



# LICENSE LAW IN PLAIN ENGLISH

GREC Approved

**SCHOOL CODE 6533**

**InMotion Real Estate Institute**  
Course #65292





# License Law in Plain English

This course meets the requirements set forth by the Georgia Real Estate Commission (GREC) under Rule 520-1-.05 (1) (e) regarding License Law. All nine modules represent an area that was identified by GREC in the order in which they were presented to course providers. This handout provides the unaltered laws and regulations for your present and future reference.

## Module 1 – 43-40-15 (c)-(k) and (m)

A. The effects on license status by a licensee of prohibited conduct found in OCGA 43-40-15 (c)-(k) and (m)

**Q: What is 43-40-15?**

**A: 43-40-15. Grant, revocation, or suspension of licenses; other sanctions; surrender or lapse; conviction; noncompliance with child support order; borrowers in default**

Licenses shall be granted only to persons who bear a good reputation for honesty, trustworthiness, integrity, and competence to transact the business of a licensee in such manner as to safeguard the interest of the public and only after satisfactory proof of such qualifications has been presented to the commission.

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

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

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

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



licensee.

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

- (1) Surrendered or voluntarily surrenders the license to the commission;
- (2) Allowed or allows the license to lapse due to failure to meet educational requirements provided by law; or
- (3) Allowed or allows the license to lapse due to failure to pay any required fees,

the commission may issue an order revoking such licensee's license. The order shall be effective ten days after the order is served on the licensee unless the licensee makes a written request for a hearing before the commission, in which event, the commission shall file a notice of hearing in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." Service shall be accomplished as provided for in Code Section 43-40-26.

(h) Whenever any occupational licensing body of this state or any other state has disciplined the license of an applicant for any license authorized by this chapter or whenever such an applicant has allowed a license to lapse or has surrendered a license to any occupational licensing body of this state or any other state after that body has initiated an investigation or a disciplinary process regarding such applicant's license, such discipline, lapsing, or surrender in itself may be a sufficient ground for refusal of a license. Whenever any occupational licensing body of this state or any other state has revoked the license of an applicant for any license authorized by this chapter or whenever such an applicant has allowed a license to lapse or has surrendered a license to any occupational licensing body of this state or any other state after that body has initiated an investigation or a disciplinary process regarding such applicant's license, the commission may issue an associate broker's or a broker's license only if:

- (1) At least ten years have passed since the date that the applicant's occupational license was revoked or surrendered;
- (2) No criminal charges are pending against the applicant at the time of application; and
- (3) The applicant presents to the commission satisfactory proof that the applicant now bears a good reputation for honesty, trustworthiness, integrity, and competence to transact the business of a licensee in such a manner as to safeguard the interest of the public.

(i) Whenever any licensee is convicted of any offense enumerated in subsection (b) of this Code section, the licensee shall immediately notify the commission of that



conviction. The licensee's license shall automatically be revoked 60 days after the licensee's conviction unless the licensee makes a written request to the commission for a hearing during that 60 day period. Following any such hearing requested pursuant to this subsection, the commission in its discretion may impose upon that licensee any sanction permitted by this chapter.

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

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

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

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

## Module 2 – 43-40-19 and 520-1-.07

A. Requirements of a qualifying broker and an affiliated licensee upon transfer of a license from one firm to another under OCGA 43-40-19 and Rule 520-1-.07(5)

### **Q: What is 43-40-19?**

#### **A: Change of place of business; transfer of salesperson, associate broker, or community association manager**

(a) Should a broker change the address of the broker's place of business, the broker shall notify the commission, in writing, within 30 days of such change.

(b) When an affiliated licensee leaves a broker for whom such licensee is acting, the broker shall immediately cause the license of that licensee to be forwarded either to the commission or to the new broker for whom the licensee will act. If the wall certificate of licensure is forwarded to the new broker for whom the licensee will act, the broker



releasing the licensee shall notify the commission in writing of that action. The releasing broker shall furnish such other information regarding the termination of said licensee as the commission may require. Any licensee whose license is released by a broker shall not engage in the activities of a real estate licensee until the licensee:

(1) Personally delivers to the commission a commission approved application to transfer such licensee's license to a new broker or has the United States Postal Service postmark a letter containing such an application; or

(2) Receives from the commission a wall certificate of licensure authorizing the licensee to serve as the broker or the qualifying broker of a firm.

(c) A licensee transferring to a new broker may continue to act as a licensee for the former broker with regard to transactions begun prior to the transfer, provided:

(1) Both brokers agree in writing to the licensee's actions on behalf of the former broker;

(2) The transactions on which the licensee will act on behalf of the former broker are enumerated in the written agreement between the brokers;

(3) The former broker agrees in writing to assume full responsibility for the licensee's activities in the enumerated transactions; and

(4) The written agreement expresses the terms under which the licensee shall be compensated by the former broker.

(d) A salesperson or community association manager shall not act as a licensee for any broker other than the broker holding the salesperson's or community association manager's license except as provided in subsection (c) of this Code section.

### **520-1-.07 (5) - Transferring Licensees Into or Out of a Firm.**

(a) Any broker seeking to have a licensee affiliate with the broker's firm shall enter into a written agreement specifying the terms under which the licensee will be compensated for work during the time of their affiliation and specifying how the licensee will be compensated for work begun but not completed prior to the termination of their affiliation. Other than to determine that such agreements are entered into by licensees and their broker, the Commission shall not regulate the content of such agreements or enforce the provisions of such agreements. A dispute between licensees as to whether the terms of this agreement have been met shall not be grounds for the broker's refusal to sign a release and to forward the wall certificate of licensure to the Commission nor for either party to file a complaint with the Commission.

(b) When a licensee requests that a release form be signed, the releasing broker shall immediately sign the release and forward the wall certificate of licensure of the departing licensee to the Commission or notify the Commission in writing that the wall certificate of licensure has been forwarded to the new broker for whom the licensee will



act. If a licensee assumes the responsibility of delivering the wall certificate to a new broker, then the wall certificate must be delivered as soon as practically possible after the licensee receives it from the releasing broker.

(c) Any licensee transferring shall not take, nor have in the licensee's possession, nor use any written brokerage engagement secured through the office or through licensed affiliates of the releasing broker, unless specifically authorized by the broker. The names of all prospective customers or clients given in writing to the departing licensee during the tenure of the affiliation with the releasing broker shall be accounted for to that broker. All plats of property, keys and other property which the releasing broker owns or for which the releasing broker is responsible, "for sale" signs, notebooks, listing cards, or records of any kind that have been used in connection with the listing or selling of property or with the management of property or community associations shall be returned in person by the departing licensee to the person designated by the releasing broker. Any broker seeking to have a licensee affiliate with the broker's firm shall enter into a written agreement expressing the terms under which the provisions of this paragraph shall be fulfilled upon the licensee's transferring from the broker.

Failure of a departing licensee to meet the requirements of this paragraph shall not be grounds for the broker's refusal to sign a release and to forward the wall certificate of licensure to the Commission, but shall be grounds for the filing with the Commission of a formal written complaint against the departing licensee.

(d) Whenever a broker returns to the Commission a wall certificate of licensure of a licensee affiliated with the broker's firm, the certificate shall be accompanied by a release signed by both the broker or authorized associate broker and the licensee or by a signed statement that such a release has been signed by both parties. The licensee shall then transfer the license to another broker or apply to place the license on inactive status within one month of the Commission's receipt of the licensee's wall certificate of licensure. If a broker is releasing a licensee for reasons other than the licensee's request and is unable for any reason to obtain the licensee's signature on the release, the broker or authorized associate broker shall send to the Commission a copy of a letter from the broker or authorized associate broker mailed to the licensee's last known address indicating that the broker is returning the license to the Commission. The broker's letter to the licensee should state clearly that the licensee has one month from the Commission's receipt of the licensee's wall certificate of licensure to apply to transfer to another broker or to apply to place the license on inactive status.

(e) Whenever a licensee decides to terminate an affiliation with a firm, such licensee may not have any contact with any of the firm's clients that the licensee is serving under a listing, a management agreement, or other brokerage engagement until the expiration of such a brokerage engagement, except as may be expressly approved in writing by the broker or qualifying broker of the firm that the licensee is leaving.

(f) Applications for sponsoring broker forms and applications for transfer or release may be signed only by the broker or an associate broker if the broker permits the associate broker such authority in writing. Such written authority shall be permanently maintained by the broker.

(g) Duplicate certificates of licensure and/or pocket cards shall be issued upon satisfactory proof of loss of the original.



## Module 3 - OCGA 43-40-20 and under Rule 520-1.08

- A. Requirements of a qualifying broker and affiliate licensee concerning trust or escrow accounts under OCGA 43-40-20 and under Rule 520-1.08

**O.C.G.A. § 43-40-20 (2014)** Trust or escrow checking account for real estate business; when entitled to commission

(a) Each broker who accepts down payments, earnest money deposits, security deposits, rents, association fees, or other trust funds in a real estate brokerage transaction or whose affiliated licensees accept such trust funds shall maintain a separate, federally insured bank checking account in this state which shall be designated a trust or escrow account wherein all down payments, earnest money deposits, or other trust funds received by the broker or the broker's affiliated licensees, on behalf of a principal or any other person, shall be deposited. An account so designated and registered with the commission shall not be subject to attachment or garnishment. A broker who does not accept trust funds in real estate brokerage transactions is not required to maintain a designated trust or escrow account; provided, however, that if a broker does not maintain such a trust or escrow account and later receives trust funds in a real estate brokerage transaction, such broker must open the designated trust or escrow account required by this subsection within one business day of the receipt of such trust funds.

(b) Each broker who is required to maintain a trust or escrow account shall notify the commission of the name of the bank in which the trust account is maintained and also the number of the account or, if the bank does not use numbered accounts, the name of the account on forms provided therefor.

(c) Each broker who maintains a trust account shall authorize the commission to examine such trust account by a duly authorized representative of the commission. The commission may examine such account at any time upon reasonable cause. The commission shall examine each broker's trust account or accounts during each renewal period. In lieu of an examination of any such account or accounts by a duly authorized representative of the commission, the commission, in its discretion, may accept a written report from a certified public accountant that the broker's trust account or accounts are maintained in accordance with the provisions of this chapter and its attendant rules and regulations. In lieu of the renewal period examination by a duly authorized representative of the commission, the commission may accept with the broker's renewal application and fee a summary of data on the broker's trust account or accounts on a form prepared by or approved by the commission if that data appears complete and includes no indication of irregularities. The commission, after initiating an authorized investigation, may require that a broker supply to it written reports on the status of the broker's designated trust account or accounts.

(d) A broker may maintain more than one trust account if the commission is advised of



such account, as specified in subsections (a), (b), and (c) of this Code section.

(e) A broker shall not be entitled to any part of the earnest money, security deposit, or other trust funds paid to the broker in connection with any real estate transaction as part or all of the broker's commission or fee until the transaction has been consummated or terminated.

(f) Any licensee, acting in the capacity of principal in the sale of interests in real estate owned by such licensee, shall deposit in a trust account in a state bank or trust company or any foreign bank which authorizes the commission to examine its records of such deposits those parts of all payments received on contracts which are necessary to meet any amounts concurrently due and payable on any existing mortgages, contracts for deed or other conveyancing instruments, reserves for taxes and insurance, or any other encumbrance on such receipts. Such deposits shall be maintained until disbursement is made under the terms of the encumbrance pertaining thereto and proper accounting on such property is made to the parties entitled thereto.

(g) The commission, in its discretion, may allow a nonresident broker who accepts any trust funds in a real estate brokerage transaction to maintain the trust account required in subsection (a) of this Code section in a bank of such nonresident broker's state of residence, provided that the commission is authorized to examine the account at such time or times as the commission may elect and that the licensee meets the requirements of any rules which the commission may establish regarding the maintenance of such accounts.

(h) Community association managers, salespersons, or associate brokers who receive security deposits or other trust funds on property they own or who receive payments as described in subsection (f) of this Code section must deposit those funds into a designated trust account maintained by the broker with whom their licenses are affiliated or in a designated trust account approved by that broker. If the broker approves the affiliated licensee's holding such trust funds in a designated trust account owned by the licensee, the broker shall assure that the bank in which the account is maintained designates the account as a trust account and the broker shall notify the commission of the name of the bank in which the account is maintained, the number of the account, and the name of the licensee who owns the account. The licensee who owns such account shall maintain such records on the account as are required by this chapter and the applicable rules and regulations for brokers in maintaining their trust accounts. The licensee who owns such account shall provide to such licensee's broker on at least a quarterly basis a written reconciliation statement comparing the licensee's total trust liability with the reconciled bank balance of the licensee's trust account.

## **520-1-.08 Managing Trust Accounts and Trust Funds.**

### **(1) The Designated Trust or Escrow Account.**

(a) Brokers may maintain more than one designated trust or escrow account. Brokers shall



notify the Commission of the name of the bank in which each account is maintained and each account's name or number within one month of opening each account.

(b) A licensee shall place all cash, checks, or other items of value received by the licensee in a brokerage capacity into the custody of the broker holding the licensee's license as soon after receipt as is practicably possible.

(c) A licensee shall place all cash, checks, or other items of value received by the licensee when the licensee is acting in the capacity of principal in the sale of interests in real estate owned by such licensee and all security deposits received on property owned by the licensee into the custody of the broker holding the licensee's license or in a trust account approved by that broker as soon after receipt as is practicably possible.

(d) Unless otherwise agreed to in writing by the party or parties at interest, the broker holding such cash or checks shall promptly deposit said funds in a federally insured checking account designated by the bank as a trust account and registered with the Commission and shall make appropriate arrangement for the safekeeping of any items of value received other than cash or checks. If the broker elects to deposit any funds into an interest-bearing trust account, the broker shall obtain the written agreement of the parties indicating to whom the broker shall pay any interest earned on trust funds deposited into that interest-bearing checking account prior to depositing those funds into such an account. See also O.C.G.A. §§43-40-2, 43-40-20, 43-40-21, & 43-40-25.

(e) A broker may maintain the broker's own funds in a designated trust or escrow account only when they are clearly identified as the broker's deposit and only for the following purposes:

1. If the bank in which the account is maintained designates a specific minimum balance that must be maintained in order to keep the account open, the broker may maintain that amount in the account designated as the broker's funds.

2. If the bank in which the account is maintained requires a service charge be paid for the account, the broker may maintain in the account in the broker's name a reasonable amount to cover that service charge. The broker may also maintain in the account in the broker's name a reasonable amount sufficient to cover other occasional bank charges and costs of maintaining the account including but not limited to charges for blank checks and deposit slips and fees for return of deposited checks which fail to clear.

3. A broker may allow commissions due the broker that are being paid from funds of others held in the broker's designated trust or escrow account to remain in the account provided that:

(i) the broker's accounting system for trust or escrow accounts designates those commissions as the broker's funds and properly accounts for them and

(ii) each month the broker removes from the account any of the broker's funds that exceed the minimum necessary to comply with subparagraph (a) or (b) above.

4. Only checks made payable to the broker may be used to withdraw monies designated as the broker's funds from the designated trust or escrow account.

## **(2) Accounting Requirements.**

(a) Every broker required by O.C.G.A. Section 43-40-22 to maintain a trust or escrow account shall maintain an accounting system in which each trust or escrow deposit is detailed in the following manner:



1. Names of buyer and seller or tenant and landlord or member and community association or broker.
2. Amount and date of deposit.
3. Identification of property involved.
4. The amount, payee and date of each check drawn on the escrow account in connection with that deposit.

(b) Licensees may meet the accounting requirements of this or any other Commission rule with either manual or electronic accounting systems as the efficiency of the firm's business operations dictate. However, whether a manual or electronic, the accounting system must:

1. include all the components required by law and sound business practices,
2. be readily accessible,
3. be in a readily understandable format, and
4. be reasonably available to any authorized representative of the Commission.

(3) Disbursements.

*(a) A broker who disburses trust funds from the broker's designated trust or escrow account contrary to the terms of a contract for the sale or rental of real estate, or other contract creating the escrow, or who fails to disburse trust funds according to the terms of any contract creating the escrow, will be considered by the Commission to have demonstrated incompetence to act as a real estate broker in such manner as to safeguard the interest of the public.*

*(b) A broker who disburses trust funds from a designated trust account under the following circumstances shall be deemed by the Commission to have fulfilled properly the broker's duty to account for and remit money which the broker is required to maintain and deposit in a designated trust account:*

- *upon the rejection of an offer to buy, sell, rent, lease, exchange, or option real estate;*
- *upon the withdrawal of an offer not yet accepted to buy, sell, rent, lease, exchange, or option real estate;*
- *at the closing of the transaction;*
- *upon securing a written agreement which is signed by all parties having an interest in the trust funds and is separate from the contract which directs the broker to hold the funds;*
- *upon the filing of an interpleader action in a court of competent jurisdiction;*
- *upon the order of a court of competent jurisdiction; or*
- *upon a reasonable interpretation of the contract which directed the broker to deposit the funds.*

(c) A broker shall not disburse funds from a designated trust account as provided in paragraph (b) until the broker has reasonable assurance that the bank has credited the funds to the broker's trust account. When a broker makes a disbursal to which all parties to the contract do not expressly agree, the broker must immediately notify all parties in writing of the disbursal.



(d) A broker who claims any part of the earnest money or other money paid to the broker in connection with any real estate transaction as part or all of the broker's commission or fee shall be deemed by the Commission to have complied with O.C.G.A. Section 43-40-20 (e) if:

- in a sales transaction, the transaction has closed or the date of closing specified in the sales agreement and any extensions of that date have passed;
- in a lease or rental transaction, possession has been delivered to the tenant;
- in a lease/purchase transaction, the sales transaction has closed or the date of closing specified in the sales agreement and any extensions thereof have passed; or
- the broker has secured a written agreement, separate from the sales contract or lease agreement, signed by all parties having an interest in the transaction who have agreed that the broker is entitled to any commission.

See also O.C.G.A. §§43-40-2, 43-40-20, 43-40-21, & 43-40-25.

(e) All refunds of earnest money must be paid by check or credited at the closing of a transaction.

(f) The total of all checks written against each deposit should reflect a zero balance in the designated escrow or trust account relating to the closing of each individual transaction

except when a portion of the deposit is transferred to the broker's name for the purpose of satisfying a commission. When such a transfer is made, the total of that transfer and all checks written against that deposit should reflect a zero balance.

(g) If a licensee who owns a designated trust account files a bankruptcy petition, such licensee shall immediately notify the Commission in writing of the filing of that petition. If a qualifying broker or the firm that a licensee serves as qualifying broker files a bankruptcy petition, such qualifying broker shall immediately notify the Commission in writing of the filing of that petition.

See also O.C.G.A. §§43-40-2, 43-40-7, & 43-40-25.

**(4) Trust Accounts for Property Management or Association Management.** Brokers who manage real property or community associations may maintain designated rental or assessment trust or escrow accounts separate from their other trust or escrow accounts.

(a) In paying bills on behalf of an owner or an association from any designated rental or assessment escrow or trust account, there must be enough money credited and deposited to the owner's or the association's account to cover said bill.

(b) Security deposits, if kept in a designated rental trust or escrow account, must be clearly identified and credited to the tenant and there must always be a balance in the account equal to the total of said security deposits.

(c) A licensee who manages rental property which the licensee owns must maintain any security deposits collected in a designated trust account and may not post a bond in lieu of maintaining such security deposits in a designated trust account.

**(5) Examination of Trust Accounts by the Commission.** O.C.G.A. Section 43-40-20 provides that each broker required to maintain a designated trust or escrow account shall authorize the Commission to have that designated trust or escrow account(s) examined by a duly authorized representative of the Commission during each renewal



period or at such other time as the Commission may direct upon reasonable cause.

**(a)** With regard to the members of the Commission who are required to maintain such designated trust accounts, this examination may be done either:

1. By the Commission member's engaging and paying a Certified Public Accountant to examine the broker's designated trust account or accounts to determine that that account is maintained in accordance with this rule and any other applicable rules, regulations, or statutes; or
2. by the Real Estate Commissioner's engaging the services of an independent accountant to examine a member's designated trust account or accounts to determine that the account is maintained in accordance with this rule and any other applicable rules, regulations, or statutes.

**(b)** Upon being contacted by the Commission's staff for purposes of conducting an examination of a trust account or accounts, a broker may elect to provide the Commission with a report on the broker's designated trust account(s) from a Certified Public Accountant in lieu of an examination by a duly authorized representative of the Commission. The Commission, in its discretion, may elect not to accept such a report and conduct its own examination. The report of the Certified Public Accountant must take the following form:

\_\_\_\_\_  
(Date)

I, \_\_\_\_\_, a Certified Public Accountant, have this date examined the real estate brokerage trust accounts of \_\_\_\_\_ for the time period of \_\_\_\_\_ to \_\_\_\_\_ and find the handling of funds in these accounts to be in compliance with O.C.G.A. Sections 43-40-20 and 43-40-25(a)(3), (4), (5), and (23) and Rules 520-1-.26, 520-1-.30, and 520-1-.34 of the Georgia Real Estate Commission. (Attach a statement explaining items, if any, which do not appear to be in compliance.) Said firm maintains the following real estate brokerage trust accounts:

(list account numbers and bank names)

Certificate Number      Signature of Certified Public Accountant

Affirmed by Broker

**(c)** Copies of accounting system entries for trust or escrow accounts, bank deposits, bank statements, receipts and other documents related to designated trust or escrow accounts shall be made available to authorized agents of the Commission upon reasonable request and at a reasonable cost to the Commission.

**(6) Monthly Reconciliation of Trust Accounts.** A broker required to maintain a trust or escrow account shall cause to be made, at least monthly, a written reconciliation statement comparing the broker's total trust liability with the reconciled bank balance(s) of the broker's trust account(s). The broker's trust liability is the sum total of all deposits received, required by contract to deposit, and being held by the broker at any point in time.

**(a)** The minimum information to be included in the monthly reconciliation statement shall be the date the reconciliation was undertaken, the date used to reconcile the balances,



the name of the bank(s), the name(s) of the account(s), the account number(s), the account balance(s) and date(s), any deposit(s) in transit, the amounts of any outstanding check(s) identified by date and check number, an itemization of the broker's outstanding trust liability showing the amount and source of funds received and not yet disbursed, and other items necessary to reconcile the bank account balance(s) with the balance in the broker's checkbook(s) and with the amount of the broker's trust liability. The broker shall review the monthly reconciliation statement and maintain copies in the broker's files for a period of three years.

**(b)** Whenever the trust liability and the bank balances do not agree, the reconciliation statement shall contain a description or explanation for the difference(s) and any corrective action(s) taken with reference to shortages or overages of funds in the account(s). Whenever a trust bank account record reflects a service charge or fee for a non-sufficient check being returned or whenever an account has a negative balance, the reconciliation statement shall disclose the cause(s) of the returned check or negative balance and the corrective action(s) taken.

**(7) Renewal Trust Account Examination.** When renewing a broker's license, a broker shall submit, along with the renewal application:

(a) a summary of data on the broker's trust account(s) on a form prepared by or approved by the Commission or

(b) a report on the broker's designated trust account(s) from a Certified Public Accountant. The report of the Certified Public Accountant must take the form provided for in paragraph (10) of this Rule.

**(8) Abandoned Funds in a Trust Account.** Whenever a real estate licensee believes that a person who placed trust funds in the licensee's care has abandoned those funds, the licensee may not disburse those funds from a trust account unless:

(a) the licensee's written authorization to hold those funds requires a particular disbursement; (b) the licensee has complied with the requirements of the Disposition of Unclaimed Property Act, O.C.G.A. Section 44-12-191, et seq.; or (c) the licensee has complied with such other statutory or court ordered requirements as may be appropriate to the circumstances.

See also O.C.G.A. §§ 3-40-2, 43-40-20, 43-40-21, & 43-40-25.

**(9) Trust Account Requirements for Non-Broker Licensee Owned Property.**

O.C.G.A. Section 43-40-20(h) authorizes a non-broker licensee to open a trust account for the deposit of trust funds received on properties the non-broker licensee owns if the broker holding the non-broker licensee's license approves the opening of such an account and if the non-broker licensee provides the broker with regular reports accounting for the funds in such an account. The Commission shall deem a property "owned by a licensee" if the deed for such property reflects either (a) only the name of the licensee or (b) only the name of a business entity of which the licensee is the sole owner, member, or stockholder. Whenever a licensee (a) owns any interest in a property that is less than one hundred percent and (b) receives any trust funds on such property, such licensee must deposit those trust funds into the trust account of a firm licensed under this chapter.



## Module 4 - Unfair trade practices prohibited by OCGA 43-40-25(b)

### **§ 43-40-25 (b) Violations by licensees, schools, and instructors; sanctions; unfair trade practices**

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

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

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

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

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

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

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

(2) Intentionally advertising material which is misleading or inaccurate or which in any way misrepresents any property, terms, values, policies, or services of the business conducted;

(3) Failing to account for and remit any money coming into the licensee's possession which belongs to others;

(4) Commingling the money or other property of the licensee's principals with the licensee's own;

(5) Failing to maintain and deposit in a separate, federally insured checking account all money received by said broker acting in said capacity, or as escrow agent or the temporary custodian of the funds of others, in a real estate transaction unless all parties having an interest in said funds have agreed otherwise in writing;



(6) Failing to disclose in writing to a principal in a real estate transaction any of the following:

(A) The receipt of a fee, rebate, or other thing of value on expenditures made on behalf of the principal for which the principal is reimbursing the licensee;

(B) The payment to another broker of a commission, fee, or other thing of value for the referral of the principal for brokerage or relocation services; or

(C) The receipt of anything of value for the referral of any service or product in a real estate transaction to a principal;

(7) Representing or attempting to represent a real estate broker, other than the broker holding the licensee's license, without the express knowledge and consent of the broker holding the licensee's license;

(8) Accepting a commission or other valuable consideration by a licensee from anyone other than the broker holding that licensee's license without the consent of that broker;

(9) Acting in the dual capacity of agent and undisclosed principal in any transaction;

(10) Guaranteeing or authorizing any person to guarantee future profits which may result from the resale of real property;

(11) Placing a sign on any property offering it for sale or rent without the written consent of the owner or the owner's authorized agent and failing to remove such sign within ten days after the expiration of listing;

(12) Offering real estate for sale or lease without the knowledge and consent of the owner or the owner's authorized agent or on terms other than those authorized by the owner or the owner's authorized agent;

(13) Inducing any party to a contract of sale or lease, or a brokerage agreement to break such contract or brokerage agreement for the purpose of substituting in lieu thereof any other contract or brokerage agreement with another principal;

(14) Negotiating a sale, exchange, or lease of real estate directly with an owner, a lessor, a purchaser, or a tenant if the licensee knows that such owner or lessor has a written outstanding listing contract in connection with such property granting an exclusive agency or an exclusive right to sell to another broker or that such purchaser or tenant has a written outstanding exclusive brokerage agreement with another broker, unless the outstanding listing or brokerage agreement provides that the licensee holding



such agreement will not provide negotiation services to the client;

(15) Indicating that an opinion given to a potential seller, purchaser, landlord, or tenant regarding a listing, lease, rental, or purchase price is an appraisal unless such licensee holds an appraiser classification in accordance with Chapter 39A of this title;

(16) Performing or attempting to perform any of the acts of a licensee on property located in another state without first having been properly licensed in that state or otherwise having complied fully with that state's laws regarding real estate brokerage;

(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;

(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 on 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;



(18) Failing to include a fixed date of expiration in any written listing agreement and failing to leave a copy of said agreement with the principal;

(19) Failing to deliver, within a reasonable time, a completed copy of any purchase agreement or offer to buy or sell real estate to the purchaser and to the seller;

(20) Failure by a broker to deliver to the seller in every real estate transaction, at the time said transaction is consummated, a complete, detailed closing statement showing all of the receipts and disbursements handled by such broker for the seller or failure to deliver to the buyer a complete statement showing all money received in said transaction from such buyer and how and for what the same was disbursed; the broker shall retain true copies of such statements in the broker's files;

(21) Making any substantial misrepresentations;

(22) Acting for more than one party in a transaction without the express written consent of all parties to the transaction;

(23) Failure of an associate broker, salesperson, or community association manager to place, as soon after receipt as is practicably possible, in the custody of the broker holding the licensee's license any deposit money or other money or funds entrusted to the licensee by any person dealing with the licensee as the representative of the licensee's licensed broker;

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

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

(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 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;

(27) Failing to keep for a period of three years a true and correct copy of all sales



contracts, closing statements, any offer or other document that resulted in the depositing of trust funds, accounting records related to the maintenance of any trust account required by this chapter, and other documents relating to real estate closings or transactions or failing to produce such documents at the reasonable request of the commission or any of its agents for their inspection;

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

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

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

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

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

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

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

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

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

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

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



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

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

(35) Inducing any person to alter, modify, or change another licensee's fee or commission for real estate brokerage services without that licensee's prior written consent; or

(36) Failing to obtain a person's written agreement to refer that person to another licensed broker for brokerage or relocation services and to inform such person being referred whether or not the licensee will receive a valuable consideration for such referral.

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

(d) Whenever a licensee acts in a real estate transaction as a principal or as an officer, employee, or member of a firm or any other entity acting as a principal, the commission may impose any sanction permitted by this chapter if the licensee commits any unfair trade practice enumerated in this Code section or violates any other provision of this chapter or any rules and regulations adopted pursuant to this chapter in such a transaction.

(e) Whenever a community association manager, a salesperson, or an associate broker violates any provision of this chapter or any rules and regulations adopted pursuant to this chapter by performing any duty or act of a broker enumerated in this chapter or any rules and regulations adopted pursuant to this chapter either with the proper delegation of that duty or act by the broker or without the broker's authorization, the commission may impose any sanction permitted under this chapter on the license of such community association manager, salesperson, or associate broker.

## Module 5 - Brokerage Relationships under Rule 520-1-.06

### **(1) Brokerage Engagements.**

(a) Each exclusive brokerage agreement must fully set forth its terms and have a definite



expiration date.

- (b) At the time of securing a brokerage engagement, the licensee securing it must furnish each person signing it a true copy thereof.
- (c) The Commission prohibits the acceptance by brokers of net brokerage engagements and hereby makes it obligatory upon the broker, when securing the brokerage engagement to add the broker's fee thereby notifying the client of the gross price of the property and the broker's services.

See also O.C.G.A. §§43-40-2 & 43-40-25.

## **(2) Management Agreements.**

(a) Every written property management agreement or other written authorization to manage real property between a broker and the owners of the real property shall:

- (1) Identify the property to be managed;
- (2) Contain all the terms and conditions under which the property is to be managed;
- (3) Specify the terms and conditions on which the broker will remit property income to the owner and on which the broker will provide periodic written statements of property income and expenses to the owner, provided that the periodic written statements shall be submitted to the owner on at least an annual basis;
- (4) Specify which payments of property related expenses are to be made by the broker to third parties and how such payments are to be funded;
- (5) State the amount of fee or commission to be paid and when the fee or commission will be paid;
- (6) Specify whether security deposits and prepaid rents will be held by the broker or the owner;
- (7) Contain the effective date of the agreement and its termination date;
- (8) Provide the terms and conditions for termination of the property management agreement by the broker or the owner of the property; and
- (9) Contain signatures of broker and owner or their authorized agent.

(b) The licensee shall give to the owner or the owner's authorized agent a legible copy of every written property management agreement or other written authorization to manage real property at the time the signature of the owner is obtained; and the licensee's broker shall retain a copy.

See also O.C.G.A. §§ 43-40-2, 43-40-25, & 43-40-25.1.

## **(3) Fidelity Bond or Insurance Required for Community Association Management.**

Any broker who provides community association management services as defined in O.C.G.A. Section 43-40-1 and who collects, maintains, controls, has access to, or disburses community association funds shall be covered at all times under a fidelity bond or fidelity insurance policy that complies with the requirements of paragraph (a) below unless such broker at no time collects, maintains, controls, has access to, or disburses community association funds totaling more than \$60,000.00;

*(a) Any fidelity bond or fidelity insurance policy required by this rule shall:*

- 1. be written by an insurance company authorized to write such bonds or policies in this state;



2. cover the maximum amount of funds that the broker providing community association management services collects, maintains, controls, has access to, or disburses at any time the bond or insurance policy is in effect, provided that at no time shall coverage be less than an amount equal to the sum of three months assessments due from all the members of the association or associations managed by the broker plus the amount of reserve funds that the community association or associations require the broker to maintain;
3. name the community association(s) as an additional named insured;
4. cover the broker and all partners, officers, licensed affiliates, and employees of the broker and may cover other persons collecting, maintaining, controlling, having access to, or disbursing community association funds as well; and
5. provide that the insurance company issuing the bond or policy may not cancel, substantially modify, or refuse to renew the bond or policy without giving thirty days prior written notice to the broker and to the community association; except that in the case of non-payment of premiums, no less than ten days prior written notice shall be given.

*(b) Each broker shall maintain a separate fidelity bond or fidelity insurance policy for each community association for which the broker provides community association management services and collects, maintains, controls, has access to, or disburses community association funds or such alternate fidelity coverage as is acceptable to the Commission.*

*(c) Each broker shall maintain a copy of each fidelity bond or fidelity insurance policy along with a current certificate of each such bond or insurance policy showing current coverage and shall provide a copy thereof to the community association.*

See also O.C.G.A. §§43-40-2.

#### **(4) Disclosure of Brokerage Relationships.**

(a) No licensee shall buy or lease, nor take an option to buy or lease, any interest in property listed with the licensee or the licensee's firm on which the licensee or the licensee's firm has been requested to act as a broker, unless the licensee shall clearly disclose the licensee's position as a buyer to the seller or as a tenant to the landlord, as the case may be, and insert a clause to this effect in the contract. Neither shall any licensee sell or lease or otherwise convey any interest in property owned by the licensee to any person, unless the licensee shall clearly disclose the licensee's position as a seller to the buyer or as a landlord to the tenant, as the case may be, and insert a clause to this effect in the contract.

(b) A licensee shall make or cause to be made a written disclosure to both buyer and seller or to both lessor and lessee, as the case may be, revealing the party or parties for whom that licensee's firm is acting as agent or dual agent and from whom that licensee's firm will receive any valuable consideration for its efforts as agent in the transaction. If the licensee's firm is not acting as an agent for either party, then the licensee shall make a written disclosure revealing from whom the licensee's firm will receive any valuable consideration for its efforts in the transaction. The written disclosures required by this paragraph must be made in a timely manner, but in any event not later than the time that any party first makes an offer to purchase, to sell, to lease, or to exchange real property.

(c) Real estate licensees shall not pay a fee or commission to a licensee representing



another party to a transaction except with the full knowledge and written consent of all parties.

## Module 6 - Management responsibilities of real estate firms under Rule 520-1-.07 (4), (5) and (6)

(1) **Name of Firm.** A broker shall not conduct business under any name other than the one in which the broker's license is issued.

(2) **Responsibilities of Brokers or Qualifying Brokers.**

A real estate broker or qualifying broker shall be held responsible for any licensee whose license is affiliated with the broker or the broker's firm who violates any of the provisions of O.C.G.A. Chapter 43-40 and its attendant Rules and Regulations.

Every broker or qualifying broker shall be responsible to instruct licensees affiliated with the broker or the broker's firm of the provisions set forth in the License Law and its Rules and Regulations.

The broker or qualifying broker shall notify the Georgia Real Estate Commission of any violation of the License Law and its Rules and Regulations.

See also O.C.G.A. §§43-40-1, 43-40-2, & 43-40-18.

(3) **Change of Qualifying Broker.**

- Whenever the qualifying broker of a partnership, limited liability company, or corporation dies, resigns, or is discharged unexpectedly, the partnership, limited liability company, or corporation must secure a new qualifying broker within 60 days or cease all real estate brokerage activity until it does secure a new qualifying broker.
- During the period of time that the firm is seeking a new qualifying broker to replace a qualifying broker who dies, resigns, or is discharged unexpectedly, the firm must designate a partner, if a partnership; a member, if a limited liability company; or an officer, if a corporation, to sign any documents and applications which must be filed with the Commission and to disburse trust funds from the firm's designated trust account(s) as may be required by any contracts or agreements authorizing the firm to hold such trust funds.

(4) **Qualifying Brokers Affiliated with Multiple Firms.**

- A person licensed by the Commission as a broker or qualifying broker for a licensed firm may serve as the broker or qualifying broker with one or more other licensed firms.
- A person licensed as an associate broker and affiliated with a licensed firm may serve as the broker or qualifying broker for one or more other licensed firms provided such person has notified in writing the broker with whom he or she is affiliated as an associate broker of his or her intended services as a broker or qualifying broker with another firm.

See also O.C.G.A. §§43-40-2, 43-40-14, & 43-40-25.

(5) **Transferring Licensees Into or Out of a Firm.**

(a) Any broker seeking to have a licensee affiliate with the broker's firm shall enter into a



written agreement specifying the terms under which the licensee will be compensated for work during the time of their affiliation and specifying how the licensee will be compensated for work begun but not completed prior to the termination of their affiliation. Other than to determine that such agreements are entered into by licensees and their broker, the Commission shall not regulate the content of such agreements or enforce the provisions of such agreements. A dispute between licensees as to whether the terms of this agreement have been met shall not be grounds for the broker's refusal to sign a release and to forward the wall certificate of licensure to the Commission nor for either party to file a complaint with the Commission.

(b)When a licensee requests that a release form be signed, the releasing broker shall immediately sign the release and forward the wall certificate of licensure of the departing licensee to the Commission or notify the Commission in writing that the wall certificate of licensure has been forwarded to the new broker for whom the licensee will act. If a licensee assumes the responsibility of delivering the wall certificate to a new broker, then the wall certificate must be delivered as soon as practically possible after the licensee receives it from the releasing broker.

(c)Any licensee transferring shall not take, nor have in the licensee's possession, nor use any written brokerage engagement secured through the office or through licensed affiliates of the releasing broker, unless specifically authorized by the broker. The names of all prospective customers or clients given in writing to the departing licensee during the tenure of the affiliation with the releasing broker shall be accounted for to that broker. All plats of property, keys and other property which the releasing broker owns or for which the releasing broker is responsible, "for sale" signs, notebooks, listing cards, or records of any kind that have been used in connection with the listing or selling of property or with the management of property or community associations shall be returned in person by the departing licensee to the person designated by the releasing broker. Any broker seeking to have a licensee affiliate with the broker's firm shall enter into a written agreement expressing the terms under which the provisions of this paragraph shall be fulfilled upon the licensee's transferring from the broker.

Failure of a departing licensee to meet the requirements of this paragraph shall not be grounds for the broker's refusal to sign a release and to forward the wall certificate of licensure to the Commission, but shall be grounds for the filing with the Commission of a formal written complaint against the departing licensee.

(d)Whenever a broker returns to the Commission a wall certificate of licensure of a licensee affiliated with the broker's firm, the certificate shall be accompanied by a release signed by both the broker or authorized associate broker and the licensee or by a signed statement that such a release has been signed by both parties. The licensee shall then transfer the license to another broker or apply to place the license on inactive status within one month of the Commission's receipt of the licensee's wall certificate of licensure. If a broker is releasing a licensee for reasons other than the licensee's request and is unable for any reason to obtain the licensee's signature on the release, the broker or authorized associate broker shall send to the Commission a copy of a letter from the broker or authorized associate broker mailed to the licensee's last known address indicating that the broker is returning the license to the Commission. The broker's letter to the licensee should state clearly that the licensee has one month from the Commission's receipt of the licensee's wall certificate of licensure to apply to transfer to another broker or to apply to place the license on inactive status.



(e) Whenever a licensee decides to terminate an affiliation with a firm, such licensee may not have any contact with any of the firm's clients that the licensee is serving under a listing, a management agreement, or other brokerage engagement until the expiration of such a brokerage engagement, except as may be expressly approved in writing by the broker or qualifying broker of the firm that the licensee is leaving.

(f) Applications for sponsoring broker forms and applications for transfer or release may be signed only by the broker or an associate broker if the broker permits the associate broker such authority in writing. Such written authority shall be permanently maintained by the broker.

(g) Duplicate certificates of licensure and/or pocket cards shall be issued upon satisfactory proof of loss of the original.

See also O.C.G.A. §§43-40-2, 43-40-7, 43-40-11, 43-40-14, & 43-40-25.

**(6) Utilizing Support Personnel – Task Guidelines.**

(a) Whenever a firm or a licensee who is affiliated with a firm engages support personnel to assist the firm or the affiliated licensee in the conduct of the real estate brokerage business, both the firm and the affiliated licensee are responsible for the acts of the support personnel and for assuring that the support personnel comply with the requirements of this rule and the license law. Support personnel may not perform any real estate brokerage activities of a real estate licensee when engaged as support personnel and may perform only ministerial duties, those that do not require discretion or the exercise of the support personnel's own judgment.

(b) Nothing in this rule shall prohibit an individual employed by a firm to assist in the management of property from undertaking those activities permitted by O.C.G.A. Section 43-40-29 (10).

(c) An individual actively licensed with one firm may work as support personnel for a different firm or for a licensee(s) of a different firm with the written consent of the broker of each firm. An individual whose license is on inactive status may work as support personnel for a firm or any affiliated licensee.

(d) Any firm which employs (or engages under an independent contractor agreement) support personnel to assist such firm or an affiliated licensee of said firm in carrying out his or her real estate brokerage activities must:

1. enter into a written agreement with the support personnel specifying the duties that the support personnel may undertake on behalf of the firm or an affiliated licensee of the firm and the tasks that support personnel are prohibited from performing on behalf of the firm or an affiliated licensee of the firm;
2. if applicable, enter into a written agreement with the affiliated licensee authorizing the use of the support personnel, specifying the duties that the support personnel may undertake on behalf of the affiliated licensee of the firm and the tasks that support personnel are prohibited from performing, and approving any compensation arrangement the affiliated licensee has with the support personnel;
3. if applicable, assure that the affiliated licensee of the firm and the support personnel have entered into a separate written agreement specifying the duties that the support personnel may undertake on behalf of the affiliated licensee of the firm, the tasks that support personnel are prohibited from performing, and the compensation arrangement the affiliated licensee has with the support personnel.



**(e) In order to provide reasonable guidelines for firms, affiliated licensees and support personnel, but without defining every permitted or prohibited activity, the Commission has identified the following tasks that support personnel may perform:**

1. answer the telephone and forward calls and emails to a licensee; 2. submit data on listings to a multiple listing service;
3. check on the status of loan commitments after a contract has been negotiated; 4. assemble documents for closings;
5. secure documents that are public information from a courthouse and other sources available to the public;
6. have keys made for firm listings and install or remove lock boxes from firm listings;
7. write advertisements and promotional materials for the approval of the firm and any affiliated licensee;
8. place advertisements in the media as defined in Rule 520-1-.09 (1) (b) and as directed by the firm;
9. record, and deposit earnest money, security deposits, and rents;
10. type contract forms as directed by the firm or affiliated licensee of the firm;
11. monitor personnel files and license reports from the Commission; computer commission checks;
12. place signs on real estate and remove such signs;
13. order items of routine repair as directed by the firm or affiliated licensee;
14. act as courier for such purposes as delivering documents or obtaining documents and keys;
15. schedule appointments with an owner or an owner's agent in order for a licensee to show listed real estate;
16. arrange dates and times for inspections;
17. arrange dates and times for a mortgage application, a pre-closing walk through, or a closing;
18. schedule an open house;
19. accompany a licensee to an open house or a showing only for security purposes; or perform physical maintenance on real estate.

**(f) The Commission has identified the following tasks that support personnel shall not perform:**

1. make cold calls by telephone, in person, or through any media as defined in Rule 520-1-.09 (1) (b) or otherwise contact the public for the purpose of securing prospects for listings, leasing, sales, exchanges, or property management of real estate;
2. host open houses, kiosks, home show booths, or fairs;
3. prepare promotional materials or advertisements without the review and approval of an affiliated licensee and firm;
4. show real estate;
5. answer any questions on title, financing, or closings (other than the time and place);
6. answer any questions regarding a listing except for information on price and amenities expressly authorized in writing by the licensee;



7. discuss or explain a contract, listing, lease, agreement, or other real estate document with anyone outside the firm;
8. negotiate or agree to any commission, commission split, management fee, or referral fee on behalf of a licensee;
9. discuss the attributes or amenities of real estate, under any circumstances, with a prospective purchaser or lessee;
10. discuss with the owner of real estate, the terms and conditions of the real estate offered for sale or lease;
11. collect or hold deposit monies, rent, other monies or anything of value received from the owner of real estate or from a prospective purchaser or lessee; or
12. provide owners of real estate or prospective purchasers or lessees with any advice, recommendations or suggestions as to the sale, purchase, exchange, or leasing of real estate that is listed, to be listed, or currently available for sale or lease.

(g) Unlicensed support personnel or inactive licensed support personnel shall not hold themselves out in any manner, orally or in writing, as being actively licensed or affiliated with a particular firm or real estate broker as a licensee.

**(7) Sharing Commissions with Non-Resident Brokers.** A licensed broker in this state is hereby permitted to divide or share a real estate commission with a licensed broker in another state. If a broker licensed in another licensing jurisdiction refers prospective clients or customers to a Georgia broker, the Georgia broker may pay a fee to such licensed broker. Such brokers who refer prospective clients or customers to a Georgia broker may not perform any of the other acts of a broker with regard to property located in this state unless they first obtain a nonresident's license or enter into a written agreement with a Georgia broker as permitted by O.C.G.A Section 43-40-9.

## Module 7 - Advertising under OCGA 43-40-25 (b)(1), (2), (11), (12) and (21) and Rule 520-1-.09, Advertising

***ALSO See Module 4 for 43-40-25(b) on page 13***

### **(1) Definitions.**

**(a) Advertising or Advertisement.** For the purposes of this Rule, the term "advertising" or "advertisement" means any manner, method, or activity by which a licensee through the use of any media makes known to the general public real estate for sale, rent, lease, or exchange.

**(b) Media.** For the purposes of this Rule, the term "media" includes, but is not limited to, print, photographs, broadcast, and the Internet including, but not limited to, such examples as newspapers, magazines, flyers, posters, business cards, billboards, radio, videos, television, signs (including office, directional, "for sale," "for lease," "sold," or vehicle signs), newsletters, voicemail, email, facsimile transmissions, Internet websites, blogs, video blogs, property listing database services, email farming, news groups, discussion lists, bulletin boards, social networking/social media, instant text messages, multimedia advertising, banner ads, pop-ups, and similar media.

**(2) Misleading Advertising.** Any advertising that is misleading or inaccurate in any material fact or in any way misrepresents any real estate is prohibited. Whenever a licensee becomes aware that a principal with whom the licensee's firm has a



brokerage engagement is advertising to sell, buy, rent, lease, or exchange real estate in such a manner that is inconsistent with this rule, the licensee must immediately take steps to stop the advertising until it complies with this rule.

**(2.1) Advertising by Affiliated Licensees.** All advertising by associate brokers, salespersons, and community association managers must be under the direct supervision of their broker and in the name of their firm.

**(3) Written Permission to Advertise.** A licensee shall not advertise any real estate for sale, rent, lease, or exchange unless the licensee has first secured the written permission of the owner, the owner's authorized agent, or the owner of a leasehold estate. When such permission is granted, a licensee advertising real estate that is listed with another firm shall clearly and conspicuously disclose that fact and the name of the listing firm unless the listing firm has expressly agreed in writing to waive those clear and conspicuous disclosures.

**(4) Discriminatory Advertising Prohibited.** A licensee shall not advertise to sell, buy, exchange, rent, or lease real estate when such advertisement is directed at or referred to persons of a particular race, color, religion, sex, handicap, familial status, or national origin. The contents of any advertisement must be confined to information relative to the real estate itself, and any advertisement that is directed at or referred to persons of any particular race, color, religion, sex, handicap, familial status, or national origin is prohibited.

**(5) Internet Advertising.** In addition to the unfair trade practices found in O.C.G.A. §43-40-25 (b) (1), (2), (11), (12) and (21) or any other requirements found in this Rule, any advertising on the Internet by a licensee of real estate for sale, rent, lease, or exchange shall disclose the name and telephone number of the licensee's firm on every viewable web page of a website except as herein otherwise provided.

(a) When advertising in electronic messages of limited information or characters, a license shall provide a direct link to a display that is in compliance with this Rule.

(b) When advertising real estate for sale, rent, lease or exchange on an internet website not owned or controlled by the licensee or firm with which the licensee is affiliated and that website's terms of use limit the licensee's ability to comply with this paragraph, the advertising shall provide a direct link to a display that is in compliance with this Rule on every viewable webpage of the website.

(c) Information on a website maintained by a licensee that is outdated shall be updated or removed from the website within thirty (30) days of the information becoming outdated.

(d) If a licensee's website is maintained by an authorized third party (other than its firm or its franchisor's webmaster), the licensee shall provide to the third party, a timely written notice, by mail, fax, or electronic means, of any updates to outdated information or information to be removed from the website, so that such updates or information removal may be accomplished in accordance with this Rule. A licensee who provides such timely notice shall not be in violation of this Rule if the third party fails to effect an information change as notified.

(e) The requirements of this Rule apply to advertising and information on a website that is within the licensee's ownership or direct control. No licensee shall be responsible for any information taken from the licensee's website, or other advertising, if placed on



a website, or in other advertising outside the licensee's ownership and/or direct control and without the licensee's consent.

**(6) Trade Names and Franchise Names.** For purposes of this rule the term trade name shall include trade mark and service mark; and the term advertising shall include, but is not limited to, advertising done by others on behalf of the licensee.

(a) Any firm using a trade name or any franchisee in advertising specific real estate for sale in any media shall clearly and unmistakably include the firm's name as registered with the Commission in a manner reasonably calculated to attract the attention of the public. The firm's name shall appear adjacent to any specific real estate the firm advertises for sale so that the public may unmistakably identify the firm listing the specific real estate. In advertising real estate for sale, rent, or exchange, the name of the firm offering the real estate for sale, rent, or exchange shall appear in equal or greater size, prominence, and frequency than the name or names of any affiliated licensees or groups of licensees.

(b) Any firm using a trade name or any franchisee shall clearly include the firm's name as registered with the Commission on any contracts or other documents relating to a real estate transaction.

(c) Any firm using a trade name or any franchisee shall clearly include the firm's name as registered with the Commission on office signs.

**(7) Firm Names and Telephone Numbers in Advertising.** In advertising specific real estate for sale, rent, or exchange in any media:

(a) firms must include in the advertisement a name of the firm as registered with the Commission and a telephone number for the firm, except when complying with lawful restrictions (such as covenants or local governmental ordinances) that forbid the use of the firm's name on a particular type of sign;

(b) the name of the firm advertising the real estate for sale, rent, or exchange shall appear in equal or greater size, prominence, and frequency than the name or names of any affiliated licensees or groups of licensees;

(c) the firm's telephone number shall appear in equal or greater size, prominence, and frequency than the telephone number of any affiliated licensee or groups of licensees, and it must be a number at which the public can reach a broker or a manager of the firm without going through the affiliated licensee(s) listed in the advertisement;

(d) whether contained in a logo or standing alone, the name of the firm must be in equal or greater size, prominence, and frequency than the name of any affiliated licensee or group of licensees; and

(e) a block advertisement in any print media that advertises various listings of a firm and includes the name of the listing agent next to each listing shall be in compliance with this rule if the name of the firm appears only once at the top of the advertisement in equal or greater prominence and print size than any of the listing agent's names. The firm's name may be located in other positions in such block advertisements if the firm name appears clearly larger and more prominently than the name of any other licensee in the advertisement.

**(8) Licensees Advertising as Principals.** A licensee shall not advertise to sell, buy, exchange, rent, or lease real estate in a manner indicating that the offer to sell, buy, exchange, rent, or lease such real estate is being made by a private party not licensed by the Commission.



Every associate broker, salesperson, and community association manager is prohibited from advertising under the licensee's individual name to buy any real estate or offer for sale, rent, or lease any real estate. All advertising by associate brokers, salespersons, and community association managers must be under the direct supervision of their broker and in the name of their firm. However, when a licensee wishes to advertise real estate owned by the licensee and which is not under a brokerage engagement, the licensee may do so provided:

1. if the licensee's license is affiliated with a firm, the broker holding the licensee's license has been notified in writing of the specific real estate to be advertised;
2. if the licensee's license is affiliated with a firm, the broker gives written consent to advertising the specific real estate and approves the advertisement itself; and
3. regardless of whether the licensee's license is affiliated with a firm or on inactive status, any advertisement must include either (a) the legend "seller, buyer, landlord, tenant (select the appropriate name) holds a real estate license" or (b) the legend "Georgia Real Estate License # (insert licensee's six digit number; for example, 000001)." "Georgia Real Estate License" may be abbreviated to "GA R. E. Lic.."

**(9) Licensees Advertising Approved Schools.** A licensee shall not advertise that such licensee offers, sponsors, or conducts Commission approved courses or that such licensee offers, sponsors, or conducts Commission approved courses in conjunction with an approved school or other approved organization unless the licensee is approved by the Commission to offer such courses.

**(10)** Notwithstanding any other provision of this Rule, a licensee shall make every reasonable attempt in advertising to assure the public knows that they are being contacted by a licensee.

## Module 8 - 520-1-.10 Handling Real Estate Transactions

**(1) Presenting Offers.** A licensee shall promptly tender to any customer or client any signed offer to purchase, sell, lease, or exchange property made to such client or customer. In a transaction in which the offeror is not a client or customer of the licensee, the licensee receiving an offer must provide a copy of the offer to the licensee working with or representing the offeree. However, a licensee who obtains an offer may negotiate a sale, exchange, or lease directly with an owner, a lessor, a purchaser, or a tenant if the licensee who obtains the offer knows that such offeree has a written outstanding agreement in connection with such property that expressly provides the other licensee will not provide negotiation services to the offeree.

**(2) License Numbers in Offers.** A licensee preparing or signing a brokerage engagement or an offer to purchase, sell, lease, or exchange real property shall include the license number issued by the Commission of each firm and of each licensee participating in the transaction. The licensee shall include the six digit license number issued by the Commission.

**(3) Responsibility to Distribute Copies.** A licensee shall provide a copy of any document utilized in a real estate transaction to any individual signing such document. If any offer to purchase, sell, lease, or exchange is accepted and signed by all parties, copies of that document shall be properly distributed, one to each person signing the document and one to each brokerage firm involved in the transaction.



**(4) Retention of Copies of Records and Documents.** Copies of sales contracts, brokerage engagements, closing statements, leases, and other documents related to a real estate transaction required by law to be maintained in a broker's file for three years shall be made available to authorized agents of the Commission upon reasonable request and at a reasonable cost to the Commission. Brokers that must keep copies of the documents cited in this paragraph include:

any broker identified in a sales contract, brokerage engagement, closing statement, lease, or other document related to a real estate transaction;

any broker firm that participates in the negotiations involving a sales contract, brokerage engagement, lease, or other contractual document related to a real estate transaction; and

any broker required by O.C.G.A. Section 43-40-20 to maintain a trust account. Copies of documents and other records which licensees are required by law and the Commission's rules to maintain may be maintained in any records storage system that utilizes paper, film, electronic, or other media provided that: (a) the licensee can produce true and correct copies of such documents and records and (b) copies of such documents and records can be made available to an authorized representative of the Commission upon reasonable request and at reasonable cost to the Commission.

**(5) Falsification of Transaction Documents and Misleading Representations**

**Prohibited.** No licensee shall falsify or be a party to the falsification of a document involved in a real estate transaction or knowingly represent, either verbally or in writing, to a principal or any interested third party:

an amount other than the true and actual sales, lease, or exchange price;

an amount other than the true and actual downpayment;

an amount other than the true and actual earnest money, security deposit, or other trust funds or that such trust funds have been tendered in any form other than its true and actual form;

a payment of trust funds in cash when in fact some other method of such is made; or an artifice, contrivance, or machination with the intent to deceive.

Any or all such practices shall constitute a misrepresentation.

**(6) Disclosure of Commissions, Fees, Rebates, or Other Valuable Consideration.**

The disclosures required by O.C.G.A. §43-40-25 (b)(6) from a licensee to a principal may be made in advance of the payment or receipt of a commission, fee, rebate or thing of value to a licensee based upon pre-established terms set forth in a brokerage agreement, a brokerage engagement agreement, management agreement or other written agreement.

In a transaction where a licensee refers a principal to another broker for brokerage or relocation services (and the broker to whom the principal is referred knows of the referral and the referring licensee's expectation of receiving a commission, fee or other thing of value for the referral), the payment of a commission, fee or other thing of value to the referring licensee by the broker working with the principal shall be disclosed in writing to the principal by the broker to whom the referral was made no later than at the closing of the purchase, sale, exchange, or lease, of any property in a transaction where a commission, fee or other thing of value will be paid by the broker to the referring licensee.



The disclosures required in O.C.G.A. §43-40-25 (b)(6)(c) shall be in addition to any requirements of federal law pertaining to the payment or receipt of anything of value for the referral of any service or product in a real estate transaction.

For the purposes of O.C.G.A. §43-40-25 (b)(6), the term "licensee's principal" shall, in the specific real estate transaction for which disclosure is required, mean both the client of the broker and a customer of the broker if the customer is working primarily with the broker and is not being represented by another broker in the transaction.

A licensee may rebate to a principal any part of a commission, fee, or other compensation received by the licensee related to the purchase, sale, lease or exchange of real estate as long as said rebate is disclosed on the closing statement for that transaction and as long as the rebate does not mislead any other licensee, other principal, lender, title company or government agency involved in the transaction regarding the source of funds to complete the transaction or regarding the financial resources or obligations of a buyer principal.

Notwithstanding anything to the contrary above, no disclosure is required for gifts, products, services, or other things of value given to a principal by a licensee provided that they are not contingent upon the purchase, sale, lease or exchange of real estate for that transaction.

## Module 9 - Licensees Acting as Principals under Rule 520-1-.11

(1) **Written Notification to Broker.** No licensee shall be permitted to list, sell, buy, exchange, rent, lease, or option or offer to list, sell, buy, exchange, rent, lease, or option real estate, either in individual or multiple parcels, in the licensee's own name or in the name of any other firm or entity in which the licensee is an officer, employee, beneficiary, or member of such firm or other entity acting as principal without first advising, in writing, the broker for whom the real estate licensee is acting.

(2) **Offers to Buy Associated with a Brokerage Relationship.** Whenever a licensee offers to purchase a property as a condition to obtaining a brokerage engagement to sell, lease, or exchange or on which the licensee is extending the expiration date of an existing brokerage engagement, the licensee must enter into a written contract to purchase which expresses all the terms and conditions of the licensee's purchase prior to or at the time of entering into the proposed brokerage engagement or into the extension of the existing brokerage engagement. Whenever a licensee offers to purchase a property in order to enable a party to purchase, sell, lease, or exchange another property, the licensee must enter into a written contract to purchase which expresses all the terms and conditions of the licensee's purchase prior to or at the time of the other party's entering into a contract to purchase, sell, lease, or exchange the new property.

(3) **Licensees Advertising as Principals.** Licensees advertising to buy, sell, or exchange real property for their own accounts must comply with the advertising requirements of Rule 520-1-.09.

### References:

Title 43, Chapter 40 – Visit <http://www.lexisnexis.com/hottopics/gacode/Default.asp>