

House Bill 880

By: Representatives Powell of the 29th, Williams of the 4th, Benton of the 31st, and Dickson of the 6th

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 43 of the Official Code of Georgia Annotated, relating to professions and
2 businesses, so as to change certain provisions relating to real estate professionals; to provide
3 for definitions relative to real estate appraisers and to real estate brokers and salespersons;
4 to change certain provisions relating to revocation of licenses; to change certain provisions
5 relating to discipline, sanctions, and citations; to provide for a letter of findings to be issued
6 by the Georgia Real Estate Appraisers Board and the Georgia Real Estate Commission; to
7 change certain provisions relating to qualifications for a broker or associate broker's license;
8 to change certain provisions relating to the real estate education, research, and recovery fund;
9 to revise certain provision relating to the commission's subrogation rights; to provide for
10 related matters; to repeal conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

13 Title 43 of the Official Code of Georgia Annotated, relating to professions and businesses,
14 is amended by revising subparagraph (B) of paragraph (3) of Code Section 43-39A-2,
15 relating to definitions relative to real estate appraisers, as follows:

16 "(B) 'Appraisal management company' does not include:

- 17 (i) Any person licensed to practice law in this state who orders an appraisal in
18 connection with a bona fide client relationship when that person directly contracts
19 with an appraiser;
- 20 (ii) Any person who contracts with an appraiser acting as an independent contractor
21 for the completion of a real estate appraisal assignment and who, upon the completion
22 of such an assignment, cosigns the appraisal report with the appraiser who is acting
23 as an independent contractor;
- 24 (iii) Any federal, state, or local government or any of its departments, agencies, or
25 authorities that order appraisals; or

- 26 (iv) Any person who orders an appraisal on behalf of any federal, state, or local
 27 government or its departments, agencies, or authorities as an employee thereof; or
 28 (v) A relocation company."

29 **SECTION 2.**

30 Said title is further amended by revising Code Section 43-39A-2, relating to definitions
 31 relative to real estate appraisers, by adding a new paragraph to read as follows:

32 "(25.1) 'Relocation company' means a business entity that acts as an agent or contractor
 33 of an employer for the purposes of relocating the employees of such employer and
 34 determining an anticipated sales price of the residences of the employees being
 35 relocated."

36 **SECTION 3.**

37 Said title is further amended by revising subsection (e) of Code Section 43-39A-3, relating
 38 to the Georgia Real Estate Appraisers Board, membership, qualifications, recusal for conflict
 39 of interest, terms, removal, meetings, and compensation, as follows:

40 "(e) Upon expiration of their terms, members of the board shall continue to hold office until
 41 the appointment and qualification of their successors. The Governor, after giving notice
 42 and opportunity for a hearing, may remove from office any member of the board for any
 43 of the following:

- 44 (1) Inability to perform or neglecting to perform the duties required of members;
 45 (2) Incompetence;
 46 (3) Dishonest conduct; or
 47 (4) Having a disciplinary sanction other than a citation or a letter of findings authorized
 48 by this chapter imposed by any professional licensing agency on such member's right to
 49 practice a trade or profession."

50 **SECTION 4.**

51 Said title is further amended by revising Code Section 43-39A-14, relating to required
 52 conduct of applicants, refusal of classification, imposition of sanctions, revocation of
 53 classification, noncompliance with child support orders, and borrowers in default, as follows:

54 "43-39A-14.

55 (a) Appraiser classifications shall be granted only to persons who bear a good reputation
 56 for honesty, trustworthiness, integrity, and competence to transact real estate appraisal
 57 activity in such manner as to safeguard the interests of the public and only after satisfactory
 58 proof of such qualifications has been presented to the board.

59 (b)(1) As used in this subsection, the term:

60 (A) 'Conviction' means a finding or verdict of guilty or a plea of guilty to a charge of
 61 a felony or any crime involving moral turpitude, regardless of whether an appeal of the
 62 conviction has been brought; a sentencing to first offender treatment without an
 63 adjudication of guilt pursuant to a charge of a felony or any crime involving moral
 64 turpitude; or a plea of nolo contendere to a charge of a felony or any crime involving
 65 moral turpitude.

66 (B) 'Felony' ~~includes~~ means any offense ~~which, if committed in this state, would be~~
 67 ~~deemed a felony, without regard to its designation elsewhere~~ committed:

68 (i) Within this state and deemed a felony under the laws of this state or under the
 69 laws of the United States; or

70 (ii) In another state and deemed a felony under the laws of that state or the laws of
 71 the United States.

72 (1.1) No person who has a conviction shall be eligible to become an applicant for a
 73 license or an approval authorized by this chapter unless such person has successfully
 74 completed all terms and conditions of any sentence imposed for such conviction;,
 75 provided that if such individual has multiple convictions, at least five years shall have
 76 passed since the individual satisfied all terms and conditions of any sentence imposed for
 77 the last conviction before making application for licensure or approval; and provided,
 78 further, that if such individual has a single conviction, at least two years shall have passed
 79 since the individual satisfied all terms and conditions of any sentence imposed for the last
 80 conviction before making application for licensure or approval.

81 (1.2) A person who has a conviction in a court of competent jurisdiction of this state or
 82 any other state, ~~district, or territory of the United States, or of a foreign country,~~ shall be
 83 eligible to become an applicant for a licensure or an approval authorized by this chapter
 84 only if:

85 (A) Such person has satisfied all terms and conditions of any conviction such person
 86 may have had before making application for licensure or approval, provided that; if
 87 such individual has multiple convictions, at least five years shall have passed since the
 88 individual satisfied all terms and conditions of any sentence imposed for the last
 89 conviction before making application for licensure or approval; and provided, further,
 90 that if such individual has been convicted of a single felony or of a single crime of
 91 moral turpitude, at least two years shall have passed since the individual satisfied all
 92 terms and conditions of any sentence imposed for the last conviction before making
 93 application for licensure or approval;

94 (B) No criminal charges for forgery, embezzlement, obtaining money under false
 95 pretenses, theft, extortion, conspiracy to defraud, a felony, a ~~sex~~ sexual offense, a

96 probation violation, or a crime involving moral turpitude are pending against the
97 person; and

98 (C) Such person presents to the commission satisfactory proof that the person now
99 bears a good reputation for honesty, trustworthiness, integrity, and competence to
100 transact the business of a licensee in such a manner as to safeguard the interest of the
101 public.

102 (2) Where an applicant for any classification or approval authorized by this chapter has
103 been convicted in a court of competent jurisdiction of this state or any other state, ~~district,~~
104 ~~or territory of the United States or of a foreign country~~ of the offense of forgery,
105 embezzlement, obtaining money under false pretenses, theft, extortion, or conspiracy to
106 defraud or other like offense or offenses or has been convicted of a felony, a ~~sex~~ sexual
107 offense, a probation violation, or a crime involving moral turpitude, such conviction in
108 itself may be a sufficient ground for refusal of a classification or approval. An applicant
109 for any classification or approval authorized by this chapter who has been convicted of
110 any offense enumerated in this paragraph may be issued a classification or approval by
111 the board only if:

112 (A) The time periods identified in paragraph ~~(1)~~ (1.1) of this subsection have passed
113 since the applicant was convicted, sentenced, or released from any incarceration,
114 whichever is later;

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

116 (C) The applicant presents to the board satisfactory proof that the applicant now bears
117 a good reputation for honesty, trustworthiness, integrity, and competence to transact
118 real estate appraisal activity in such a manner as to safeguard the interest of the public.

119 (c) Where an applicant or an appraiser has been found guilty of a violation of the federal
120 fair housing law or Article 4 of Chapter 3 of Title 8 by an administrative law judge or a
121 court of competent jurisdiction and after any appeal of such conviction is concluded, such
122 conviction may in itself be a sufficient ground for refusal of an appraiser classification or
123 the imposition of any sanction permitted by this chapter.

124 (d) Where an applicant or an appraiser has made a false statement of material fact on an
125 application or caused to be submitted or been a party to preparing or submitting any
126 falsified application to the board, such action may, in itself, be a sufficient ground for the
127 refusal, suspension, or revocation of the appraiser classification.

128 (e) Grounds for suspension or revocation of an appraiser classification, as provided for by
129 this chapter, shall also be grounds for refusal to grant an appraiser classification.

130 (f) The conduct provided for in subsections (a) through (d) and subsection (h) of this Code
131 section which relates to the denial of an appraiser classification to an applicant shall also

132 be grounds for the imposition of any sanction permitted by this chapter when the conduct
133 is that of an appraiser.

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

137 (1) Surrendered or surrenders an appraiser classification to the board;

138 (2) Allowed or allows an appraiser classification to lapse due to failure to meet education
139 requirements provided by law; or

140 (3) Allowed or allows an appraiser classification to lapse due to failure to pay any
141 required fees,

142 the board may issue an order revoking such appraiser's classification. The order ~~will~~ shall
143 be effective ten days after the order is served on the appraiser unless the appraiser makes
144 a written request for a hearing before the board, in which event, the board ~~will~~ shall file a
145 notice of hearing in accordance with Chapter 13 of Title 50, the 'Georgia Administrative
146 Procedure Act.' Service shall be accomplished as provided for in Code Section 43-39A-21.
147 ~~If such surrender or lapsing occurs after the board has filed a notice of hearing alleging that~~
148 ~~such appraiser has violated any provision of this chapter or the rules and regulations~~
149 ~~adopted pursuant to this chapter but before the board enters a final order in the matter, then~~
150 ~~upon submission of a new application by such person the matters asserted in the notice of~~
151 ~~hearing shall be deemed admitted and may be used by the board as grounds for refusal of~~
152 ~~a new appraiser classification to such person.~~

153 (h) Whenever any occupational licensing body of this state; or any other state; ~~or any~~
154 ~~foreign country~~ has ~~sanctioned~~ disciplined any license or classification of an applicant for
155 any appraiser classification or whenever such an applicant has allowed a license or
156 classification to lapse or has surrendered a license or classification to any occupational
157 licensing body of this state; or any other state; ~~or any foreign country~~ after that
158 occupational licensing body has initiated an investigation or a disciplinary process
159 regarding such applicant's licensure or classification, such ~~sanction~~ discipline, lapsing, or
160 surrender in itself may be a sufficient ground for refusal of an appraiser classification.
161 Whenever any occupational licensing body of this state; or any other state; ~~or any foreign~~
162 ~~country~~ has revoked the license or classification of an applicant for a classification or
163 whenever such an applicant has allowed a license or classification to lapse or has
164 surrendered a license or classification to any occupational licensing body of this state; or
165 any other state; ~~or any foreign country~~ after that body has initiated an investigation or a
166 disciplinary process regarding such applicant's license or classification, the board may issue
167 an appraiser classification only if:

- 168 (1) At least five years have passed since the date that the applicant's occupational
 169 registration, license, or certification was revoked or surrendered;
- 170 (2) No criminal charges are pending against the applicant at the time of application; and
- 171 (3) The applicant presents to the board satisfactory proof that the applicant now bears a
 172 good reputation for honesty, trustworthiness, integrity, and competence to transact real
 173 estate appraisal activity in such a manner as to safeguard the interests of the public.
- 174 (i) Whenever any appraiser is convicted of any offense enumerated in subsection (b) of
 175 this Code section, such appraiser ~~must~~ shall immediately notify the board of that
 176 conviction. Such appraiser's appraiser classification shall automatically be revoked 60 days
 177 after the conviction unless the appraiser makes a written request to the board for a hearing
 178 during that 60 day period. Following any such hearing requested pursuant to this
 179 subsection, the board in its discretion may impose upon that appraiser any sanction
 180 permitted by this chapter.
- 181 (j) Where an applicant or licensee has been found not in compliance with an order for child
 182 support as provided in Code Section 19-6-28.1 or 19-11-9.3, such action ~~is~~ shall be
 183 sufficient grounds for refusal of a license or suspension of a license. For purposes of this
 184 subsection, the hearing and appeal procedures provided for in such Code sections shall be
 185 the only such procedures required under this article.
- 186 (k) Where an applicant or licensee has been found to be a borrower in default who is not
 187 in satisfactory repayment status as provided in Code Section 20-3-295, such finding ~~is~~ shall
 188 be sufficient grounds for refusal of a license or suspension of a license. For purposes of
 189 this subsection, the hearing and appeal procedures provided for in Code Section 20-3-295
 190 shall be the only such procedures required under this article.
- 191 (l) Where the board has previously sanctioned any applicant for a classification under
 192 Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' such sanction may in
 193 itself be a sufficient ground for refusing the classification."

194 **SECTION 5.**

195 Said title is further amended by revising subsection (a) of Code Section 43-39A-18, relating
 196 to penalties for violations, unfair trade practices, and civil judgments, as follows:

197 "(a) In accordance with the hearing procedures established for contested cases by Chapter
 198 13 of Title 50, the 'Georgia Administrative Procedure Act,' whenever an appraiser
 199 classification, a school approval, or an instructor approval has been obtained by false or
 200 fraudulent representation~~;~~₂ or whenever an appraiser, an approved school, or an approved
 201 instructor has been found guilty of a violation of this chapter, ~~or~~ of the rules and regulations
 202 promulgated by the board, or of any unfair trade practices, including, but not limited to,

203 those listed in this Code section, the board shall have the power to take any one or more
204 of the following actions:

- 205 (1) Refuse to grant or renew a classification to an applicant;
- 206 (2) Administer a reprimand;
- 207 (3) Suspend any classification or approval for a definite period of time or for an
208 indefinite period of time in connection with any condition that may be attached to the
209 restoration of the classification or approval;
- 210 (4) Revoke any classification or approval;
- 211 (5) Revoke any classification issued to an appraiser and simultaneously issue such
212 appraiser a classification with more restricted authority to conduct appraisals;
- 213 (6) Impose on an appraiser, applicant, ~~approved school approval~~, or ~~approved instructor~~
214 ~~approval~~ monetary assessments in an amount necessary to reimburse the board for
215 administrative, investigative, and legal costs and expenses incurred by the board in
216 conducting any proceeding authorized under this chapter or Chapter 13 of Title 50, the
217 'Georgia Administrative Procedure Act';
- 218 (7) Impose a fine not to exceed \$1,000.00 for each violation of this chapter or its rules
219 and regulations with fines for multiple violations limited to \$5,000.00 in any one
220 disciplinary proceeding or such other amount as the parties may agree;
- 221 (8) Require completion of a course of study in real estate appraisal or instruction; or
- 222 (9) Limit or restrict any classification or approval as the board deems necessary for the
223 protection of the public.

224 Any action taken by the board pursuant to this subsection may, at its discretion, be
225 construed as a 'disciplinary sanction' or 'sanction' as such terms are used in this chapter.'

226 **SECTION 6.**

227 Said title is further amended by revising Code Section 43-39A-18.1, relating to alternative
228 disciplinary procedures and citations, as follows:

229 "43-39A-18.1.

230 (a) It is the intent of the General Assembly to provide the board with a disciplinary ~~tool~~
231 ~~which is an alternative~~ measures to use as alternatives to the sanctions provided for in
232 subsection (a) of Code Section 43-39A-18. The citation and letter of findings provided for
233 in this Code section shall not be construed as a disciplinary sanction.

234 (b) Whenever the evidence gathered in an investigation reveals an apparent violation by
235 an appraiser of this chapter, the rules and regulations promulgated by the board, or a
236 standard of conduct, the board, in its discretion, may:

237 (1) ~~initiate~~ Initiate the process for the imposition of sanctions, as provided for in
 238 subsection (a) of Code Section 43-39A-18 and in accordance with the hearing procedures
 239 established for contested cases by Chapter 13 of Title 50, ~~or;~~

240 (2) ~~issue~~ Issue a citation to the appraiser. Such citation, which shall be served personally
 241 or by mail, shall give notice to the appraiser of the alleged violation or violations of this
 242 chapter, commission rules, or standard or standards of conduct and inform the appraiser
 243 of the opportunity to request a contested case hearing to be held in accordance with the
 244 procedures established for such hearings by Chapter 13 of Title 50. A citation issued by
 245 the board may include an order to complete a course of study in real estate appraisal or
 246 instruction or to pay a fine not to exceed \$1,000.00 for each violation of this chapter or
 247 its rules and regulations, with fines for multiple violations limited to \$5,000.00 in any one
 248 citation, or both. If the appraiser fails to request a hearing within 30 days of the date of
 249 service of the citation, the order contained in the citation shall be final. The failure of an
 250 appraiser to comply with a final order contained in a citation may be cause for the
 251 imposition of a sanction on such person's classification, after notice and opportunity for
 252 a hearing; ~~or~~

253 (3) Issue a letter of findings to the appraiser if the alleged violation appears to have done
 254 no harm to a third party or to the public. Such letter of findings, which shall be served
 255 personally or by mail, shall give notice to the appraiser of the alleged violation or
 256 violations of this chapter, commission rules, or standard or standards of conduct. A letter
 257 of findings shall be confidential and shall not appear on the classification history of an
 258 appraiser. A letter of findings shall not be subject to a subpoena in a civil action, shall
 259 not constitute a public record or be available for inspection by the public, and shall not
 260 be disclosed to any person or agency, except as provided in subsection (d) of Code
 261 Section 43-39A-22.

262 (c) The board is authorized to promulgate rules and regulations to implement this Code
 263 section. Such rules may limit the provisions of this chapter and of its rules and regulations
 264 and standards of conduct which may be the basis for the issuance of a citation or a letter
 265 of findings."

266 SECTION 7.

267 Said title is further amended by revising subparagraph (B) of paragraph (2) of Code Section
 268 43-40-1, relating to definitions relative to real estate brokers and salespersons, as follows:

269 "(B) Holds himself or herself out as a referral agent for the purpose of securing
 270 prospects for property management services, community association management
 271 services, or the listing, sale, purchase, exchange, renting, lease, or option for any real
 272 estate;"

273 **SECTION 8.**

274 Said title is further amended by revising subsection (d) of Code Section 43-40-2, relating to
 275 creation of commission, members, meetings, recusal for conflict of interest, removal,
 276 compensation, annual report, and budget unit, as follows:

277 "(d) The Governor, after giving notice and an opportunity for a hearing, may remove from
 278 office any member of the commission for any of the following:

- 279 (1) Inability to perform or neglecting to perform the duties required of members;
 280 (2) Incompetence;
 281 (3) Dishonest conduct; or
 282 (4) Having a disciplinary sanction, other than a citation or a letter of findings authorized
 283 by this chapter, imposed by any professional licensing agency on such member's right to
 284 practice a trade or profession."

285 **SECTION 9.**

286 Said title is further amended by revising subsection (c) of Code Section 43-40-8, relating to
 287 qualifications of licensees, course of study for licensed salespersons, lapse, reinstatement,
 288 renewal, continuing education, and standards for courses, as follows:

289 "(c) In order to qualify to become an applicant for a broker or associate broker's license,
 290 an individual shall:

- 291 (1) Have attained the age of 21 years;
 292 (2) Be a resident of the State of Georgia, unless that person has fully complied with the
 293 provisions of Code Section 43-40-9;
 294 (3) Be a high school graduate or the holder of a certificate of equivalency;
 295 (3.1) Have complied fully with the requirements of subsection (b) of Code Section
 296 43-40-15 regarding any criminal convictions;
 297 (4) Have maintained a license in active status for at least three of the five years
 298 immediately preceding the filing of an application to become a broker;
 299 (5) Furnish evidence of completion of 60 instructional hours in a broker's course of study
 300 approved by the commission, provided that if licensed as a community association
 301 manager, the applicant shall furnish evidence of completion of an additional 75
 302 instructional hours in courses or a course of study approved by the commission; and
 303 (6) Stand and pass a real estate examination administered by or approved by the
 304 commission covering generally the matters confronting real estate brokers after
 305 completing the requirements of paragraph (5) of this subsection and after ~~serving at least~~
 306 ~~two years of active licensure~~ maintaining a license in active status for at least three of the
 307 five years immediately preceding such examination.

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

310 **SECTION 10.**

311 Said title is further amended by revising Code Section 43-40-15, relating to grant, revocation,
312 or suspension of licenses, other sanctions, surrender or lapse, conviction, noncompliance
313 with child support order, and borrowers in default, as follows:

314 "43-40-15.

315 (a) Licenses shall be granted only to persons who bear a good reputation for honesty,
316 trustworthiness, integrity, and competence to transact the business of a licensee in such
317 manner as to safeguard the interest of the public and only after satisfactory proof of such
318 qualifications has been presented to the commission. The commission may deny a license
319 to a corporation, limited liability company, or partnership if a stockholder, member, or
320 partner or any combination thereof which owns more than a 20 percent interest therein does
321 not bear a good reputation for honesty, trustworthiness, and integrity; has been convicted
322 of any of the crimes enumerated in subsection (b) of this Code section; or has been
323 ~~sanctioned~~ disciplined by any legally constituted regulatory agency for violating a law
324 regulating the sale of real estate.

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

326 (A) 'Conviction' means a finding or verdict of guilty or a plea of guilty to a charge of
327 a felony or any crime involving moral turpitude, regardless of whether an appeal of the
328 conviction has been brought; a sentencing to first offender treatment without an
329 adjudication of guilt pursuant to a charge of a felony or any crime involving moral
330 turpitude; or a plea of nolo contendere to a charge of a felony or any crime involving
331 moral turpitude.

332 (B) 'Felony' ~~includes~~ means any offense ~~which, if committed in this state, would be~~
333 ~~deemed a felony, without regard to its designation elsewhere~~ committed:

334 (i) Within this state and deemed a felony under the laws of this state or under the
335 laws of the United States; or

336 (ii) In another state and deemed a felony under the laws of that state or the laws of
337 the United States.

338 (1.1) No person who has a conviction shall be eligible to become an applicant for a
339 license or an approval authorized by this chapter unless such person has successfully
340 completed all terms and conditions of any sentence imposed for such conviction;,
341 provided that if such individual has multiple convictions, at least five years shall have
342 passed since the individual satisfied all terms and conditions of any sentence imposed for
343 the last conviction before making application for licensure or approval; and provided,

344 further, that if such individual has a single conviction, at least two years shall have passed
 345 since the individual satisfied all terms and conditions of any sentence imposed for the last
 346 conviction before making application for licensure or approval.

347 (1.2) A person who has a conviction in a court of competent jurisdiction of this state or
 348 any other state, ~~district, or territory of the United States, or of a foreign country,~~ shall be
 349 eligible to become an applicant for a licensure or an approval authorized by this chapter
 350 only if:

351 (A) Such person has satisfied all terms and conditions of any conviction such person
 352 may have had before making application for licensure or approval; ~~;~~ provided that if
 353 such individual has multiple convictions, at least five years shall have passed since the
 354 individual satisfied all terms and conditions of any sentence imposed for the last
 355 conviction before making application for licensure or approval; and provided, further,
 356 that if such individual has been convicted of a single felony or of a single crime of
 357 moral turpitude, at least two years shall have passed since the individual satisfied all
 358 terms and conditions of any sentence imposed for the last conviction before making
 359 application for licensure or approval;

360 (B) No criminal charges for forgery, embezzlement, obtaining money under false
 361 pretenses, theft, extortion, conspiracy to defraud, a felony, a ~~sex~~ sexual offense, a
 362 probation violation, or a crime involving moral turpitude are pending against the
 363 person; and

364 (C) Such person presents to the commission satisfactory proof that the person now
 365 bears a good reputation for honesty, trustworthiness, integrity, and competence to
 366 transact the business of a licensee in such a manner as to safeguard the interest of the
 367 public.

368 (2) Where an applicant for any license or approval authorized by this chapter has been
 369 convicted of forgery, embezzlement, obtaining money under false pretenses, theft,
 370 extortion, conspiracy to defraud, or other like offense or offenses or has been convicted
 371 of a felony, a ~~sex~~ sexual offense, a probation violation, or a crime involving moral
 372 turpitude and has been convicted thereof in a court of competent jurisdiction of this state
 373 or any other state, ~~district, or territory of the United States or of a foreign country~~ such
 374 conviction in itself may be sufficient ground for refusal of a license or approval
 375 authorized by this chapter. An applicant for licensure as an associate broker or a broker
 376 who has been convicted of any offense enumerated in this paragraph may be licensed by
 377 the commission as an associate broker or a broker only if:

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

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

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

385 (c) Where an applicant or licensee has been found guilty of a violation of the federal fair
 386 housing law or Article 4 of Chapter 3 of Title 8 by an administrative law judge or a court
 387 of competent jurisdiction and after any appeal of such conviction is concluded, such
 388 conviction may in itself be a sufficient ground for refusal of a license or the imposition of
 389 any sanction permitted by this chapter.

390 (d) Where an applicant or licensee has made a false statement of material fact on his or her
 391 application or caused to be submitted or been a party to preparing or submitting any
 392 falsified application to the commission, such action may, in itself, be a sufficient ground
 393 for the refusal, suspension, or revocation of the license.

394 (e) Grounds for suspension or revocation of a license, as provided for by this chapter, shall
 395 also be grounds for refusal to grant a license.

396 (f) The conduct provided for in subsections (a), (b), (c), (d), and (h) of this Code section
 397 which relates to the denial of a real estate license to an applicant shall also be grounds for
 398 imposition of any sanction permitted by this chapter when the conduct is that of a licensee.

399 (g) Whenever the commission initiates an investigation as permitted by Code Section
 400 43-40-27 to determine whether a licensee has violated any provision of this chapter or its
 401 rules and regulations and such licensee has:

402 (1) Surrendered or voluntarily surrenders the license to the commission;

403 (2) Allowed or allows the license to lapse due to failure to meet educational requirements
 404 provided by law; or

405 (3) Allowed or allows the license to lapse due to failure to pay any required fees,

406 ~~then if such surrender or lapsing takes place after before the commission has filed a notice~~
 407 ~~of hearing alleging that such licensee has violated any provision of this chapter or its rules~~
 408 ~~and regulations, but before the commission enters a final order in the matter, then upon~~
 409 ~~submission of a new application by such licensee the matters asserted in the notice of~~
 410 ~~hearing shall be deemed admitted and may be used by the commission as grounds for~~
 411 ~~refusal of a new license to such licensee. If such surrender or lapsing takes place prior to~~
 412 ~~the commission's filing of a notice of hearing, but after the commission initiates an~~
 413 ~~investigation as permitted by Code Section 43-40-27, then the commission may issue an~~
 414 ~~order revoking such licensee's license. Such order of revocation shall be final ten days~~
 415 ~~after it is issued unless the licensee named in the order requests a hearing before the~~
 416 ~~commission. If such licensee requests a hearing, the commission shall file a notice of~~
 417 ~~hearing and provide a hearing for such licensee in accordance with Chapter 13 of Title 50;~~

418 ~~the 'Georgia Administrative Procedure Act.'~~ the commission may issue an order revoking
 419 such licensee's license. The order shall be effective ten days after the order is served on
 420 the licensee unless the licensee makes a written request for a hearing before the
 421 commission, in which event, the commission shall file a notice of hearing in accordance
 422 with Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.' Service shall be
 423 accomplished as provided for in Code Section 43-40-26.

424 (h) Whenever any occupational licensing body of this state; or any other state; ~~or any~~
 425 ~~foreign country~~ has ~~sanctioned~~ disciplined the license of an applicant for any license
 426 authorized by this chapter or whenever such an applicant has allowed a license to lapse or
 427 has surrendered a license to any occupational licensing body of this state; or any other state;
 428 ~~or any foreign country~~ after that body has initiated an investigation or a disciplinary
 429 process regarding such applicant's license, such ~~sanction~~ discipline, lapsing, or surrender
 430 in itself may be a sufficient ground for refusal of a license. Whenever any occupational
 431 licensing body of this state; or any other state; ~~or any foreign country~~ has revoked the
 432 license of an applicant for any license authorized by this chapter or whenever such an
 433 applicant has allowed a license to lapse or has surrendered a license to any occupational
 434 licensing body of this state; or any other state; ~~or any foreign country~~ after that body has
 435 initiated an investigation or a disciplinary process regarding such applicant's license, the
 436 commission may issue an associate broker's or a broker's license only if:

437 (1) At least ten years have passed since the date that the applicant's occupational license
 438 was revoked or surrendered;

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

440 (3) The applicant presents to the commission satisfactory proof that the applicant now
 441 bears a good reputation for honesty, trustworthiness, integrity, and competence to transact
 442 the business of a licensee in such a manner as to safeguard the interest of the public.

443 (i) Whenever any licensee is convicted of any offense enumerated in subsection (b) of this
 444 Code section, the licensee ~~must~~ shall immediately notify the commission of that conviction.
 445 The licensee's license shall automatically be revoked 60 days after the licensee's conviction
 446 unless the licensee makes a written request to the commission for a hearing during that 60
 447 day period. Following any such hearing requested pursuant to this subsection, the
 448 commission in its discretion may impose upon that licensee any sanction permitted by this
 449 chapter.

450 (j) Whenever the commission revokes or suspends the license of a community association
 451 manager, a salesperson, an associate broker, or a broker, then any school or instructor
 452 approval which such licensee holds shall also be revoked or suspended. Whenever a
 453 licensee surrenders a real estate license as provided for in subsection (g) of this Code

454 section, any school or instructor approval which such licensee holds shall also be subject
455 to the provisions of subsection (g) of this Code section.

456 (k) Where an applicant or licensee has been found not in compliance with an order for
457 child support as provided in Code Section 19-6-28.1 or 19-11-9.3, such action ~~is~~ shall be
458 sufficient grounds for refusal of a license or suspension of a license. In such actions, the
459 hearing and appeal procedures provided for in those Code sections shall be the only such
460 procedures required under this chapter.

461 (l) Where an applicant or licensee has been found to be a borrower in default who is not
462 in satisfactory repayment status as provided in Code Section 20-3-295, such status ~~is~~ shall
463 be sufficient grounds for refusal of a license or suspension of a license. In such cases, the
464 hearing and appeal procedures provided for in Code Section 20-3-295 shall be the only
465 such procedures required under this chapter.

466 (m) Where the commission has previously sanctioned any applicant for a license under
467 Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' such sanction may in
468 itself be a sufficient ground for refusing the license."

469 **SECTION 11.**

470 Said title is further amended by revising subsection (b) of Code Section 43-40-22, relating
471 to real estate education, research, and recovery fund, revocation of license upon court order
472 for payment from fund, and subrogation, as follows:

473 "(b) The commission shall maintain a minimum balance of \$1 million in the real estate
474 education, research, and recovery fund from which any person, except bonding companies
475 when they are not principals in a real estate transaction, aggrieved by an act, representation,
476 transaction, or conduct of a licensee which is in violation of this chapter or of the rules and
477 regulations of the commission promulgated pursuant thereto, may recover, by order of any
478 court having competent jurisdiction, actual or compensatory damages, not including
479 interests and costs sustained by the act, representation, transaction, or conduct, provided
480 that nothing shall be construed to obligate the fund for more than ~~\$15,000.00~~ \$25,000.00
481 per transaction regardless of the number of persons aggrieved or parcels of real estate
482 involved in such transaction. In addition:

483 (1) The liability of the fund for the acts of a licensee, when acting as such, is terminated
484 upon the issuance of court orders authorizing payments from the fund for judgments, or
485 any unsatisfied portion of judgments, in an aggregate amount of ~~\$45,000.00~~ \$75,000.00
486 on behalf of such licensee;

487 (2) A licensee acting as a principal or agent in a real estate transaction has no claim
488 against the fund; and

489 (3) No person who establishes a proper claim or claims under this Code section shall
 490 ever obtain more than ~~\$15,000.00~~ \$25,000.00 from the fund."

491 **SECTION 12.**

492 Said title is further amended by revising subsection (d) of Code Section 43-40-22, relating
 493 to real estate education, research, and recovery fund, revocation of license upon court order
 494 for payment from fund, and subrogation, as follows:

495 "(d)(1) No action for a judgment which subsequently results in an order for collection
 496 from the real estate education, research, and recovery fund shall be started later than two
 497 years from the accrual of the cause of action thereon. ~~When any aggrieved person~~
 498 ~~commences action for a judgment which may result in collection from the real estate~~
 499 ~~education, research, and recovery fund, the aggrieved person shall notify the commission~~
 500 ~~in writing, by certified mail or statutory overnight delivery, return receipt requested, to~~
 501 ~~this effect at the time of the commencement of such action.~~ The commission shall have
 502 the right to intervene in and defend any such action.

503 (2) When any aggrieved person recovers a valid judgment in any court of competent
 504 jurisdiction against any licensee for any act, representation, transaction, or conduct which
 505 is in violation of this chapter, or of the regulations promulgated pursuant thereto, which
 506 act occurred on or after July 1, 1973, the aggrieved person may, upon termination of all
 507 proceedings, including reviews and appeals in connection with the judgment, file a
 508 verified claim in the court in which the judgment was entered and, upon ~~ten~~ 30 days'
 509 written notice to the commission, may apply to the court for an order directing payment
 510 out of the real estate education, research, and recovery fund of the amount unpaid upon
 511 the judgment, subject to the limitations stated in this Code section. The commission shall
 512 have the right to intervene in and object to such verified claim on the issue of whether or
 513 not the claim was in violation of this chapter or of the rules and regulations of the
 514 commission promulgated pursuant thereto.

515 (3) The court shall proceed upon such application in a summary manner and, upon the
 516 hearing thereof, the aggrieved person shall be required to show that such person:

517 (A) At the time of the cause of action, was not a spouse of the judgment debtor; or a
 518 parent, sibling, or child of the judgment debtor or the judgment debtor's spouse; or the
 519 personal representative of such person or persons;

520 (B) Has complied with all the requirements of this Code section;

521 (C) Has obtained a judgment, as set out in paragraph (2) of this subsection, stating the
 522 amount thereof and the amount owing thereon at the date of the application; and that,
 523 in such action, the aggrieved person had joined any and all bonding companies which

524 issued corporate surety bonds to the judgment debtors as principals and all other
525 necessary parties;

526 (D) Has caused to be issued a writ of execution upon such judgment and the officer
527 executing the same has made a return showing that no personal or real property of the
528 judgment debtor liable to be levied upon in satisfaction of the judgment could be found
529 or that the amount realized on the sale of them or of such of them as were found, under
530 such execution, was insufficient to satisfy the judgment, stating the amount so realized
531 and the balance remaining due to the judgment after application thereon of the amount
532 realized;

533 (E) Has caused the judgment debtor to make discovery under oath concerning the
534 judgment debtor's property, in accordance with Chapter 11 of Title 9, the 'Georgia Civil
535 Practice Act';

536 (F) Has made all reasonable searches and inquiries to ascertain whether the judgment
537 debtor is possessed of real or personal property or other assets liable to be sold or
538 applied in satisfaction of the judgment;

539 (G) Has discovered by such search no personal or real property or other assets liable
540 to be sold or applied or that certain of them, being described, owned by the judgment
541 debtor and liable to be so applied have been discovered and that the aggrieved person
542 has taken all necessary action and proceedings for the realization thereof and that the
543 amount thereby realized was insufficient to satisfy the judgment, stating the amount so
544 realized and the balance remaining due on the judgment after application of the amount
545 realized; and

546 (H) Has applied the following items, if any, as recovered by the aggrieved person, to
547 the actual or compensatory damages awarded by the court:

548 (i) Any amount recovered from the judgment debtor or debtors;

549 (ii) Any amount recovered from the bonding company or companies; or

550 (iii) Any amount recovered in out-of-court settlements as to particular defendants.

551 (4) Whenever the aggrieved person satisfies the court that it is not practical to comply
552 with one or more of the requirements enumerated in subparagraphs (D), (E), (F), (G), and
553 (H) of paragraph (3) of this subsection and that the aggrieved person has taken all
554 reasonable steps to collect the amount of the judgment or the unsatisfied part thereof and
555 has been unable to collect the same, the court may, in its discretion, dispense with the
556 necessity for complying with such requirements.

557 (5) The court shall make an order directed to the commission requiring payment from
558 the real estate education, research, and recovery fund of whatever sum it shall find to be
559 payable upon the claim, pursuant to the provisions of and in accordance with the
560 limitations contained in this Code section, if the court is satisfied, upon the hearing, of

561 the truth of all matters required to be shown by the aggrieved person by paragraph (3) of
 562 this subsection and is satisfied that the aggrieved person has fully pursued and exhausted
 563 all remedies available to him or her for recovering the amount awarded by the judgment
 564 of the court.

565 (6) Should the commission pay from the real estate education, research, and recovery
 566 fund any amount in settlement of a claim or toward satisfaction of a judgment against a
 567 licensee, the license of such licensee shall be automatically revoked upon the issuance of
 568 a court order authorizing payment from the real estate education, research, and recovery
 569 fund. If such license is that of a firm, the license of the qualifying broker of the firm shall
 570 automatically be revoked upon the issuance of a court order authorizing payment from
 571 the real estate education, research, and recovery fund. No such licensee shall be eligible
 572 to receive a new license until such licensee has repaid in full, plus interest at the judgment
 573 rate in accordance with Code Section 7-4-12, the amount paid from the real estate
 574 education, research, and recovery fund on such licensee's account. A discharge in
 575 bankruptcy shall not relieve a person from the penalties and disabilities provided in this
 576 subsection.

577 (7) If, at any time, the money deposited in the real estate education, research, and
 578 recovery fund is insufficient to satisfy any duly authorized claim or portion thereof, the
 579 commission shall, when sufficient money has been deposited in the real estate education,
 580 research, and recovery fund, satisfy such unpaid claims or portions thereof in the order
 581 that such claims or portions thereof were originally filed, plus accumulated interest at the
 582 rate of 4 percent a year."

583 **SECTION 13.**

584 Said title is further amended by revising subsection (a) of Code Section 43-40-25, relating
 585 to violations by licensees, schools, and instructors, sanctions, and unfair trade practices, as
 586 follows:

587 "(a) In accordance with the hearing procedures established for contested cases by Chapter
 588 13 of Title 50, the 'Georgia Administrative Procedure Act,' whenever a license, a school
 589 approval, or an instructor approval has been obtained by false or fraudulent representation,
 590 or whenever a licensee, an approved school, or an approved instructor has been found
 591 guilty of a violation of this chapter, ~~or~~ of the rules and regulations promulgated by the
 592 commission, or of any unfair trade practices, including, but not limited to, those listed in
 593 this Code section,~~;~~ the commission shall have the power to take any one or more of the
 594 following actions:

- 595 (1) Refuse to grant or renew a license to an applicant;
 596 (2) Administer a reprimand;

- 597 (3) Suspend any license or approval for a definite period of time or for an indefinite
 598 period of time in connection with any condition that may be attached to the restoration
 599 of the license or approval;
- 600 (4) Revoke any license or approval;
- 601 (5) Revoke the license of a broker, qualifying broker, or associate broker and
 602 simultaneously issue such licensee a salesperson's license;
- 603 (6) Impose on a licensee, applicant, approved school approval, or approved instructor
 604 approval monetary assessments in an amount necessary to reimburse the commission for
 605 the administrative, investigative, and legal costs and expenses incurred by the
 606 commission in conducting any proceeding authorized under this chapter or Chapter 13
 607 of Title 50, the 'Georgia Administrative Procedure Act';
- 608 (7) Impose a fine not to exceed \$1,000.00 for each violation of this chapter or its rules
 609 and regulations with fines for multiple violations limited to \$5,000.00 in any one
 610 disciplinary proceeding or such other amount as the parties may agree;
- 611 (8) Require completion of a course of study in real estate brokerage or instruction;
- 612 (9) Require the filing of periodic reports by an independent accountant on a real estate
 613 broker's designated trust account; or
- 614 (10) Limit or restrict any license or approval as the commission deems necessary for the
 615 protection of the public.
- 616 Any action taken by the commission pursuant to this subsection may, at its discretion, be
 617 construed as a 'disciplinary sanction' or 'sanction' as such terms are used in this chapter."

618 **SECTION 14.**

619 Said title is further amended by revising subsection (c) of Code Section 43-40-25, relating
 620 to violations by licensees, schools, and instructors, sanctions, and unfair trade practices, as
 621 follows:

622 "(c) When a licensee has previously been sanctioned by the commission or disciplined by
 623 any other state's real estate brokerage licensing authority, the commission may consider any
 624 such prior sanctions or disciplinary actions by another state's real estate brokerage licensing
 625 authority in determining the severity of a new sanction which may be imposed upon a
 626 finding that the licensee has committed an unfair trade practice, that the licensee has
 627 violated any provision of this chapter, or that the licensee has violated any of the rules and
 628 regulations of the commission. The failure of a licensee to comply with or to obey a final
 629 order of the commission may be cause for suspension or revocation of the individual's
 630 license after opportunity for a hearing."

631 **SECTION 15.**

632 Said title is further amended by revising Code Section 43-40-25.2, relating to alternative
 633 disciplinary procedures and citations, as follows:

634 "43-40-25.2.

635 (a) It is the intent of the General Assembly to provide the commission with ~~a disciplinary~~
 636 ~~tool which is an alternative~~ measures to use as alternatives to the sanctions provided for in
 637 subsection (a) of Code Section 43-40-25. The citation and letter of findings provided for
 638 in this Code section shall not be construed as a disciplinary sanction.

639 (b) Whenever the evidence gathered in an investigation reveals an apparent violation of
 640 this chapter or of the rules and regulations promulgated by the commission or the apparent
 641 commission of any unfair trade practice by a licensee, the commission, in its discretion,
 642 may:

643 (1) ~~initiate~~ Initiate the process for the imposition of sanctions, as provided for in
 644 subsection (a) of Code Section 43-40-25 and in accordance with the hearing procedures
 645 established for contested cases by Chapter 13 of Title 50, ~~or;~~

646 (2) ~~issue~~ Issue a citation to the licensee. Such citation, which shall be served personally
 647 or by mail, shall give notice to the licensee of the alleged violation or violations of this
 648 chapter or commission rules or alleged unfair trade practice or practices and inform the
 649 licensee of the opportunity to request a contested case hearing to be held in accordance
 650 with the procedures established for such hearings by Chapter 13 of Title 50. A citation
 651 issued by the commission may include an order to complete a course of study in real
 652 estate brokerage or instruction; to file periodic reports by an independent accountant on
 653 a real estate broker's designated trust account; or to pay a fine not to exceed \$1,000.00
 654 for each violation of this chapter or its rules and regulations, with fines for multiple
 655 violations limited to \$5,000.00 in any one citation, or a combination of the above. If the
 656 licensee fails to request a hearing within 30 days of the date of service of the citation, the
 657 order contained in the citation shall be final. The failure of a licensee to comply with a
 658 final order contained in a citation may be cause for the imposition of a sanction on such
 659 person's license, after notice and opportunity for a hearing; or

660 (3) Issue a letter of findings to the licensee if the alleged violation appears to have done
 661 no harm to a third party or to the public. Such letter of findings, which shall be served
 662 personally or by mail, shall give notice to the licensee of the alleged violation or
 663 violations of this chapter or commission rules or alleged unfair trade practice or practices.
 664 A letter of findings shall be confidential and shall not appear on the license history of a
 665 licensee. A letter of findings shall not be subject to a subpoena in a civil action, shall not
 666 constitute a public record or be available for inspection by the public, and shall not be

667 disclosed to any person or agency, except as provided in subsection (d) of Code Section
668 43-40-27.

669 (c) The commission is authorized to promulgate rules and regulations to implement this
670 Code section. Such rules may limit the provisions of this chapter and of its rules and
671 regulations and unfair trade practices which may be the basis for the issuance of a citation
672 or a letter of findings."

673 **SECTION 16.**

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