

Senate Bill 548

By: Senators Seabaugh of the 28th, Cagle of the 49th, Johnson of the 1st, Williams of the 19th, Stephens of the 27th and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 40 of Title 43 of the Official Code of Georgia Annotated, relating to real
2 estate brokers and salespersons, so as to provide for the recusal of members of the Georgia
3 Real Estate Commission; to provide for certain reasons for removing a member of the
4 Georgia Real Estate Commission; to provide for grounds for denying a real estate license;
5 to provide for the requirements for approving a license to a real estate licensing school; to
6 allow for the regulation of granting, revoking, or suspending a real estate license; to provide
7 for certain provisions relating to sanctions for violations committed by licensees, schools,
8 and instructors; to provide for certain provisions relating to investigating complaints reported
9 to the Georgia Real Estate Commission; to repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

12 Chapter 40 of Title 43 of the Official Code of Georgia Annotated, relating to real estate
13 brokers and salespersons, is amended by striking Code Section 43-40-2, relating to the
14 creation, meetings, compensation, budget, reports, and rules and regulations of the Georgia
15 Real Estate Commission, and inserting in its place a new Code section to read as follows:

16 "43-40-2.

17 (a) There is created the Georgia Real Estate Commission, which shall be composed of six
18 members, each of whom shall be appointed by the Governor and confirmed by the Senate
19 for a term of five years. Any such appointments made when the Senate is not in session
20 shall be effective until acted upon by the Senate. Five of the members shall be licensees
21 who shall have been residents of this state and actively engaged in the real estate business
22 for five years. The sixth member of the commission shall have no connection with the real
23 estate industry whatsoever but shall have a recognized interest in consumer affairs and in
24 consumer protection concerns.

25 (b) Members of the commission shall serve until their successors are appointed and
26 qualified. Vacancies on the commission shall be filled by appointment of a successor for

1 the unexpired term of office by the Governor. Four members shall constitute a quorum for
 2 the transaction of any business of the commission. The commission shall organize by
 3 selecting from its members a chairperson and may do all things necessary and convenient
 4 to carry this chapter into effect. The commission shall meet at least once a month, or as
 5 often as is necessary, and remain in session as long as the chairperson thereof shall deem
 6 it necessary to give full consideration to the business before the commission. Members of
 7 the commission or others may be designated by the chairperson of the commission, in a
 8 spirit of cooperation and coordination, to confer with similar commissions of other states,
 9 attend interstate meetings, and generally do such acts and things as may seem advisable to
 10 the commission in the advancement of the profession and the standards of the real estate
 11 business.

12 (c) A member of the commission shall recuse himself or herself from voting on matters
 13 in which the member has a conflict of interest. Whenever an investigation authorized by
 14 this chapter results in the commission's initiating a contested case under Chapter 13 of
 15 Title 50, the 'Georgia Administrative Procedure Act,' against a member, such member shall
 16 be recused from voting on such matter and may not discuss such matter with other
 17 commission members or be present when the commission discusses or votes on such
 18 matter.

19 ~~(e)~~(d) The Governor, after giving notice and an opportunity for a hearing, may remove
 20 from office any member of the commission for any of the following:

21 (1) Inability to perform or neglecting to perform the duties required of members;

22 (2) Incompetence; ~~or~~

23 (3) Dishonest conduct; or

24 (4) Having a disciplinary sanction, other than a citation authorized by this chapter,
 25 imposed by any professional licensing agency on such member's right to practice a trade
 26 or profession.

27 ~~(d)~~(e) The commission is authorized to pass rules and regulations, not inconsistent with
 28 this chapter, relating to the professional conduct of licensees and the administration of this
 29 chapter.

30 ~~(e)~~(f) Each member of the commission shall receive as compensation for each day actually
 31 spent on his or her official duties at scheduled meetings and time actually required in
 32 traveling to and from its meetings, not to exceed one day's traveling time, the sum of
 33 \$25.00 and his or her actual and necessary expenses incurred in the performance of his or
 34 her official duties.

35 ~~(f)~~(g) The commission, through its chairperson, shall file a written report with the
 36 Governor and a copy thereof with both houses of the General Assembly on or before the
 37 second Tuesday in January of each year. The Governor may request a preliminary report

1 prior to such an annual report. The report shall include a summary of all actions taken by
 2 the commission, a financial report of income and disbursements, staff personnel, and
 3 number of persons licensed by the commission. The report shall further delineate steps
 4 taken in education and research to disseminate information so that all licensees can be
 5 better informed in order to protect the public. The commission shall also outline a program
 6 of education and research for each ensuing year, for which a line appropriation shall be
 7 requested.

8 ~~(g)~~(h) The commission shall be a budget unit as defined in Part 1 of Article 4 of Chapter
 9 12 of Title 45, the 'Budget Act'; provided, however, that the commission shall be assigned
 10 for administrative purposes only to the office of the Secretary of State."

11 SECTION 2.

12 Said chapter is further amended by striking subsection (a) of Code Section 43-40-8, relating
 13 to license requirements, and inserting in its place a new subsection (a) to read as follows:

14 "(a) In order to qualify for a community association manager's license, an applicant must:

15 (1) Have attained the age of 18 years;

16 (2) Be a resident of the State of Georgia, unless that person has fully complied with the
 17 provisions of Code Section 43-40-9;

18 (3) Be a high school graduate or the holder of a certificate of equivalency;

19 (4) Furnish evidence of completion of at least 25 in-class hours in a community
 20 association manager's course or courses of study approved by the commission; and

21 (5) Stand and pass a real estate examination administered by or approved by the
 22 commission covering generally the matters confronting real estate brokers who provide
 23 community association management services and community association managers after
 24 completing the requirements of paragraph (4) of this subsection.

25 Failure to meet any of these requirements shall be grounds for denial of license without a
 26 hearing."

27 SECTION 3.

28 Said chapter is further amended by striking subsection (i) of Code Section 43-40-8, relating
 29 to license requirements, and inserting in its place a new subsection (i) to read as follows:

30 "(i) The commission, through its rules and regulations, shall establish standards for the
 31 approval of schools and instructors to offer the education courses required by this chapter.

32 Each approved school must comply with Code Sections 43-40-15 through 43-40-32. Each
 33 approved school must designate an individual approved by the commission to act as its
 34 director and such designated individual shall be responsible for assuring that the approved
 35 school complies with the requirements of this chapter and rules and regulations

1 promulgated under this chapter. An approved school must authorize its director to bind the
 2 school to any settlement of a contested case before the commission as defined in Chapter
 3 13 of Title 50, the 'Georgia Administrative Procedure Act.' The commission, through its
 4 rules and regulations, shall establish standards for the offering of the prelicense education
 5 courses required by this chapter by methods of instruction, which it deems to be
 6 educationally sound, other than in-class instruction. The commission, through its rules and
 7 regulations, may establish standards for the offering of continuing education courses
 8 required by this chapter by methods of instruction, which it deems to be educationally
 9 sound, other than in-class instruction."

10 SECTION 4.

11 Said chapter is further amended by striking Code Section 43-40-10, relating to the granting
 12 of a real estate broker's license, associate broker's license, salesperson's license, or
 13 community association manager's license to a firm, and inserting in its place a new Code
 14 section to read as follows:

15 "43-40-10.

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

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

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

23 Violations of this chapter or its rules and regulations by a firm licensed as a broker shall
 24 subject the license of the qualifying broker to sanction as authorized by this chapter. No
 25 broker's license shall be granted to a firm unless every person who acts as a licensee for
 26 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 who holds~~
 30 ~~the same type of license as its qualifying licensee who shall be responsible for assuring that~~
 31 ~~the corporation, limited liability company, or partnership complies with the provisions of~~
 32 ~~this chapter and its attendant rules and regulations. Violations of this chapter or rules and~~
 33 ~~regulations by a corporation, limited liability company, or partnership licensed as an~~
 34 ~~associate broker, salesperson, or community association manager shall subject both the~~
 35 ~~license of the entity and the license of the qualifying licensee to sanction as authorized by~~
 36 ~~this chapter. The qualifying licensee shall be the only licensee of a corporation, limited~~

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

8 SECTION 5.

9 Said chapter is further amended by striking paragraphs (14), (17), and (26) of subsection (b)
 10 of Code Section 43-40-25, relating to sanctions for violations committed by licensees,
 11 schools, and instructors and unfair trade practices, and inserting in their places new
 12 paragraphs (14), (17), and (26) to read as follows:

13 "(14) Negotiating a sale, exchange, or lease of real estate directly with an owner, a lessor,
 14 a purchaser, or a tenant if the licensee knows that such owner or lessor has a written
 15 outstanding contract in connection with such property granting an exclusive agency or
 16 an exclusive right to sell to another broker or that such purchaser or tenant has a
 17 brokerage agreement with another broker unless the licensee holding the outstanding
 18 brokerage agreement has given his or her written consent for the licensee seeking to
 19 negotiate the offer to negotiate directly with the owner, lessor, purchaser, or tenant;"

20 "(17) Paying a commission or compensation to any person for performing the services
 21 of a real estate licensee who has not first secured the appropriate license under this
 22 chapter or is not cooperating as a nonresident who is licensed in such nonresident's state
 23 or foreign country of residence, provided that nothing contained in this subsection or any
 24 other provision of this Code section shall be construed so as to prohibit the payment of
 25 earned commissions:

26 (A) To the estate or heirs of a deceased real estate licensee when such deceased real
 27 estate licensee had a valid Georgia real estate license in effect at the time the
 28 commission was earned and at the time of such person's death; ~~or~~

29 (B) To a citizen of another country acting as a referral agent if that country does not
 30 license real estate brokers and if the Georgia licensee paying such commission or
 31 compensation obtains and maintains reasonable written evidence that the payee is a
 32 citizen of said other country, is not a resident of this country, and is in the business of
 33 brokering real estate in said other country; or

34 (C) By the brokerage firm holding a licensee's license to an unlicensed firm in which
 35 an individual licensee affiliated with the brokerage firm owns more than a 20 percent
 36 interest provided:

1 from notifying persons who request investigations or the licensee or applicant who is the
2 subject of the notice of hearing of the receipt of a request for investigation or the
3 commission's disposition of the investigation nor from making available to the public any
4 document that becomes a public record during the hearing process authorized by
5 Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.'"

6 **SECTION 7.**

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