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REAL ESTATE

Real Estate Brokers/Salespersons: Amended Provisions

CODE SECTIONS:	O.C.G.A. §§ 43-40-1 — 43-40-30 (amended)
BILL NUMBER:	HB 314
ACT NUMBER:	193
SUMMARY:	The Act revises Chapter 40 on real estate brokers and salespersons.

History

HB 314 is the culmination of a three-year plan of improvement written by the Real Estate Commission. Although it makes some substantive changes, the bill is characterized as a housekeeping bill.[1]

HB 314

HB 314 makes editorial and substantive revisions of O.C.G.A. Chapter 40. Under the 1985 revisions, approval of the Secretary of State for appointments to the Real Estate Commission is no longer required.[2] The Governor's appointments to the Commission made when the Senate is not in session remain effective until acted upon by the Senate.[3] The Governor may remove a member of the Commission after notice and opportunity for a hearing if the member is unable to perform or neglects to perform the duties of office, is incompetent or is dishonest.[4]

Several revisions regarding a change of status in licenses are made. A licensee seeking to reactivate a license must meet the continuing education requirements.[5] A nonresident licensee who ends his affiliation with a resident broker can avoid automatic termination of his license by placing it on inactive status.[6] Licensees who place their licenses on inactive status after June 30, 1985, are required to pay the biennial license fee. Failure to pay results in a lapsed license. Those on inactive status prior to July 1, 1985, remain subject to conditions for reactivating their licenses which

1. Interview with Charles Clark, Real Estate Commissioner of Georgia, in Atlanta (June 20, 1985).
2. O.C.G.A. § 43-40-2(a) (1984). (Since the Real Estate Commission was a division of the Secretary of State's office, appointments to it required approval of the Secretary of State and confirmation by the Senate.)
3. O.C.G.A. § 43-40-2(a) (Supp. 1985).
4. O.C.G.A. § 43-40-2(c) (Supp. 1985).
5. O.C.G.A. § 43-40-8(d) (Supp. 1985).
6. O.C.G.A. § 43-40-9(c) (Supp. 1985).

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were in effect when the licenses were placed on inactive status. Licenses placed on inactive status prior to July 1, 1985, will lapse after five years, but a licensee can seek reinstatement within ten years under the same terms which existed when the license became inactive. A licensee on inactive status must notify the Commission of a change of address within fourteen days.[7]

Some revisions of fees were made. Real estate schools and instructors are required to pay the same original application fee and biennial renewal fee as required for broker applicants and licensees.[8] The Commission has the power to impose reasonable fees for failure to:

> 1. notify the commission in writing within 14 days of a change in address, of opening or closing of a designated trust account, of transferring to a new company, or of leaving a firm to go on inactive status;
> 2. affiliate with a new company or apply for inactive status within 14 days of the commission's receipt of the licensee's license from the broker who has notified the licensee by mail to his last known address;
> 3. respond within 14 days to a written inquiry of the commission regarding information on any application the licensee has filed with the commission.[9]

Some fees such as the transfer fee were abolished.[10]

Other changes in the Commission's power include granting subpoena power to the commissioner or chairperson of the Commission to compel production of writings, documents or material for authorized investigation.[11] The results of investigations by the Commission can be released to other states' real estate commissions or comparable regulatory agencies whenever the investigation leads to the filing of a notice of hearing by the Commission.[12] When the Commission "revokes or suspends for more than 60 days a license, a school approval, or an instructor approval" or whenever one is surrendered after receipt of notice of a hearing, "the commission shall publish the name of such licensee, approved school, or approved instructor in its official newsletter."[13]

The aggregate amount of liability paid from the real estate education, research and recovery fund for acts of the licensee was increased to

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7. O.C.G.A. § 43-40-12(h) (Supp. 1985).
8. O.C.G.A. § 43-40-12(l) (Supp. 1985).
9. O.C.G.A. § 43-40-12(m) (Supp. 1985).
10. *Compare* O.C.G.A. § 43-40-19(c) (1984) *with* O.C.G.A. § 43-40-19 (Supp. 1985). (A transfer fee was charged when a licensee moved his license from one broker to another.)
11. O.C.G.A. § 43-40-27(c) (Supp. 1985).
12. O.C.G.A. § 43-40-27(d) (Supp. 1985).
13. O.C.G.A. § 43-40-27(e) (Supp. 1985).

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$40,000,[14] but each person establishing a claim against a licensee is limited to $10,000[15] from the fund and the $10,000 limit per transaction is unchanged.

Real Estate Commissioner Charles Clark explained that the exceptions to the application of this Chapter[16] were expanded to include the general partner of a limited partnership, spouses,[17] and managers of residential apartment complexes under contract approved by any federal agency.[18] He also stated that "spouses" refers to the subsequent list of owner, general partner of a limited partnership, lessor or prospective purchaser. These exceptions do not apply to brokers or other persons holding real estate licenses or persons selling property which must be registered under the Georgia Land Sales Act of 1982 or the Georgia Time Share Act.[19] Brokers who manage residential property under written management agreements may employ unlicensed persons to assist in the management of that property, but the broker is liable for the brokerage activities of the person employed to manage such property.[20] Within the exceptions provisions, the language referring to the attorney's compliance with the trust fund provisions of Chapter 40[21] was deleted to end duplication of supervisory power over trust accounts. Supervisory power remains with the State Bar of Georgia.

14. *Compare* O.C.G.A. § 43-40-22(b)(1) (1984) *with* O.C.G.A. § 43-40-22(b)(1) (1984) (The previous amount of aggregate liability was $20,000.)
15. O.C.G.A. § 43-40-22(b)(3) (Supp. 1985).
16. Clark, *supra* note 1.
17. O.C.G.A. § 43-40-29(a)(1) (Supp. 1985).
18. *Id.*
19. O.C.G.A. § 43-40-29(b) and (c) (Supp. 1985).
20. O.C.G.A. § 43-40-29(d) (Supp. 1985).
21. *Compare* O.C.G.A. § 43-40-29 (Supp. 1985) *with* O.C.G.A. § 43-40-29(3) (1984).

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