

Senate Bill 250

By: Senators Shafer of the 48th, Ginn of the 47th and Heath of the 31st

A BILL TO BE ENTITLED
AN ACT

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

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

182 **SECTION 2.**

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

185 **SECTION 3.**

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