



NOWACKHOWARD
COMMUNITY ASSOCIATION ATTORNEYS

Understanding Georgia License Law

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QUESTION

Why is this
Class
required?

ANSWER

- During the FY17, the Commission opened 1,995 new investigative cases
- Largest number since 2010

Source: GREC



Total Licensees as of 6/30/19

Just individuals, not other entities

	Active	Inactive	Total			
Broker	17,711	2,905	20,616	25%		
Salesperson	51,766	12,318	64,084	74%		
CAM	467	162	629	1%		
	69,944	15,385	85,329			
Source: GREC						



CAM Licensing Exceptions 43-40-29

- Any person employed on a full-time basis by a community association for providing community association management services (**direct employee**)
- Any person who is a member of a community association and who provides community association management services only to one community association of which such person is a member (**full-time not required**)
- Any person employed on a full-time basis by the owner of property for providing community association management services (**non-licensed employee of declarant/development company**)



Top CAM Complaints Filed with GREC

- Manager is unresponsive to our requests
- Manager will not provide requested documentation regarding expenses
- Previous manager will not turn over the association records to our new manager



Top CAM Complaints Filed with GREC

- Person currently managing our association is not licensed
 - Usually an unlicensed assistant under a broker is managing the association and is conducting brokerage activity that a licensee should be doing

- Money is missing and we suspect our previous manager misappropriated funds
 - Not common, but it does happen



Previous Law Change

- Effective July 1, 2015: Senate Bill 95 expanded the number of financial institutions at which trust accounts may be held by a real estate broker from “federally insured banks” to “federally insured financial institutions”
- A “financial institution” under Georgia law includes a “bank” but also a trust company, a building and loan association, and a credit union
- Additionally, a trust account may now be held in accounts other than “checking accounts” as long as the account is federally insured
- Related Rules were updated July 1, 2016



Previous Rule Changes

- Effective **July 1, 2016**: 3 of the continuing education (CE) hours must be on the topic of license law from a license law course approved by GREC
- Effective **July 1, 2015**: CE hours increased from 24 to 36 hours over the four-year renewal period (law requires a minimum of 24 hours)



Review GREC Authority

- Grant / deny licenses (43-40-14)
- Set licensing fees (43-40-3)
- Pass rules and regulations (43-40-3.1)
 - Right to pass rules regarding professional conduct of licensees
 - Rules must be based on some provision of the License Law
 - Rules and regulations cannot be inconsistent with the License Law



Review GREC Authority

- Disciplinary Action (43-40-25)(a)
 - Right to revoke and suspend licenses
 - Right to reprimand and issue warning letters
 - Right to fine \$1,000 per violation
 - \$5,000 limit for multiple violations in any one disciplinary proceeding
 - Require additional education



Prohibited Conduct (43-40-15)



- Grounds for refusal or any sanction including revocation or suspension of license
 - Federal Fair Housing Act
 - Georgia Fair Housing Act



Prohibited Conduct (43-40-15)

- Grounds for refusal or suspension of license
 - Not in compliance with a court order for child support
 - Borrower in default (not in a satisfactory repayment status)

- Any licensee convicted of a felony or any crime involving moral turpitude shall immediately notify GREC



Change of Place of Business (43-40-19)

- Broker shall notify GREC within 30 days of any change of address
- When a licensee leaves a broker, the broker shall immediately forward the licensee's license to GREC or the new broker
- Licensee shall not engage in activities of a real estate licensee until a new broker is secured



Change of Place of Business (43-40-19)

- Change Application
 - Activate
 - Inactivate
 - Transfer

- Online Options

- Releasing Broker
- Affiliate Broker



Change of Place of Business (43-40-19)

A salesperson or community association manager may not act as a license for any broker other than the one holding the license except as provided by 43-40-19 (c)



Change of Place of Business (43-40-19) (c)

- Licensee transferring to new broker may continue to work for former broker with transactions begun prior to transfer, provided
 - Both brokers agree in writing
 - The transactions are documented in the written agreement
 - Former broker assumes full responsibility activities
 - Written agreement expresses the compensation terms



Purpose of Trust Accounts

To keep other people's money completely separated from the broker's funds

- What if broker dies?
- What if there is a judgment against the broker?
- What if broker files for bankruptcy?



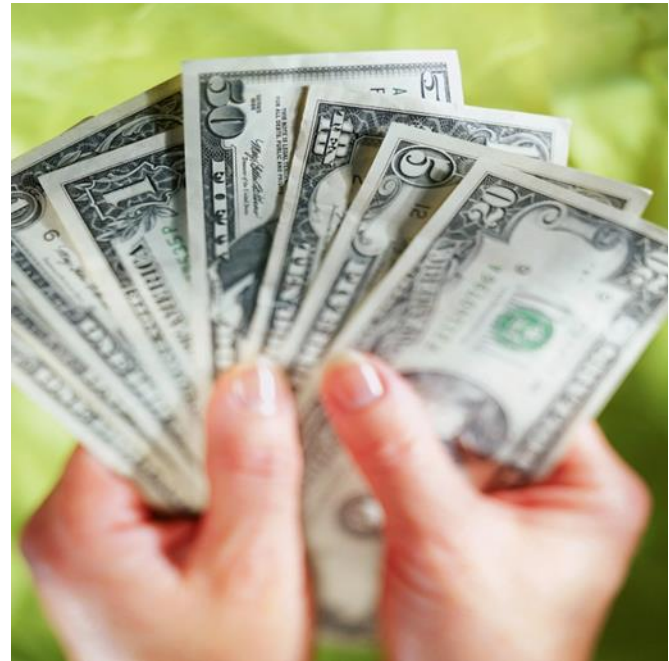
Purpose of Trust Accounts

- What if broker dies?
 - Money goes into broker's estate
- What if there is a judgment against the broker?
 - Potential garnishment
- What if broker files for bankruptcy?
 - Creditors may receive the funds



Trust Accounts for Management Companies

- Rarely use trust accounts
- Name and Federal Tax ID on Association accounts
- Endorse over improperly paid funds





Trust Accounts (43-40-20 & 520-1-.08)

- Properly opened and maintained trust accounts cannot be seized for the broker's debts
- If broker uses any part of trust funds for any reason, or simply mixes the funds with his/her own, the broker is commingling
- Commingling is a direct violation of the license law and may result in disciplinary action against the broker's license



Managing Trust Accounts (520-1-.08)

- Brokers may maintain more than one trust account – each one should be registered with GREC within one month of opening
- Place funds in trust account as soon as practicably possible
- Unless otherwise agreed to in writing, trust account should be in a federally insured financial institution
 - If its an interest bearing account, all parties must agree who will earned the interest



Managing Trust Accounts (520-1-.08)

- Broker must provide GREC with the name of the financial institution and the account number
- Provide GREC, or its representative, the authority to investigate and examine the records of that account at any time



Managing Trust Accounts (520-1-.08)

- The qualifying broker must have signatory power on all the trust accounts
- A monthly written reconciliation must be maintained in broker's files for at least 3 years
- If maintaining a trust account take the GREC free online course “ Avoiding Trust Account Trouble”



Managing Trust Accounts (520-1-.08)

- A licensee who manages rental property which the licensee owns must maintain any security deposits collected in a designated trust account

- Non-broker licensee may open a trust account for the deposit of trust funds received on properties *owned* by the non-broker licensee
 - Broker must approve
 - Licensee provides regular reports accounting for the funds



Managing Trust Accounts (520-1-.08)

- Property “owned by a licensee”
 - Only the name of the non-broker licensee or
 - Only the name of a business entity of which the non-broker licensee is the sole owner, member, or stockholder
 - In sum, the non-broker licensee must own 100%
 - Otherwise, trust funds must be deposited into a trust account of a firm licensed by GREC



Non-Broker Licensees Managing Rental Property

	<u>100% Owned</u>	<u><100% Owned</u>
Security Deposit	Personal trust acct.	Firm's trust acct.
Property Mgmt.	Manage personally	Firm must manage



Ethics and Duties of CAMs as to Trust Funds

- Broker responsible for establishing written policy and instructing licensees on how receipt of trust funds will be acknowledged
- Broker should have written procedure for handling cash deposits and other items of personal property, if the designated person is not available to process them



Violations (43-40-25)

- Commission's enforcement authority (a)
- Unfair Trade Practices (b) (36 in total)
 - Discrimination (1) (*think fair housing laws*)
 - Misleading advertising (2)
 - Failing to account for other's funds (3)
 - Commingling money or property (4)



Violations (43-40-25)

- Failing to disclose in writing to a client (6)
 - The receipt of a fee, rebate or other thing of value on expenditures made on behalf of the client for which the client is reimbursing the broker (a)
 - The commission payment to another broker for the referral of the principal (b)
 - The receipt of anything of value for the referral of any service or product in a real estate transaction to a client (c)



Violations (43-40-25) (7)

- Representing more than one broker without consent of each broker
 - Can obtain written permission from broker to also work as an active licensee practicing real estate with another real estate firm
 - Broker must voluntarily agree in writing for the affiliated licensee to do so
 - Practical business perspective - it may not be desirable for brokers to be competing with each other with the same licensee



Inducement to Break Contract 43-40-25 (13)

- Informally referred to as the “No Solicitation Rule”

- **Clear Violation**
 - I know you under a brokerage agreement with Firm A
 - If you terminate their services and let my company manage your Association I will charge you 10% less than you are currently paying Firm A.



Inducement to Break Contract 43-40-25 (13)

■ **No Violation**

- Contacting Associations with general information about your services when they are under a contract with another management firm asking them to consider you next time they are contracting for services
- Best to include general verbiage that you are not seeking to solicit their business while they are currently under a contact with another firm



Violations (43-40-25)

- Failing to place (as soon after receipt as is practicably possible) any trust funds in the custody of the broker (23)

- Attempting to sell, lease or exchange the property of any member of a community association to which a licensee is providing CAM Service without the express written consent of that association to do so (32)
 - Practical solution: include authorization in management agreement



Violations (43-40-25)

- Obtain a brokerage agreement knowing or having reason to believe that another broker already has an exclusive agreement with the owner (26)
 - Unless the licensee has written permission from the broker;
 - However, a broker shall be permitted to present a proposal / bid for CAM if requested to do so in writing from a community association

- Failing to retain copy of contracts for 3 yrs. (27)



Violations (43-40-25)

- 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: (33)
 - A complete and accurate record of all transactions handled during the period of the contract and not previously accounted for
 - All records and documents received from the community association or received on the association's behalf
 - Any funds held on behalf of the community association



Brokerage Engagements

520-1-06

- Each brokerage engagement must include all terms and have a definite expiration date
 - Automatic renewal is okay as long as terms of renewal are very clear
- Licensee must furnish each person signing it a true copy



Brokerage Engagements

520-1-06

- Management agreement requirements
 - Identify the property (*or association*)
 - Contain all terms and conditions
 - Provide periodic (at least annually) written statement of income (*revenue*) and expense
 - State the amount of the fee and when it will be paid
 - Contain the effective date of the agreement and its termination date



Brokerage Engagements

520-1-06

- Management agreement requirements (continued)
 - Provide the terms and conditions for termination of the agreement
 - Contain signatures of broker and owner (*board*) or authorized agent
 - Provide a copy of the agreement to the owner
- Add brokerage firm license # to management agreement



Fidelity Insurance (520-1-.06)

- Broker who provides CAM Services and collects, maintains, controls, has access to or disburses community association funds shall be covered at all times under a fidelity insurance policy
- Unless such broker at no time collects, maintains, controls, has access to, or disburses community association funds totaling more than \$60,000
- What if the total is less than the minimum requirement?



Policy Requirements (520-1-.06)

- Coverage must be written by insurance company authorized to write policies in GA
- Must 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 association funds



Policy Requirements (520-1-.06)

- Broker shall maintain a separate policy for each community association managed.....*or such alternate fidelity coverage as is acceptable to the Commission*
- Broker shall maintain copy of policy and provide copy to community association



Policy Requirements (520-1-.06)

- Must cover the maximum amount of funds broker collects, maintains, controls, has access to, or disburses at any time the bond or insurance policy is in effect, BUT ***shall never be less than an amount equal to the sum of three month's assessments due from all the members of the association plus the amount of reserve funds***



Fidelity Insurance Example

- HOA has 200 SFH's
- Annual assessment is \$700, billed quarterly
- Association has \$30K in reserves

- What amount of fidelity insurance required?



Fidelity Insurance Example

- 200 owners x \$700 = \$140,000 annually, billed quarterly
- $\$140,000 / 12 \text{ months} \times 3 \text{ months} = \$35,000$
- $\$140,000 / 4 = \$35,000$
- $\$35,000 \text{ (3 mos. assessment)} + 30,000 \text{ (reserves)}$
- = \$65,000 Fidelity Coverage
- Maximum coverage = minimum coverage



Fidelity Insurance Example

- Same as original example, but what if the association also had \$10,000 in an operating account?
- Same as original example, but what if the assessment was billed annually instead of quarterly?



QUESTION

What if the association also had \$10K in an operating account?

ANSWER

The policy should cover the maximum amount of funds the broker collects, in this case \$75,000. The \$35,000 quarterly assessment plus \$30,000 reserve fund plus \$10,000 operating fund.



QUESTION

What if the association billed annually instead of quarterly?

ANSWER

The policy should cover the maximum amount of funds the broker collects, in this case \$170,000. \$140,000 annual assessment plus \$30K reserve fund.



Management of Firm (520-1.07)

Broker shall not conduct business under any name other than the one in which the license is issued

- Entity Legal Name
- GA Secretary of State
- GREC Registration
- Local business license



Management of Firm (520-1.07)

Broker-Affiliate Agreement Requirements

- Written agreement & terms of compensation
- Departing licensee return (in person) all plats of property, keys and other property which the releasing broker owns or for which the releasing broker is responsible
- Licensee terminating an affiliation with the firm shall 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



Management of Firm (520-1.07)

- Support staff may perform only ministerial duties, *(those that do not require discretion or the exercise of the licensee's own judgment)*
- An individual actively licensed with one firm (or license is inactive) may work as support personnel for a different firm with written consent from both brokers and may perform only ministerial duties at the second firm



QUESTION

No licensee shall be permitted to list, sell, buy, exchange, rent, lease or option real estate owned by the licensee without first advising, in writing, the broker –

Why is that?

ANSWER

- Will any brokerage fees be paid
- How will trust funds be handled
- Any marketing / advertising
- What contract forms will be used



Licensees Acting as Principals (520-1-.11)

- Licensees advertising to buy, sell or exchange real property for their own account must comply with the advertising requirements of 520-1-.09
- May hire a 3rd party broker to represent them as a buyer, seller, tenant or landlord



Advertising (520-1-.09)

Licensees Advertising as Principals

- CAM Licensees are prohibited from advertising under the licensee's own name to buy, sell or lease property, unless:
 - Property is owned by the licensee
 - Property is not under a brokerage engagement with a broker
 - Licensee's broker was notified in writing of the specific property to be advertised for sale, rent or lease
 - If the licensee's license is affiliated with a broker, the broker must give written consent to advertising the specific property and the advertisement itself



Advertising (520-1-.09)

- For this rule, *Advertising* means any manner by which a licensee makes known to the general public real estate for sale, rent, lease or exchange
- Any advertising that is misleading or inaccurate in any material fact or in any way misrepresents any real estate is prohibited
- All advertising by licensees, including CAMs must be under the direct supervision of broker and in the name of their firm



Advertising (520-1-.09)

Licensees Advertising as Principals

- Licensees are prohibited from advertising to sell, buy, rent, or lease property in a manner indicating that the offer to sell, buy, rent or lease is made by a private party not licensed by the GREC



Advertising (520-1-.09)

Regardless of whether the licensee's license is affiliated with a broker or on inactive status, any advertisement must include either

- The legend “seller, buyer, landlord, tenant (select one) holds a real estate license”
- Or “Georgia Real Estate License # _____”
- Or “GA R. E. Lic. # _____”
- Usually made in the disclosure section of a contact



Handling Real Estate Transactions (520-1-.10)

- Presenting Offers
- License # in Offers
- Responsibility to Distribute Copies
- Retention of Copies (3 years)
- Falsification of Transaction Documents
- Disclosure of Commissions, Fees and Rebates



The Federal Fair Housing Act

- Enforced by Dept. of Housing and Urban Development (HUD)
- Applies to residential real estate only
- Don't confuse: Fair Housing Act with the commonly discussed "FHA" which stands for Federal Housing Administration also part of HUD
- Don't confuse: Fair Housing Act with Americans with Disabilities Act (ADA) enacted in 1992



The Federal Fair Housing Act

- Civil Rights Act of 1866
- Fair Housing Act of 1968 (Title VIII)
- Housing & Community Development Act of 1974
- Fair Housing Amendment Act of 1988



The Federal Fair Housing Act

- Race
- Color
- National Origin
- Religion
- Sex
- **Familial Status**
- **Disability**





The Federal Fair Housing Act

Protected Class

- Race
- Color
- National Origin
- Religion
- Sex
- **Familial Status**
- **Disability**

Year Added

- 1866
- 1968
- 1968
- 1968
- 1974
- 1988
- 1988



The Federal Fair Housing Act

Blockbusting

- Inducing owners to list or sell their homes because a protected class will be moving into the community

Steering

- Channeling prospective buyers toward or away from communities

Redlining

- Refusing to make loans



Familial Status

May not discriminate against families in which one or more children under 18 live with:

- A parent
- A person who has legal custody of a child or children or
- The designee of the parent or legal custodian, with the parent or custodian's written permission



Note: Does not override local laws limiting the # of occupants in a dwelling / permits reasonable restrictions regarding Max. # of occupants to occupy a dwelling – cannot distinguish by relationship



Familial Status

- Also applies to pregnant women, and
- Anyone securing legal custody of a child under 18
- No discrimination permitted in the community's rules and regulations
- FHA mandates that all restrictions be “facially neutral”, meaning any law, rule or regulation must not, as written, discriminate against a particular group
- Rules against behavior is okay!



Discrimination Examples

- Rules regulating “adults-only” times
- Rules that specifically target children may violate the FHA
- Restrictions should not give special privileges to any age group

Not okay: Children shall not bring skateboards or bicycles into the gated pool area

Okay: Skateboards or bicycles are prohibited within the gated pool area



Familial Status Exemption

Housing for older persons is exempt from the prohibition against familial status discrimination if:

- The HUD Secretary has determined that it is specifically designed for and occupied by elderly persons under a Federal, State or local government program or
- It is occupied solely by persons who are 62 or older or
- It houses at least one person who is 55 or older in at least 80 percent of the occupied units, and adheres to a policy that demonstrates an intent to house persons who are 55 or older



Disability

The Fair Housing Act defines “disability” as:

- A physical or mental impairment which substantially limits one or more major life activities
- Have a record of such a disability or
- Are regarded as having such a disability



Disability – Examples of Major Life Activities

- Walking
- Seeing
- Hearing
- Speaking
- Breathing
- Learning
- Performing manual tasks
- Caring for oneself
- Working
- Sitting
- Standing
- Lifting
- Reading



Disability (also includes)

- Chronic Alcoholism
 - Chronic Mental Illness
 - AIDS, AIDS Related Complex
 - Mental Retardation
-
- Represents a complex topic – always seek legal advice



Disability

Must make “Reasonable Accommodations”





Common Fair Housing Complaints Against CAMs

- Refusal to allow use of amenities based on age (pool restrictions)
- Refusal to accommodate a required emotional support dog because of a disability (pet restrictions)
- Refusal to accommodate someone an assigned parking space because of a disability (parking space restrictions)



Enforcement and Penalties

- GREC License Law and Rules

Also

- The FHA is enforceable by private citizens and the Attorney General
- Court may impose a fine of \$50,000 for the first offense and up to \$100,000 for any subsequent violations



NOWACKHOWARD
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Parking Lot: Question Review



Thank You

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