Senate Bill 547

By: Senators Seabaugh of the 28th, Cagle of the 49th, Johnson of the 1st, Williams of the 19th and Stephens of the 27th

AS PASSED

A BILL TO BE ENTITLED

AN ACT

To amend Chapter 39A of Title 43 of the Official Code of Georgia Annotated, relating to real estate appraisers, so as to provide for the recusal of board members when a conflict of interest exists; to provide for circumstances for removal of board members; to provide standards for offering education courses on appraising; to provide for certain conditions for the investigation of appraisers; to amend Chapter 40 of Title 43 of the Official Code of Georgia Annotated, relating to real estate brokers and salespersons, so as to provide for the recusal of members of the Georgia Real Estate Commission; to provide for certain reasons for removing a member of the Georgia Real Estate Commission; to provide for grounds for denying a real estate license; to provide for the requirements for approving a license to a real estate licensing school; to allow for the regulation of granting, revoking, or suspending a real estate license; to provide for certain provisions relating to sanctions for violations committed by licensees, schools, and instructors; to provide for certain provisions relating to investigating complaints reported to the Georgia Real Estate Commission; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 39A of Title 43 of the Official Code of Georgia Annotated, relating to real estate appraisers, is amended by striking Code Section 43-39A-3, relating to the Georgia Real Estate Appraisers Board, requirements for membership, removal from the board, meetings, and compensation, and inserting in its place a new Code section to read as follows:

"43-39A-3.

(a) There is created the Georgia Real Estate Appraisers Board, which shall consist of five members. All members must be residents of Georgia. One member shall be a public member. The public member of the board shall not be connected in any way with the practice of real estate appraisal, real estate brokerage, or mortgage lending. Four members shall be real estate appraisers who have been actively engaged in the real estate appraisal

business for at least three years. In appointing real estate appraisers to the board, while not automatically excluding other appraisers, the Governor shall give preference to real estate appraisers who do not hold an active, occupational license which authorizes their work in real estate brokerage or mortgage lending activities, who do not have a financial interest in any real estate brokerage firm or mortgage lending firm, and who are not employees of real estate brokerage firms or mortgage lending firms.

(b) The Governor shall appoint the members of the board, subject to confirmation by the Senate, with consideration given to appropriate geographic representation and to areas of appraisal expertise. Any such appointments made when the Senate is not in session shall be effective until acted upon by the Senate.

(c) A member of the board shall recuse himself or herself from voting on matters in which the member has a conflict of interest. Whenever an investigation authorized by this chapter results in the board´s initiating a contested case under Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' against a member, such member shall be recused from voting on such matter and may not discuss the matter with other board members or be present when the board discusses or votes on such matter.

~~(c)~~(d) The term of each member of the board shall be five years, except that one of the successors to the two members first appointed to serve until July 1, 1992, shall be appointed to serve until July 1, 1994, and one of the successors to the two members first appointed to serve until July 1, 1993, shall be appointed to serve until July 1, 1995. In the event of a vacancy, the Governor shall appoint a person to fill such vacancy and the person so appointed shall serve for the remainder of the unexpired term.

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

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

(2) Incompetence; ~~or~~

(3) Dishonest conduct~~.~~; or

(4) Having a disciplinary sanction other than a citation authorized by this chapter imposed by any professional licensing agency on such member´s right to practice a trade or profession.

~~(e)~~(f) The members of the board shall annually elect a chairperson from among the members to preside at board meetings.

~~(f)~~(g) The board shall meet at least once each calendar quarter, or as often as is necessary, and remain in session as long as the chairperson shall deem it necessary to give full consideration to the business before the board. A quorum of the board shall be three

members. Members of the board or others may be designated by the chairperson of the board, in a spirit of cooperation, to confer with similar boards of other states, attend interstate meetings, and generally do such acts and things as may seem advisable to the board in the advancement of the profession and the standards of real estate appraisal activity.

~~(g)~~(h) Each member of the board shall receive as compensation for each day actually spent on his or her official duties at scheduled meetings and for time actually required in traveling to and from its meetings, not to exceed one day´s traveling time, the sum of $25.00 and his or her actual and necessary expenses incurred in the performance of official duties.

~~(h)~~(i) The commission shall supply staff support for the board. The commissioner shall serve as executive officer of the board. The commissioner shall be charged with the duties and powers as delegated by the board.″

SECTION 2.

Said chapter is further amended by striking subsection (c) of Code Section 43-39A-8, relating to establishing appraiser classifications to comply with federal law, continuing education courses required for renewing classification, and approval of instructors, and inserting a new subsection (c) to read as follows:

″(c) The board, through its rules and regulations, shall establish standards for offering of all education courses required by this Code section and for the approval of schools and instructors to offer the education courses required by this chapter. Each approved school must comply with Code Sections 43-40-15 through 43-40-32. Each approved school must designate an individual approved by the board to act as its director and such designated individual shall be responsible for assuring that the approved school complies with the requirements of this chapter and rules and regulations promulgated under this chapter. No school approval shall be granted to a school unless the school authorizes its director to bind the school to any settlement of a contested case before the board as defined in Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.'

Violations of this chapter or its attendant rules and regulations by an approved school shall subject the school and its director to sanction as authorized by this chapter.″

SECTION 3.

Said chapter is further amended by striking subsections (a) and (d) of Code Section 43-39A-22, relating to investigations, subpoenas, confidentiality, access to records, and the publication of the names of disciplined appraisers and schools, and inserting in its place a new Code section to read as follows:

"(a) The board may, upon its own motion, and shall, upon the sworn written request of any person, investigate the actions of any appraiser, applicant, or school approved by the board; provided, however, that, whenever a request for investigation involves an appraisal report which varies from a sales, lease, or exchange price by ~~10~~ 20 percent or less, or, if the appraiser is acting as a tax consultant, which varies from the tax assessor's value by 20 percent or less, the board may in its discretion decline to conduct an investigation. Except for investigations of applicants for appraiser classifications, investigations of allegations of fraudulent conduct, or investigations of possible violations of this chapter which have been litigated in the courts or arise from litigation in the courts, the board shall not initiate an investigation on its own motion or upon a sworn written request for investigation unless the act or acts which may constitute a violation of this chapter occurred within ~~three~~ five years of the initiation of the investigation."

"(d) The results of all investigations shall be reported only to the board or to the commissioner and the records of such investigations shall not be subject to subpoena in civil actions. Records of investigations shall be kept by the board and no part of any investigative record shall be released for any purpose other than a hearing before the board or its designated hearing officer, review by another law enforcement agency or lawful licensing authority upon issuance of a subpoena from such agency or authority or at the discretion of the board upon an affirmative vote of ~~all members~~ a majority of the quorum of the board, review by the ~~respondent~~ appraiser or applicant who is the subject of the notice of hearing after ~~the~~ its service ~~of a notice of hearing~~, review by the board's legal counsel, or an appeal of a decision by the board to a court of competent jurisdiction; provided, however, if an investigation authorized by this chapter results in the board's filing a notice of hearing or entering into settlement discussions with a member of the board, the commissioner shall immediately notify the Governor or the Governor's legal counsel of such action by the board. After service of a notice of hearing, ~~a respondent~~ the appraiser or applicant who is the subject of the notice of hearing shall have a right to obtain a copy of the investigative record pertaining to the ~~respondent~~ hearing."

SECTION 4.

Chapter 40 of Title 43 of the Official Code of Georgia Annotated, relating to real estate brokers and salespersons, is amended by striking Code Section 43-40-2, relating to the creation, meetings, compensation, budget, reports, and rules and regulations of the Georgia Real Estate Commission, and inserting in its place a new Code section to read as follows:

"43-40-2.

(a) There is created the Georgia Real Estate Commission, which shall be composed of six members, each of whom shall be appointed by the Governor and confirmed by the Senate

for a term of five years. Any such appointments made when the Senate is not in session shall be effective until acted upon by the Senate. Five of the members shall be licensees who shall have been residents of this state and actively engaged in the real estate business for five years. The sixth member of the commission shall have no connection with the real estate industry whatsoever but shall have a recognized interest in consumer affairs and in consumer protection concerns.

(b) Members of the commission shall serve until their successors are appointed and qualified. Vacancies on the commission shall be filled by appointment of a successor for the unexpired term of office by the Governor. Four members shall constitute a quorum for the transaction of any business of the commission. The commission shall organize by selecting from its members a chairperson and may do all things necessary and convenient to carry this chapter into effect. The commission shall meet at least once a month, or as often as is necessary, and remain in session as long as the chairperson thereof shall deem it necessary to give full consideration to the business before the commission. Members of the commission or others may be designated by the chairperson of the commission, in a spirit of cooperation and coordination, to confer with similar commissions of other states, attend interstate meetings, and generally do such acts and things as may seem advisable to the commission in the advancement of the profession and the standards of the real estate business.

(c) A member of the commission shall recuse himself or herself from voting on matters in which the member has a conflict of interest. Whenever an investigation authorized by this chapter results in the commission´s initiating a contested case under Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' against a member, such member shall be recused from voting on such matter and may not discuss such matter with other commission members or be present when the commission discusses or votes on such matter.

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

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

(2) Incompetence; ~~or~~

(3) Dishonest conduct~~.~~; or

(4) Having a disciplinary sanction, other than a citation authorized by this chapter, imposed by any professional licensing agency on such member´s right to practice a trade or profession.

~~(d)~~(e) The commission is authorized to pass rules and regulations, not inconsistent with this chapter, relating to the professional conduct of licensees and the administration of this chapter.

~~(e)~~(f) Each member of the commission shall receive as compensation for each day actually spent on his or her official duties at scheduled meetings and time actually required in traveling to and from its meetings, not to exceed one day´s traveling time, the sum of $25.00 and his or her actual and necessary expenses incurred in the performance of his or her official duties.

~~(f)~~(g) The commission, through its chairperson, shall file a written report with the Governor and a copy thereof with both houses of the General Assembly on or before the second Tuesday in January of each year. The Governor may request a preliminary report prior to such an annual report. The report shall include a summary of all actions taken by the commission, a financial report of income and disbursements, staff personnel, and number of persons licensed by the commission. The report shall further delineate steps taken in education and research to disseminate information so that all licensees can be better informed in order to protect the public. The commission shall also outline a program of education and research for each ensuing year, for which a line appropriation shall be requested.

~~(g)~~(h) The commission shall be a budget unit as defined in Part 1 of Article 4 of Chapter 12 of Title 45, the 'Budget Act'; provided, however, that the commission shall be assigned for administrative purposes only to the office of the Secretary of State.″

SECTION 5.

Said chapter is further amended by striking subsection (a) of Code Section 43-40-8, relating to license requirements, and inserting in its place a new subsection (a) to read as follows:

″(a) In order to qualify for a community association manager´s license, an applicant must:

(1) Have attained the age of 18 years;

(2) Be a resident of the State of Georgia, unless that person has fully complied with the provisions of Code Section 43-40-9;

(3) Be a high school graduate or the holder of a certificate of equivalency;

(4) Furnish evidence of completion of at least 25 in-class hours in a community association manager´s course or courses of study approved by the commission; and

(5) Stand and pass a real estate examination administered by or approved by the commission covering generally the matters confronting real estate brokers who provide community association management services and community association managers after completing the requirements of paragraph (4) of this subsection.

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

SECTION 6.

Said chapter is further amended by striking subsection (i) of Code Section 43-40-8, relating to license requirements, and inserting in its place a new subsection (i) to read as follows:

"(i) The commission, through its rules and regulations, shall establish standards for the approval of schools and instructors to offer the education courses required by this chapter. Each approved school must comply with Code Sections 43-40-15 through 43-40-32. Each approved school must designate an individual approved by the commission to act as its director and such designated individual shall be responsible for assuring that the approved school complies with the requirements of this chapter and rules and regulations promulgated under this chapter. An approved school must authorize its director to bind the school to any settlement of a contested case before the commission as defined in Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.' The commission, through its rules and regulations, shall establish standards for the offering of the prelicense education courses required by this chapter by methods of instruction, which it deems to be educationally sound, other than in-class instruction. The commission, through its rules and regulations, may establish standards for the offering of continuing education courses required by this chapter by methods of instruction, which it deems to be educationally sound, other than in-class instruction."

SECTION 7.

Said chapter is further amended by striking Code Section 43-40-10, relating to the granting of a real estate broker´s license, associate broker´s license, salesperson´s license, or community association manager´s license to a firm, and inserting in its place a new Code section to read as follows:

"43-40-10.

~~(a)~~ No broker´s license shall be granted to a firm unless:

(1) ~~said~~ Said firm designates an individual licensed as a broker as its qualifying broker who shall be responsible for assuring that the firm and its affiliated licensees comply with the provisions of this chapter and its attendant rules and regulations; and

(2) ~~said~~ Said firm authorizes its qualifying broker to bind the firm to any settlement of a contested case before the commission as defined in Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' in which said firm may be a named respondent.

Violations of this chapter or its rules and regulations by a firm licensed as a broker shall subject the license of the qualifying broker to sanction as authorized by this chapter. No broker´s license shall be granted to a firm unless every person who acts as a licensee for such firm shall hold a real estate license.

~~(b) No associate broker´s, salesperson´s, or community association manager´s license shall be granted to a corporation, limited liability company, or partnership unless said corporation, limited liability company, or partnership designates an individual who holds the same type of license as its qualifying licensee who shall be responsible for assuring that the corporation, limited liability company, or partnership complies with the provisions of this chapter and its attendant rules and regulations. Violations of this chapter or rules and regulations by a corporation, limited liability company, or partnership licensed as an associate broker, salesperson, or community association manager shall subject both the license of the entity and the license of the qualifying licensee to sanction as authorized by this chapter. The qualifying licensee shall be the only licensee of a corporation, limited liability company, or partnership licensed as an associate broker, salesperson, or community association manager. The license of a corporation, limited liability company, or partnership licensed as an associate broker, salesperson, or community association manager must be assigned to a licensed broker. The licensed associate broker, salesperson, community association manager, corporation, limited liability company, or partnership or qualifying licensee may not engage in the brokerage business except in behalf of the broker to whom its license is assigned.~~″

SECTION 8.

Said chapter is further amended by striking paragraphs (17) and (26) of subsection (b) of Code Section 43-40-25, relating to sanctions for violations committed by licensees, schools, and instructors and unfair trade practices, and inserting in their places new paragraphs (17) and (26) to read as follows:

″(17) Paying a commission or compensation to any person for performing the services of a real estate licensee who has not first secured the appropriate license under this chapter or is not cooperating as a nonresident who is licensed in such nonresident´s state or foreign country of residence, provided that nothing contained in this subsection or any other provision of this Code section shall be construed so as to prohibit the payment of earned commissions:

(A) To the estate or heirs of a deceased real estate licensee when such deceased real estate licensee had a valid Georgia real estate license in effect at the time the commission was earned and at the time of such person´s death; ~~or~~

(B) To a citizen of another country acting as a referral agent if that country does not license real estate brokers and if the Georgia licensee paying such commission or compensation obtains and maintains reasonable written evidence that the payee is a citizen of said other country, is not a resident of this country, and is in the business of brokering real estate in said other country; or

(C) By the brokerage firm holding a licensee´s license to an unlicensed firm in which an individual licensee affiliated with the brokerage firm owns more than a 20 percent interest provided:

(i) Such individual licensee earned the commission in behalf of the brokerage firm;

(ii) Such unlicensed firm does not perform real estate brokerage activity;

(iii) The affiliated licensee and the brokerage firm have a written agreement authorizing the payment to the unlicensed firm; and

(iv) The brokerage firm obtains and retains written evidence that the affiliated licensee owns more than a 20 percent interest in the unlicensed firm to which the compensation will be paid;"

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

SECTION 9.

Said chapter is further amended by striking subsection (d) of Code Section 43-40-27, relating to the investigation of complaints reported to the commission, and inserting in its place a new subsection (d) to read as follows:

"(d) The results of all investigations shall be reported only to the commission or to the commissioner, and the records of such investigations shall not be subject to subpoena in civil actions. Records of investigations shall be kept by the commission and no part of any investigative record shall be released for any purpose other than a hearing before the commission or its designated hearing officer, review by another law enforcement agency or lawful licensing authority upon issuance of a subpoena from such agency or authority or at the discretion of the commission upon an affirmative vote of ~~all members~~ a majority of the quorum of the commission, review by the ~~respondent~~ licensee or applicant who is the subject of the notice of hearing after ~~the~~ its service ~~of a notice of hearing~~, review by the commission´s legal counsel, or an appeal of a decision by the commission to a court of competent jurisdiction; provided, however, if an investigation authorized by this chapter results in the commission´s filing a notice of hearing or entering into settlement discussions with a member of the commission, the commission shall immediately notify the Governor or the Governor´s legal counsel of such action by the commission. After service of a notice

of hearing, a ~~respondent~~ licensee or applicant who is the subject of the notice of hearing shall have a right to obtain a copy of the investigative record pertaining to the ~~respondent~~ hearing. Nothing in this subsection shall prevent the commission, in its sole discretion, from notifying persons who request investigations or the licensee or applicant who is the subject of the notice of hearing of the receipt of a request for investigation or the commission´s disposition of the investigation nor from making available to the public any document that becomes a public record during the hearing process authorized by Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.'"

SECTION 10.

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