

Senate Bill 365

By: Senator Hamrick of the 30th

**AS PASSED**

**A BILL TO BE ENTITLED  
AN ACT**

1 To amend Title 43 and Code Section 44-14-13 of the Official Code of Georgia Annotated,  
2 relating to professions and businesses and disbursement of settlement proceeds, respectively,  
3 so as to change certain provisions relating to real estate and real estate professionals; to  
4 provide for definitions relative to real estate appraisers; to change certain provisions relating  
5 to revocation of licenses; to change certain provisions relating to discipline, sanctions, and  
6 citations; to provide for a letter of findings to be issued by the Georgia Real Estate  
7 Appraisers Board and the Georgia Real Estate Commission; to change certain provisions  
8 relating to qualifications for a broker or associate broker's license; to change certain  
9 provisions relating to the real estate education, research, and recovery fund; to revise certain  
10 provisions relating to the commission's subrogation rights; to change the definition of  
11 "settlement agent"; to change provisions relating to the applicability of the Code section and  
12 the availability of damages for violating the Code section; to provide for criminal penalties;  
13 to provide for exceptions; to provide for related matters; to repeal conflicting laws; and for  
14 other purposes.

15 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

16 **SECTION 1.**

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

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

- 21 (i) Any person licensed to practice law in this state who orders an appraisal in
- 22 connection with a bona fide client relationship when that person directly contracts
- 23 with an appraiser;
- 24 (ii) Any person who contracts with an appraiser acting as an independent contractor
- 25 for the completion of a real estate appraisal assignment and who, upon the completion

26 of such an assignment, cosigns the appraisal report with the appraiser who is acting  
 27 as an independent contractor;  
 28 (iii) Any federal, state, or local government or any of its departments, agencies, or  
 29 authorities that order appraisals; ~~or~~  
 30 (iv) Any person who orders an appraisal on behalf of any federal, state, or local  
 31 government or its departments, agencies, or authorities as an employee thereof; or  
 32 (v) A relocation company."

33 **SECTION 2.**

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

36 "(25.1) 'Relocation company' means a business entity that acts as an agent or contractor  
 37 of an employer for the purposes of relocating the employees of such employer and  
 38 determining an anticipated sales price of the residences of the employees being  
 39 relocated."

40 **SECTION 3.**

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

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

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

54 **SECTION 4.**

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

58 "43-39A-14.

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

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

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

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

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

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

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

85 (1.2) A person who has a conviction in a court of competent jurisdiction of this state or  
 86 any other state, ~~district, or territory of the United States, or of a foreign country,~~ shall be  
 87 eligible to become an applicant for a licensure or an approval authorized by this chapter  
 88 only if:

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

96 terms and conditions of any sentence imposed for the last conviction before making  
97 application for licensure or approval;

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

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

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

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

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

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

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

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

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

134 (f) The conduct provided for in subsections (a) through (d) and subsection (h) of this Code  
 135 section which relates to the denial of an appraiser classification to an applicant shall also  
 136 be grounds for the imposition of any sanction permitted by this chapter when the conduct  
 137 is that of an appraiser.

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

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

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

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

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

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

169 any other state, ~~or any foreign country~~ after that body has initiated an investigation or a  
 170 disciplinary process regarding such applicant's license or classification, the board may issue  
 171 an appraiser classification only if:

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

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

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

178 (i) Whenever any appraiser is convicted of any offense enumerated in subsection (b) of  
 179 this Code section, such appraiser ~~must~~ shall immediately notify the board of that  
 180 conviction. Such appraiser's appraiser classification shall automatically be revoked 60 days  
 181 after the conviction unless the appraiser makes a written request to the board for a hearing  
 182 during that 60 day period. Following any such hearing requested pursuant to this  
 183 subsection, the board in its discretion may impose upon that appraiser any sanction  
 184 permitted by this chapter.

185 (j) Where an applicant or licensee has been found not in compliance with an order for child  
 186 support as provided in Code Section 19-6-28.1 or 19-11-9.3, such action ~~is~~ shall be  
 187 sufficient grounds for refusal of a license or suspension of a license. For purposes of this  
 188 subsection, the hearing and appeal procedures provided for in such Code sections shall be  
 189 the only such procedures required under this article.

190 (k) Where an applicant or licensee has been found to be a borrower in default who is not  
 191 in satisfactory repayment status as provided in Code Section 20-3-295, such finding ~~is~~ shall  
 192 be sufficient grounds for refusal of a license or suspension of a license. For purposes of  
 193 this subsection, the hearing and appeal procedures provided for in Code Section 20-3-295  
 194 shall be the only such procedures required under this article.

195 (l) Where the board has previously sanctioned any applicant for a classification under  
 196 Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' such sanction may in  
 197 itself be a sufficient ground for refusing the classification."

198 **SECTION 5.**

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

201 "(a) In accordance with the hearing procedures established for contested cases by Chapter  
 202 13 of Title 50, the 'Georgia Administrative Procedure Act,' whenever an appraiser  
 203 classification, a school approval, or an instructor approval has been obtained by false or  
 204 fraudulent representation, or whenever an appraiser, an approved school, or an approved

205 instructor has been found guilty of a violation of this chapter, ~~or~~ of the rules and regulations  
 206 promulgated by the board, or of any unfair trade practices, including, but not limited to,  
 207 those listed in this Code section; the board shall have the power to take any one or more  
 208 of the following actions:

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

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

230 **SECTION 6.**

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

233 "43-39A-18.1.

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

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

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

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

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

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

## 270 SECTION 7.

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

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

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

- 277 (2) Incompetence;  
 278 (3) Dishonest conduct; or  
 279 (4) Having a disciplinary sanction, other than a citation or a letter of findings authorized  
 280 by this chapter, imposed by any professional licensing agency on such member's right to  
 281 practice a trade or profession."

282 **SECTION 8.**

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

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

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

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

307 **SECTION 9.**

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

311 "43-40-15.

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

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

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

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

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

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

335 (1.1) No person who has a conviction shall be eligible to become an applicant for a  
 336 license or an approval authorized by this chapter unless such person has successfully  
 337 completed all terms and conditions of any sentence imposed for such conviction;  
 338 provided that if such individual has multiple convictions, at least five years shall have  
 339 passed since the individual satisfied all terms and conditions of any sentence imposed for  
 340 the last conviction before making application for licensure or approval; and provided,  
 341 further, that if such individual has a single conviction, at least two years shall have passed  
 342 since the individual satisfied all terms and conditions of any sentence imposed for the last  
 343 conviction before making application for licensure or approval.

344 (1.2) A person who has a conviction in a court of competent jurisdiction of this state or  
 345 any other state, ~~district, or territory of the United States, or of a foreign country,~~ shall be  
 346 eligible to become an applicant for a licensure or an approval authorized by this chapter  
 347 only if:

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

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

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

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

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

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

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

382 (c) Where an applicant or licensee has been found guilty of a violation of the federal fair  
 383 housing law or Article 4 of Chapter 3 of Title 8 by an administrative law judge or a court  
 384 of competent jurisdiction and after any appeal of such conviction is concluded, such

385 conviction may in itself be a sufficient ground for refusal of a license or the imposition of  
386 any sanction permitted by this chapter.

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

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

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

396 (g) Whenever the commission initiates an investigation as permitted by Code Section  
397 43-40-27 to determine whether a licensee has violated any provision of this chapter or its  
398 rules and regulations and such licensee has:

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

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

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

403 ~~then if such surrender or lapsing takes place after before the commission has filed a notice~~  
404 ~~of hearing alleging that such licensee has violated any provision of this chapter or its rules~~  
405 ~~and regulations, but before the commission enters a final order in the matter, then upon~~  
406 ~~submission of a new application by such licensee the matters asserted in the notice of~~  
407 ~~hearing shall be deemed admitted and may be used by the commission as grounds for~~  
408 ~~refusal of a new license to such licensee. If such surrender or lapsing takes place prior to~~  
409 ~~the commission's filing of a notice of hearing, but after the commission initiates an~~  
410 ~~investigation as permitted by Code Section 43-40-27, then the commission may issue an~~  
411 ~~order revoking such licensee's license. Such order of revocation shall be final ten days~~  
412 ~~after it is issued unless the licensee named in the order requests a hearing before the~~  
413 ~~commission. If such licensee requests a hearing, the commission shall file a notice of~~  
414 ~~hearing and provide a hearing for such licensee in accordance with Chapter 13 of Title 50,~~  
415 ~~the 'Georgia Administrative Procedure Act.' the commission may issue an order revoking~~  
416 ~~such licensee's license. The order shall be effective ten days after the order is served on~~  
417 ~~the licensee unless the licensee makes a written request for a hearing before the~~  
418 ~~commission, in which event, the commission shall file a notice of hearing in accordance~~  
419 ~~with Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.' Service shall be~~  
420 ~~accomplished as provided for in Code Section 43-40-26.~~

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

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

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

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

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

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

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

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

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

466 **SECTION 10.**

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

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

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

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

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

488 **SECTION 11.**

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

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

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

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

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

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

518 (C) Has obtained a judgment, as set out in paragraph (2) of this subsection, stating the  
 519 amount thereof and the amount owing thereon at the date of the application; and that,  
 520 in such action, the aggrieved person had joined any and all bonding companies which  
 521 issued corporate surety bonds to the judgment debtors as principals and all other  
 522 necessary parties;

523 (D) Has caused to be issued a writ of execution upon such judgment and the officer  
 524 executing the same has made a return showing that no personal or real property of the  
 525 judgment debtor liable to be levied upon in satisfaction of the judgment could be found  
 526 or that the amount realized on the sale of them or of such of them as were found, under  
 527 such execution, was insufficient to satisfy the judgment, stating the amount so realized

528 and the balance remaining due to the judgment after application thereon of the amount  
 529 realized;

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

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

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

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

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

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

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

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

554 (5) The court shall make an order directed to the commission requiring payment from  
 555 the real estate education, research, and recovery fund of whatever sum it shall find to be  
 556 payable upon the claim, pursuant to the provisions of and in accordance with the  
 557 limitations contained in this Code section, if the court is satisfied, upon the hearing, of  
 558 the truth of all matters required to be shown by the aggrieved person by paragraph (3) of  
 559 this subsection and is satisfied that the aggrieved person has fully pursued and exhausted  
 560 all remedies available to him or her for recovering the amount awarded by the judgment  
 561 of the court.

562 (6) Should the commission pay from the real estate education, research, and recovery  
 563 fund any amount in settlement of a claim or toward satisfaction of a judgment against a  
 564 licensee, the license of such licensee shall be automatically revoked upon the issuance of

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

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

580 **SECTION 12.**

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

584 "(a) In accordance with the hearing procedures established for contested cases by Chapter  
 585 13 of Title 50, the 'Georgia Administrative Procedure Act,' whenever a license, a school  
 586 approval, or an instructor approval has been obtained by false or fraudulent representation;  
 587 or whenever a licensee, an approved school, or an approved instructor has been found  
 588 guilty of a violation of this chapter, or of the rules and regulations promulgated by the  
 589 commission, or of any unfair trade practices, including, but not limited to, those listed in  
 590 this Code section; the commission shall have the power to take any one or more of the  
 591 following actions:

- 592 (1) Refuse to grant or renew a license to an applicant;  
 593 (2) Administer a reprimand;  
 594 (3) Suspend any license or approval for a definite period of time or for an indefinite  
 595 period of time in connection with any condition that may be attached to the restoration  
 596 of the license or approval;  
 597 (4) Revoke any license or approval;  
 598 (5) Revoke the license of a broker, qualifying broker, or associate broker and  
 599 simultaneously issue such licensee a salesperson's license;

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

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

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

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

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

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

### 615 **SECTION 13.**

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

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

### 628 **SECTION 14.**

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

631 "43-40-25.2.

632 (a) It is the intent of the General Assembly to provide the commission with a ~~disciplinary~~  
 633 ~~tool which is an alternative~~ measures to use as alternatives to the sanctions provided for in

634 subsection (a) of Code Section 43-40-25. The citation and letter of findings provided for  
 635 in this Code section shall not be construed as a disciplinary sanction.

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

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

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

657 (3) Issue a letter of findings to the licensee if the alleged violation appears to have done  
 658 no harm to a third party or to the public. Such letter of findings, which shall be served  
 659 personally or by mail, shall give notice to the licensee of the alleged violation or  
 660 violations of this chapter or commission rules or alleged unfair trade practice or practices.  
 661 A letter of findings shall be confidential and shall not appear on the license history of a  
 662 licensee. A letter of findings shall not be subject to a subpoena in a civil action, shall not  
 663 constitute a public record or be available for inspection by the public, and shall not be  
 664 disclosed to any person or agency, except as provided in subsection (d) of Code Section  
 665 43-40-27.

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

670

**SECTION 15.**

671 Code Section 44-14-13 of the Official Code of Georgia Annotated, relating to disbursement  
 672 of settlement proceeds, is amended by revising paragraph (10) of subsection (a) and  
 673 subsections (b) and (e) and by adding two new subsections (f) and (g) to read as follows:

674 "(10) 'Settlement agent' means the person lender or an active member of the State Bar of  
 675 Georgia responsible for conducting the settlement and disbursement of the settlement  
 676 ~~proceeds and includes any individual, corporation, partnership, or other entity conducting~~  
 677 ~~the settlement and disbursement of the loan funds."~~

678 ~~"(b) This Code section applies~~ shall apply only to transactions involving purchase money  
 679 loans made by a lender, or ~~loans made to refinance, directly or indirectly, a purchase~~  
 680 ~~money loan made by another lender~~ refinance loans made by the current or a new lender,  
 681 which loans will be secured by deeds to secure debt or mortgages on real estate within the  
 682 State of Georgia containing not more than four residential dwelling units, whether or not  
 683 such deeds to secure debt or mortgages have a first-priority status."

684 ~~"(e) Any party violating this Code section shall be liable to any other party suffering a loss~~  
 685 ~~due to such violation for such other party's actual damages plus reasonable attorneys' fees.~~  
 686 ~~In addition, any party violating this Code section shall pay to the borrower~~ party suffering  
 687 the loss an amount of money equal to \$1,000.00 or double the amount of interest payable  
 688 on the loan for the first 60 days after the loan closing, whichever is greater.

689 ~~(f) Any individual, corporation, partnership, or other entity conducting the settlement and~~  
 690 ~~disbursement of loan funds, when he, she, or it is not the settlement agent, shall be guilty~~  
 691 ~~of a misdemeanor.~~

692 (g) Nothing contained in this Code section shall prevent a real estate broker or real estate  
 693 salesperson from exercising the rights and providing the duties and services specified by  
 694 Chapter 40 of Title 43."

695

**SECTION 16.**

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