

House Bill 177 (AS PASSED HOUSE AND SENATE)

By: Representatives Powell of the 23<sup>rd</sup>, Stoner of the 34<sup>th</sup>, Post 1, Porter of the 119<sup>th</sup>, DeLoach of the 127<sup>th</sup>, and Boggs of the 145<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 39A of Title 43 of the Official Code of Georgia Annotated, relating to real  
2 estate appraisers, so as to change certain definitions; to change the manner in which appraiser  
3 classification criteria are determined; to change certain provisions relating to the surrender  
4 or lapse of a license; to change certain provisions concerning hearings and service of orders;  
5 to provide certain sanctions for violations; to amend Chapter 40 of Title 43 of the Official  
6 Code of Georgia Annotated, relating to real estate brokers and salespersons, so as to add  
7 certain definitions; to provide requirements for nonresident licenses; to provide for the  
8 licensing of certain community association managers; to change certain requirements for  
9 display of licenses; to require that ten years elapse from the date of a license surrender after  
10 initiation of an investigation or disciplinary process before the person is eligible for an  
11 associate broker's license or broker's license; to provide for certain hearings; to provide for  
12 certain sanctions for violations; to add certain actions as constituting unfair trade practices;  
13 to provide that listing or sales contracts or leases shall contain such dates as necessary to  
14 determine whether the parties have acted timely in meeting their responsibilities under such  
15 contracts or leases; to provide for the publication of the name of licensees, schools, and  
16 instructors whose licenses or approvals are revoked, suspended, or surrendered; to provide  
17 additional exceptions to the operation of the chapter; to provide for related matters; to repeal  
18 conflicting laws; and for other purposes.

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

20 style="text-align:center">**SECTION 1.**

21 Chapter 39A of Title 43 of the Official Code of Georgia Annotated, relating to real estate  
22 appraisers, is amended by striking paragraph (19) of Code Section 43-39A-2, relating to  
23 definitions, and inserting in lieu thereof a new paragraph (19) to read as follows:

24 "(19) 'State' ~~includes~~ means any state, district, territory, possession, or province of the  
25 United States or Canada and any sovereign nation or any political subdivision of such  
26 sovereign nation."

**SECTION 2.**

Said chapter is further amended by striking subsection (a) of Code Section 43-39A-8, relating to establishment of appraiser classifications, and inserting in lieu thereof a new subsection (a) to read as follows:

"(a) The board is authorized to establish through its rules and regulations such appraiser classifications as are necessary to comply with federal law in order to assure that Georgia has appropriate classifications of appraisers authorized to appraise in federally related transactions. ~~The board shall establish criteria for experience, examination, or education standards and shall establish the scope of practice for such classifications as are necessary to comply with guidelines established by the Appraisal Subcommittee.~~ The board shall also create a classification of appraiser to appraise in nonfederally related transactions and for which applicants need only to meet education standards established by the board through its rules and regulations."

**SECTION 3.**

Said chapter is further amended by striking subsections (g), (h), and (i) of Code Section 43-39A-14, relating to required conduct of applicants, and inserting in lieu thereof new subsections (g), (h), and (i) to read as follows:

"(g) Whenever the board initiates an investigation as provided in Code Section 43-39A-22 to determine whether an appraiser has violated any provision of this chapter or the rules and regulations adopted pursuant to this chapter and such appraiser:

- (1) ~~Voluntarily Surrendered or~~ surrenders an appraiser classification to the board;
- (2) ~~Allows~~ Allowed or allows an appraiser classification to lapse due to failure to meet education requirements provided by law; or
- (3) ~~Allows~~ Allowed or allows an appraiser classification to lapse due to failure to pay any required fees,

~~and if such surrender or lapsing takes place after the board has initiated an investigation pursuant to Code Section 43-39A-22 but before the board files a notice of hearing, the board may issue an order revoking the appraiser's appraiser classification and provide a copy of such order to the appraiser~~ the board may issue an order revoking such appraiser's classification. The order will be effective ten days after the order is served on the appraiser ~~receives a copy of the order~~ unless the appraiser makes a written request for a hearing before the board, in which event the board will file a notice of hearing in accordance with Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.' Service shall be accomplished as provided for in Code Section 43-39A-21. If such surrender or lapsing occurs after the board has filed a notice of hearing alleging that such appraiser has violated any provision of this chapter or the rules and regulations adopted pursuant to this chapter

1 but before the board enters a final order in the matter, then upon submission of a new  
 2 application by such person the matters asserted in the notice of hearing shall be deemed  
 3 admitted and may be used by the board as grounds for refusal of a new appraiser  
 4 classification to such person.

5 (h) Whenever any occupational licensing body of this state, any other state, or any foreign  
 6 country has sanctioned any license or classification of an applicant for any appraiser  
 7 classification or whenever such an applicant has allowed a license or classification to lapse  
 8 or has surrendered a license or classification to any occupational licensing body of this  
 9 state, any other state, or any foreign country after that occupational licensing body has  
 10 initiated an investigation or a disciplinary process regarding such applicant's licensure or  
 11 classification, such sanction, lapsing, or surrender in itself may be a sufficient ground for  
 12 refusal of an appraiser classification. Whenever any occupational licensing body of this  
 13 state, any other state, or any foreign country has revoked the license or classification of an  
 14 applicant for a classification or whenever such an applicant has allowed a license or  
 15 classification to lapse or has surrendered a license or classification to any occupational  
 16 licensing body of this state, any other state, or any foreign country after that body has  
 17 initiated an investigation or a disciplinary process regarding such applicant's license or  
 18 classification, the board may issue an appraiser classification only if:

19 (1) At least five years have passed since the date that the applicant's occupational  
 20 registration, license, or certification was revoked or surrendered;

21 (2) No criminal charges are pending against the applicant at the time of application; and

22 (3) The applicant presents to the board satisfactory proof that the applicant now bears a  
 23 good reputation for honesty, trustworthiness, integrity, and competence to transact real  
 24 estate appraisal activity in such a manner as to safeguard the interests of the public.

25 (i) Whenever any appraiser is convicted of any offense enumerated in subsection (b) of  
 26 this Code section, such appraiser must immediately notify the board of that conviction.  
 27 Such appraiser's appraiser classification shall automatically be revoked 60 days after the  
 28 conviction unless the appraiser makes a written request to the board for a hearing during  
 29 that 60 day period. Following any such hearing ~~held~~ requested pursuant to this subsection,  
 30 the board in its discretion may impose upon that appraiser any sanction permitted by this  
 31 chapter."

#### 32 SECTION 4.

33 Said chapter is further amended by striking subsection (a) of Code Section 43-39A-15,  
 34 relating to hearings in accordance with the Georgia Administrative Procedure Act, and  
 35 inserting in lieu thereof a new subsection (a) to read as follows:

1 "(a) If the board, after an application in proper form has been filed with it, accompanied  
 2 by the proper fee, shall refuse to ~~accept the application~~ issue an appraiser classification to  
 3 such applicant, the board shall provide an opportunity for a hearing for such applicant in  
 4 accordance with Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.'  
 5 Unless otherwise agreed to by the board, all such hearings shall be held in the county of  
 6 domicile of the board."

#### 7 SECTION 5.

8 Said chapter is further amended by striking Code Section 43-39A-18, relating to penalties  
 9 for violations, and inserting in lieu thereof a new Code Section 43-39A-18 to read as follows:  
 10 "43-39A-18.

11 ~~(a) In accordance with the hearing procedures established for contested cases by Chapter~~  
 12 ~~13 of Title 50, the 'Georgia Administrative Procedure Act,' the board shall have the power~~  
 13 ~~to reprimand appraisers and approved schools; to revoke or suspend any appraiser~~  
 14 ~~classification issued under this chapter; to revoke any appraiser classification issued to an~~  
 15 ~~appraiser under this chapter and simultaneously to issue such appraiser a classification with~~  
 16 ~~more restricted authority to conduct appraisals; to revoke or suspend approval of any~~  
 17 ~~school; to impose a fine not to exceed \$1,000.00 for each violation of this chapter or its~~  
 18 ~~rules and regulations with fines for multiple violations limited to \$5,000.00 in any one~~  
 19 ~~hearing; to require completion of a course of study in real estate appraisal or instruction;~~  
 20 ~~or to utilize any combination of these sanctions which the board may deem appropriate~~  
 21 ~~whenever an appraiser classification or a school approval has been obtained by false or~~  
 22 ~~fraudulent representation or whenever an appraiser or an approved school has been found~~  
 23 ~~guilty of a violation of this chapter, of the rules and regulations promulgated by the board,~~  
 24 ~~or of any standard of conduct, including, but not limited to, the following acts or omissions:~~  
 25 In accordance with the hearing procedures established for contested cases by Chapter 13  
 26 of Title 50, the 'Georgia Administrative Procedure Act,' whenever an appraiser, a school  
 27 approval, or an instructor approval has been obtained by false or fraudulent representation;  
 28 or whenever an appraiser, an approved school, or an approved instructor has been found  
 29 guilty of a violation of this chapter, or of the rules and regulations promulgated by the  
 30 board, or of any unfair trade practices, including, but not limited to, those listed in this  
 31 Code section; the board shall have the power to take any one or more of the following  
 32 actions:

33 (1) Refuse to grant or renew a classification to an applicant;

34 (2) Administer a reprimand;

1 (3) Suspend any classification or approval for a definite period of time or for an indefinite  
 2 period of time in connection with any condition that may be attached to the restoration  
 3 of the classification or approval;

4 (4) Revoke any classification or approval;

5 (5) Revoke any classification issued to an appraiser and simultaneously issue such  
 6 appraiser a classification with more restricted authority to conduct appraisals;

7 (6) Impose on an appraiser, applicant, school approval, or instructor approval monetary  
 8 assessments in an amount necessary to reimburse the board for administrative,  
 9 investigative, and legal costs and expenses incurred by the board in conducting any  
 10 proceeding authorized under this chapter or Chapter 13 of Title 50, the 'Georgia  
 11 Administrative Procedure Act';

12 (7) Impose a fine not to exceed \$1,000.00 for each violation of this chapter or its rules  
 13 and regulations with fines for multiple violations limited to \$5,000.00 in any one  
 14 disciplinary proceeding or such other amount as the parties may agree;

15 (8) Require completion of a course of study in real estate appraisal or instruction; or

16 (9) Limit or restrict any classification or approval as the board deems necessary for the  
 17 protection of the public.

18 (b) Appraisers shall not engage in the following unfair trade practices:

19 (1) Performing any real estate appraisal activity or specialized services which indicate  
 20 any preference, limitation, or discrimination based on race, color, religion, sex, disability,  
 21 familial status, or national origin or an intention to make any such preference, limitation,  
 22 or discrimination;

23 (2) An act or omission involving dishonesty, fraud, or misrepresentation with the intent  
 24 to benefit substantially an appraiser or another person or with the intent to injure  
 25 substantially another person;

26 (3) Commission of any act of fraud, misrepresentation, or deceit in the making of an  
 27 appraisal of real estate for which act a final civil or criminal judgment has been rendered;

28 (4) Engaging in real estate appraisal activity under an assumed or fictitious name not  
 29 properly registered in this state;

30 (5) Paying a finder's fee or a referral fee to a person who is not an appraiser in  
 31 connection with an appraisal of real estate or real property;

32 (6) Making a false or misleading statement in that portion of a written appraisal report  
 33 that deals with professional qualifications or in any testimony concerning professional  
 34 qualifications;

35 (7) Violation of the confidential nature of governmental records to which an appraiser  
 36 gained access through employment or engagement as an appraiser by a governmental  
 37 agency;

- 1 (8) Violation of any of the standards for the development or communication of real estate  
2 appraisals as promulgated by the board;
- 3 (9) Failure or refusal without good cause to exercise reasonable diligence in developing  
4 an appraisal, preparing an appraisal report, or communicating an appraisal;
- 5 (10) Negligence or incompetence in developing an appraisal, in preparing an appraisal  
6 report, or in communicating an appraisal;
- 7 (11) Accepting an independent appraisal assignment when the employment itself is  
8 contingent upon the appraiser's reporting a predetermined estimate, analysis, valuation,  
9 or opinion or where the fee to be paid is contingent upon the opinion, conclusions,  
10 analysis, or valuation reached or upon the consequences resulting from the appraisal  
11 assignment;
- 12 (12) Failure to retain for a period of five years the original or a true copy of each  
13 appraisal report prepared or signed by the appraiser and all supporting data assembled  
14 and formulated by the appraiser in preparing each such appraisal report. The five-year  
15 period for retention of records is applicable to each engagement of the services of the  
16 appraiser and shall commence upon the date of the delivery of each appraisal report to  
17 the client unless, within such five-year period, the appraiser is notified that the appraisal  
18 or the appraisal report is involved in litigation, in which event the five-year period for the  
19 retention of records shall commence upon the date of the final disposition of such  
20 litigation;
- 21 (13) Failure upon reasonable request of an appraiser to make all records required to be  
22 maintained under the provisions of this chapter available to the board for inspection and  
23 copying by the board;
- 24 (14) Performing any appraisal beyond the scope of authority granted in the appraiser  
25 classification held;
- 26 (15) Demonstrating incompetency to act as an appraiser in such a manner as to safeguard  
27 the interests of the public or any other conduct, whether of the same or a different  
28 character than specified in this subsection, which constitutes dishonest dealing;
- 29 (16) Performing or attempting to perform any real estate appraisal activity on property  
30 located in another state without first having complied fully with that state's laws  
31 regarding real estate appraisal activity;
- 32 (17) Providing an oral appraisal report in a federally related transaction;
- 33 (18) Utilizing the services of any person in other than a ministerial capacity in  
34 developing an appraisal, in preparing an appraisal report, or in communicating an  
35 appraisal if such person's appraiser classification is suspended or revoked or if such  
36 person does not hold an appraiser classification; or

1 (19) Performing or attempting to perform any real estate appraisal activity in a federally  
 2 related transaction without complying with the standards required by the federal financial  
 3 institutions regulatory agency that regulates the financial transaction for which the  
 4 appraisal assignment is undertaken.

5 ~~(b)~~(c) In a disciplinary proceeding based upon a civil judgment, an appraiser shall be  
 6 afforded an opportunity to present matters in mitigation and extenuation but may not  
 7 collaterally attack the civil judgment.

8 ~~(c)~~(d) When an appraiser has previously been sanctioned by the board or by any other  
 9 state's real estate appraiser licensing authority, the board may consider such prior sanction  
 10 in determining the severity of a new sanction which may be imposed upon a finding that  
 11 an appraiser has violated any provision of this chapter or any of the rules and regulations  
 12 of the board. The failure of an appraiser to comply with or to obey a final order of the  
 13 board may be cause for suspension or revocation of the individual's appraiser classification  
 14 after opportunity for a hearing."

#### 15 SECTION 6.

16 Said chapter is further amended by striking subsection (a) of Code Section 43-39A-21,  
 17 relating to hearings on the imposition of sanctions against appraisers, and inserting in lieu  
 18 thereof a new subsection (a) to read as follows:

19 "(a) Before the board shall impose on any appraiser any sanction permitted by this chapter,  
 20 it shall provide an opportunity for a hearing for such appraiser in accordance with Chapter  
 21 13 of Title 50, the 'Georgia Administrative Procedure Act.' Unless otherwise agreed to by  
 22 the board, all such hearings shall be held in the county of domicile of the board."

#### 23 SECTION 7.

24 Chapter 40 of Title 43 of the Official Code of Georgia Annotated, relating to real estate  
 25 brokers and salespersons, is amended by adding new paragraphs (2.1) and (11) to Code  
 26 Section 43-40-1, relating to definitions, to read as follows:

27 "(2.1) 'Brokerage agreement' means an express written contract wherein the client  
 28 promises to pay the real estate broker a valuable consideration or agrees that the real  
 29 estate broker may receive a valuable consideration from another in consideration of the  
 30 broker's producing a seller, buyer, tenant, or landlord ready, able, and willing to sell, buy,  
 31 or rent the property or in consideration of the broker's performing property management  
 32 services or performing community association management services."

33 "(11) 'State' means any state, district, territory, possession, or province of the United States  
 34 or Canada and any sovereign nation or any political subdivision of such sovereign nation."

**SECTION 8.**

Said chapter is further amended by striking subsections (c) and (g) of Code Section 43-40-9, relating to nonresident licenses, and inserting in lieu thereof new subsections (c) and (g) to read as follows:

"(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:

- (1) Show satisfactory proof of current licensure in the applicant's state of residence;
- (2) Pay any required fees;
- (3) Sign a statement which states that the applicant has read this chapter and its rules and regulations and agrees to abide by its provisions in all brokerage activity in this state;
- (4) Affiliate with a resident or nonresident broker if the applicant is an individual community association manager, salesperson, or associate broker. If a nonresident licensee terminates the affiliation with a broker licensed by the commission, the license of such nonresident shall automatically be terminated unless such nonresident places the license on inactive status or affiliates with another broker licensed by the commission within 30 days. No license shall be issued to any member, officer, independent contractor, employee, or partner of a nonresident firm until said firm qualifies for a broker's license. A nonresident corporation or limited liability company must obtain from the proper agency and maintain a certificate of authority to transact business in this state;
- (5) Provide any documentation required by the commission of the applicant's licensure in any other state and copies of the records of any disciplinary actions taken against the applicant's license in that or other states. The imposition of a disciplinary action by any other lawful licensing authority may be grounds for denial of license to a nonresident or for suspension or revocation of a license issued to a nonresident;
- (6) File with the commission a designation in writing that appoints the real estate commissioner to act as the licensee's agent, upon whom all judicial and other process or legal notices directed to such licensee may be served. Service upon the real estate commissioner shall be equivalent to personal service upon the licensee. Copies of such appointment, certified by the real estate commissioner, shall be deemed sufficient evidence thereof and shall be admitted in evidence with the same force and effect as the original thereof might be admitted. In such written designation, the licensee shall agree that any lawful process against the licensee which is served upon the real estate commissioner shall be of the same legal force and validity as if served upon the licensee, and that authority shall continue in force so long as any liability remains outstanding in this state. Upon the receipt of any such process or notice, the real estate commissioner shall immediately mail a copy of the same by certified mail or statutory overnight delivery to the last known business address of the licensee; and



1 (7) Agree in writing to cooperate with any investigation initiated by the commission by  
 2 promptly supplying any documents any authorized investigator of the commission may  
 3 request and by personally appearing at the commission's offices or other location in this  
 4 state as the commission's investigator may request. If the commission sends a notice to  
 5 produce documents or to appear for an interview with an authorized investigator of the  
 6 commission by certified mail or statutory overnight delivery to the last known business  
 7 address of a nonresident licensee and the nonresident licensee fails to comply with that  
 8 request, the commission may impose on the nonresident licensee any disciplinary  
 9 sanction permitted under this chapter."

10 "(g) ~~As used in this Code section, the term 'state' means any state, district, territory,~~  
 11 ~~possession, or province of the United States or Canada~~ Reserved."

### 12 SECTION 9.

13 Said chapter is further amended by striking Code Section 43-40-10, relating to granting of  
 14 broker's license, associate broker's license, or salesperson's license to firm, and inserting in  
 15 lieu thereof a new Code Section 43-40-10 to read as follows:

16 "43-40-10.

17 (a) No broker's license shall be granted to a firm unless: (1) said firm designates an  
 18 individual licensed as a broker as its qualifying broker who shall be responsible for  
 19 assuring that the firm and its affiliated licensees comply with the provisions of this chapter  
 20 and its attendant rules and regulations; and (2) said firm authorizes its qualifying broker to  
 21 bind the firm to any settlement of a contested case before the commission as defined in  
 22 Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' in which said firm may  
 23 be a named respondent. Violations of this chapter or its rules and regulations by a firm  
 24 licensed as a broker shall subject the license of the qualifying broker to sanction as  
 25 authorized by this chapter. No broker's license shall be granted to a firm unless every  
 26 person who acts as a licensee for such firm shall hold a real estate license.

27 (b) No associate broker's, salesperson's, or community association manager's license shall  
 28 be granted to a corporation, limited liability company, or partnership unless said  
 29 corporation, limited liability company, or partnership designates an individual ~~licensed as~~  
 30 ~~an associate broker~~ who holds the same type of license as its qualifying ~~associate broker~~  
 31 licensee who shall be responsible for assuring that the corporation, limited liability  
 32 company, or partnership complies with the provisions of this chapter and its attendant rules  
 33 and regulations. Violations of this chapter or rules and regulations by a corporation, limited  
 34 liability company, or partnership licensed as an associate broker, salesperson, or  
 35 community association manager shall subject both the license of the entity and the license  
 36 of the qualifying ~~associate broker~~ licensee to sanction as authorized by this chapter. The

1 qualifying ~~associate broker licensee~~ shall be the only licensee of a corporation, limited  
 2 liability company, or partnership licensed as an associate broker, salesperson, or  
 3 community association manager. The license of a corporation, limited liability company,  
 4 or partnership licensed as an associate broker, salesperson, or community association  
 5 manager must be assigned to a licensed broker. The licensed associate broker, salesperson,  
 6 or community association manager corporation, limited liability company, or partnership  
 7 or qualifying ~~associate broker licensee~~ may not engage in the brokerage business except  
 8 in behalf of the broker to whom its license is assigned.

9 ~~(c) No salesperson's license shall be granted to a corporation, limited liability company,~~  
 10 ~~or partnership unless said corporation, limited liability company, or partnership designates~~  
 11 ~~an individual licensed as a salesperson as its qualifying salesperson who shall be~~  
 12 ~~responsible for assuring that the corporation, limited liability company, or partnership~~  
 13 ~~complies with the provisions of this chapter and its attendant rules and regulations.~~  
 14 ~~Violations of this chapter or rules and regulations by a corporation, limited liability~~  
 15 ~~company, or partnership licensed as a salesperson shall subject the license of the qualifying~~  
 16 ~~salesperson to sanction as authorized by this chapter. The qualifying salesperson shall be~~  
 17 ~~the only licensee of a corporation, limited liability company, or partnership licensed as a~~  
 18 ~~salesperson. The license of a corporation, limited liability company, or partnership licensed~~  
 19 ~~as a salesperson must be assigned to a licensed broker. The licensed salesperson~~  
 20 ~~corporation, limited liability company, or partnership, or qualifying salesperson may not~~  
 21 ~~engage in the brokerage business except in behalf of the broker to whom its license is~~  
 22 ~~assigned."~~

### 23 SECTION 10.

24 Said chapter is further amended by striking Code Section 43-40-11, relating to form and  
 25 display of license, and inserting in lieu thereof a new Code Section 43-40-11 to read as  
 26 follows:

27 "43-40-11.

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

**SECTION 11.**

Said chapter is further amended by striking subsections (h) and (i) of Code Section 43-40-15, relating to grant, revocation, and suspension of licenses, and inserting in lieu thereof new subsections (h) and (i) to read as follows:

"(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."

**SECTION 12.**

Said chapter is further amended by striking subsection (a) of Code Section 43-40-16, relating to the nonacceptance of applications for licenses, and inserting in lieu thereof a new subsection (a) to read as follows:

1 "(a) If the commission, after an application in proper form has been filed with it,  
 2 accompanied by the proper fee, shall refuse to ~~accept the application~~ issue a license to such  
 3 applicant, the commission shall provide an opportunity for a hearing for such applicant in  
 4 accordance with Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.'  
 5 Unless otherwise agreed by the commission, all such hearings shall be held in the county  
 6 of the domicile of the commission."

### 7 SECTION 13.

8 Said chapter is further amended by striking Code Section 43-40-17, relating to revocation or  
 9 suspension of a license issued to a partnership, limited liability company, or corporation, and  
 10 inserting in lieu a new Code Section 43-40-17 to read as follows:

11 "43-40-17.

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

### 21 SECTION 14.

22 Said chapter is further amended by striking Code Section 43-40-25, relating to violations by  
 23 licensees, schools, and instructors, and inserting in lieu thereof a new Code Section 43-40-25  
 24 to read as follows:

25 "43-40-25.

26 (a) ~~In accordance with the hearing procedures established for contested cases by Chapter~~  
 27 ~~13 of Title 50, the 'Georgia Administrative Procedure Act,' the commission shall have the~~  
 28 ~~power to reprimand licensees and approved schools or instructors; to revoke or suspend any~~  
 29 ~~license issued under this chapter; to revoke the license of a real estate broker or qualifying~~  
 30 ~~broker and simultaneously issue such licensee a salesperson's license; to revoke or suspend~~  
 31 ~~approval of any school or instructor; to impose a fine not to exceed \$1,000.00 for each~~  
 32 ~~violation of this chapter or its rules and regulations with fines for multiple violations~~  
 33 ~~limited to \$5,000.00 in any one hearing; to require completion of a course of study in real~~  
 34 ~~estate brokerage or instruction; to require the filing of periodic reports by an independent~~  
 35 ~~accountant on a real estate broker's designated trust account; or to utilize any combination~~

1 ~~of these sanctions which the commission may deem appropriate whenever a license, a~~  
2 ~~school approval, or an instructor approval has been obtained by false or fraudulent~~  
3 ~~representation or whenever a licensee, an approved school, or an approved instructor has~~  
4 ~~been found guilty of a violation of this chapter, or of the rules and regulations promulgated~~  
5 ~~by the commission, or of any unfair trade practices, including, but not limited to, the~~  
6 ~~following: In accordance with the hearing procedures established for contested cases by~~  
7 ~~Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' whenever a license, a~~  
8 ~~school approval, or an instructor approval has been obtained by false or fraudulent~~  
9 ~~representation; or whenever a licensee, an approved school, or an approved instructor has~~  
10 ~~been found guilty of a violation of this chapter, or of the rules and regulations promulgated~~  
11 ~~by the commission, or of any unfair trade practices, including, but not limited to those~~  
12 ~~listed in this Code section; the commission shall have the power to take any one or more~~  
13 ~~of the following actions:~~

14 (1) Refuse to grant or renew a license to an applicant;

15 (2) Administer a reprimand;

16 (3) Suspend any license or approval for a definite period of time or for an indefinite  
17 period of time in connection with any condition that may be attached to the restoration  
18 of the license or approval;

19 (4) Revoke any license or approval;

20 (5) Revoke the license of a broker, qualifying broker, or associate broker and  
21 simultaneously issue such licensee a salesperson's license;

22 (6) Impose on a licensee, applicant, school approval, or instructor approval monetary  
23 assessments in an amount necessary to reimburse the commission for the administrative,  
24 investigative, and legal costs and expenses incurred by the commission in conducting any  
25 proceeding authorized under this chapter or Chapter 13 of Title 50, the 'Georgia  
26 Administrative Procedure Act';

27 (7) Impose a fine not to exceed \$1,000.00 for each violation of this chapter or its rules  
28 and regulations with fines for multiple violations limited to \$5,000.00 in any one  
29 disciplinary proceeding or such other amount as the parties may agree;

30 (8) Require completion of a course of study in real estate brokerage or instruction;

31 (9) Require the filing of periodic reports by an independent accountant on a real estate  
32 broker's designated trust account; or

33 (10) Limit or restrict any license or approval as the commission deems necessary for the  
34 protection of the public.

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

36 (1) Because of race, color, religion, sex, disability, familial status, or national origin:

- 1 (A) Refusing to sell or rent after the making of a bona fide offer, or refusing to  
2 negotiate for the sale or rental of, or otherwise making unavailable or denying, real  
3 estate to any person;
- 4 (B) Discriminating against any person in the terms, conditions, or privileges of sale or  
5 rental of real estate or in the provision of services or facilities in connection therewith;
- 6 (C) Making, printing, or publishing or causing to be made, printed, or published any  
7 notice, statement, or advertisement, with respect to the sale or rental of real estate, that  
8 indicates any preference, limitation, or discrimination or an intention to make any such  
9 preference, limitation, or discrimination;
- 10 (D) Representing to any person that any real estate is not available for inspection, sale,  
11 or rental when such real estate is in fact so available; or
- 12 (E) Representing explicitly or implicitly that a change has or will or may occur in a  
13 block, neighborhood, or area in order to induce or discourage the listing, purchasing,  
14 selling, or renting of real estate;
- 15 (2) Intentionally advertising material which is misleading or inaccurate or which in any  
16 way misrepresents any property, terms, values, policies, or services of the business  
17 conducted;
- 18 (3) Failing to account for and remit any money coming into the licensee's possession  
19 which belongs to others;
- 20 (4) Commingling the money or other property of the licensee's principals with the  
21 licensee's own;
- 22 (5) Failing to maintain and deposit in a separate, federally insured checking account all  
23 money received by said broker acting in said capacity, or as escrow agent or the  
24 temporary custodian of the funds of others, in a real estate transaction unless all parties  
25 having an interest in said funds have agreed otherwise in writing;
- 26 (6) Accepting, giving, or charging any undisclosed commission, rebate, or direct profit  
27 on expenditures made for a principal or any undisclosed commission, rebate, or direct  
28 profit for procuring a loan or insurance or for conducting a property inspection related to  
29 a real estate transaction;
- 30 (7) Representing or attempting to represent a real estate broker, other than the broker  
31 holding the licensee's license, without the express knowledge and consent of the broker  
32 holding the licensee's license;
- 33 (8) Accepting a commission or other valuable consideration by a licensee from anyone  
34 other than the broker holding that licensee's license without the consent of that broker;
- 35 (9) Acting in the dual capacity of agent and undisclosed principal in any transaction;
- 36 (10) Guaranteeing or authorizing any person to guarantee future profits which may result  
37 from the resale of real property;

- 1 (11) Placing a sign on any property offering it for sale or rent without the written consent  
 2 of the owner or the owner's authorized agent and failing to remove such sign within ten  
 3 days after the expiration of listing;
- 4 (12) Offering real estate for sale or lease without the knowledge and consent of the  
 5 owner or the owner's authorized agent or on terms other than those authorized by the  
 6 owner or the owner's authorized agent;
- 7 (13) Inducing any party to a contract of sale or lease, ~~a listing contract, an exclusive~~  
 8 ~~agency contract or agreement, or a management agreement~~ or a brokerage agreement to  
 9 break such contract or brokerage agreement for the purpose of substituting in lieu thereof  
 10 any other contract or brokerage agreement with another principal;
- 11 (14) Negotiating a sale, exchange, or lease of real estate directly with an owner, ~~or a~~  
 12 ~~lessor, a purchaser, or a tenant~~ if the licensee knows that such owner or lessor has a  
 13 written outstanding contract in connection with such property granting an exclusive  
 14 agency or an exclusive right to sell to another broker or that such purchaser or tenant has  
 15 a brokerage agreement with another broker;
- 16 (15) Indicating that an opinion given to a potential seller, purchaser, landlord, or tenant  
 17 regarding a listing, lease, rental, or purchase price is an appraisal unless such licensee  
 18 holds an appraiser classification in accordance with Chapter 39A of this title;
- 19 (16) Performing or attempting to perform any of the acts of a licensee on property  
 20 located in another state without first having been properly licensed in that state or  
 21 otherwise having complied fully with that state's laws regarding real estate brokerage;
- 22 (17) Paying a commission or compensation to any person for performing the services of  
 23 a real estate licensee who has not first secured the appropriate license under this chapter  
 24 or is not cooperating as a nonresident who is licensed in such nonresident's state or  
 25 foreign country of residence, provided that nothing contained in this subsection or any  
 26 other provision of this Code section shall be construed so as to prohibit the payment of  
 27 earned commissions:
- 28 (A) To the estate or heirs of a deceased real estate licensee when such deceased real  
 29 estate licensee had a valid Georgia real estate license in effect at the time the  
 30 commission was earned and at the time of such person's death; or
- 31 (B) To a citizen of another country acting as a referral agent if that country does not  
 32 license real estate brokers and if the Georgia licensee paying such commission or  
 33 compensation obtains and maintains reasonable written evidence that the payee is a  
 34 citizen of said other country, is not a resident of this country, and is in the business of  
 35 brokering real estate in said other country;
- 36 (18) Failing to include a fixed date of expiration in any written listing agreement and  
 37 failing to leave a copy of said agreement with the principal;

- 1 (19) Failing to deliver, within a reasonable time, a completed copy of any purchase  
2 agreement or offer to buy or sell real estate to the purchaser and to the seller;
- 3 (20) Failure by a broker to deliver to the seller in every real estate transaction, at the time  
4 said transaction is consummated, a complete, detailed closing statement showing all of  
5 the receipts and disbursements handled by such broker for the seller or failure to deliver  
6 to the buyer a complete statement showing all money received in said transaction from  
7 such buyer and how and for what the same was disbursed; the broker shall retain true  
8 copies of such statements in the broker's files;
- 9 (21) Making any substantial misrepresentations;
- 10 (22) Acting for more than one party in a transaction without the express written consent  
11 of all parties to the transaction;
- 12 (23) Failure of an associate broker, salesperson, or community association manager to  
13 place, as soon after receipt as is practicably possible, in the custody of the broker holding  
14 the licensee's license any deposit money or other money or funds entrusted to the licensee  
15 by any person dealing with the licensee as the representative of the licensee's licensed  
16 broker;
- 17 (24) Filing a listing contract or any document or instrument purporting to create a lien  
18 based on a listing contract for the purpose of casting a cloud upon the title to real estate  
19 when no valid claim under said listing contract exists;
- 20 (25) Having demonstrated incompetency to act as a real estate licensee in such manner  
21 as to safeguard the interest of the public or any other conduct whether of the same or a  
22 different character than heretofore specified which constitutes dishonest dealing;
- 23 (26) Obtaining ~~an exclusive listing~~ a brokerage agreement, a sales contract, or a lease  
24 management agreement from any owner, purchaser, or tenant while knowing or having  
25 reason to believe that another broker has ~~an exclusive listing on the property~~ a brokerage  
26 agreement with such owner, purchaser, or tenant, unless the licensee has written  
27 permission from the broker having the first ~~exclusive listing~~ brokerage agreement;  
28 provided, however, that notwithstanding the provisions of this paragraph, a licensee shall  
29 be permitted to present a proposal or bid for community association management if  
30 requested to do so in writing from a community association board of directors;
- 31 (27) Failing to keep for a period of three years a true and correct copy of all sales  
32 contracts, closing statements, any offer or other document that resulted in the depositing  
33 of trust funds, accounting records related to the maintenance of any trust account required  
34 by this chapter, and other documents relating to real estate closings or transactions or  
35 failing to produce such documents at the reasonable request of the commission or any of  
36 its agents for their inspection;



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

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

7 (30) Failing to obtain the written agreement of the parties indicating to whom the broker  
8 shall pay any interest earned on trust funds deposited into an interest-bearing checking  
9 account prior to depositing those funds into such account;

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

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

15 (33) Attempting to sell, lease, or exchange the property of any member of a community  
16 association to which a licensee is providing community association management services  
17 without the express written consent of that association to do so;

18 (33.1) Failure to deliver to a community association terminating a management contract  
19 within 30 days of the termination, or within such other time period as the management  
20 contract shall provide:

21 (A) A complete and accurate record of all transactions and funds handled during the  
22 period of the contract and not previously accounted for;

23 (B) All records and documents received from the community association or received  
24 on the association's behalf; and

25 (C) Any funds held on behalf of the community association;

26 (33.2) Failure to deliver to a property owner terminating a management contract within  
27 30 days of the termination, or within such other time period as the management contract  
28 shall provide:

29 (A) A complete and accurate record of all transactions and funds handled during the  
30 period of the contract and not previously accounted for;

31 (B) All records and documents received from the property owner or received on the  
32 owner's behalf; and

33 (C) Any funds held on behalf of the property owner;

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

1 (35) Failing to obtain a person's agreement to refer that person to another licensee for  
 2 brokerage or relocation services and to inform such person being referred whether or not  
 3 the licensee will receive a valuable consideration for such referral.

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

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

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

#### 24 SECTION 15.

25 Said chapter is further amended by striking Code Section 43-40-25.1, relating to completion  
 26 of certain forms not being the practice of law, and inserting in lieu thereof a new Code  
 27 Section 43-40-25.1 to read as follows:

28 "43-40-25.1.

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

1 **SECTION 16.**

2 Said chapter is further amended by striking subsection (a) of Code Section 43-40-26, relating  
3 to hearings before the commission, and inserting in lieu thereof a new subsection (a) to read  
4 as follows:

5 "(a) Before the commission shall censure a licensee or before revoking or suspending a  
6 license, it shall provide an opportunity for a hearing for such holder of a license in  
7 accordance with Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.'  
8 Unless otherwise agreed to by the commission, all such hearings shall be held in the county  
9 of domicile of the commission."

10 **SECTION 17.**

11 Said chapter is further amended by striking subsection (e) of Code Section 43-40-27, relating  
12 to investigation of complaints, and inserting in lieu thereof a new subsection (e) to read as  
13 follows:

14 "(e) Whenever the commission revokes or suspends ~~for more than 60 days~~ a license, a  
15 school approval, or an instructor approval or whenever a licensee, an approved school, or  
16 an approved instructor surrenders a license or an approval to the commission ~~after the~~  
17 ~~commission has filed a notice of hearing;~~ in a contested case as defined in Chapter 13 of  
18 Title 50, the 'Georgia Administrative Procedure Act,' the commission ~~shall~~ may publish the  
19 name of such licensee, approved school, or approved instructor on its official website or  
20 in its ~~any other~~ official newsletter publication of the agency."

21 **SECTION 18.**

22 Said chapter is further amended by striking paragraph (7) of subsection (a) of Code Section  
23 43-40-29, relating to exceptions to operation of chapter, and inserting in lieu thereof a new  
24 paragraph (7) to read as follows:

25 "(7) Any person who, as owner or through another person engaged by such owner on a  
26 full-time basis or as owner of a management company whose principals hold a  
27 controlling ownership of such property, provides property management services or  
28 community association management services, buys, sells, leases, manages, auctions, or  
29 otherwise deals with property owned by such person;"

30 **SECTION 19.**

31 This Act shall become effective upon its approval by the Governor or upon its becoming law  
32 without such approval.

1

**SECTION 20.**

2 All laws and parts of laws in conflict with this Act are repealed.