

PUBLIC HEARING - OCTOBER 13, 2021

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NOTICE OF INTENT TO ADOPT PROPOSED
AMENDMENTS TO THE GEORGIA REAL ESTATE COMMISSION RULES
CHAPTER 520
Rule 520-1-.02 & Rule 520-1-.09
AND NOTICE OF PUBLIC HEARING

TO ALL INTERESTED PARTIES:

Notice is hereby given that pursuant to the authority set forth below, the Georgia Real Estate Commission (hereinafter "Commission") proposes amendments to the Georgia Real Estate Commission Rules, Chapter 520; Rule 520-1-.02 & Rule 520-1-.09 (hereinafter "proposed rule amendments").

This notice, together with an exact copy of the proposed rule amendments and a synopsis of the proposed rule amendments, is being disseminated to all persons who have requested, in writing, that they be placed on a distribution list. A copy of this notice, an exact copy of the proposed rule amendments, and a synopsis of the proposed rule amendments may be reviewed during normal business hours of 8:00 a.m. to 4:30 p.m., Monday through Friday, except official State holidays, at the Georgia Real Estate Commission, Suite 1000 International Tower, 229 Peachtree Street, N. E. Atlanta, Georgia 30303. These documents will also be available for review on the Georgia Real Estate Commission web page at <http://www.grec.state.ga.us>. Copies may also be requested by contacting the Commission office at (404) 656-3916. A public hearing will be held at 9:30 a.m. on October 13th, 2021, at the Georgia Real Estate Commission, Suite 1000 International Tower, 229 Peachtree Street, N. E., Atlanta, Georgia 30303 to provide the public an opportunity to comment upon and provide input into the proposed rule amendments.

At the public hearing anyone may present data, make a statement, comment or offer a viewpoint or argument whether orally or in writing. Lengthy statements or statements of a considerable technical or economic nature, as well as previously recorded messages, shall be submitted for the official record. Oral statements should be concise and will be limited to five (5) minutes per person. Additional comments should be presented in writing. Written comments are welcome. Such written comments shall be legible and signed, should contain contact information from the

maker (address, telephone number and/or facsimile number, etc.) and be received in the office prior to the close of business (4:30 P.M.) on October 4th, 2021, to allow for timely processing. Written comments should be addressed to Frank Lynn Dempsey, Georgia Real Estate Commission, Suite 1000 International Tower, 229 Peachtree Street, N. E., Atlanta, Georgia 30303.

The proposed rule amendments will be considered for adoption by the Commission at its meeting on October 13th, 2021, at 9:30 a.m. following the public hearing. According to the Department of Law, State of Georgia, the Georgia Real Estate Commission has the authority to adopt proposed rule amendments to Rule 520-1-.02 & Rule 520-1-.09 pursuant to authority contained in O.C.G.A. §§ 43-40-2 (e).

The Commission will consider at its meeting on October 13th, 2021, whether the formulation and adoption of the proposed rule amendments imposes excessive regulatory cost on any Georgia real estate licensee and whether any cost to comply with the proposed rule amendments could be reduced by a less expensive alternative that fully accomplishes the objectives of O.C.G.A. § 43-40-2 (e).

Additionally, at the meeting on October 13th, 2021, the Commission will consider whether it is legal or feasible to meet the objectives of O.C.G.A. § 43-40-2 (e) to adopt or implement differing actions for businesses as listed in O.C.G.A. § 50-13-4 (a), (3)(A), (B), (C) and (D). The Commission will consider whether the formulation and adoption of the proposed rule amendments will impact every real estate licensee in the same manner.

For further information, contact the Commission at (404) 656-3916.

This notice is given in compliance with O.C.G.A. § 50-13-4.

This 8th day of September, 2021.

A handwritten signature in black ink, appearing to read "Lynn Dempsey", with a stylized, cursive script.

Lynn Dempsey

Georgia Real Estate Commissioner

Posted: September 8th, 2021

SYNOPSIS OF PROPOSED AMENDMENTS TO THE
GEORGIA REAL ESTATE COMMISSION RULES

CHAPTER 520

Rule 520-1-.02

Purpose: The purpose of this proposed amendment is to define the terms “Team” and “Team Leader” as they relate to real estate brokerage activity in Georgia.

Main Feature: Defining the terms “Team” and “Team Leader”.

DIFFERENCES BETWEEN THE EXISTING RULES AND THE PROPOSED
AMENDMENTS TO THE GEORGIA REAL ESTATE COMMISSION RULES

CHAPTER 520

Rule 520-1-.02 (2)

[Note: underlined text is proposed to be added; strikethrough text is proposed to be deleted.]

- (1) **Terms Defined by 43-40-1.** As used in this Chapter and Chapters 520-2 and 520-3, the terms "associate broker," "broker," "commission," "commissioner," "community association," "community association management services," "community association manager," "licensee," "person," "property management services," "purchaser," "real estate," and "salesperson" have the same definitions as provided for in O.C.G.A. Section 43-40-1.
- (2) Other Terms. As used in this Chapter and Chapters 520-2 and 520-3, the term:
 - (a) "Agency" means every relationship in which a real estate broker acts for or represents another by the latter's express authority in a real property transaction;
 - (b) "Applicant" means any person who has completed all of the requirements for a license or an approval as set forth in O.C.G.A. Chapter 43-40 and in any Chapter of the Commission's Rules and Regulations and who has submitted a complete application on the proper form accompanied by the correct fee;
 - (c) "Bank" means any financial institution regulated by a member of the federal financial institutions examination ~~counsel~~ council and authorized to provide federally insured checking accounts;
 - (d) "Brokerage engagement" means a written contract wherein the seller, buyer, landlord, or tenant becomes the client of the broker and promises to pay the broker a valuable consideration or agrees that the real estate broker may receive a valuable consideration from another in consideration of the broker's producing a seller, buyer, tenant, or landlord ready, able, and willing to sell, buy, or rent the property or in consideration of the broker's performing property management services or performing community association management services. Such contracts or agreements as an exclusive listing contract, an open listing contract, a buyer broker agreement, a property management agreement, a community association management agreement, and an exclusive tenant representation contract are examples of brokerage engagements;
 - (e) "Brokerage relationship" means the agency and non-agency relationships which may be formed between the broker and the broker's clients and customers as a result of the brokerage engagement;
 - (f) "Buyer" means a purchaser, a person who acquired or attempts to acquire or succeeds to an interest in real estate;

- (g) "Candidate for Licensure" means any person who is in the process of completing the requirements for a license or an approval as set forth in O.C.G.A. Chapter 43-40 and in any Chapter of the Commission's Rules and Regulations but who has not successfully completed all of them.
- (h) "Client" means a person who has entered into a brokerage engagement with a real estate broker;
- (i) "Customer" means a person who has not entered into a brokerage engagement with a broker but for whom a broker may perform ministerial acts in a real estate transaction;
- (j) "Dual agent" means a broker who simultaneously has a brokerage relationship with both seller and buyer or both landlord and tenant in the same real estate transaction;
- (k) "Firm" means a sole proprietorship, partnership, limited liability company, or corporation licensed by the Commission as a broker;
- (l) "Franchise name" means any name, the use of which requires obtaining permission from another who has an existing and continuing right in that trade name by virtue of any state or federal law;
- (m) "Franchisee" means a firm licensee authorized to use a franchisor's trade name as part of or in conjunction with the licensee firm's name;
- (n) "Franchisor" means a business entity owning a trade name whose use by others the owner of the trade name controls and authorizes;
- (o) "Instructional hour" means a period of time of at least fifty minutes of instruction or other learning activity;
- (p) "Military" means the United States armed forces, including the National Guard;
- (q) "Military Spouse" means a spouse of a service member or transitioning service member;
- (r) "Ministerial acts" means those acts which the broker or affiliated licensee performs for a person which do not require discretion or the exercise of the broker or affiliated licensee's own judgment;
- (s) "Service Member" means an active or reserve member of the armed forces, including the National Guard;
- (t) "Statutory overnight delivery" means delivery of a document through the United States Postal Service or through a commercial firm which is regularly engaged in the business of document delivery or document and package delivery in which the sender:
 1. has directed that delivery be not later than the next business day following the day on which the document is received for delivery by the United States Postal Service or the commercial firm and
 2. receives a receipt acknowledging receipt of the document signed by addressee or an agent of the addressee;
- (u) "Team" means one or more licensees and the support personnel who

1. act on behalf of, and are affiliated with, the same firm;
2. work together on a regular basis to provide the services of a broker;
3. represent themselves to the public as a team; and
4. are identified by a team name.

(v) “Team Leader” means a licensee designated by the broker as the licensee responsible for supervising the members of the team and coordinating with the broker any marketing, advertising, or related activities as required by laws and Commission rules. Each team in a firm shall have a team leader. Each team leader shall maintain an accurate list of the names, license numbers, and contact information for each licensee on the team, and shall regularly provide the list to the broker of the firm whenever a licensee joins or leaves the team

~~(u)~~ (w) “Transitioning Service Member” means a member of the military on active duty status or on separation leave who is within twenty-four months of retirement or twelve months of separation; and

~~(v)~~ (x) “Timely” means a reasonable time under the particular circumstance.

SYNOPSIS OF PROPOSED AMENDMENTS TO THE
GEORGIA REAL ESTATE COMMISSION RULES

CHAPTER 520

Rule 520-1-.09

Purpose: The purpose of this rule is to provide guidance to real estate licensees and firms and clarity to the general public, regarding advertising by real estate teams in Georgia, by identifying requirements that regulate the advertising of teams.

Main Features: Identifying the responsibilities of licensees, team leaders, and brokers when advertising as a team. Identifying required and prohibited words and phrases used when advertising as a team.

DIFFERENCES BETWEEN THE EXISTING RULES AND THE PROPOSED
AMENDMENTS TO THE GEORGIA REAL ESTATE COMMISSION RULES
CHAPTER 520
Rule 520-1-.09

[Note: underlined text is proposed to be added; strikethrough text is proposed to be deleted.]

(1) Definitions.

(a) **Advertising or Advertisement.** For the purposes of this Rule, the term “advertising” or “advertisement” means any manner, method, or activity by which a licensee through the use of any media makes known to the general public real estate for sale, rent, lease, or exchange.

(b) **Media.** For the purposes of this Rule, the term “media” includes, but is not limited to, print, photographs, broadcast, and the Internet including, but not limited to, such examples as newspapers, magazines, flyers, posters, business cards, billboards, radio, videos, television, signs (including office, directional, “for sale,” “for lease,” “sold,” or vehicle signs), newsletters, voicemail, email, facsimile transmissions, Internet websites, blogs, video blogs, property listing database services, email farming, news groups, discussion lists, bulletin boards, social networking/social media, instant text messages, multimedia advertising, banner ads, pop-ups, and similar media.

(2) Misleading Advertising. Any advertising that is misleading or inaccurate in any material fact or in any way misrepresents any real estate is prohibited. Whenever a licensee becomes aware that a principal with whom the licensee’s firm has a brokerage engagement is advertising to sell, buy, rent, lease, or exchange real estate in such a manner that is inconsistent with this rule, the licensee ~~must~~ shall immediately take steps to stop the advertising until it complies with this rule.

(2.1) Advertising by Affiliated Licensees. All advertising by associate brokers, salespersons, and community association managers ~~must~~ shall be under the direct supervision of their broker and in the name of their firm.

(3) Written Permission to Advertise. A licensee shall not advertise any real estate for sale, rent, lease, or exchange unless the licensee has first secured the written permission of the owner, the owner's authorized agent, or the owner of a leasehold estate. When such permission is granted, a licensee advertising real estate that is listed with another firm shall clearly and conspicuously disclose that fact and the name of the listing firm unless the listing firm has expressly agreed in writing to waive those clear and conspicuous disclosures.

(4) Discriminatory Advertising Prohibited. A licensee shall not advertise to sell, buy, exchange, rent, or lease real estate when such advertisement is directed at or referred to persons of a particular race, color, religion, sex, handicap, familial status, or national origin. The contents of any advertisement ~~must~~ shall be confined to information relative to the real estate itself, and any advertisement that is directed at or referred to persons of any particular race, color, religion, sex, handicap, familial status, or national origin is prohibited.

(5) Internet Advertising. In addition to the unfair trade practices found in O.C.G.A. §43-40-25 (b) (1), (2), (11), (12) and (21) or any other requirements found in this Rule, any advertising on the Internet by a licensee of real estate for sale, rent, lease, or exchange shall disclose the name and telephone number of the licensee's firm on every viewable web page of a website except as herein otherwise provided.

(a) When advertising in electronic messages of limited information or characters, a licensee shall provide a direct link to a display that is in compliance with this Rule.

(b) When advertising real estate for sale, rent, lease or exchange on an internet website not owned or controlled by the licensee or firm with which the licensee is affiliated and that website's terms of use limit the licensee's ability to comply with this paragraph, the advertising shall provide a direct link to a display that is in compliance with this Rule on every viewable webpage of the website.

(c) Information on a website maintained by a licensee that is outdated shall be updated or removed from the website within thirty (30) days of the information becoming outdated.

(d) If a licensee's website is maintained by an authorized third party (other than its firm or its franchisor's webmaster), the licensee shall provide to the third party, a timely written notice, by mail, fax, or electronic means, of any updates to outdated information or information to be removed from the website, so that such updates or information removal may be accomplished in accordance with this Rule. A licensee who provides such timely notice shall not be in violation of this Rule if the third party fails to effect an information change as notified.

(e) The requirements of this Rule apply to advertising and information on a website that is within the licensee's ownership or direct control. No licensee shall be responsible for any information taken from the licensee's website, or other advertising, if placed on a website, or in other advertising outside the licensee's ownership and/or direct control and without the licensee's consent.

(6) Trade Names and Franchise Names. For purposes of this rule the term trade name shall include trade mark and service mark; and the term advertising shall include, but is not limited to, advertising done by others on behalf of the licensee.

(a) Any firm using a trade name or any franchisee in advertising specific real estate for sale in any media shall clearly and unmistakably include the firm's name as registered with the Commission in a manner reasonably calculated to attract the attention of the public. The firm's name shall appear adjacent to any specific real estate the firm advertises for sale so that the public may unmistakably identify the firm listing the specific real estate. In advertising real estate for sale, rent, or exchange, the name of the firm offering the real estate for sale, rent, or exchange shall appear in equal or greater size, prominence, and frequency than the name or names of any affiliated licensees or groups of licensees.

(b) Any firm using a trade name or any franchisee shall clearly include the firm's name as registered with the Commission on any contracts or other documents relating to a real estate transaction.

(c) Any firm using a trade name or any franchisee shall clearly include the firm's name as registered with the Commission on office signs.

(7) Firm Names and Telephone Numbers in Advertising. In advertising specific real estate for sale, rent, or exchange in any media:

(a) firms ~~must~~ shall include in the advertisement a name of the firm as registered with the Commission and a telephone number for the firm, except when complying with lawful restrictions (such as covenants or local governmental ordinances) that forbid the use of the firm's name on a particular type of sign;

(b) the name of the firm advertising the real estate for sale, rent, or exchange shall appear in equal or greater size, prominence, and frequency than the name or names of any affiliated licensees or groups of licensees;

(c) the firm's telephone number shall appear in equal or greater size, prominence, and frequency than the telephone number of any affiliated licensee or groups of licensees, and it must be a number at which the public can reach a broker or a manager of the firm without going through the affiliated licensee(s) listed in the advertisement;

(d) whether contained in a logo or standing alone, the name of the firm must be in equal or greater size, prominence, and frequency than the name of any affiliated licensee or group of licensees; and

(e) a block advertisement in any print media that advertises various listings of a firm and includes the name of the listing agent next to each listing shall be in compliance with this rule if the name of the firm appears only once at the top of the advertisement in equal or greater prominence and print size than any of the listing agent's names. The firm's name may be located in other positions in such block advertisements if the firm name appears clearly larger and more prominently than the name of any other licensee in the advertisement.

(8) Licensees Advertising as Principals. A licensee shall not advertise to sell, buy, exchange, rent, or lease real estate in a manner indicating that the offer to sell, buy, exchange, rent, or lease such real estate is being made by a private party not licensed by the Commission.

Every associate broker, salesperson, and community association manager is prohibited from advertising under the licensee's individual name to buy any real estate or offer for sale, rent, or lease any real estate. All advertising by associate brokers, salespersons, and community association managers ~~must~~ shall be under the direct supervision of their broker and in the name of their firm. However, when a licensee wishes to advertise real estate owned by the licensee and which is not under a brokerage engagement, the licensee may do so provided:

1. if the licensee's license is affiliated with a firm, the broker holding the licensee's license has been notified in writing of the specific real estate to be advertised;
2. if the licensee's license is affiliated with a firm, the broker gives written consent to advertising the specific real estate and approves the advertisement itself; and
3. regardless of whether the licensee's license is affiliated with a firm or on inactive status, any advertisement ~~must~~ shall include either (a) the legend "seller, buyer, landlord, tenant(select the appropriate name) holds a real estate license" or (b) the legend "Georgia Real Estate License # (insert licensee's six digit number; for example, 000001)." "Georgia Real Estate License" may be abbreviated to "GA R. E. Lic."

(9) Licensees Advertising Approved Schools. A licensee shall not advertise that such licensee offers, sponsors, or conducts Commission approved courses or that such licensee offers, sponsors, or conducts Commission approved courses in conjunction with an approved school or other approved organization unless the licensee is approved by the Commission to offer such courses.

(10) Notwithstanding any other provision of this Rule, a licensee shall make every reasonable attempt in advertising to assure the public knows that they are being contacted by a licensee.

(11) Advertising as Teams.

(a) It shall be the team leader's responsibility to submit all team advertising to the broker of the firm where the team members are affiliated. The broker shall timely review all advertising by teams to assure compliance with the advertising rules of Chapter 520-1-.09.

(b) The word “team” or “group” or “partners” or “associates” shall be included as part of the name for all teams. A team name may not include the following words or phrases, or variations thereof:

Brokerage

Broker

Company

Corporation

Corp.

Firm

Incorporated

Inc.

LLC.

Authority O.C.G.A. Secs. 43-40-2, 43-40-3, 43-40-7, 43-40-12, 43-40-14, 43-40-16, 43-40-19, 43-40-20, 43-40-27, 43- 40-27.1.