

Calendar

GREC Brokerage Course & Trust Accounts Class

Dates:

- November 29 & 30, 2010
Statesboro Board
(912) 764-3818
- December 15 & 16, 2010
Metro South Association
(770) 477-7579

GREC Annual Schools Meeting:

- December 2 & 3, 2010
Athens, GA
<http://www.annualschoolmeeting.com/>

[Click here to see GREC Disciplinary Sanctions](#)

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



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Independent Contractors from a Real Estate Brokerage Perspective

Most brokerage companies have several, if not many, licensees in the firm, and most licensees operate as independent contractors. As such, the licensees are able to determine their schedules, what type of real estate they do, and how much effort they put into their profession.

The License Law, Rules and Regulations actually state that, *“Nothing contained in this chapter shall be construed as establishing an employer-employee or broker-independent contractor relationship between licensees. Whether brokers and their affiliated licensees establish employer-employee or broker-independent contractor relationships shall be at the discretion of the licensees.”* [43-40-30.1](#)

A good Broker communicates with his/her licensees and makes an effort to be involved with them and their real estate activities. In the current environment, it seems there are business models on two ends of the spectrum of broker involvement and many in-between. On one end is the Broker who carefully advises the licensee and is there for management, training and face-to-face communication. On the other end is the technology-focused broker who tries to do as much as possible in cyberspace.

Both models can work very well and still comply with the License Laws, Rules and Regulations, but they require different management techniques and record keeping. *continued on page 2....*

Complying with Notice Requirements

As independent contractors, it is critical that licensees actually “manage” their licenses, whether it is remembering to renew on time or to notify the Commission of certain events. Personal situations can affect anyone in their professional life. Certain situations must be reported in writing to the Commission or failure to report could result in a violation of the License Laws, Rules and Regulations: [520-1-.05\(5\)\(a\)](#)

- Notice of criminal conviction within 10 days,
- Notice of sanction by any real estate regulatory body or any state or federal licensing agency within 10 days
- Change of firm’s place of business within 30 days
- Change in any licensee’s mailing or residence address within 30 days

Independent Contractors

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Whatever model is employed, the Broker is still responsible for seeing that the licensees comply with the License Laws, Rules and Regulations in addition to following the company's policies and procedures. As independent contractors, the licensees are basically only responsible for the results of the work not how it is done, yet the Broker has the liability and responsibility for real estate activities of the firm.

It is worth reviewing the definition of an independent contractor and the most basic responsibilities of a Broker.

1. The Broker shall be held responsible for any licensee under him/her who violates any of the provisions of the License Laws, Rules and Regulations.
2. The Broker is responsible for instructing his/her affiliated licensees of the provisions of the License Law and its Rules and Regulations.
3. The Broker shall notify the Georgia Real Estate Commission of any violation of the License Law and its Rules and Regulations.

According to the IRS, “The general rule is that an individual is an independent

contractor if you, the person for whom the services are performed, have the right to control or direct only the result of the work and not the means and methods of accomplishing the result. Generally, you must withhold income taxes, withhold and pay Social Security and Medicare taxes, and pay unemployment tax on wages paid to an employee. You do not generally have to withhold or pay any taxes on payments to independent contractors. In determining whether the person providing service is an employee or an independent contractor, all information that provides evidence of the degree of control and independence must be considered.”

Although the Broker clearly has the responsibility for the real estate activities of his/her licensees, the Broker must be careful not to direct or control how the work is done. The following links from the Internal Revenue Service provide further information:

- www.irs.gov
- [Forms and Associated Taxes for Independent Contractors](#)
- <http://www.irs.gov/businesses/small/article/0,,id=179115,00.html>



Focus on Terminology: “1099”

Most licensees operate as independent contractors for their broker. This means that the broker does not take out any taxes from the commissions paid to the licensee. Instead an IRS form 1099 is issued to the licensee in January of the following year. This means it is totally the responsibility of the licensee to manage his/her tax liabilities. When the 1099 is issued to the licensee, a copy is also sent to the IRS. The IRS expects the reported income on the 1099 from the broker to reflect that income reported by the licensee from his/her broker.

Although this sounds simple, sometimes a licensee fails to plan for the taxes owed on their commissions earned. It is a good practice for a licensee to enlist the services of a CPA or other professional to assist with tax and income issues. For more information on the 1099 form and definition of an Independent contractor go to the Internal Revenue web site at www.irs.gov.