

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 style="text-align:center">**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 ~~serving 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 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.