transaction without the express written consent of all parties to the transaction;
see also Rule 520-1-.02 & 520-1-.08.

- (23) Failure of an associate broker, salesperson, or community association manager to place, as soon after receipt as is practicably possible, in the custody of the broker holding the licensee's license any deposit money or other money or funds entrusted to the licensee by any person dealing with the licensee as the representative of the licensee's licensed broker; see also Rule 520-1-.30.
- (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;
- (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;
- (26) Obtaining ~~an exclusive listing~~ a brokerage agreement, a sales contract, or a management agreement from any owner, a purchaser, or a tenant while knowing or having reason to believe that another broker has ~~an exclusive listing on the property~~ a brokerage agreement with such owner, purchaser, or tenant , unless the licensee has written permission from the broker having the first ~~exclusive listing~~ brokerage agreement; provided, however, that notwithstanding the provisions of this paragraph, a licensee shall be permitted to present a proposal or bid for community association management if requested to do so in writing from a community association board of directors;
see also Rule 520-1-.11.

F. 43-40-25 (b) (27) - the current law requires licensees to keep for three years copies of “sales contracts, closing statements, and other documents related to real estate closings.” (They may be kept in either paper or electronic form.) Since the law makes licensees the custodians of funds of others in transactions that do not necessarily “close,” licensees should also keep for three years any document that results in their depositing of trust funds. This additional documentation would allow licensees to demonstrate that they have properly deposited, maintained, accounted for, and remitted any funds of others that the document authorizes them to hold.

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

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

(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 related to the maintenance of any trust account required by this Chapter, and other documents relating to real estate closings or transactions or failing to produce said documents at the reasonable request of the commission or any of its agents for their inspection;

see also Rule 520-1-.26.

(28) Being or becoming a party to any falsification of any portion of any contract or other document involved in any real estate transaction;

see also Rule 520-1-.17.

(29) Conducting the closing of any real estate transaction by any licensee except a broker unless the licensee acts under the supervision of the broker under whom such licensee is licensed or under the supervision of a practicing attorney with the knowledge and consent of the broker;

(30) 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 checking account prior to depositing those funds into such account;

see also O.C.G.A. §43-40-20 and Rules 520-1-.26, 520-1-.30, & 520-1-.34.

(31) Failing to disclose in a timely manner to all parties in a real estate transaction any agency relationship that the licensee may have with any of the parties;

see also Rules 520-1-.02 & 520-1-.08.

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

(33) 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 to do so;

G. 43-40-25.1 - *the current law requires a licensee to include in contracts “the date of acceptance.” Some contracts no longer use the language “the acceptance date.” Instead they may use language such as “binding agreement date.” The purpose of the law was to establish in the contract the precise time the parties reached agreement since other responsibilities of the parties often had to be met within a certain time period. (For example, the deposit of earnest money was often required “within three business days of*

acceptance.”) Because the description of such dates may easily vary from contract to contract, the Commission recommends more generic language that would require the licensee to include in contracts “such dates as may be necessary to determine whether the parties have acted timely in meeting their responsibilities under the lease, offer, or contract.”

43-40-25.1. Completion of certain forms not practice of law; contents of certain forms.

It shall be lawful for licensees to complete listing or sales contracts or leases whose form has been prepared by legal counsel and such conduct shall not constitute the unauthorized practice of law. In completing a lease or a written offer to buy, sell, lease, rent, or exchange real property, a licensee shall include a description of the property involved, a method of payment, any special stipulations or addenda the offer requires, and, ~~upon acceptance by the offeree, the date of such acceptance~~ such dates as may be necessary to determine whether the parties have acted timely in meeting their responsibilities under the lease, offer, or contract.

see also Rules 520-1-.33 & 520-1-.38.

IV.&V. The Task Force also appeared to support these proposed changes A. Through I. which were recommended to the Commission in discussions with various working groups:

A. 43-40-10 - *allows community association managers to operate through business entities in the same manner as salespersons and associate brokers.*

43-40-10. Granting of broker's license, associate broker's license, ~~or~~ salesperson's, or community association manager's license to corporation, limited liability company, or partnership.

(a) No broker's license shall be granted to a firm unless:

- (1) said firm designates an individual licensed as a broker as its qualifying broker who shall be responsible for assuring that the firm and its affiliated licensees comply with the provisions of this chapter and its attendant rules and regulations; and

- (2) said firm authorizes its qualifying broker to bind the firm to any settlement of a contested case before the commission as defined in Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," in which said firm may be a named respondent.

Violations of this chapter or its rules and regulations by a firm licensed as a broker shall subject the license of the qualifying broker to sanction as authorized by this chapter. No broker's license shall be granted to a firm unless every person who acts as a licensee for such firm shall hold a real estate license.

- (b) No associate broker's, salesperson's, or community association manager's license shall be granted to a corporation, limited liability company, or partnership unless said corporation, limited liability company, or partnership designates an individual ~~licensed as an associate broker~~ who holds the same type of license as its qualifying ~~associate broker licensee~~ who shall be responsible for assuring that the corporation, limited liability company, or partnership complies with the provisions of this chapter and its attendant rules and regulations. Violations of this chapter or rules and regulations by a corporation, limited liability company, or partnership licensed as an associate broker, salesperson, or community association manager shall subject both the license of the entity and the license of the qualifying ~~associate broker licensee~~ to sanction as authorized by this chapter. The qualifying ~~associate broker licensee~~ shall be the only licensee of a corporation, limited liability company, or partnership licensed as an associate broker, salesperson, or community association manager. The license of a corporation, limited liability company, or partnership licensed as an associate broker, salesperson, or community association manager must be assigned to a licensed broker. The licensed associate broker, salesperson, or community association manager corporation, limited liability company, or partnership or qualifying ~~associate broker licensee~~ may not engage in the brokerage business except in behalf of the broker to whom its license is assigned.
- (c) ~~No salesperson's license shall be granted to a corporation, limited liability company, or partnership unless said corporation, limited liability company, or partnership designates an individual licensed as a salesperson as its qualifying salesperson who shall be responsible for assuring that the corporation, limited liability company, or partnership complies with the provisions of this chapter and its attendant rules and regulations. Violations of this chapter or rules and regulations by a~~

~~corporation, limited liability company, or partnership licensed as a salesperson shall subject the license of the qualifying salesperson to sanction as authorized by this chapter. The qualifying salesperson shall be the only licensee of a corporation, limited liability company, or partnership licensed as a salesperson. The license of a corporation, limited liability company, or partnership licensed as a salesperson must be assigned to a licensed broker. The licensed salesperson corporation, limited liability company, or partnership, or qualifying salesperson may not engage in the brokerage business except in behalf of the broker to whom its license is assigned.~~

B. 43-40-11 - removes the requirement that brokers display wall certificates of licensure

43-40-11. Form of license; display by broker.

The commission shall prescribe the form of the license. Each license shall have placed thereon the seal of the commission. The license of each affiliated licensee shall be delivered or mailed to the real estate broker for whom the licensee is acting and shall be kept in the custody and control of such broker. ~~It shall be the duty of each broker to display the broker's own license conspicuously and those of the affiliated licensees in such broker's place of business.~~ The commission shall prepare and deliver a pocket card certifying that the person whose name appears thereon is a licensee.

C. 43-40-17 - removes language originally adopted before the 1972 law revisions provided for the licensing of business entities and that is no longer needed;

~~**43-40-17. Revocation or suspension of license issued to partnership, limited liability company, or corporation.**~~

~~In the event of the revocation or suspension of the license issued to any partner of a partnership, to any member of a limited liability company, or to any officer of a corporation, the license issued to such partnership, limited liability company, or corporation shall be revoked by the commission unless, within a time fixed by the commission, where a partnership or limited liability company, the connection therewith of the partner or member whose license has been revoked is severed and such person's interest in the partnership or limited liability company and such person's share in its activities brought to an end or, where a corporation, the offending officer is discharged and shall have no further participation in its activities.~~

D. 43-40-19 and 43-40-22.1 - suggests new language for headers that more accurately identifies content.

43-40-19 Change of place of business; transfer of community association manager, salesperson, or associate broker.

43-40-22.1. Fidelity bond or insurance requirements for broker providing community association management services.

Please note that the changes to headings of legislative sections are controlled solely by the publisher of the Official Code of Georgia Annotated, not the agency or the legislature. Thus, even with GREC support and legislative approval, those changes may not occur.

E. 43-40-25 (b) (33.1) & (33.2) - *provides a time line for community association managers and property managers to turn over records to owners after their management contracts end;*

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 deliver 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 deliver 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;

(34) Inducing any person to alter, modify, or change another licensee's fee or commission for real estate brokerage services without that licensee's prior written consent; or

(35) Failing to obtain a person's agreement to refer that person to another licensee 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.

(ed) Whenever a licensee acts in a real estate transaction as a principal or as an officer, employee, or member of a firm or any other entity acting as a principal, the commission may impose any sanction permitted by this chapter if the licensee commits any unfair trade practice enumerated in this Code section or violates any other provision of this chapter or any rules and regulations adopted pursuant to this chapter in such a transaction.

(de) Whenever a community association manager, a salesperson, or an associate broker violates any provision of this chapter or any rules and regulations adopted pursuant to this chapter by performing any duty or act of a broker enumerated in this chapter or any rules and regulations adopted pursuant to this chapter either with the proper delegation of that duty or act by the broker or without the broker's authorization, the commission may impose any sanction permitted under this chapter on the license of such community association manager, salesperson, or associate broker.

F. 43-40-27 - provides guidelines for the Commission in publicizing disciplinary actions.

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. 43-40-29(a)(7) - defines "owner" in exceptions to recognize new forms of ownership.

43-40-29. Exceptions to operation of chapter.

(a) Except as otherwise provided, this chapter shall not apply to:

- (1) Any person who, as owner, as the spouse of an owner, as general partner of a limited partnership, as lessor, or as prospective purchaser or their regular employees, performs any act with reference to property owned, leased, or to be acquired by such owner, limited partnership, lessor, or prospective purchaser where such acts are performed in the regular course of, or as incident to, the management of such property and the investment therein or any person who manages residential apartment complexes under a contract approved by any federal agency for an organization which is exempt from federal taxes pursuant to Section 501 (c)(3) of the Internal Revenue Code, as defined in Code Section 48-1-2, provided that such person was engaged in managing such property under such type contract prior to January 1, 1989;
- (2) An attorney in fact under a duly executed power of attorney to convey real estate from the owner or lessor;
- (3) A licensed practicing attorney acting solely as an incident to the practice of law;
- (4) Any person acting as receiver, trustee in bankruptcy, administrator, executor, or guardian or while acting under a court order or under the authority of a will or of a trust instrument;
- (5) Any officer or employee of a government agency in the conduct of official duties;
- (6) Any person employed by a public or private utility who performs any act with reference to property owned, leased, or to be acquired by the utility employing that person, where such acts are performed in the regular course of, or as incident to, the management of such property and the investment therein;
- (7) Any person who, as owner or through another person engaged by such owner on a full-time basis or as owner of a management company whose principals hold a controlling ownership of such property, provides property management services or community association management services, buys, sells, leases, manages, auctions, or otherwise deals with property owned by such person;
- (8) Any person employed on a full-time basis by the owner of property for the purpose of providing property management services or community association management services, selling, buying, leasing, managing, auctioning, or otherwise dealing with such property;

- (8.1) Any person employed on a full-time basis by a community association for the purpose of providing community association management services;
- (9) Any person acting as a referral agent who is not involved in the actual negotiations, execution of documents, collection of rent, management of property, or other related activity which involves more than the mere referral of one person to another and who:
 - (A) Does not receive a fee for such referral from the party being referred;
 - (B) Does not charge an advance fee; and
 - (C) Does not act as a referral agent in more than three transactions per year;
- (10) Any individual employed by a broker to assist in property management services on property on which the broker has a written management agreement that the broker procured from and negotiated with the owner, provided that such individual's activities are explicitly authorized by the broker in a written agreement between the broker and the employee and provided that such activities are limited to one or more of the following:
 - (A) Delivering a lease application, a lease, or any amendment thereto to any person;
 - (B) Receiving a lease application, a lease, or any amendment thereto, a security deposit, rental payment, or any related payment for delivery to and made payable to the broker or the owner;
 - (C) Showing a rental unit to any person, provided that the employee is acting under the direct instructions of the broker, and executing leases or rental agreements;
 - (D) Providing information authorized by the broker about a rental unit, a lease application, or a lease;
 - (E) Providing information to a tenant about the status of such tenant's security deposit or rent payments or to an owner about the owner's financial accounts and payments from the owner's tenants; and
 - (F) Performing any ministerial acts that are explicitly authorized by the broker in a written agreement between the broker and the employee.

Any broker utilizing the services of such an employee shall be held responsible under this chapter for the activities of that individual;

- (11) Any person who provides property management services on properties available for less than 90 days' occupancy by guests or occupants and meets all of the following conditions:
- (A) The property manager enters into a written agreement with the owner specifying all terms and conditions under which the property is to be managed, the reporting of income and expenses, and the remitting of income to the owner;
 - (B) The management agreement between the property manager and the owner does not allow the property manager to rent or lease the property and any agreement between the property manager and the guest or occupant is not a lease or rental agreement;
 - (C) Any applicable zoning laws do not prohibit short-term occupancy uses of the property;
 - (D) The guest's or occupant's occupancy is for less than 90 days;
 - (E) No deposit exceeds the cost of the rental required for the minimum rental period;
 - (F) The guest or occupant pays any required state or local sales taxes or excise taxes on rooms, lodgings, and accommodations and the property manager has any required state or local business licenses or permits;
 - (G) The property manager has the authority to specify rooms or units that the guest or occupant will occupy;
 - (H) No extra charge is made for basic utilities;
 - (I) Notice is not required for a guest or occupant to terminate occupancy of the room or unit, except as provided under the provisions of Article 1 of Chapter 21 of this title; and
 - (J) The room or unit is not the permanent residence of the guest or occupant;
- (12) Any person who is a member of a community association and who provides community association management services only to one community association of which such person is a member;
- (13) Any person who performs only physical maintenance on a property; or
- (14) A licensed certified public accountant or registered public accountant acting solely as an incident to the practice of public accounting.

- (b) The exceptions provided by subsection (a) of this Code section shall not apply to any person, other than an owner or individuals who are full-time employees of the owner, who performs the acts of a broker on property required to be registered under Article 1, 2, or 5 of Chapter 3 of Title 44.
- (c) The exceptions provided by subsection (a) of this Code section shall not apply to any person who holds a real estate license.
- (d) The exceptions in subsection (a) of this Code section are not applicable to a person who uses or attempts to use them for the purpose of evading licensure required by this chapter.

H. 43-40-29(c) - clarifies the applicability to licensees of the exceptions to licensure.

43-40-29 Exceptions to operation of chapter.

(c) Except for brokerage activities governed by O.G.C.A. Title 44, Chapter 7, the Landlord and Tenant Law, the exceptions provided by subsection (a) of this Code section shall not apply to any person who holds a real estate license.

I. 520-2-.07 - *clarifies what college or university courses licenses may take to satisfy continuing education requirements.*

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.. The Task Force Members Ranked these Possible Future Issues and Their Relative Importance:

- (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?

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