

**2008 Dates to Note**

- **June 16, 2008**  
Georgia Broker Course  
[Augusta Board of Realtors](#)
- **June 17, 2008**  
Trust Account Class  
[Augusta Board of Realtors](#)
- **July 16, 2008**  
Georgia Broker Course  
[Atlanta Board of Realtors](#)
- **July 17, 2008**  
Trust Account Class  
[Atlanta Board of Realtors](#)
- **July 24-25, 2008**  
[Georgia Instructor Training \(GIT\)](#)  
Georgia Institute of Real Estate

[GREC Disciplinary Sanctions](#)

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**Focus on Terminology:**

*"Executory...Executed"*

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# Contracts May Be Created by More than a Signed Agreement

Contracts may be formed in a variety of ways, through written documentation, actions, words or a combination of them all. It is important to realize that sometimes, *"our actions truly do speak louder than words."* Since email is an accepted method of communication, it can become a useful history line of the transaction and it may also provide evidence that may be used or needed later. Records of email transmissions have been used in lawsuits and can be available virtually indefinitely.

It is often easier to respond with a quick email than it is to draft a formal letter, but realize it probably has the same impact. Knowing that the words are only part of the whole message, remember that the tone of the email also affects how it is received. Advanced thought, planning and editing before sending an important response is time well spent.

Two topics of contract law should be reviewed as they could apply here. There may be Express Contracts or Implied Contracts.

**1. Express Contract:**

The discussion and agreement of terms may be oral or written. The best example of an express contract is a signed sales contract.

**2. Implied Contract:**

The conduct or actions of the parties and the intent of the parties can also form a contract. The following describes an example of an implied Contract:



*"A builder consistently allows the buyers of newly constructed houses to move their belongings into their house before the closing. The contract does not mention this practice and the builder never charges rent. Now the builder will not allow the buyer of the next property to move in before closing unless she pays rent. The builder's previous actions imply that the buyer has the right to free use of the house before closing." (Section 17.02, The Georgia Real Estate Guide.)*

Remember that real estate licensees are held to a higher standard than the general consumer with regards to knowledge concerning the formation of contracts and basic real estate transactions. Not only it is important to be reminded that what you "do" affects the deal, but what you might "not do" can also be influential to the transaction.

In addition, be aware of how your emails may be received or interpreted and be reminded that such communication can also serve as proof of the creation of a contract.

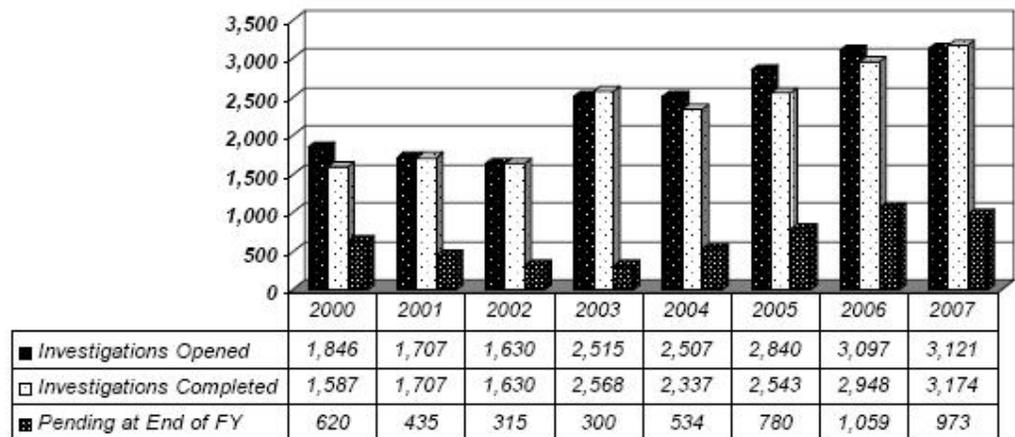
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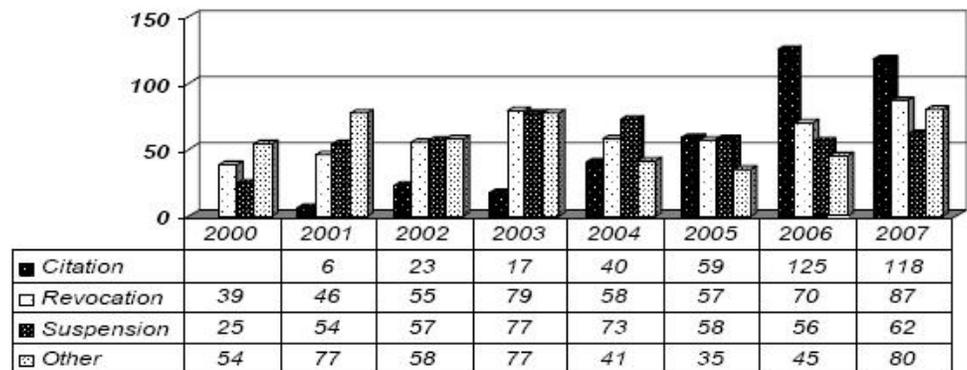
**GREC ANNUAL REPORT**



GREC publishes an [Annual Report](#) each year that is posted on the website. It gives a summary of investigations done and the disciplinary actions issued. The following graph shows the increased number of necessary investigations is not overly significant considering the increased number of licensees.



[GREC Disciplinary Sanctions](#) are posted on the website. Most cases are resolved without the Commission’s holding a formal hearing. Formal Disciplinary Actions are either citations or sanctions, suspensions and in some cases revocation.



**Focus on Terminology: “Executory Contract... Executed Contract”**

The word “executed” is often used in a misleading manner. It is often said that once all parties have actually *signed the agreement*, “that is It has been executed,” when in reality, under the true definition, it has not. During the time period that begins after all the necessary signatures are on the contract, the parties have certain obligations to perform. That time period to satisfy their obligations is considered the “**executory**” phase.

Once all obligations and conditions of the agreement have been fulfilled by all the parties involved, then the contract is said to be “**executed**.”

Although semantics may seem perfunctory, a true understanding of the formation of the contract, the obligations of the parties and completion of the transaction is important. Once the contract is “**executed**” by true definition, the contract is merged with the deed and of no other force, unless certain conditions of the contract are stipulated to survive beyond the actual closing.

In the field, the phrase “the contract is ‘executed’” may refer to the signatures, but understand that once the closing takes place, it is really **executed**.