

2012 Calendar

GREC Brokerage Course & Trust Accounts Class dates for 2013 courses will be posted on the GREC home page in January.

Common Violations Class dates for 2013 courses will be posted on the GREC home page in January.

*Happy
Holidays from
the Georgia
Real Estate
Commission*

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Common Issues in Real Estate Litigation

Attorney Carol V. Clark of Carol Clark Law, Atlanta, GA spoke at the GREC Annual School meeting in November regarding three of the most common issues she sees in her real estate law practice. She used the 3D acronym to describe the 3 common issues:

1. **D**escription
2. **D**isclosure
3. **D**efinition

Remember the 3D's

1. **Description**

"Review your purchase and sale agreements with a fine-toothed comb. Make absolutely sure that the property description paragraph, which is Paragraph 1 of the GAR Purchase and Sale Agreement, contains the correct land lot, district, section, county, address city, zip code, block, unit, phase/section, subdivision, plat book, and acreage. **Do not forget to attach the exhibit describing the property.** Attach a plat or survey if one is available. Never rely on just a street address. Let there be no misunderstanding regarding the parties' intent as to the location and quantity of the property to be conveyed.

2. **Disclosure**

Take particular care in assisting your seller clients with their seller's disclosure form. Don't just give it to them to fill out. Discuss with them each item on the list and how they intend to respond. Disclose even the most obvious things that you believe in your professional judgment a

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buyer would want to know about. Disclose disclose disclose!

3. **Definition**

BRRETA was enacted in part to govern relationships that are not set out in writing. Specific written agreements identifying the exact nature of the parties' relationships and duties are always advisable. Make sure that your own listing and other agreements are in good order. Make sure that provisions regarding payment of commissions are carefully spelled out. Carefully specify in writing who you represent and in what capacity. If the term of the agreement is about to expire, require a written extension; do not rely on gentlemen's agreements and loose assumptions that your efforts will be rewarded after the term of the agreement has expired. Get it in writing!"

Ms. Clark explained that when these types of dispute occur, they do their best to resolve them without litigation.

Copyrighted Real Estate Contract Forms & Registered Trademarks

There are approximately 85,000 licensees in Georgia. Some of those licensees voluntarily join the Georgia Association of Realtors®. Those that are members of GAR also belong to the National Association of Realtors® and their local board. The "board" is a membership association and is not related to the Georgia Real Estate Commission. Upon joining these organizations, the members can refer to themselves as Realtors®. Therefore, not all licensees are Realtors®.

This is significant because "Realtor®" is a registered trademark that you must have permission to use.

The Realtor® organization offers many benefits and services, however it is not a requirement of licensure. One of the integral components of the Realtor organization is the NAR Code of Ethics. The Realtor® Code of Ethics can be a valuable guideline for professional and

ethical real estate brokerage practices. Many texts and instructors often reference the Code of Ethics, however it is not part of the License Law, Rules, and Regulations.

Many Realtors® utilize the contract forms produced by GAR and they are quite useful. However, only Realtors® are permitted to use these copyrighted forms.

The Georgia Real Estate Commission does not require the use of specific contract or lease forms and does not endorse any particular legal forms. Licensees may use any other contracts and other legal documents provided they are prepared by an attorney. In fact, in many commercial transactions, contracts are prepared specifically for that transaction.

Be aware of the many copy protected works and trademarks in the real estate industry and be diligent in using them properly, especially in advertising.

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Focus on Terminology: "Copyright, Trademark, Patent, Trade Name"

The following are excerpts from the Frequently Asked Questions section of the Federal Government Library of Congress web site <http://www.copyright.gov/>

- **What is copyright?**

"Copyright is a form of protection grounded in the U.S. Constitution and granted by law for original works of authorship fixed in a tangible medium of expression. Copyright covers both published and unpublished works."

<http://www.copyright.gov/help/faq/faq-general.html#what> Library of Congress

- **How is a copyright different from a patent or a trademark?**

"Copyright protects original works of authorship, while a patent protects inventions or discoveries. Ideas and discoveries are not protected by the copyright law, although the way in which they are expressed may be. A trademark protects words, phrases, symbols, or designs identifying the source of the goods or services of one party and distinguishing them from those of others."

The following are excerpts from the Official Code of Georgia as noted:

- **O.C.G.A. TITLE 10 Chapter 1 Article 16 Trademarks, Service Marks, And Trade Names** <http://www.grec.state.ga.us/about/renew.html>

(4) "Service mark" means any word, name, symbol, or device or any combination thereof adopted and used by a person to identify the services of one person and to distinguish them from the services of others.

(5) "Trademark" means any word, name, symbol, or device or any combination thereof adopted and used by a person to identify goods made or sold by him and to distinguish them from goods made or sold by others."

- For real estate purposes, Trade name includes a Trade mark or Service mark, and it must be registered with the Commission in order to advertise or do business in that name.



The Appraisers Page

Useful Links:

[GREAB Web Site](#)

[Appraisal Act](#)

[GREAB Disciplinary Sanctions](#)

Gross Living Area (GLA)

By: D. Scott Murphy, SRA

Probably one of the most important elements of a home, in terms of value, is the overall living space or gross living area (GLA). It is probably one of the most misunderstood elements as well. There are a number of standards for calculating GLA but the one that is used by appraisers is the "ANSI" – American National Standard Institute.

The ANSI standards define "finished area" as "an enclosed area in a house suitable for year-round use, embodying walls, floors, and ceilings that are similar to the rest of the house." Measurements must be taken to the nearest inch or tenth of a foot, and floor area must be reported to the nearest square foot. Garages are specifically excluded.

The way I explain it is that if you put your foot on the floor of any given level and any portion of that floor is below the grade of the ground, it is considered below grade space and CAN NOT be included in GLA. Another way to think of it is that if you could not put a door on any part of the perimeter than it is below grade space. This comes into play in parts of the country where there are homes with basements and other home styles such as split level and split foyer homes where some levels are below the grade of the ground.

The appraiser then will take the areas above grade and count the rooms. The appraiser will count the total number of rooms, then the number of bedrooms and then the number of bathrooms. The room count will only include rooms which are above grade; bedrooms and bathrooms below grade will not be included in the room count. Foyers, breakfast areas, laundry rooms and bathrooms are excluded from the total room count. So for example, we might have a typical two story traditional home. The first floor has a foyer, living room, dining room, family room, kitchen, breakfast area, laundry room and a half bathroom. The second floor might have four bedrooms and two full bathrooms. Our total room count is eight (living room, dining room, family room, kitchen and four bedrooms), our bedroom count is four and our bathroom count is two and a half (8-4-2.5).

Let's define a bedroom before we go any further. A bedroom is a room of "adequate size" – which is defined as no less than 100 square feet. It must have a closet, a window, a door; it must be heat/cooled and finished to the same quality as the rest of the house. It must be ABOVE GRADE to be counted as a bedroom. And the most forgotten or unknown factor in defining a bedroom is that it must have ready access to a FULL bathroom. A full bathroom is one which has a shower or a tub as well as sink and toilet. Think about it, if you have a bonus room finished up over a garage; it has a closet, window, door, heated/cooled and finished to the same quality as the rest of the house but you have to go down the stairs and across the house to use the bathroom – that does not function on a long-term basis as a bedroom. Another common scenario is that you might have four "bedrooms" on the second floor of a house. Three of the bedrooms have private baths. How is someone in the fourth bedroom supposed to get to the bathroom?





The Appraisers Page

Useful Links:

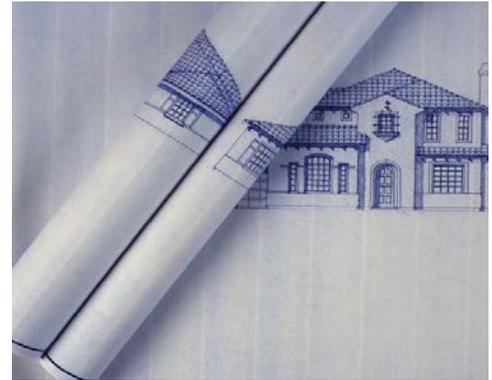
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Continued from previous page...

If you answered “by going through one of the other bedrooms” you are incorrect. That does not function on a long-term basis as a bedroom. We would instead call it a den or office.

Probably the most common scenario is as follows: let’s take a traditional two story house. On the first floor you have a living room, dining room, kitchen, one half bathroom, laundry and a “bedroom”. The problem here is that the “bedroom” is only serviced by a half bath. Again, this does not function on a long-term basis as a bedroom. Here is where it is valuable to have an appraiser as a consultant during or prior to the construction process of a new house.

Getting back to below grade space, let me stop right here and assure you that value is given to these “below grade” spaces, they just have to be handled separately. By creating and utilizing these measuring standards, appraisers are able to accurately compare and value homes. All appraisers use the same measure standards as a basis for determining GLA, however, there may be some local exceptions so it is important to check with a local certified appraiser. One example of a local exception is in lake front or mountain home communities. The homes are built on such a slope that often living areas are built into the hill and may span three or four levels. Many times the most upper level (the only part above grade) is just the entry area and great room. Kitchens, bedrooms and other living areas are below grade. The most important thing to remember here is consistency. As long as you are consistent on how you define the space and are sure your comparables are calculated the same as your subject, you will be fine. GLA is not as much an issue in parts of the country where all the homes are built on slab.

It is critical that you recognize these factors and determine gross living area correctly. This forms the foundation for the valuation of the entire property.

Upcoming Issues:

- *Measuring Your Home Correctly*
- *Why Don't Appraisers Rely on the Cost Approach*