

2019 Calendar

GREEA Spring Symposium

- May 10, 2019 Atlanta Realtors® Center www.greaa.org

Georgia Instructor Training Workshops (GIT)

- October 16 & 17, 2019

[Link to the Georgia Real Estate License Laws, Rules, and Regulations](#)

[Link to GREC Disciplinary Actions](#)
View Current Suspensions and Revocations

[Link to Proposed Rule Changes](#)

Georgia Real Estate Infobase

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The Case of the Frustrated Licensee

The Georgia Real Estate Commission received a Request for Investigation from a licensee regarding the failure to disclose to a seller all terms of the sharing of a commission. During the investigation, a licensee expressed her frustration regarding previous transactions in which her team members showed the team's listings to buyers and the buyers subsequently used other agents to submit the offers. To prevent this from reoccurring, she implemented a team policy of stating within the FMLS advertising that team members would be happy to show the property, however, if they did, the commission to the selling broker would be reduced to 1% of the sales price.

Contrary to this team policy, the team used the standard GAR listing agreement between the broker and seller, which stated, "Broker agrees to pay cooperating broker, if any, 3% of the sales price of the property".

The investigation into this matter found the following:

- The licensee failed to submit the advertisement regarding the 1% to her broker for review before it was posted. In fact, she stated this condition in three other listing advertisements. [Violation: 520-1-.09 Advertising](#). 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. [Violation 43-40-25 9\(b\)\(28\)](#) It is an unfair practice and violation to be or become a party to any falsification of any portion of any contract or other document involved in any real estate transaction.

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April 2019 Commission Actions Taken

Cases Sent to the Attorney General for Review and Disposition by Consent Order or by Hearing	0
Cease & Desist Orders Issued	2
Citations Issued	6
Letter of Findings Issued	4
Consent Orders Entered Into	0
Final Orders of Revocation of Licensure	2
Cases Closed for Insufficient Evidence or No Apparent Violation	12
Licensing Cases - Applicant has a Criminal Conviction - License Issued	8
Licensing Cases - Applicant has a Criminal Conviction - License Denied	1
Total	35

[Click here to review a legend of the disciplinary actions the Commission may impose.](#)

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Comments
&
Suggestions

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as Instructor CE,
not approved as
License Law CE)

*“Avoiding
Trust
Account
Trouble”*

*“Practicing
Real Estate &
Staying Out
of Trouble”*

*“Being a
Broker and
Staying Out
of Trouble”*

Georgia Real Estate
Commission
Suite 1000
International Tower
229 Peachtree Street NE
Atlanta, GA 30303-1605
Phone 404-656-3916

- The seller was not aware and did not agree to the 1% co-op as he was only aware of the 3% as stated in the listing agreement that he signed. The licensee cannot offer terms other than those agreed to in the listing agreement. **Violation: 43-40-25 (b)(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.

It is significant to note that the listing broker stated that in the past he had sent emails to his affiliates informing them that they could not include a statement in their advertisements sharing less commission than the seller had contracted for a co-op broke to receive. The broker had addressed this topic in sales meetings. He would also add the topic to the firm's Policies and Procedures Manual.

The Commission issued a Citation to the licensee requiring a payment of \$800 (a fine of \$400 and \$400 for administrative, investigative and legal expenses of the Commission). She was also required to complete a 3-hour continuing education course “Practicing Real Estate and Staying Out of Trouble” within 30 days or be subject to further disciplinary actions.

Ethically Speaking

Proper disclosure is important both in relation to ethics and in relation to avoiding violations of the License Law, Rules and Regulations. The [NAR® Code of Ethics](#), Standard of Practice 3-4 addresses the necessary disclosure of any variable or differential in the terms of compensation between brokers, and such disclosure should clearly be determined in advance of any transaction. In addition, the seller and buyer should be made aware of any conditions affecting the marketing of the property.



Absolutely Must Know Section



Unless all the parties in a transaction agree in writing, a licensee cannot alter the terms of an agreement once the agreement is accepted.

43-40-25. Violations by licensees, schools, and instructors; sanctions; unfair trade practices (b) Licensees shall not engage in any of the following unfair trade practices:

(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; (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.



Focus on Terminology: “Commission” and “Disclose”

Commission:

Definition: a charge for service; compensation; fee; or other thing of value

Synonyms: charge; price; cost; rate

Disclose:

Definition: to reveal; expose, to make known or public

Synonyms: divulge; unmask; uncover; unveil; bare



The Appraisers Page

Useful Links:

[GREAB Web Site](#)

[Appraisal Act](#)

[GREAB Disciplinary Sanctions](#)

Common appraisal reporting errors – Part 1

By: D. Scott Murphy, SRA

Most residential real estate appraisals are prepared on standardized forms. This is done to ensure consistency across the industry and to simplify the review process for users such as real estate agents, lenders, and owners. About 10 years ago the government-sponsored entities (i.e., Fannie and Freddie) further standardized the reports by requiring mandatory use of codes used to describe the condition and quality of the Subject and the comparables. In addition, they repurposed several fields on the form to facilitate more accurate extraction of appraisal data. Some of these recent changes make it difficult for an agent or homeowner to understand the report. To compound matters, many appraisers are not completing the repurposed fields correctly. In this article I want to walk through a traditional residential appraisal report and point out areas of confusion as well as fields I regularly see completed incorrectly.

The first section of the appraisal report is the “subject” section. In this space the appraiser identifies the property to be appraised, provides the legal description, current year taxes, etc. With the recent trend of creating newer, smaller municipalities in the Atlanta area, I see the city name listed incorrectly on a regular basis. If a property falls within the new city limits, it should be identified as being in the new city. Sounds pretty simple, but you would be amazed how many appraisers and underwriters I fight with over this topic. Agents should also be verifying the city information when entering listings or writing contracts.

When a lender closes a loan, the information is required to be exactly consistent on all the documents (contract, appraisal, inspection, insurance, etc). Quite often the conflict begins with the contract, which has the “old” (or incorrect) city name on the contract and the lender picks that up and populates it across all their forms and documents. Most lenders feel that USPS.com is the definitive source for a correct address. The problem is that USPS allows the use of the old and the new city name for up to 5 years. The assessor’s tax records still show the old city and any corresponding bills and paperwork the seller might have still show the old city name. Which is correct? The way to verify is to go to the “new” city’s website and review the city limits or boundary map, then locate your property. Some cities will also list streets or subdivisions included in the newly incorporated area.

The last part of the subject section is where the appraiser is to report any prior or current **listings** of the subject property. This is not where one reports any prior sales of the subject, that is later in the sales history section of the report. The purpose of this section is to identify if the subject property has had any exposure to the market in the past 12 months. Market exposure is an extremely important element in determining market value. New construction properties can cause confusion for appraisers in this regard. The question is “was the property listed and exposed to the market?” For most pre-sale properties the answer is no – the home was not exposed as it stands (or will stand in proposed scenarios). Which opens up the question, are pre-sale new construction sales truly market value sales? Just because one buyer takes every option available, does not mean a “typical buyer” would pay a similar amount. This section is actually more important for resales. Is the property which sold “off-market” or as a pocket listing a true arm’s length transaction. Were true, unimpeded market forces at work when the buyer and seller agreed on a sales price?

In the next section of the form, the appraiser analyzes the sales contract to attempt to determine if the sale is arm’s length or if there are any other circumstances which may have influenced the agreed upon value. One question that the appraiser must answer is “Is there any financial assistance to be paid by **any** party on behalf of the borrower?” Notice the specific wording - it does not say “Is the seller paying any closing costs?”. Anything given to or credited to



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the borrower to entice them to agree upon the sales price must be considered. This would include, but is not limited to: prepaid HOA fees; a car, boat, or other personal property being included in the sale; lender-paid closing costs; agent credit in lieu of commission; and of course any seller paid closing costs. You need to ask yourself “Would the buyer have paid the agreed sales price if they were not getting _____?”. For example, would the buyer still pay the same price if they were not getting the additional refrigerator in the garage, the pool table in the basement? Often these items are insignificant and do not impact the sales price. In those cases, the answer would be yes, they would still pay the agreed upon sales price. Most market participants do not understand why the appraiser is required to review the contract. There can be many factors or pieces to the deal which helps the appraiser understand the agreed upon sales price. There are also many situations where the appraiser would arrive at a different value based on the fact that the contract stipulates certain conditions (particularly repairs or improvements) that will have a true impact on market value.

To this point in our conversation about changes to the appraisal report, there have been very few of any significance. The next section, the neighborhood section, has one of the biggest

and most confusing changes made to the report form to date. In order to frame my comments about the new neighborhood section, it is important to know that, until March 2009, there was no specific reporting method for the appraiser to demonstrate or prove his opinion of appreciation or depreciation in the market. The neighborhood section, which looked exactly as it does today, had one small box that the appraiser checked to indicate if the neighborhood was *increasing, stable or declining*.

Neighborhood Characteristics				One-Unit Housing Trends			
Location	<input type="checkbox"/> Urban	<input checked="" type="checkbox"/> Suburban	<input type="checkbox"/> Rural	Property Values	<input type="checkbox"/> Increasing	<input checked="" type="checkbox"/> Stable	<input type="checkbox"/> Declining
Built-Up	<input type="checkbox"/> Over 75%	<input checked="" type="checkbox"/> 25-75%	<input type="checkbox"/> Under 25%	Demand/Supply	<input type="checkbox"/> Shortage	<input checked="" type="checkbox"/> In Balance	<input type="checkbox"/> Over Supply
Growth	<input type="checkbox"/> Rapid	<input checked="" type="checkbox"/> Stable	<input type="checkbox"/> Slow	Marketing Time	<input checked="" type="checkbox"/> Under 3 mths	<input type="checkbox"/> 3-6 mths	<input type="checkbox"/> Over 6 mths

The appraiser was to analyze the subject’s market area and report the overall trends. A very wise person involved with the form conversion said “The overall market trends are fine but what we really want to know is what is happening in our submarket – what are the trends of **comparable** properties?”. Most market area have many submarkets. Most large subdivisions have numerous phases, some might be homes in the \$300’s, another homes in the \$500’s and then the “estate” section with home over \$1MM. Might it be that the \$500’s are stable, the \$300’s are appreciating like crazy and the \$1M’s are in a slight decline? If you analyze all the homes in the overall market you get a very different result than the individual submarkets.

What Fannie Mae did was “repurpose” the housing trend boxes in the neighborhood section and ask the appraiser to report only the submarket. The analysis must be done with **comparable** properties only. There are many appraisers I come across who do not understand this. They are looking at the overall market not the submarket. This then leads them to an incorrect interpretation of appreciation or depreciation for the subject comparable properties. This can be quite misleading to a reader of the report and can cause unnecessary “red flags” when done incorrectly.

This article will be the first in a series of articles looking at the standard appraisal form and pointing out important areas and common errors. Next month I will focus on the form Fannie Mae introduced in 2009 which gives the appraiser a canvas to report and analyze historic data in order to properly complete the neighborhood section and adjust the comparables sales.