Chapter 3
Licensure

LICENSURE REQUIREMENTS FOR GEORGIA RESIDENTS

Georgia residents must comply with these requirements to obtain a license as a community association manager, salesperson, associate broker, or broker.

<table>
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<tr>
<th>Requirement</th>
<th>Description</th>
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<td>(a) AGE</td>
<td>Individuals must be 18 years old to be licensed as a community association manager or salesperson and 21 to be licensed as a broker or associate broker. Applicants may take the community association manager or salesperson examination at age 17 but cannot activate the license until they are 18. Similarly, applicants may take the broker examination at age 20 but cannot activate the license until they are 21.</td>
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<td>(b) EDUCATION</td>
<td>To receive either a community association manager, a salesperson, or a broker license an individual must possess a high school diploma or a certificate of equivalency and fulfill the following educational requirements:</td>
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<tr>
<td>(1) COMMUNITY ASSOCIATION MANAGER EXAMINATION</td>
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<td>(2) SALESPERSON EXAMINATION</td>
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adult education courses will not meet the education requirement unless the college or university gives full academic credit for such courses or the Commission specifically approves them.

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<th>(3) For the BROKER EXAMINATION:</th>
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<td>(A) complete a 60-hour pre-licensing brokers’ course approved by the Commission or</td>
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<td>(B) complete 15 quarter hours or 9 semester hours in real estate courses at an accredited college or university (see item (2)(B) above) or</td>
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<tr>
<td>(C) complete all courses required by the Georgia Association of REALTORS® to qualify for the designation Graduate, Realtors® Institute.</td>
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The Commission has not approved any school to teach real estate license courses other than those listed on its list of approved schools and accredited colleges or universities described in items (1)(B) or (2)(B) above).

| (c) EXPERIENCE - There are no experience requirements for a salesperson’s license. The law requires an applicant to have maintained a license in active status for at least three of the five years immediately preceding the application for an associate broker's or a broker's license. Active licensure for these three years as a salesperson or broker in another state or states meets the experience requirement for an associate broker’s or a broker’s license. To obtain approval of out-of-state experience, the applicant must secure a certified copy of his or her license history and education from the licensing agencies of all other states in which the applicant holds or has held a license. |
| (d) EXAMINATION - Applied Measurement Professionals (AMP) administers the Georgia Real Estate Examination by computer at test sites in Lilburn, Marietta, Macon, and Savannah. These test centers offer the examination by appointment only. The days on which the examination is available vary from test center to test center. However, the examination is offered Monday through Saturday at one or more of the test centers. Applicants may obtain booklets containing detailed information on how to meet the licensing requirements and the fees involved, a content outline of the examination, instructions on how to apply for the license, days and hours of operation for each of the test centers and driving directions to each of the test sites at [www.goamp.com](http://www.goamp.com), or by calling 1-800-345-6559. |
| (e) POSTLICENSE EDUCATIONAL REQUIREMENTS - Salespersons must take an approved 25 hour Sales Post-license Course in their first year of licensure. The Commission must approve the course and the school offering the course. All salespersons must complete this education requirement within one year of original licensure. This requirement applies to salespersons whether their status is active or inactive and whether they are residents or nonresidents of Georgia. More specific information regarding inactive and nonresident status appears in a subsequent section of this chapter. |
CONTINUING EDUCATION REQUIREMENTS - All active licensees (with a license number above 100,000) must complete at least twenty-four (24) hours of Commission approved continuing education courses during each four-year license renewal period.

APPLYING FOR A LICENSE

COMMUNITY ASSOCIATION MANAGER OR SALESPERSON LICENSE APPLICATION - Any person who successfully passes the community association manager’s or the salesperson’s examination may enjoy a cost saving by applying for the license within three months from the date of the examination. For an application made after three months but before twelve months have passed since the date of the examination, the fee is twice the original application fee. If an individual does not apply within twelve months, the individual must retake and pass the examination. The individual may also have to complete additional courses if pre-license requirements have changed.

BROKER LICENSE APPLICATION - Any person who has successfully passed the broker’s examination must apply for an associate broker’s or a broker’s license within twelve months from the date of the examination. If an individual does not apply within twelve months, the individual must retake and pass the examination. The individual may have to complete courses if pre-license requirements have changed.

FEES - Any person making application for a community association manager’s, salesperson’s, associate broker’s, or broker’s license must pay the fees provided for in Rule 520-1-.04 (1) at the time of application.

COMMISSION REVIEW OF THE APPLICATION - The Commission reviews each application for licensure for criminal convictions and sanctions by a licensing agency. An applicant who has been convicted of a crime or sanctioned by any licensing agency must reveal that fact on the application. If an individual does not apply within twelve months, the individual must retake and pass the examination. The individual may have to complete courses if pre-license requirements have changed.

APPLICANTS WITH CRIMINAL CONVICTIONS OR LICENSE REVOCATIONS

The license law grants to the Real Estate Commission discretionary power to grant or deny licenses to individuals convicted of various criminal activities (or who pled nolo contendere or were sentenced as a first offender) or who have had an occupational license revoked. If the applicant can demonstrate "honesty, trustworthiness, integrity, and competence to transact the business of a broker or salesperson in such a manner as to safeguard the interest of the public . . .," the Commission may grant a license in spite of the prior conviction. In deciding whether to issue a license, the Commission evaluates each application that reveals a conviction on its own merits.

The law restricts the Commission’s discretionary power to grant or deny licenses to associate broker and broker applicants who have been convicted of various criminal offenses, who have pled nolo contendere or been given first offender treatment for a felony or a crime involving moral turpitude, or who have had an occupational license
revoked. In those cases the Commission may grant a license as associate broker or broker only if:

| (a) | at least ten (10) years have passed since the revocation of the applicant's occupational license or since the applicant's conviction or release from any probation, whichever is later; |
| (b) | no criminal charges are pending against the applicant; and |
| (c) | the applicant presents satisfactory proof that he or she now bears a good reputation for honesty, trustworthiness, integrity, and competence to transact the business of a licensee in such a manner as to safeguard the interest of the public. |

Restrictions (a) and (b) do not apply to applicants for salesperson's licenses, while (c) applies to all applicants.

Application for licensure with the Commission is a two-step process. Step one involves successfully meeting the pre-licensing education requirements and passing the Commission's qualifying examination. Step two is filing an application for licensure with the required fee. Step two cannot be taken until all of step one has been successfully completed. The Commission does not decide whether to issue a license until both steps are completed properly.

However, because of the expense involved in meeting the education and examination requirements for a license, the Commission has established a procedure to offer applicants with prior convictions or disciplinary sanctions a PRELIMINARY decision on whether it will issue or deny a license. (However, no applicant is required to use the preliminary decision process. An applicant with a conviction or an occupational license sanction may elect to meet all of the requirements for licensure before requesting the Commission to make a formal decision on whether it will issue a license to the applicant.)

A person desiring such a PRELIMINARY decision must complete the Commission's Application for Preliminary Decision Regarding Prior Criminal Conviction(s) or Disciplinary Sanction(s). When a completed application for preliminary decision is filed with the Commission, the Commission's staff will conduct an investigation of that application and the applicant's prior conviction(s) or occupational license sanction(s) and may review any additional information that the applicant believes may assist the Commission in rendering a PRELIMINARY decision.

The investigator presents the results of that investigation to the Commission. The Commission then makes a PRELIMINARY decision indicating that upon successful completion of all other requirements for licensure, it intends to issue or deny a license.

If the Commission's PRELIMINARY decision is to deny a license, the applicant may not request a formal hearing regarding licensure until and unless the applicant has successfully completed the pre-license education course required, passed the qualifying examination, and paid the license application fee (the fee is non-refundable). When an applicant requests a formal hearing, the applicant may be represented by an attorney and present evidence in support of the issuance of a license. (Indeed, an attorney may represent the applicant at any time during the PRELIMINARY decision or formal hearing process.)
Following the applicant’s written request for a formal hearing, an Administrative Law Judge from the Office of State Administrative Hearings (a separate state agency) will conduct a formal hearing. At that formal hearing the applicant may present evidence and witnesses related to the Matters Asserted in the Notice of Hearing and the issues determined by the Administrative Law Judge. The Commission strongly recommends that the applicant consult with legal counsel to determine what evidence and witnesses to present.

After hearing both the Commission’s case and any information that the applicant may elect to provide, the independent Administrative Law Judge makes an Initial Decision to issue or deny the license. If the applicant disagrees with the Administrative Law Judge's Initial Decision, he or she may appeal the decision within thirty days to the Commission. Likewise, the Commission may elect within thirty days to review an Administrative Law Judge's Initial Decision if it disagrees with the decision. If the applicant disagrees with the Commission’s final decision, he or she may appeal to the courts. If no review is requested, either by the applicant or the Commission, within thirty days after the Administrative Law Judge issues a decision, the Administrative Law Judge’s Decision becomes final. The full hearing procedure may take several months to complete.

**INACTIVE STATUS**

Any individual who successfully passes a licensing examination may apply to the Commission to place his or her license on inactive status rather than affiliating with a broker. In this case, the applicant must still pay the appropriate license fee and subsequent renewal fees as they are due. The post-license educational requirements still apply to a salesperson who applies for inactive status. An active practicing licensee can switch to inactive status by filing a change application with the Commission.

The license law provides that a licensee on inactive status may perform the acts of a licensee only concerning property he or she personally owns. [O.C.G.A. 43-40-12(g)] However, even in this situation involving personally owned property, the inactive licensee remains subject to the provisions of the license law requiring disclosure of his or her licensed status in real estate sales contracts and leases; in advertising to sell, buy, exchange, rent, or lease property, and in handling any earnest money or security deposits. Whenever an individual places his or her license on inactive status, that licensee has not surrendered his or her rights to a license. The individual retains those rights and the attendant responsibilities and may reactivate the license without requalifying as an original applicant. A licensee on inactive status may not perform the acts of a licensee for a fee for a licensed individual or company or for an unlicensed individual or company. (See the Section 3.10 of this chapter, "Licensees May Not Work for Unlicensed Persons," for a more detailed discussion of this issue.)

**LICENSE REQUIREMENTS FOR NONRESIDENTS**

An applicant who resides in another state, who does not hold a real estate license from that state, and who applies for a nonresident salesperson's or an associate broker's license in Georgia must successfully complete the licensure requirements imposed on residents of Georgia. The nonresident salesperson or associate broker must affiliate with a broker licensed by the Georgia Real Estate Commission.
licensed broker may be a resident or a nonresident of Georgia. An applicant for a nonresident broker's license must obtain an appropriate Georgia broker's license for the firm through which he or she intends to operate as a broker. All nonresident licensees must meet the post-license and continuing education requirements imposed in Georgia's license law and discussed in an earlier section of this chapter.

**NONRESIDENTS AND PERSONS LICENSED IN OTHER STATES WHO HAVE MOVED TO GEORGIA**

An individual seeking to be licensed in Georgia by reciprocity must obtain a certification of license history, not more than one year old, from his or her state of residence or from the state from which the person is seeking reciprocity. The individual must then submit the certification or certifications to the Georgia Real Estate Commission as part of the application process. Since Florida does not grant full reciprocity to Georgia licensees, Georgia law requires that the Commission impose requirements on applicants from Florida which are substantially equivalent to the requirements Florida imposes on Georgia licensees seeking nonresident licensure in Florida. More specific information follows:

(a) An **individual licensed in Florida** must take and pass the state portion of the qualifying examination for the Georgia license that he or she seeks. The applicant must submit with the application for examination (and also with the application for a license) an original certification of license history from the licensing body of his or her state of residence issued not more than one year prior to the application to the Georgia Real Estate Commission.

(b) An **individual licensed in any other state**, either a nonresident or a licensee moving to Georgia, may obtain a license without further examination or education if the applicant has not been sanctioned by another state’s licensing body and if the applicant submits an appropriate and recent certification of license history from his or her state of residence or from the state from which the person is seeking reciprocity (issued no more than one year prior to making application to the Georgia Real Estate Commission). The certification must show the following information about the applicant:

1. a passing grade on an examination for the type of license the applicant seeks in Georgia;
2. completion of pre-license and continuing education requirements imposed by such other state(s) for that license;
3. licensure in good standing or current at the time the certificate was issued; and
4. absence of any formal disciplinary action imposed by such state’s real estate commission.

An applicant who does not meet all of the above requirements must meet Georgia’s education and experience requirements and take and pass the qualifying examination for the Georgia license which the applicant seeks. Nonresident licensees must also meet Georgia’s continuing education requirements after becoming licensed. A salesperson must complete a Sales Postlicense course in the first year of
licensure. All active licensees must complete at least 24 hours of Commission approved continuing education study during each four-year renewal period.

**BROKERAGE ACTIVITY IN GEORGIA BY NONRESIDENTS WHO ARE NOT LICENSED IN GEORGIA**

Nonresidents licensed in other states may participate in real estate transactions and commissions with Georgia brokers in three ways: (1) through referral of clients or prospects, (2) through written agreements with Georgia brokers, and (3) through nonresident licensure.

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<th>(a) REFERRALS – Georgia licensees may participate in real estate transactions through referral of clients or prospects with any broker licensed in any other state. In this instance, the nonresident broker refers a client or prospect to the Georgia broker. The nonresident broker may or may not receive a fee as negotiated by the brokers involved. The nonresident broker may take no part in listing, showing property, negotiating agreements, or any of the other functions of a broker licensed in Georgia. Conversely, the Georgia broker might refer a party to the nonresident broker for a fee but cannot participate further in the transaction unless that state's laws permit the Georgia broker to do so.</th>
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<tr>
<td>(b) WRITTEN AGREEMENTS - A licensed broker of another state who desires to work in Georgia on an occasional transaction without becoming licensed may enter into a written agreement with a Georgia broker to conduct real estate brokerage business in Georgia. The Georgia broker is responsible for all of the real estate brokerage acts performed by the nonresident broker under such written agreement and must determine that the nonresident broker has and maintains an active license in the nonresident broker's state of residence. The written agreement between the Georgia broker and the nonresident broker must provide for certain procedures to be followed before, during, and after each transaction. See O.C.G.A. § 43-40-9 (e) for specific requirements regarding these agreements.</td>
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<td>(c) NONRESIDENT LICENSURE - See Section 3.05 of this chapter.</td>
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**EXCEPTIONS TO LICENSURE**

Georgia license law provides an exemption from licensure for certain unlicensed persons when they perform the acts of a real estate broker, associate broker, salesperson, or community association manager. Most of the exceptions provided for in O.C.G.A. § 43-40-29 and discussed below, apply to an owner selling his or her own property, a full-time employee dealing with an owner's property, a person acting under the authority of a will or the courts, or a government official acting in behalf of a governmental agency. The Georgia Supreme Court described the basic rationale for exceptions to real estate licensure in the *Beschenko v. Fulton Federal* case in 1979. The court wrote the following opinion:

*The General Assembly recognized, however, that certain activities were routinely carried out by regularly employed persons incidental to the purchase or sale of real estate and these persons could technically be in violation of the law. . . . None of the*
nine subsections in O.C.G.A. §43-40-29 (a), relate to persons who will personally receive a fee, commission, or other valuable consideration from the seller for services rendered outside of their regular employment. For example, a licensed, practicing attorney, while receiving a fee for . . . legal services at closing, is not entitled to a fee or commission for procuring a purchaser unless licensed as a broker, associate broker, or salesman.

Since that decision by the Supreme Court, the General Assembly has made several important changes to the exceptions to licensure. They expanded some of the exceptions slightly, eliminated others, and created new ones.

(a) PROPERTY MANAGEMENT - One of the major exceptions to licensure is in property management. First, general partners of limited partnerships may manage property owned by the limited partnership without obtaining a license and may employ unlicensed persons to assist them in that work. Second, persons managing residential apartment complexes for a tax-exempt organization prior to January 1, 1989, under a contract approved by a federal agency do not require licensure. Third, an owner's spouse or regular employees who manage or assist in managing the owner's property does not require licensure.

All of the exceptions cited in the preceding paragraph apply only to unlicensed persons. They do not apply to anyone who holds a real estate license. Thus, for example, a real estate licensee who is a general partner of a limited partnership must comply with all of the requirements of a real estate broker in managing the property of the limited partnership. Similarly, a licensee may not allow his or her unlicensed spouse to perform property management functions on the licensee's property.

(b) TIMESHARE AND LAND SALES - The law now requires licensure for any person, other than the owner or individuals who are full-time employees of the owner, who performs the acts of a broker on property registered under the Georgia Time-Share Act or the Georgia Land Sales Act. Thus, most members of sales staffs selling timeshare intervals or lots registered under the land sales act must obtain licensure as a salesperson, associate broker, or broker before marketing such property. The exception for owners and full-time employees of owners is not as broad as it may appear.

First, the unlicensed individual must be an employee of the firm or individual who owns the property, not of a third party. Thus, a separate company created by the owner of a timeshare project to handle sales in the project may not utilize unlicensed employees. It must use only licensed personnel. Only the owner of the project may use unlicensed full-time employees to market its intervals.

Second, this exemption applies only to individuals, not corporations or partnerships. Thus, a corporation or partnership employed by the owner to market timeshare intervals or subdivided land must hold a real estate license as must all of its licensed affiliates.

Third, the unlicensed individuals must be full-time employees of the owner. They may not be, for example, persons who work at some
other job during the week and sell for the owner on the weekend.

Fourth, to qualify as an employee, the owner must pay workers' compensation, withhold federal and state taxes, and pay F.I.C.A. benefits for the individual.

Fifth, the owner must fully segregate activities of unlicensed employees from the activities of licensed agents. A licensed broker who is responsible for licensed agents selling in the project must not supervise the activities of unlicensed employees. The project must make each consumer aware of whether it is dealing through a licensed real estate agent or through an unlicensed employee of the project.

(c) EMPLOYEES OF BROKERS - The Legislature created a narrowly drawn exception for certain employees of real estate brokers. A broker may utilize an unlicensed individual to perform certain tasks incident to the broker's property management function, but the broker is responsible for all the real estate brokerage activities of that individual. Thus, if the unlicensed employee's actions violate the real estate license law, the broker's license is subject to disciplinary action. By contrast, brokers who utilize licensees to manage rental property will not have as great a liability exposure under the license law. For example, if an affiliated licensee managing property for a broker violates the license law without the broker's knowledge, then the affiliate is subject to sanction under the license law; but the Commission may choose not to sanction the broker.

Currently, the fifteen subsections in O.C.G.A. § 43-40-29 (a) provide the following specific exemptions:

(a) any person who, as owner, as the spouse of an owner, as general partner of a limited partnership, as lessor, or as prospective purchaser or their regular employees, performs any act with reference to property owned, leased, or to be acquired by such owner, limited partnership, lessor, or prospective purchaser where such acts are performed in the regular course of, or as incident to, the management of such property and the investment therein or any person who manages residential apartment complexes under a contract approved by any federal agency for an organization which is exempt from federal taxes pursuant to Section 501 (c)(3) of the Internal Revenue Code, as defined in Code Section 48-1-2, provided that such person was engaged in managing such property under such type of contract prior to January 1, 1989;

(b) an attorney in fact under a duly executed power of attorney to convey real estate from the owner or lessor;

(c) a licensed practicing attorney acting solely as an incident to the practice of law;

(d) any person acting as receiver, trustee in bankruptcy, administrator, executor, or guardian, or while acting under a court order or under the authority of a will or of a trust instrument;
(e) any officer or employee of a government agency in the conduct of official duties;

(f) any person employed by a public or private utility who performs any act with reference to property owned, leased, or to be acquired by the utility employing that person, where such acts are performed in the regular course of, or as incident to, the management of such property and the investment therein;

(g) any person who, as owner or through another person engaged by such owner on a full-time basis, provides property management services, buys, sells, leases, manages, auctions, or otherwise deals with property owned by such person;

(h) any person employed on a full-time basis by the owner of property for the purpose of providing property management services, selling, buying, leasing, managing, auctioning, or otherwise dealing with such property;

(i) any person employed on a full-time basis by a community association for the purpose of providing community association management services;

(j) any person acting as a referral agent who is not involved in the actual negotiations, execution of documents, collection of rent, management of property, or other related activity which involves more than the mere referral of one person to another and who:

1. does not receive a fee for such referral from the party being referred;
2. does not charge an advance fee; and
3. does not act as a referral agent in more than three transactions per year;

(k) any individual employed by a broker to assist in property management services on property on which the broker has a written management agreement that the broker procured from and negotiated with the owner, provided that such individual's activities are explicitly authorized by the broker in a written agreement between the broker and the employee and provided that such activities are limited to one or more of the following:

1. delivering a lease application, a lease, or any amendment thereto to any person;
2. receiving a lease application, a lease, or any amendment thereto, a security deposit, rental payment, or any related payment for delivery to and made payable to the broker or the owner;
3. showing a rental unit to any person, provided that the employee is acting under the direct instructions of the broker, and executing leases or rental agreements;
4. providing information authorized by the broker about a rental unit, a lease application, or a lease;
5. providing information to a tenant about the status of such tenant's security deposit or rent payments or to an owner about
the owner's financial accounts and payments from the owner's tenants; and

(6) performing any ministerial acts that are explicitly authorized by the broker in a written agreement between the broker and the employee.

Any broker utilizing the services of such an employee shall be held responsible under this chapter for the activities of that individual; or

(l) any person who provides property management services on properties available for less than 90 days' occupancy by guests or occupants and meets all of the following conditions:

(1) the property manager enters into a written agreement with the owner specifying all terms and conditions under which the property is to be managed, the reporting of income and expenses, and the remitting of income to the owner;

(2) the management agreement between the property manager and the owner does not allow the property manager to rent or lease the property and any agreement between the property manager and the guest or occupant is not a lease or rental agreement;

(3) any applicable zoning laws do not prohibit short-term occupancy uses of the property;

(4) the guest's or occupant's occupancy is for less than 90 days;

(5) no deposit exceeds the cost of the rental required for the minimum rental period;

(6) the guest or occupant pays any required state or local sales taxes on rooms, lodgings, and accommodations and the property manager has any required state or local licenses or permits;

(7) the property manager has the authority to specify rooms or units that the guest or occupant will occupy;

(8) no extra charge is made for basic utilities;

(9) notice is not required for a guest or occupant to terminate occupancy of the room or unit, except as provided in Article 1 of Chapter 21 of O.C.G.A. Title 43;

(10) the room or unit is not the permanent residence of the guest or occupant; or

(m) any person who is a member of a community association and who provides community association management services only to one community association of which such person is a member;

(n) any person who performs only physical maintenance on a property; or

(o) a licensed certified public accountant or registered public accountant acting solely as an incident to the practice of public accounting.

Exception (l) above is sometimes called the "innkeepers exception" because it pertains to persons who make accommodations available to the public primarily on a daily or weekly basis. The exception applies to such operations as motels, hotels,
and such vacation type rentals as short-term cabin rentals or condominium rentals in resort areas.

**EXCEPTIONS NOT AVAILABLE TO LICENSEES**

Real estate licensees must always act in real estate transactions as licensees. Thus, they may not claim to operate under one of the exceptions discussed above while licensed. For example, an unlicensed individual with a duly executed power of attorney to convey an owner's real estate may deposit earnest money or proceeds from the sale in his or her personal bank account. A real estate licensee operating under a duly executed power of attorney must deposit such funds into the designated trust account. Similarly, a licensee must place trust funds he or she receives on property he or she owns into a trust account approved by the licensee's broker.

**LICENSEES MAY NOT WORK FOR UNLICENSED PERSONS**

Occasionally a licensee may seek to do the acts of a licensee for an unlicensed developer, builder, or management company. Once the individual becomes licensed by the Commission, he or she can no longer claim a right to be exempted from licensure when working full time for an unlicensed owner or management company. In order to provide brokerage services to such unlicensed individuals or companies a licensee must either:

- (a) act as a licensee through a listing agreement or management agreement established by his or her broker with the unlicensed party, or
- (b) act as an unlicensed person to the extent permitted by the exceptions to the license law only after surrendering to the Commission all rights to his or her license.

In addition, a licensee may not place his or her license on inactive status with the Commission in order to work for an unlicensed party. O.C.G.A. § 43-40-12 (g) provides that an inactive status licensee may do the acts of a licensee only in connection with property he or she personally owns, not in connection with property owned by others. Whenever an individual places his or her license on inactive status, that licensee has not surrendered his or her license but instead retains both the license and the attendant responsibilities and may reactivate the license without requalifying as an original applicant subject to educational and examination requirements. Therefore, a licensee who ceases work for a broker and begins to do the acts of a licensee for an unlicensed individual or company may not do so by placing his or her license on inactive status. In order to act for such unlicensed individuals or companies the licensee would have to surrender his or her license and could reinstate the license only as an original applicant subject to the education and examination requirements of the law.

The License Law governs all of the actions of licensees in a brokerage capacity. The Attorney General defines this position clearly in a 1976 Opinion. In part that Opinion reads:
Furthermore, it is extremely doubtful that there was an intent to provide a loophole whereby a person could represent himself to the public as a broker and still claim immunity from the restrictions placed upon brokers. Status as a broker implies that the person holding such status is regulated by certain laws designed to protect the public; namely the provisions of Georgia Code Chapter 43-40. Consequently, it was certainly not contemplated that a person could claim that status when it is to his benefit and disavow that same status when it operates to his detriment.

ASSISTANTS, SECRETARIES AND SUPPORT STAFF

The Commission has received inquiries from brokers and their licensed affiliates concerning the use of unlicensed assistants, secretaries, and general support personnel to assist them in their brokerage activities. The answer to these inquiries involves an understanding of the nature of the activities covered by license law and its definition of a licensee. A licensee is a person who receives or expects to receive a valuable consideration from another for negotiating or attempting to negotiate or for assisting in the procuring of prospects for the listing, sale, purchase, exchange, renting, lease, or option of any real estate. Salary or fees paid to an assistant and love and affection for a spouse or friend are all examples of “a valuable consideration.” Many agents would like to maximize their production by delegating prospecting, holding open houses, and other duties not directly involved in drafting a listing or sales contract to a capable assistant, secretary, friend, or spouse. However, unless licensees delegate those activities only to others holding active licenses, they may subject themselves and others to disciplinary actions by the Commission.

Note that the definition of a licensee includes "assisting in the procuring of prospects." Thus, an assistant, secretary, friend, or spouse who conducts such activities as making cold calls to secure listing appointments or hosting an open house in order to secure prospects for a licensee must obtain a license in order to do so. Nor can a person with an inactive real estate license secure prospects for a licensee. The license law provides that failure to have an active license before performing those acts is a criminal offense. In addition, licensees who utilize unlicensed individuals to perform such acts may have their real estate licenses revoked by the Commission. Licensees may not pay fees to unlicensed individuals nor to those whose licenses are on inactive status for referring prospects to them. If a licensee uses another licensee to act as his or her assistant, both must be affiliated with the same broker. The broker must enter into a written compensation agreement with each of the licensees. [See O.C.G.A. Section 43-40-18 (c)(9)]

In order to provide reasonable guidelines for licensees but without attempting to define every permitted or prohibited activity, the Commission has identified the following specific tasks which assistants, secretaries, or other support personnel can and cannot do. Unlicensed or inactively licensed support personnel CAN:

- (a) answer the phone and forward calls to a licensee;
- (b) submit data on listings to a multiple listing service;
- (c) check on the status of loan commitments after a contract has been negotiated;
- (d) assemble documents for closings;
- (e) secure documents that are public information from the courthouse and
other sources available to the public;

(f) have keys made for company listings and install or remove lock boxes from company listings;

(g) write ads and promotional materials for the approval of the licensee and the supervising broker;

(h) place advertising in magazines, newspapers, and other media as directed by the supervising broker;

(i) receive, record, and deposit earnest money, security deposits, and advance rents;

(j) type contract forms as directed by the licensee and the supervising broker;

(k) monitor personnel files and license reports from the Commission;

(l) compute commission checks;

(m) place signs on property and remove such signs;

(n) order items of routine repair as directed by a licensee;

(o) act as courier service for such purposes as delivering documents or picking up keys [the licensee remains responsible for assuring delivery of contracts and closing documents as required by O.C.G.A. § 43-40-25 (a)(19) & (20)];

(p) schedule appointments with the owner or the owner’s agent for a licensee to show listed property;

(q) arrange dates and times for inspections;

(r) arrange dates and times for the mortgage application, the pre-closing walk through, and the closing;

(s) schedule an open house

(t) accompany a licensee to an open house or a showing only for security purposes, or

(u) perform physical maintenance on a property.

Unlicensed or inactively licensed support personnel CANNOT:

(a) make cold calls by telephone or in person or otherwise contact the public for the purpose of securing prospects for listings, leasing, sales, exchanges, or property management;

(b) host open houses, kiosks, home show booths or fairs;

(c) prepare promotional materials or ads without the review and approval of the licensee and the supervising broker;

(d) show property;

(e) answer any questions on title, financing, or closings (other than their time and place);

(f) answer any questions regarding a listing except for information on price and amenities expressly authorized in writing by the licensee;

(g) discuss or explain a contract, listing, lease, agreement, or other real
estate document with anyone outside the firm;

(h) negotiate or agree to any commission, commission split, management fee, or referral fee on behalf of a licensee;

(i) discuss the attributes or amenities of a property, under any circumstances, with a prospective purchaser or lessee;

(j) discuss with the owner of real property, the terms and conditions of the real property offered for sale or lease;

(k) collect or hold deposit monies, rent, other monies, or anything of value received from the owner of real property or from a prospective purchaser or lessee;

(l) provide owners of real property or prospective purchasers or lessees with any advice, recommendations, or suggestions as to the sale, purchase, exchange, or leasing of real property that is listed, to be listed, or currently available for sale or lease; or

(m) hold themselves out in any manner, orally or in writing, as being licensed or affiliated with a particular firm or real estate broker as a licensee.

When employing support personnel, it is important for brokers to review the regulations governing broker supervision (O.C.G.A. § 43-40-18). The Commission will look at the answers to these questions when reviewing a situation.

(a) Was the broker physically available to supervise?

(b) Had the broker contracted to avoid the responsibilities of supervision?

(c) In what type of activity was the affiliated licensee or unlicensed assistant engaged?

(d) Had the broker established written policies and procedures to guide both licensed and unlicensed personnel affiliated with the firm?

(e) Did the broker try to prevent violation of the statute or regulations?

(f) Did the broker try to avoid learning about a violation?

While a licensee may have an assistant who performs purely secretarial or bookkeeping duties, the licensee and the licensee’s broker must be certain that assistant performs no brokerage activity, unless the assistant has obtained a license.

**BUSINESS BROKERS**

Business brokers must hold real estate licenses or utilize the services of a licensed real estate broker anytime the sale of a business involves the transfer of any interest in real property. A business broker and any associates who do not hold real estate licenses may not negotiate a real property transaction and then secure a real estate broker to approve it. Any person who for a valuable consideration negotiates the transfer of a leasehold or ownership interest in real property must hold a real estate license.

**LICENSEES AND THEIR REAL PROPERTY**
An individual who becomes licensed as a broker, associate broker, or salesperson must always act as a licensee in the sale or leasing of real property whether the licensee or someone else owns the property involved. The law allows an unlicensed owner, an executor of an estate, a general partner of a limited partnership (among others) to perform the acts of a licensee without a license. Licensees sometimes mistakenly believe that when a licensee finds himself or herself in a similar capacity, the licensee does not need to comply with the provisions of the license law. O.C.G.A. § 43-40-29 (c) specifically provides that none of the permitted exceptions to licensure applies to any person who holds a real estate license. Thus, whenever a licensee sells or leases real property that the licensee owns, he or she must practice all of the safeguards to which a licensee is subject. These include such requirements as placing any trust funds in a trust account approved by his or her broker and disclosing his or her licensed status in writing in sales contracts and leases. In a 1977 opinion the Attorney General expressed the legal basis for this requirement as follows:

In a recent official opinion, Op. Att'y Gen. 76-101, I expressed doubt that the General Assembly intended to permit a person to represent himself as a broker and at the same time claim immunity from the restrictions placed upon brokers. I pointed out that, inasmuch as status as a broker implies to the public that such a person is regulated by the provisions of Ga. Code Ch. 43-40, it is doubtful that it was contemplated that a person could use his status as a broker when it is to his benefit but disavow that same status when it operates to his detriment. Thus, I am of the opinion that in situations where a broker sells his own real estate through his brokerage company, or otherwise represents to prospective purchasers that they are dealing with a licensed broker, the owner-broker must assure that the public with whom he deals has the protection afforded under the licensing law. This protection requires that he employ only licensed sales associates for such sales. While the appellate courts in Georgia have never addressed this issue, my opinion is consistent with appellate court decisions in other states.

Therefore, it is my official opinion that if a broker sells his own real estate through his brokerage company, or otherwise represents to prospective purchasers that they are dealing with a licensed broker, the broker may employ only licensed sales associates to make such sales on his behalf.

AFFILIATED LICENSEES HANDLING RENTAL PROPERTY

Many real estate firms have chosen not to handle rental properties as a part of their business. Occasionally, a friend or business acquaintance may approach a licensed affiliate of such a firm to have the licensee handle collections of rent or other brokerage functions associated with the renting or leasing of property. The affiliated licensee may not take on this business unless the broker assumes full responsibility for the licensee's actions and accounting for any funds received. A salesperson or associate broker must perform all activity through a broker. The broker may not choose to be responsible for certain brokerage acts of licensees affiliated with him or her and at the same time deny responsibility for other brokerage acts of the same licensees. Therefore, a broker must not authorize an affiliated licensee to handle rentals for others outside the company's clear and continuing review and control. Likewise, a salesperson or an associate broker must not seek to handle
rentals for others except through his or her brokerage firm. Similarly, a licensed firm which deals exclusively in rentals or property management must not permit salespersons or associate brokers to handle sales of real estate outside the firm.

If a broker allows an affiliated licensee to handle personally owned rental properties outside the firm's normal business, the broker may allow the licensee to maintain a trust account. However, the broker must register that account with the Commission and remains responsible for the transactions in that account. The law also requires that the affiliate provide to the broker, at least a quarterly, a written reconciliation statement comparing the affiliate’s total trust liability with the reconciled bank balance of the trust account. Affiliated licensees who maintain such accounts must maintain the same types of records which the law requires brokers to maintain on the firm's trust accounts.

**SOLD SIGNS**

Many licensees want to place a "SOLD" sticker on their "FOR SALE" signs whenever they secure a sales agreement signed by both buyer and seller. But is the property really "SOLD?" In a 1978 decision the Georgia Court of Appeals defined the word "SOLD" as it applies to real property transactions. The court held: "The word 'sold' imports not a mere proposition to sell, but a consummated contract of sale." and "Ordinarily a sale is an executed contract - a completed transaction binding on seller and buyer alike."

A sales agreement signed by the buyer and the seller is an executory contract, not an executed contract. An executory contract becomes an executed contract when the buyer and the seller have performed all of the obligations to which they agreed upon signing the sales agreement. Therefore, when the buyer and seller sign a sales agreement, the property is not "SOLD." The property is "SOLD" when the transaction closes and the parties fulfill all of their obligations in the sales agreement (such as paying the purchase price and delivery of a deed). In light of this court decision, placing a "SOLD" sign on a property before a closing may violate the provision of the real estate license law prohibiting licensees from "intentionally advertising material which is misleading or inaccurate." See O.C.G.A. § 43-40-25 (b)(2) and Substantive Regulation 520-1-.04. Placing a "SOLD" sign on a property on which the parties have not fully executed the provisions of the sales agreement is misleading and inaccurate. Licensees who wish to indicate on a sign the existence of a sales agreement on a particular property might consider using a language such as "under contract," "contract pending," or "sale pending."