

House Bill 869

By: Representatives Powell of the 32<sup>nd</sup>, Maxwell of the 17<sup>th</sup>, and Harrell of the 106<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 40 of Title 43 of the Official Code of Georgia Annotated, relating to real  
2 estate brokers and salespersons, so as to change certain provisions relating to the  
3 responsibilities of brokers and qualifying brokers to review certain documents; to change  
4 certain provisions relating to actions that constitute unfair trade practices; to provide for  
5 related matters; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Chapter 40 of Title 43 of the Official Code of Georgia Annotated, relating to real estate  
9 brokers and salespersons, is amended by revising subsection (c) of Code Section 43-40-18,  
10 relating to management of firm and licensed affiliates and compliance with local ordinances,  
11 as follows:

12 "(c) The real estate brokerage activities of each firm shall be under the direct management  
13 and supervision of a broker or qualifying broker. The broker or qualifying broker shall be  
14 responsible for establishing, implementing, and continuing procedures for:

15 (1) Reviewing all advertising to ensure compliance with this chapter and its rules and  
16 regulations;

17 (2) Providing programs for study and review of this chapter and its rules and regulations  
18 for all licensed associates;

19 (3) Reviewing for compliance with this chapter and its rules and regulations all listing  
20 contracts, leases, sales contracts, and management agreements, ~~and offers~~ to buy, sell,  
21 lease, or exchange real property and any offer to buy, sell, lease, or exchange real  
22 property accepted within the time limit of said offer secured or negotiated by the firm's  
23 associates. This review shall take place within 30 days of the date of the offer or contract;

24 (4) Systematic review of the firm's trust accounting practices in order to assure their  
25 compliance with this chapter and its rules and regulations;

- 26 (5) Ensuring that the firm utilizes only licensed personnel to perform those acts of a  
 27 licensee which require licensure and that when it pays compensation to an individual  
 28 licensee, other than another firm, the license of such individual licensee was assigned to  
 29 the firm by the commission at the time such individual licensee earned the compensation  
 30 paid;
- 31 (6) Ensuring that proper disbursements are made from trust accounts;
- 32 (7) Providing continuing and reasonable safekeeping for all records related to real estate  
 33 transactions which this chapter and its rules and regulations require a broker to maintain;
- 34 (8) Providing all licensed personnel with written policies and procedures under which  
 35 they are expected to operate;
- 36 (9) Seeing that the firm and all licensed affiliates enter into a written agreement  
 37 specifying the terms under which the licensee will be compensated for work during the  
 38 time of their affiliation and specifying how the licensee will be compensated for work  
 39 begun but not completed prior to the termination of their affiliation. Other than to  
 40 determine that such agreements are entered into by licensees and their firm, the  
 41 commission shall not regulate the content of such agreements or enforce their provisions;  
 42 and
- 43 (10) Assuring that an individual with appropriate management authority is reasonably  
 44 available to assist licensees and the public in real estate transactions handled by the firm."

## 45 SECTION 2.

46 Said chapter is further amended by revising paragraphs (20) through (36) of subsection (b)  
 47 of Code Section 43-40-25, relating to violations by licensees, schools, and instructors,  
 48 sanctions, and unfair trade practices, as follows:

- 49 ~~"(20) Failure by a broker to deliver to the seller in every real estate transaction, at the~~  
 50 ~~time said transaction is consummated, a complete, detailed closing statement showing all~~  
 51 ~~of the receipts and disbursements handled by such broker for the seller or failure to~~  
 52 ~~deliver to the buyer a complete statement showing all money received in said transaction~~  
 53 ~~from such buyer and how and for what the same was disbursed; the broker shall retain~~  
 54 ~~true copies of such statements in the broker's files;~~
- 55 ~~(21)~~(20) Making any substantial misrepresentations;
- 56 ~~(22)~~(21) Acting for more than one party in a transaction without the express written  
 57 consent of all parties to the transaction;
- 58 ~~(23)~~(22) Failure of an associate broker, salesperson, or community association manager  
 59 to place, as soon after receipt as is practicably possible, in the custody of the broker  
 60 holding the licensee's license any deposit money or other money or funds entrusted to the

61 licensee by any person dealing with the licensee as the representative of the licensee's  
62 licensed broker;

63 ~~(24)~~(23) Filing a listing contract or any document or instrument purporting to create a  
64 lien based on a listing contract for the purpose of casting a cloud upon the title to real  
65 estate when no valid claim under said listing contract exists;

66 ~~(25)~~(24) Having demonstrated incompetency to act as a real estate licensee in such  
67 manner as to safeguard the interest of the public or any other conduct whether of the same  
68 or a different character than heretofore specified which constitutes dishonest dealing;

69 ~~(26)~~(25) Obtaining a brokerage agreement, a sales contract, or a lease from any owner,  
70 purchaser, or tenant while knowing or having reason to believe that another broker has  
71 an exclusive brokerage agreement with such owner, purchaser, or tenant, unless the  
72 licensee has written permission from the broker having the first exclusive brokerage  
73 agreement; provided, however, that notwithstanding the provisions of this paragraph, a  
74 licensee shall be permitted to present a proposal or bid for community association  
75 management if requested to do so in writing from a community association board of  
76 directors;

77 ~~(27)~~(26) Failing to keep for a period of three years a true and correct copy of all sales  
78 contracts, ~~closing statements~~, any offer or other document ~~that resulted in the depositing~~  
79 ~~of trust funds pursuant to which trust funds were deposited in compliance with any~~  
80 provision of this chapter, accounting records related to the maintenance of any trust  
81 account required by this chapter, ~~and other documents relating to real estate closings or~~  
82 ~~transactions~~ or failing to produce such documents at the reasonable request of the  
83 commission or any of its agents for their inspection;

84 ~~(28)~~(27) Being or becoming a party to any falsification of any portion of any contract or  
85 other document involved in any real estate transaction;

86 ~~(29)~~(28) Failing to obtain the written agreement of the parties indicating to whom the  
87 broker shall pay any interest earned on trust funds deposited into an interest-bearing  
88 account prior to depositing those funds into such account;

89 ~~(30)~~(29) Failing to disclose in a timely manner to all parties in a real estate transaction  
90 any agency relationship that the licensee may have with any of the parties;

91 ~~(31)~~(30) Attempting to perform any act authorized by this chapter to be performed only  
92 by a broker, associate broker, or salesperson while licensed as a community association  
93 manager;

94 ~~(32)~~(31) Attempting to sell, lease, or exchange the property of any member of a  
95 community association to which a licensee is providing community association  
96 management services without the express written consent of that association to do so;

- 97 ~~(33)~~(32) Failure to deliver to a community association terminating a management  
 98 contract within 30 days of the termination, or within such other time period as the  
 99 management contract shall provide:
- 100 (A) A complete and accurate record of all transactions and funds handled during the  
 101 period of the contract and not previously accounted for;
- 102 (B) All records and documents received from the community association or received  
 103 on the association's behalf; and
- 104 (C) Any funds held on behalf of the community association;
- 105 ~~(34)~~(33) Failure to deliver to a property owner terminating a management contract  
 106 within 30 days of the termination, or within such other time period as the management  
 107 contract shall provide:
- 108 (A) A complete and accurate record of all transactions and funds handled during the  
 109 period of the contract and not previously accounted for;
- 110 (B) All records and documents received from the property owner or received on the  
 111 owner's behalf; and
- 112 (C) Any funds held on behalf of the property owner;
- 113 ~~(35)~~(34) Inducing any person to alter, modify, or change another licensee's fee or  
 114 commission for real estate brokerage services without that licensee's prior written  
 115 consent; or
- 116 ~~(36)~~(35) Failing to obtain a person's written agreement to refer that person to another  
 117 licensed broker for brokerage or relocation services and to inform such person being  
 118 referred whether or not the licensee will receive a valuable consideration for such  
 119 referral."

120 **SECTION 3.**

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