

Senate Bill 114

By: Senators Shafer of the 48th, Williams of the 19th, Johnson of the 1st, Rogers of the 21st,
Pearson of the 51st 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 that certain time periods shall have passed
3 after completing the terms and conditions of a sentence for certain criminal convictions
4 before making an application for licensure; to provide for additional criminal offenses for
5 which the Georgia Real Estate Commission may deny a license; to change the term "in-class
6 hour" to "instructional hour"; to change the number of instructional hours for a broker
7 prelicense course of study; to change the required number of continuing education hours; to
8 provide for certain provisions relating to persons on active military duty or serving in the
9 General Assembly; to permit the commission to provide certain educational materials to
10 consumers; to provide that brokers are entitled to trust funds only after consummation or
11 termination of the transaction; to permit a licensee to deal directly with another licensee's
12 client under certain circumstances; to provide for related matters; to repeal conflicting laws;
13 and for other purposes.

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

16 Chapter 40 of Title 43 of the Official Code of Georgia Annotated, relating to real estate
17 brokers and salespersons, is amended by revising Code Section 43-40-8, relating to license
18 requirements, as follows:

19 "43-40-8.

20 (a) In order to qualify to become an applicant for a community association manager's
21 license, an ~~applicant must~~ individual shall:

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

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

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

1 (3.1) Have satisfied all terms and conditions of any conviction, as the term is defined in
 2 subparagraph (A) of paragraph (1) of subsection (b) of Code Section 43-40-15, such
 3 individual may have had before making application for licensure; provided that if such
 4 individual has been convicted of multiple criminal offenses, at least five years shall have
 5 passed since the individual satisfied all terms and conditions of any sentence imposed for
 6 the last conviction before making application for licensure; and provided that if such
 7 individual has been convicted of a single felony or a single crime of moral turpitude, at
 8 least two years shall have passed since the individual satisfied all terms and conditions
 9 of any sentence imposed for the conviction before making application for licensure;

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

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

17 Failure to meet any of these requirements shall be grounds for denial of license without a
 18 hearing.

19 (b) In order to qualify to become an applicant for a salesperson's license, an ~~applicant must~~
 20 individual shall:

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

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

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

25 (3.1) Have satisfied all terms and conditions of any conviction, as the term is defined in
 26 subparagraph (A) of paragraph (1) of subsection (b) of Code Section 43-40-15, such
 27 individual may have had before making application for licensure; provided that if such
 28 individual has been convicted of multiple criminal offenses, at least five years shall have
 29 passed since the individual satisfied all terms and conditions of any sentence imposed for
 30 the last conviction before making application for licensure; and provided that if such
 31 individual has been convicted of a single felony or a single crime of moral turpitude, at
 32 least two years shall have passed since the individual satisfied all terms and conditions
 33 of any sentence imposed for the conviction before making application for licensure;

34 (4) Furnish evidence of completion of at least 75 ~~in-class~~ instructional hours in a
 35 salesperson's course ~~or courses~~ of study approved by the commission; and

1 (5) Stand and pass a real estate examination administered by or approved by the
 2 commission covering generally the matters confronting real estate brokers and
 3 salespersons after completing the requirements of paragraph (4) of this subsection.

4 Failure to meet any of these requirements shall be grounds for denial of license without a
 5 hearing.

6 (c) In order to qualify to become an applicant for a broker or associate broker's license,
 7 an ~~applicant must~~ individual shall:

8 (1) Have attained the age of 21 years;

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

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

12 (3.1) Have satisfied all terms and conditions of any conviction, as the term is defined in
 13 subparagraph (A) of paragraph (1) of subsection (b) of Code Section 43-40-15, such
 14 individual may have had before making application for licensure; provided that if such
 15 individual has been convicted of multiple criminal offenses, at least five years shall have
 16 passed since the individual satisfied all terms and conditions of any sentence imposed for
 17 the last conviction before making application for licensure; and provided that if such
 18 individual has been convicted of a single felony or a single crime of moral turpitude, at
 19 least two years shall have passed since the individual satisfied all terms and conditions
 20 of any sentence imposed for the conviction before making application for licensure;

21 (4) ~~Have served actively for three years as a licensee~~ maintained a license in active status
 22 for at least three of the five years immediately preceding the filing of an application to
 23 become a broker;

24 (5) Furnish evidence of completion of ~~60 in-class hours~~ in a broker's course of study of
 25 not more than 120 instructional hours to be determined and approved by the commission,
 26 provided that if licensed as a community association manager, the applicant ~~must~~ shall
 27 furnish evidence of completion of an additional 75 ~~in-class~~ instructional hours in courses
 28 or a course of study approved by the commission; and

29 (6) Stand and pass a real estate examination administered by or approved by the
 30 commission covering generally the matters confronting real estate brokers after
 31 completing the requirements of paragraph (5) of this subsection and after serving at least
 32 two years of active licensure.

33 Failure to meet any of these requirements shall be grounds for denial of license without a
 34 hearing.

35 (d) Upon being issued an original salesperson's license, each salesperson shall be required
 36 to furnish the commission, within one year of the issuance of a license, evidence of
 37 satisfactory completion of a course of study of at least 25 ~~in-class~~ instructional hours

1 approved by the commission. As a ~~part~~ condition of satisfactory completion of this course,
 2 the licensee ~~must~~ shall stand and pass an examination ~~covering~~ that the commission
 3 approves and that covers the subject matter contained in the course. ~~The commission, in~~
 4 ~~its discretion, may approve an examination prepared by and administered by the school~~
 5 ~~offering the course or may prepare and administer an examination itself.~~ The license of
 6 any salesperson who fails to complete satisfactorily in a timely manner the course provided
 7 for in this subsection shall lapse, and the salesperson's wall certificate of licensure and
 8 pocket card shall immediately be surrendered to the commission. Any salesperson whose
 9 license lapses for failure to complete satisfactorily ~~this~~ an approved 25 instructional hour
 10 course may reinstate the license in the following manner:

11 (1) Any salesperson who has enrolled in ~~the~~ any approved 25 instructional hour course
 12 within one year of the issuance of an original license, has paid all required fees for the
 13 course, and:

14 ~~(A) Has~~ has not completed all in-class sessions, required exercises, or examinations;
 15 for any reason

16 ~~(B) Produces a medical doctor's certification of incapacitation which caused the~~
 17 ~~licensee to be unable to complete all in-class sessions and the examination; or~~

18 ~~(C) Has not completed the course or the examination due to cancellation of the course~~
 19 ~~by the approved school~~

20 may reinstate the license by completing the course within six months of the lapsing of the
 21 license; or

22 (2) Any salesperson who fails to reinstate a lapsed license as provided in paragraph (1)
 23 of this subsection ~~must qualify as an original applicant by passing a new examination as~~
 24 ~~required in subsection (b) of this Code section and must~~ shall complete 25 in-class
 25 instructional hours of instruction in a course of study approved by the commission and
 26 pay such penalty fees as the commission may require through its rules and regulations
 27 before making application to reinstate such license.

28 (e) Except those individuals actively licensed on January 1, 1980, each applicant for
 29 renewal of an active license ~~must~~ shall furnish to the commission before renewing a license
 30 evidence of satisfactorily completing a continuing education course or courses approved
 31 by the commission. The length of the course or courses taken by licensees to meet this
 32 requirement of continuing education ~~must~~ shall total at least ~~six~~ twelve instructional hours
 33 for each year of the renewal period established by the commission. The commission shall
 34 not require the passing of an examination to meet this requirement. Continuing education
 35 courses ~~will~~ shall be provided by all educational or duly authorized instructional
 36 organizations teaching real estate licensing courses. No licensee whose license has been
 37 placed on inactive status shall be allowed to reactivate unless the provisions of this

1 subsection and subsection (g) of Code Section 43-40-12 are met. Individuals serving on
2 active duty in the armed forces of the United States or in the General Assembly may
3 choose not to meet the continuing education requirements of this subsection while on active
4 duty or during their terms of office. Members of the armed forces or the General Assembly
5 who choose to exercise this temporary exemption option and whose term of active duty or
6 of office exceeds two years shall be required to complete the 25 instructional hour course
7 referenced in subsection (d) above within six months of the conclusion of their active duty
8 or term of office.

9 (f) Instructors in all of the approved courses ~~must~~ shall be approved by the commission
10 and, where the commission deems necessary, receive any special instruction the
11 commission may require.

12 (g) Failure to complete any of the educational requirements as provided in this Code
13 section shall be grounds for denial of a license or denial of renewal of a license without
14 further hearing. No fees or portion of fees paid shall be refunded if a licensee fails to meet
15 the continuing education provisions of subsections (d) and (e) of this Code section or any
16 other provisions of this chapter.

17 (h) The commission may prepare and distribute to licensees under this chapter educational
18 material deemed of assistance in the conduct of their business. The commission may
19 prepare and distribute to the public educational material deemed of assistance to consumers
20 engaging in business in real estate transactions with persons licensed under this chapter.

21 (i) The commission, through its rules and regulations, shall establish standards for the
22 approval of schools and instructors to offer the education courses required by this chapter.
23 Each approved school ~~must~~ shall comply with Code Sections 43-40-15 through 43-40-32.
24 Each approved school ~~must~~ shall designate an individual approved by the commission to
25 act as its director and such designated individual shall be responsible for assuring that the
26 approved school complies with the requirements of this chapter and rules and regulations
27 promulgated under this chapter. An approved school ~~must~~ shall authorize its director to
28 bind the school to any settlement of a contested case before the commission as defined in
29 Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.' The commission,
30 through its rules and regulations, shall establish standards for the offering of the prelicense
31 education courses required by this chapter by methods of instruction, which it deems to be
32 educationally sound, other than in-class instruction. The commission, through its rules and
33 regulations, may establish standards for the offering of continuing education courses
34 required by this chapter by methods of instruction, which it deems to be educationally
35 sound, other than in-class instruction."

1 ~~who shall first~~ meet the continuing education requirement of subsection (e) of Code Section
 2 43-40-8 ~~in each renewal period that they are on inactive status nor to licensees who~~ which
 3 would have been required had such person been on active status unless such person
 4 maintained an active license in another state that has continuing education requirements
 5 while such licensee's license was on inactive status in Georgia."

6 SECTION 3.

7 Said chapter is further amended by revising subsection (b) of Code Section 43-40-15, relating
 8 to the grant, revocation, or suspension of licenses, as follows:

9 "(b)(1) As used in this Code section, the term:

10 (A) 'Conviction' means a finding or verdict of guilty or a plea of guilty, regardless of
 11 whether an appeal of the conviction has been brought; a sentencing to first offender
 12 treatment without an adjudication of guilt pursuant to a charge of a felony or any crime
 13 involving moral turpitude; or a plea of nolo contendere to a charge of a felony or any
 14 crime involving moral turpitude.

15 (B) 'Felony' includes any offense which, if committed in this state, would be deemed
 16 a felony, without regard to its designation elsewhere.

17 (1.1) No person who has a conviction for:

18 (A) Any criminal offense other than a traffic violation; or

19 (B) Any traffic violation that involved driving under the influence of alcohol or drugs,
 20 homicide or feticide by vehicle, fleeing the scene of an accident, attempting to elude a
 21 police officer, or impersonating a law enforcement officer

22 shall be eligible to become an applicant for a license or an approval authorized by this
 23 chapter unless such person has successfully completed all terms and conditions of any
 24 sentence imposed for such conviction before making application for licensure or
 25 approval; provided that if such individual has been convicted of multiple criminal
 26 offenses, at least five years shall have passed since the individual satisfied all terms and
 27 conditions of any sentence imposed for the last conviction before making application for
 28 licensure or approval; and provided that if such individual has been convicted of a single
 29 felony or a single crime of moral turpitude, at least two years shall have passed since the
 30 individual satisfied all terms and conditions of any sentence imposed for the last
 31 conviction before making application for licensure or approval;

32 (1.2) A person who has been convicted in a court of competent jurisdiction of this or any
 33 other state, district, or territory of the United States or of a foreign country of any
 34 criminal offense other than a traffic violation or of any traffic violation that involved
 35 driving under the influence of alcohol or drugs, homicide or feticide by vehicle, fleeing
 36 the scene of an accident, attempting to elude a police officer, or impersonating a law

1 enforcement officer shall be eligible to become an applicant for a license or an approval
 2 authorized by this chapter only if:

3 (A) Such person has satisfied all terms and conditions of any criminal conviction such
 4 person may have had before making application for licensure or approval; provided that
 5 if such individual has been convicted of multiple criminal offenses, at least five years
 6 shall have passed since the individual satisfied all terms and conditions of any sentence
 7 imposed for the last conviction before making application for licensure or approval; and
 8 provided that if such individual has been convicted of a single felony or a single crime
 9 of moral turpitude, at least two years shall have passed since the individual satisfied all
 10 terms and conditions of any sentence imposed for the last conviction before making
 11 application for licensure or approval;

12 (B) No criminal charges are pending against such person; and

13 (C) The person presents to the commission satisfactory proof that he or she now bears
 14 a good reputation for honesty, trustworthiness, integrity, and competence to transact the
 15 business of a licensee in such a manner as to safeguard the interest of the public.

16 (2) Where an applicant for a community association manager's license or a salesperson's
 17 license any license or approval authorized by this chapter has been convicted of forgery,
 18 embezzlement, obtaining money under false pretenses, theft, extortion, conspiracy to
 19 defraud, or other like offense or offenses or has been convicted of a felony, a sex offense,
 20 a probation violation, or a crime involving moral turpitude and has been convicted thereof
 21 in a court of competent jurisdiction of this or any other state, district, or territory of the
 22 United States; or of a foreign country; such conviction in itself may be a sufficient ground
 23 for refusal of a license or approval authorized by this chapter. An applicant for licensure
 24 as an associate broker or a broker who has been convicted of any offense enumerated in
 25 this subsection paragraph may be licensed by the commission as an associate broker or
 26 a broker only if:

27 (A) At least ten years have passed since the applicant was convicted, sentenced, or
 28 released from any incarceration, whichever is later;

29 (B) No criminal charges are pending against the applicant; and

30 (C) The applicant presents to the commission satisfactory proof that the applicant now
 31 bears a good reputation for honesty, trustworthiness, integrity, and competence to
 32 transact the business of a licensee in such a manner as to safeguard the interest of the
 33 public."

34 SECTION 4.

35 Said chapter is further amended by revising subsection (e) of Code Section 43-40-20, relating
 36 to when a broker is entitled to commission or fee, as follows:

