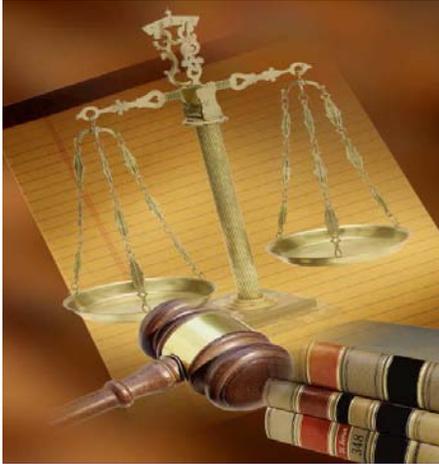


The Georgia Real Estate Commission Newsletter

Fall 2010 Issue

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Are You Legal or Just **L**ucky?

Property Management & Unlicensed Activities

Consider this actual case and decide how you would have handled it.

Some agents look to Property Management as an alternative source of income to listing and selling properties. It still requires a license and all those activities must be under the broker holding the agent's license.

A recent case involved a salesperson who sold a house to an investor. The sales transaction was handling through his broker as usual. However, when the investor wanted to rent out the house the agent decided to set up his own company (Leasing Specialists, LLC) for property management activities. His broker did not do property management in the firm. This is where the agent began a domino effect of violations.

Here is the case involving Marty Barstow, a licensed salesperson:

(Although this is an actual case, the real names of the companies and individuals have been changed.)

1. After closing the sale of the house to his investor, Marty wrote a lease for a residential property stating the leasing agent as being Home Leasing Specialists, LLC, a company that is not licensed by the Georgia Real Estate Commission.
2. He used a form lease from the brokerage company holding his license (TMG Company), but TMG was not involved in the transaction. The preprinted lease form indicated that TMG Company was the listing broker. The Broker of TMG was unaware of the agent's property management activities.
3. Marty deposited the Security Deposit into an operating account of Home Leasing Specialists, LLC, but the account was not registered as a trust account with the Commission. He should have given these trust funds to his broker ASAP.
4. Upon deposit of the money, he gave himself a commission/management fee of \$500. By doing so he received a commission from someone other than his broker.

Marty conducted brokerage activity under the name of an unlicensed firm and everything under that firm caused multiple violations of the license law.

Marty received a Citation, was fined \$1,000 plus \$2,000 in legal, administrative and investigative costs and expenses and is required to complete continuing education approved by GREC. If he does not comply, other sanctions can be imposed.

Licensee Laws Violated:

43-40-25(b)(3)(4)(5)(8)(23)(25)
43-40-30(a)(b), 520-1-.08(1)(b)

1) All brokerage activities must be under the broker holding the license
2) Property Management requires a license.



Recap of License Law Changes

This article summarizes those changes to the Rules and Regulations of the License Law since the year 2009 in reverse chronological order.

- Effective September 1, 2010, House Bill 1050 **requires Appraisal Management Companies in Georgia** to register with the Georgia Real Estate Appraisers Board.
- Effective November 25, 2009, **the maximum amount of disciplinary fine issued through citation was increased by \$400 per violation**, with the exception of violations by schools. For example the fine for failure of a licensee to provide a copy of any document used in a real estate transaction to any individual signing such document is now \$500.00. The Schedule of Violations and Penalties is listed in Chapter 520-1-.14 Citations.
- The fines for violations by schools were unchanged except for the section (gg) regarding the failure of a school to have students complete the required number of hours in any course or to complete all exercises and/or exams. The fine is now \$400 (was \$500) or \$100 per student, whichever is greater, and is now subject to limits. Chapter 520-1-.14 Citations.
- Two amendments were made in 2009 regarding the disclosure of commissions, gifts and referrals and specifically those involving property management activities. The last change became effective August 1, 2009. **The rule states that commissions, fees, rebates or other valuable consideration must be disclosed and it also describes situations where a management agreement may set up pre-established terms for such fees.** Chapter 520-1-.10 Handling Real Estate Transactions.
- As of April 1, 2009, the rule was amended to specify the conditions in which a non-broker licensee who owns property may place trust funds in a separate trust account from that of his/her broker. **However it is significant to note that the rule clearly states that if the licensee owns less than 100% of the title to the property, then the funds must be placed in a trust account of a broker licensed by GREC.** Chapter 520-1-.08 Managing Trust Accounts and Trust Funds

Proposed rule changes may be initiated because the Commission sees an increasing number of cases that focus on one area, or seem to become a trend.

Statistics of Recent Violations

The Georgia Real Estate Commission tracks the most common violations and notes certain activities increase or decrease with market and economic conditions. 2009 showed one of the highest numbers of pending investigations on record although it dropped substantially in 2010 due to greater efficiency in processing investigations. GREC has increasingly issued more Citations

over the last 5 years as indicated on the table below. A Citation is a specific type of disciplinary action that usually imposes payment of a fine and fees in addition to educational requirements. A Citation may be imposed for an action that did not cause serious harm to the public. For instance, failing to include a license number on a contract could result in a Citation as opposed to a more serious action such

as the suspension or revocation of a license. Most investigations are initiated by complaints from clients or customers or by other licensees.

Issued in the last 12 months:
 - 165 Citations
 - 116 Revocations
 - 88 Suspensions
 - 21 disciplinary sanctions

Actions by GREC	Last 5 Years	Last 12 Months
Citations Issued	Up 180%	Up 19%
All other Disciplinary Actions including Revocations and Suspensions	Up 81%	Down 8%
Investigations or Cases Pending	Down 14%	Down 30%

Training Tools and Resources

The license law actually requires the broker or qualifying broker of a firm to establish, implement, and to continue procedures to provide programs for study and review of the license laws and the rules and regulations for all of his/her licensed associates. This can be a daunting task that requires much planning and forethought. Fortunately the Georgia Real Estate

Commission provides several training and management tools for brokers and all licensees.

Some brokers are implementing policies that require all of his/her associates to complete the online or class version of the common violations course and/or the trust account classes.

These are useful GREC resources available to aid in training and managing

agents. A calendar of classes is stated on page 4 of this newsletter, and the GREC web site

www.grec.sate.ga.us

regularly displays the schedule for all GREC education programs.

Each issue of this newsletter will contain an actual case study with reference to specific license laws that can be used in broker-licensee training meetings.



"The trust account class is not just for brokers; all agents need to take this course." Student Comment

GREC Online Course is a Free Resource for All Licensees

GREC currently offers a free 3-hour continuing education course online, "Practicing Real Estate and Staying Out of Trouble." Any licensee or unlicensed assistants may take the course by enrolling online at www.jmre.com/grec.

Over 2500 licensees have enrolled or completed the course and the responses are very positive. Actual cases of common violations are reviewed with emphasis on practical application. Through the Real Estate Education, Research and Recovery

fund GREC has contracted to develop and provide 2 more 3-hour courses for licensees. These online courses should be available by November 2010 and March 2011. Brokers have found GREC courses to be useful training tools and ones that help protect the broker.

"I now require all my agents to complete the GREC online course as part of their training." Broker Comment

Absolutely Must Know SectionDo you know the AMKs?



Every issue will include up to 3 critical items from the License law.



Every transaction must state within the contract, lease, etc. the license number issued by the Commission of each firm and each licensee participating in the transaction.



Copies of contracts, brokerage engagements, closing statements, leases, etc. related to a real estate transaction must be maintained in a broker's file for three (3) years.



Every licensee must complete 6 hours of continuing education for each year of licensure. A licensee must have 24 hours CE in order to renew as an active licensee.

Calendar of Classes

Brokerage Class Schedule

September 15, 2010

Columbus Board (706) 323-1701

October 25, 2010

I-85 North Board (706) 335-3044

November 29, 2010

Statesboro Board (912) 764-3818

December 15, 2010

Metro South Association
770-477-7579

Trust Account Class Schedule

September 16, 2010

Columbus Board (706) 323-1701

October 26, 2010

I-85 North Board (706) 335-3044

November 30, 2010

Statesboro Board (912) 764-3818

December 16, 2010

Metro South Association
770-477-7579

Common Violations Class

September 14, 2010

GAMLS Tucker (770) 493-9000

October 14, 2010

Georgia Institute (404) 252-6768

October 20, 2010

Camden Board (912) 882-5806

October 21, 2010

Savannah Board (912) 354-1513

October 22, 2010

Statesboro Board (912)764-3818

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Semi-Annual Publication for all Georgia Real Estate Licensees

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