

House Bill 455

By: Representatives Powell of the 29<sup>th</sup>, Bearden of the 68<sup>th</sup>, and Jerguson of the 22<sup>nd</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Code Section 43-40-25, relating to violations by licensed community association  
2 managers, salespersons, associate brokers, brokers, schools, and instructors and sanctions and  
3 unfair trade practices, so as to change provisions relating to the prohibition against licensees  
4 engaging in unfair trade practices; to provide for related matters; to provide an effective date;  
5 to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

8 Code Section 43-40-25, relating to violations by licensed community association managers,  
9 salespersons, associate brokers, brokers, schools, and instructors and sanctions and unfair  
10 trade practices, is amended by revising subsection (b) as follows:

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

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

13 (A) Refusing to sell or rent after the making of a bona fide offer, or refusing to  
14 negotiate for the sale or rental of, or otherwise making unavailable or denying, real  
15 estate to any person;

16 (B) Discriminating against any person in the terms, conditions, or privileges of sale or  
17 rental of real estate or in the provision of services or facilities in connection therewith;

18 (C) Making, printing, or publishing or causing to be made, printed, or published any  
19 notice, statement, or advertisement, with respect to the sale or rental of real estate, that  
20 indicates any preference, limitation, or discrimination or an intention to make any such  
21 preference, limitation, or discrimination;

22 (D) Representing to any person that any real estate is not available for inspection, sale,  
23 or rental when such real estate is in fact so available; or

24 (E) Representing explicitly or implicitly that a change has or will or may occur in a  
25 block, neighborhood, or area in order to induce or discourage the listing, purchasing,  
26 selling, or renting of real estate;

- 27 (2) Intentionally advertising material which is misleading or inaccurate or which in any  
 28 way misrepresents any property, terms, values, policies, or services of the business  
 29 conducted;
- 30 (3) Failing to account for and remit any money coming into the licensee's possession  
 31 which belongs to others;
- 32 (4) Commingling the money or other property of the licensee's principals with the  
 33 licensee's own;
- 34 (5) Failing to maintain and deposit in a separate, federally insured checking account all  
 35 money received by said broker acting in said capacity, or as escrow agent or the  
 36 temporary custodian of the funds of others, in a real estate transaction unless all parties  
 37 having an interest in said funds have agreed otherwise in writing;
- 38 ~~(6) Accepting, giving, or charging any undisclosed commission, fee, rebate, direct profit,  
 39 or other valuable consideration on expenditures made for a principal or any undisclosed  
 40 commission, fee, rebate, direct profit for procuring a loan or insurance or for conducting  
 41 a property inspection, or for any other service related to a real estate transaction~~
- 42 Failing to disclose in writing to a principal in a real estate transaction any of the  
 43 following:
- 44 (A) The receipt of a fee, rebate, or other thing of value on expenditures made on behalf  
 45 of the principal for which the principal is reimbursing the licensee;
- 46 (B) The payment to another broker of a commission, fee, or other thing of value for the  
 47 referral of the principal for brokerage or relocation services; or
- 48 (C) The receipt of anything of value for the referral of any service or product in a real  
 49 estate transaction to a principal;
- 50 (7) Representing or attempting to represent a real estate broker, other than the broker  
 51 holding the licensee's license, without the express knowledge and consent of the broker  
 52 holding the licensee's license;
- 53 (8) Accepting a commission or other valuable consideration by a licensee from anyone  
 54 other than the broker holding that licensee's license without the consent of that broker;
- 55 (9) Acting in the dual capacity of agent and undisclosed principal in any transaction;
- 56 (10) Guaranteeing or authorizing any person to guarantee future profits which may result  
 57 from the resale of real property;
- 58 (11) Placing a sign on any property offering it for sale or rent without the written consent  
 59 of the owner or the owner's authorized agent and failing to remove such sign within ten  
 60 days after the expiration of listing;
- 61 (12) Offering real estate for sale or lease without the knowledge and consent of the  
 62 owner or the owner's authorized agent or on terms other than those authorized by the  
 63 owner or the owner's authorized agent;

- 64 (13) Inducing any party to a contract of sale or lease, or a brokerage agreement to break  
65 such contract or brokerage agreement for the purpose of substituting in lieu thereof any  
66 other contract or brokerage agreement with another principal;
- 67 (14) Negotiating a sale, exchange, or lease of real estate directly with an owner, a lessor,  
68 a purchaser, or a tenant if the licensee knows that such owner or lessor has a written  
69 outstanding listing contract in connection with such property granting an exclusive  
70 agency or an exclusive right to sell to another broker or that such purchaser or tenant has  
71 a written outstanding exclusive brokerage agreement with another broker, unless the  
72 outstanding listing or brokerage agreement provides that the licensee holding such  
73 agreement will not provide negotiation services to the client;
- 74 (15) Indicating that an opinion given to a potential seller, purchaser, landlord, or tenant  
75 regarding a listing, lease, rental, or purchase price is an appraisal unless such licensee  
76 holds an appraiser classification in accordance with Chapter 39A of this title;
- 77 (16) Performing or attempting to perform any of the acts of a licensee on property  
78 located in another state without first having been properly licensed in that state or  
79 otherwise having complied fully with that state's laws regarding real estate brokerage;
- 80 (17) Paying a commission or compensation to any person for performing the services of  
81 a real estate licensee who has not first secured the appropriate license under this chapter  
82 or is not cooperating as a nonresident who is licensed in such nonresident's state or  
83 foreign country of residence, provided that nothing contained in this subsection or any  
84 other provision of this Code section shall be construed so as to prohibit the payment of  
85 earned commissions:
- 86 (A) To the estate or heirs of a deceased real estate licensee when such deceased real  
87 estate licensee had a valid Georgia real estate license in effect at the time the  
88 commission was earned and at the time of such person's death;
- 89 (B) To a citizen of another country acting as a referral agent if that country does not  
90 license real estate brokers and if the Georgia licensee paying such commission or  
91 compensation obtains and maintains reasonable written evidence that the payee is a  
92 citizen of said other country, is not a resident of this country, and is in the business of  
93 brokering real estate in said other country; or
- 94 (C) By the brokerage firm holding a licensee's license to an unlicensed firm in which  
95 an individual licensee affiliated with the brokerage firm owns more than a 20 percent  
96 interest provided:
- 97 (i) Such individual licensee earned the commission on behalf of the brokerage firm;  
98 (ii) Such unlicensed firm does not perform real estate brokerage activity;  
99 (iii) The affiliated licensee and the brokerage firm have a written agreement  
100 authorizing the payment to the unlicensed firm; and

- 101 (iv) The brokerage firm obtains and retains written evidence that the affiliated  
102 licensee owns more than a 20 percent interest in the unlicensed firm to which the  
103 compensation will be paid;
- 104 (18) Failing to include a fixed date of expiration in any written listing agreement and  
105 failing to leave a copy of said agreement with the principal;
- 106 (19) Failing to deliver, within a reasonable time, a completed copy of any purchase  
107 agreement or offer to buy or sell real estate to the purchaser and to the seller;
- 108 (20) Failure by a broker to deliver to the seller in every real estate transaction, at the time  
109 said transaction is consummated, a complete, detailed closing statement showing all of  
110 the receipts and disbursements handled by such broker for the seller or failure to deliver  
111 to the buyer a complete statement showing all money received in said transaction from  
112 such buyer and how and for what the same was disbursed; the broker shall retain true  
113 copies of such statements in the broker's files;
- 114 (21) Making any substantial misrepresentations;
- 115 (22) Acting for more than one party in a transaction without the express written consent  
116 of all parties to the transaction;
- 117 (23) Failure of an associate broker, salesperson, or community association manager to  
118 place, as soon after receipt as is practicably possible, in the custody of the broker holding  
119 the licensee's license any deposit money or other money or funds entrusted to the licensee  
120 by any person dealing with the licensee as the representative of the licensee's licensed  
121 broker;
- 122 (24) Filing a listing contract or any document or instrument purporting to create a lien  
123 based on a listing contract for the purpose of casting a cloud upon the title to real estate  
124 when no valid claim under said listing contract exists;
- 125 (25) Having demonstrated incompetency to act as a real estate licensee in such manner  
126 as to safeguard the interest of the public or any other conduct whether of the same or a  
127 different character than heretofore specified which constitutes dishonest dealing;
- 128 (26) Obtaining a brokerage agreement, a sales contract, or a lease from any owner,  
129 purchaser, or tenant while knowing or having reason to believe that another broker has  
130 an exclusive brokerage agreement with such owner, purchaser, or tenant, unless the  
131 licensee has written permission from the broker having the first exclusive brokerage  
132 agreement; provided, however, that notwithstanding the provisions of this paragraph, a  
133 licensee shall be permitted to present a proposal or bid for community association  
134 management if requested to do so in writing from a community association board of  
135 directors;
- 136 (27) Failing to keep for a period of three years a true and correct copy of all sales  
137 contracts, closing statements, any offer or other document that resulted in the depositing

138 of trust funds, accounting records related to the maintenance of any trust account required  
 139 by this chapter, and other documents relating to real estate closings or transactions or  
 140 failing to produce such documents at the reasonable request of the commission or any of  
 141 its agents for their inspection;

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

144 ~~(29) Failing to cause or preventing the disclosure of, on a real estate transaction~~  
 145 ~~settlement statement, settlement document, lease agreement, or management agreement,~~  
 146 ~~any fee, charge, rebate, profit, commission, referral fee, or other valuable consideration~~  
 147 ~~for any service related to such transaction and the recipient of the consideration;~~

148 ~~(30)~~(29) Failing to obtain the written agreement of the parties indicating to whom the  
 149 broker shall pay any interest earned on trust funds deposited into an interest-bearing  
 150 checking account prior to depositing those funds into such account;

151 ~~(31)~~(30) Failing to disclose in a timely manner to all parties in a real estate transaction  
 152 any agency relationship that the licensee may have with any of the parties;

153 ~~(32)~~(31) Attempting to perform any act authorized by this chapter to be performed only  
 154 by a broker, associate broker, or salesperson while licensed as a community association  
 155 manager;

156 ~~(33)~~(32) Attempting to sell, lease, or exchange the property of any member of a  
 157 community association to which a licensee is providing community association  
 158 management services without the express written consent of that association to do so;

159 ~~(33.1)~~(33) Failure to deliver to a community association terminating a management  
 160 contract within 30 days of the termination, or within such other time period as the  
 161 management contract shall provide:

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

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

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

167 ~~(33.2)~~(34) Failure to deliver to a property owner terminating a management contract  
 168 within 30 days of the termination, or within such other time period as the management  
 169 contract shall provide:

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

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

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

175 ~~(34)~~(35) Inducing any person to alter, modify, or change another licensee's fee or  
176 commission for real estate brokerage services without that licensee's prior written  
177 consent; or  
178 ~~(35)~~(36) Failing to obtain a person's written agreement to refer that person to another  
179 licensee licensed broker for brokerage or relocation services and to inform such person  
180 being referred whether or not the licensee will receive a valuable consideration for such  
181 referral ~~and an estimate of such consideration."~~

182 **SECTION 2.**

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

185 **SECTION 3.**

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