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**Happy
Holidays
from the
Georgia Real
Estate
Commission!**

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Independent Contractor Agreements

As the end of the year approaches, it is a good time for brokers and management staff to review existing policies, procedures, and documentation. One of the most important agreements every firm must maintain is the Broker-Independent Contractor Agreement, also called Broker-Affiliate Agreement or Independent Contractor Agreement. This is not to be confused with the firm's written policies and procedures, though the written policies and procedures are often attached to the Broker-Affiliate Agreement as an addendum.

The Georgia Real Estate Commission conducts routine audits of real estate firms and the Broker-Independent Contractor Agreement is one of the items that are reviewed. The Commission's responsibility is to ensure that certain issues and circumstances are addressed in the agreements. The following is adapted from the checklist used by the GREC Investigative staff when performing firm audits.

1. Do you have a written Broker – Independent Contractor Agreement with every affiliate currently working with your firm? 520-1-.07(5)(a)
2. Does the Broker-Independent Contractor Agreement specify the terms under which the licensee will be compensated for work during the time of their affiliation?
3. Does the Broker-Independent Contractor Agreement specify the terms under which the licensee will be compensated for work begun but not completed prior to the termination of their affiliation? 43-40-18(c)(9) and 520-1-.07(5)(a).

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Georgia Real Estate Commission Annual School Meeting Recap

With over 200 attendees for the one day meeting in November, the Georgia Real Estate Commission Annual School Meeting provided discussion of teaching resources, requirements for 3-hour courses on specific license law topics and common sense teaching techniques. Real Estate Commissioner Bill Rogers discussed trends including an increase in the number of real estate license applicants. Currently there are about 82,000 real estate licensees, of which about 80% are active.

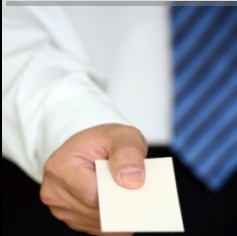
Discussion included identifying the reasoning and importance of the new rule change (beginning July 1, 2016) that requires licensees to obtain 3 hours of instruction on specific license law topics. The rule was designed to require training in the most

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**Georgia Real Estate
Commission**
Suite 1000
International Tower
229 Peachtree Street NE
Atlanta, GA 30303-1605
Phone 404-656-3916

Independent Contractor Agreements...

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- Does the agreement require that the departing licensee return (in person) all plats of property, keys and other property which the releasing broker owns or for which the releasing broker is responsible, "for sale" signs, notebooks, listing cards or records of any kind that have been used in connection with the listing or selling of property or with the management of property or community associations? 520-1-.07(5)(c)
- Does the agreement state that a licensee terminating an affiliation with the firm shall not have any contact with any of the firm's clients that the licensee is serving under a listing, a management agreement, or other brokerage engagement except as may be expressly approved in writing by the broker or qualifying broker of the firm the licensee is leaving? 520-1-.07(5)(e)

Reference: Broker/Affiliate Agreements [43-40-18\(c\)\(9\)](#) and [520-1-.07\(5\)\(a\)\(c\)&\(e\)](#)

An annual review of these agreements is a good policy. A review of existing files could uncover agreements with expired dates, existing files with affiliates no longer associated with the firm, and documentation on those transferred to other firms.

Annual School Meeting Recap

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common violations of the Georgia Real Estate License Law, Rules, and Regulations, and its intent is to prevent future violations through targeted training. Suggestions for resources for developing training materials included actual case studies involving license laws, the GREC RENewsletters, and the GREC website.



- On July 1, 2015: required hours of continuing education increase from 24 to 36.**
- On July 1, 2016: 3 of the 36 hours must be on the topic of License Law.**



Focus on Terminology: CRM

CRM Customer Relationship Management is software used to manage and follow up with contacts, send communications, determine and trigger time frames and deadlines. The firm CRM could collect lead information, filter it to salespersons, and track how it was handled and the eventual outcome. Brokers can see affiliated licensee's email to clients and customers. Some software collects and organizes the data so that it can be used for targeting communications and marketing and better broker management. Customer and client relationships are critical to a service industry such as the real estate profession. Sometimes called client management software, there is a multitude of programs, methods, tools, and systems for tech savvy licensees. Whatever data is collected and whatever software is used, the licensee should be careful to safeguard client or customer information and have security systems in place as well as backup systems for critical information.



The Appraisers Page

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Seller Concessions

By: D. Scott Murphy, SRA



One of the most misunderstood real estate topics is **seller concessions**. Part of the problem is that there are several several different names; seller contributions, seller paid closing costs and seller concessions. Most tend to feel the term only refers to the closing costs a seller agrees to pay on behalf of the buyer. However, seller concessions are **any** consideration given to the buyer which can include, but is not limited to closing costs.

Another word for concession is enticement. What did the buyer receive which enticed him to purchase the property at this price? Its important to remember that market value is based on the cash equivalent price, which is paid for a property. The cash equivalent concept is based upon the principle that market values must be measured or expressed in cash or money. If this principle is accepted, the cash equivalent of all forms of nonmonetary consideration must be

estimated before a sale is considered as a possible indicator of market value. Money performs several functions, one of which is to measure value. Therefore, from a logical and practical viewpoint, it is also proper to measure market value in terms of money. In the field of valuation, values should be expressed in terms of the same thing for all transactions. If not, the equity of value is destroyed or at least greatly impaired.

An offer of \$20,000 cash today and a promise to pay \$20,000 in cash ten years from today at zero rate of interest are significantly different things in an economic sense. The second is not cash but a promise to pay cash ten years from today at zero rate of interest. Both offers have sales prices of \$20,000 but which offer would you accept if you were the seller? A professional appraiser, therefore, cannot simply accept selling prices without analyzing the cash equivalency of nonmonetary consideration. So the proper way to analyze a sale is to consider not what the buyer paid but what the seller received.

We first must consider the terms of sale. Was the sale arm's length? If not, special consideration must be given to the type of sale and its impact on the sales price. For instance, an REO sale is a non-arm's length sale. A buyer will tend to pay less due to the lack of seller's disclosure/warranty and limited title. The appraiser must analyze the market and extract the amount a typical buyer would discount the sales price of the property.

Next the appraiser must thoroughly examine the sale to expose any sales concessions. The concessions must then be monetized and expressed in cash equivalent terms. This means that if the seller offers to pay one year of HOA fees in a condo where monthly HOA fees are \$300, the cash equivalent value is \$3600 less than the contracted sales price. Concessions are anything given to the buyer in order to entice him to purchase the property.

Why is it so important to compensate for these items? Seller concessions are typical in the market. Well, lets say there were three recent sales in a subdivision; sale 1 sold to a cash buyer for \$287,000. Sale 2 sold for \$305,000, the seller paid 3% of the buyers closing costs, a year's HOA fees at \$900/yr, and the seller gave the buyer a boat valued at \$8,000. Sale 3 sold for \$319,000, the seller paid \$10,000 closing costs, transferred a golf membership worth \$12,000 and each agent reduced his or her commission 1%. If all three homes are otherwise identical, which seller walked away with the most cash?

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Sale 1 - **\$287,000** cash to seller = **\$287,000**

Sale 2 - **\$305,000** - \$9150 - \$900 - \$8000 = **\$286,950**

Sale 3 - **\$319,000** - \$10,000 - \$12,000 - \$6,380 = **\$284,620**

You can see that it is not just the seller who can offer an incentive to the buyer. Concessions from any party impact the buyer's actions. It is critical that all terms of the contract are considered and analyzed properly.

Another question, which comes up regularly, is how does an appraiser handle sales concessions involved with the subject property? Let's say the subject is under contract for \$300,000 and the seller has agreed to pay 2% of the sales price for buyers closing costs.

There are three cash sales in the neighborhood for \$295,000, \$299,000 and \$303,000. What are the adjusted values of the comparables?

- a. \$300,900, \$304,980, \$309,060 – respective sales prices times 2%
- b. \$301,000, \$305,000, \$309,000 – respective sales prices plus 2% of subject sales price (\$6000)
- c. \$295,000, \$299,000, \$303,000 – no adjustment

The correct answer is "c" – no adjustment. Our appraised value does not take into consideration the sales concessions of the subject property. Remember, it does not matter if the seller is selling the \$300,000 home to a friend for \$200,000 or he is selling the same home for \$350,000 with \$50,000 sellers concessions – the home is worth what it is worth. We analyze the contract in order to explain to the reader why our appraised value is \$300,000 and the respective contracts are \$200,000 for non-arm's length sale to friend or \$350,000 with excessive seller concessions. We never make POSITIVE concession adjustment.

The terms of a sale become extremely important when future appraisers analyze this sale for use as a comparable. Cash equivalency is the only way to compare one transaction to another.

Another question I am asked surrounding this topic is how are real estate commissions considered? In general, they are not because they are not an enticement to the buyer, they don't benefit the buyer in any direct way, they are an expense of the seller. While it is true that the net to seller for a home sold for sale by owner is greater than one where the seller pays an agent 6%, the difference represents costs associated with selling the home. A for sale by owner seller assumes the role of a listing agent and presumably expends his own time and money to market and sell the home. One exception would be the situation where an agent represents him or herself and reduces the purchase price of the property by the amount of their commission. In this case the amount, which the subject appraises for that purchase transaction, is not impacted. It should appraise at the amount PRIOR to the reduction of commission. However, for the use of this sale as a comparable in the future, in a typical residential transaction, unfortunately, lenders will not allow us to adjust that sales price. That would represent a POSITIVE concession adjustment, which is not allowed. Let's say the sales price was \$400,000 and the buyer reduced the sales price by his or her \$12,000 commission and purchased the home for \$388,000. We are unable to use the true sales price of \$400,000. We could put less weight on that comp and make comments in my report – or we certainly could exclude this comp.