Chapter 9
The Georgia Brokerage Relationships in Real Estate Transactions Act

A. OVERVIEW

PURPOSE OF THE ACT

The Brokerage Relationships in Real Estate Transactions Act (BRRETA) http://www.crowngeorgia.com/BRRETA.htm went into effect in Georgia on January 1, 1994. The drafters of BRRETA designed it to help clarify agency relationships between real estate brokers and the consumers of brokers' services. Agency law, as applied to real estate brokers and sales associates, had been in a state of flux in recent years with a trend toward increased broker liability, misunderstandings and expensive lawsuits.

Because of uncertain knowledge of their responsibilities and duties under agency law, some licensees acted in ways that created accidental or unintended agency relationships with customers. Treating Customers like Clients creates an implied agency, with the associated requirements to act on that Client's behalf. In order to avoid misunderstandings and assist Brokers in professionally serving the public, BRRETA provides guidance to brokers, sales associates and the public by defining the roles, rights and obligations of each. The complete text of the Act (as codified in the Official Code of Georgia Annotated) is set out in Appendix F. This Chapter provides examples illustrating the provisions of BRRETA.

WHO IS AFFECTED BY BRRETA

BRRETA applies to any real estate broker or affiliated licensee providing a real estate brokerage service in the State of Georgia. Thus, it applies in virtually any situation in which a licensee acts in the normal course of providing real estate brokerage services.

B. SPECIFIC PROVISIONS

BROKERAGE RELATIONSHIPS

BRRETA provides the following basic definitions in Section 10-6A-3:

(1) 'Agency' means every relationship in which a real estate broker acts for or represents another as a client by the latter's written authority in a real property transaction.

(2) 'Broker' means any individual or entity issued a broker’s real estate license by the Georgia Real Estate Commission pursuant to Chapter 40 of Title 43. The term 'broker' includes the broker's affiliated licensees except where the context would otherwise indicate.

(3) 'Brokerage' means the business or occupation of a real estate broker.
(4) '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 broker may receive a valuable consideration from another in consideration of the broker producing a seller, buyer, tenant, or landlord ready, able, and willing to sell, buy, or rent the property or performing other brokerage services.

(5) 'Brokerage relationship' means the agency and nonagency relationships which may be formed between the broker and the broker’s clients and customers, as described in this chapter.

(6) 'Client' means a person who is being represented by a real estate broker in an agency capacity pursuant to a brokerage engagement.

(7) 'Common source information companies' means any person, firm, or corporation that is a source, compiler, or supplier of information regarding real estate for sale or lease and other data and includes but is not limited to multiple listing services.

(8) 'Customer' means a person who is not being represented by a real estate broker in an agency capacity pursuant to a brokerage engagement but for whom a broker may perform ministerial acts in a real estate transaction pursuant to either a verbal or written agreement.

**BROKERAGE ENGAGEMENT**

Some real estate brokers have experienced lawsuits based upon "accidental" or "unintentional" agency in which a disgruntled home buyer alleged a breach of an implied client-agent relationship. Most often, the broker was in fact representing the seller in the transaction, but the buyer believed that the broker represented him or her, and felt that they had relied on that Broker to their detriment. BRRETA begins addressing this and other agency problems by providing for a written "brokerage engagement."

A **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 broker may receive a valuable consideration from another in consideration of the broker producing a seller, buyer, tenant, or landlord ready, able, and willing to sell, buy, or rent the property or performing other brokerage services.

However, simply paying compensation does not create a brokerage engagement; the parties must have an expressed written agreement. For example, a broker representing a buyer could present a sales contract under which the seller paid a real estate commission which is to be split between the listing broker and selling broker. The fact that the seller is paying the compensation to a broker representing the buyer does not make the selling broker the agent of the seller. Similarly, if a buyer pays both his agent and the listing agent, the listing agent does not become the buyer’s agent, solely based on the commission payment.

Although BRRETA does not require a licensee to discuss agency status with a prospect until the time of the brokerage engagement, it is good practice to do so at the earliest possible time to prevent confusion in the mind of the prospect. If a customer thinks a licensee represents him or her and no brokerage engagement has
DURATION AND TERMINATION OF THE BROKERAGE ENGAGEMENT

A brokerage engagement shall commence at the time that the client engages the broker, and shall continue until:

(1) Completion of performance of the engagement; or

(2) If paragraph (1) of this subsection is not applicable, then the earlier of:

   (A) Any date of expiration agreed upon by the parties in the brokerage engagement or in any amendments thereto;
   (B) Any authorized termination of the relationship; or
   (C) If no expiration is provided and no termination has occurred, then one year after initiation of the engagement.

DISCLOSURES REQUIRED BEFORE OR WITHIN THE BROKERAGE ENGAGEMENT

All Broker Engagements must:

(1) Advise the prospective client of the types of agency relationships available through the broker;

(2) Advise such prospective client of any brokerage relationships held by such broker with other parties which would conflict with any interests of the prospective client actually known to the broker but excluding the fact that the broker may be representing other sellers and landlords in selling or leasing property or that the broker may be representing other buyers and tenants in buying or leasing other property;

(3) Advise such prospective client as to the broker’s compensation and whether the broker will share such compensation with other brokers who may represent other parties to the transaction in an agency capacity; and

(4) Advise the prospective client of the broker’s obligations to keep information confidential under this chapter.

LIMITING FIDUCIARY DUTIES

A major problem for real estate brokers in years just before Georgia’s BRRETTA law had been the scope of agency relationships and the duties owed to clients. Courts in some states had taken an expansive view of agency fiduciary duties, leaving the industry with some uncertainty as to the future scope of legal liability of brokers to clients. BRRETTA provides that real estate brokers and affiliated licensees have duties that are limited to those specifically contracted for in the Brokerage Engagement.

Per BRRETTA 10-6A-4. (a) A broker who performs brokerage services for a client or customer shall owe the client or customer only the duties and obligations set forth in
this chapter, unless the parties expressly agree otherwise in a writing signed by the parties. A broker shall not be deemed to have a fiduciary relationship with any party or fiduciary obligations to any party but shall only be responsible for exercising reasonable care in the discharge of its specified duties as provided in this chapter and, in the case of a client, as specified in the brokerage engagement.

BRRETA sets out four separate sections of client level duties: one set for sellers, one for buyers, one for landlords, and one for tenants. However, these duties are essentially the same in their intent to ensure that the Broker promotes the best interests of his Client, while assuring fairness, honesty, and accuracy for all other parties in the transaction. For example, under BRRETA section 10-6A-5.:

(a) A broker engaged by a seller shall:

(1) Perform the terms of the brokerage engagement made with the seller;

(2) Promote the interests of the seller by:

(A) Seeking a sale at the price and terms stated in the brokerage engagement or at a price and terms acceptable to the seller; provided, however, the broker shall not be obligated to seek additional offers to purchase the property while the property is subject to a contract of sale, unless the brokerage engagement so provides;

(B) Timely presenting all offers to and from the seller, even when the property is subject to a contract of sale;

(C) Disclosing to the seller material facts which the broker has actual knowledge concerning the transaction;

(D) Advising the seller to obtain expert advice as to material matters which are beyond the expertise of the broker; and

(E) Timely accounting for all money and property received in which the seller has or may have an interest;

(3) Exercise reasonable skill and care in performing the duties set forth in this subsection and such other duties, if any, as may be agreed to by the parties in the brokerage engagement;

(4) Comply with all requirements of this chapter and all applicable statutes and regulations, including but not limited to fair housing and civil rights statutes; and

(5) Keep confidential all information received by the broker during the course of the engagement which is made confidential by an express request or instruction from the seller unless the seller permits such disclosure by subsequent word or conduct, or such disclosure is required by law; provided, however, that disclosures between a broker and any of the broker’s affiliated licensees assisting the broker in representing the seller shall not be deemed to breach the duty of confidentiality described above.

A BROKER’S DUTIES TO OTHER PARTIES
In addition to duties owed to the Client, BRRETA addresses the treatment of all other parties in the transaction to ensure that no harm is done and accurate information is provided:

(b) A broker engaged by a seller shall timely disclose the following to all parties with whom the broker is working:

(1) All adverse material facts pertaining to the physical condition of the property and improvements located on such property including but not limited to material defects in the property, environmental contamination, and facts required by statute or regulation to be disclosed which are actually known by the broker which could not be discovered by a reasonably diligent inspection of the property by the buyer; and

(2) All material facts pertaining to existing adverse physical conditions in the immediate neighborhood within one mile of the property which are actually known to the broker and which could not be discovered by the buyer upon a diligent inspection of the neighborhood or through the review of reasonably available governmental regulations, documents, records, maps, and statistics. Examples of reasonably available governmental regulations, documents, records, maps, and statistics shall include without limitation: land use maps and plans; zoning ordinances; recorded plats and surveys; transportation maps and plans; maps of flood plains; tax maps; school district boundary maps; and maps showing the boundary lines of governmental jurisdictions. Nothing in this subsection shall be deemed to create any duty on the part of a broker to discover or seek to discover either adverse material facts pertaining to the physical condition of the property or existing adverse conditions in the immediate neighborhood. Brokers shall not knowingly give prospective buyers false information; provided, however, that a broker shall not be liable to a buyer for providing false information to the buyer if the broker did not have actual knowledge that the information was false and discloses to the buyer the source of the information. Nothing in this subsection shall limit any obligation of a seller under any applicable law to disclose to prospective buyers all adverse material facts actually known by the seller pertaining to the physical condition of the property nor shall it limit the obligation of prospective buyers to inspect and to familiarize themselves with potentially adverse conditions related to the physical condition of the property, any improvements located on the property, and the neighborhood in which the property is located. No cause of action shall arise on behalf of any person against a broker for revealing information in compliance with this subsection. No broker shall be liable for failure to disclose any matter other than those matters enumerated in this subsection. Violations of this subsection shall not create liability on the part of the broker absent a finding of fraud on the part of the broker.

(c) A broker engaged by a seller in a real estate transaction may provide assistance to the buyer by performing ministerial acts of the type described in Code Section 10-6A-14; and performing such ministerial acts shall not be construed to violate the broker’s brokerage engagement with the seller nor shall performing such ministerial acts for the buyer be construed to form a brokerage engagement with the buyer.

(d) A broker engaged by a seller does not breach any duty or obligation by showing alternative properties to prospective buyers.

Material facts will vary according to whether the broker is representing the seller, buyer, landlord or tenant. Per BRRETA 10-6A-3 (11) 'Material facts' means those facts that a party does not know, could not reasonably discover, and would
reasonably want to know. However, the broker is not liable if the broker's client provides false information and the broker does not know it is false. It is good practice for licensees to state the source of their information when they are making representations, and to have the Seller complete a written Property Disclosure Statement.

MINISTERIAL ACTS

A broker may perform ministerial acts for the other party in a real estate transaction without developing a brokerage engagement. BRRETA defines ministerial acts as actions of a licensee that do not require the exercise of the licensee's judgment or discretion. Some examples of ministerial acts set forth in BRRETA are preparing and conveying offers to the other party, locating inspectors, attorneys, surveyors, and providing other similar services.

Limiting the scope of services to the Customer to providing information on, or lists containing several names of, service providers without making specific recommendations could, perhaps, avoid unintentionally creating a brokerage engagement.

SHOWING PROPERTIES TO OTHER CLIENTS

A broker or affiliated licensee does not breach any duty to a buyer client by showing properties in which the client is interested to other parties. A broker or affiliated licensee does not breach any duty to a seller client by showing alternate properties to prospective buyers.

DUAL AGENCY

Per BRRETA 10-6A-3 (10) 'Dual agent' means a broker who simultaneously has a client relationship with both seller and buyer or both landlord and tenant in the same real estate transaction.

Representing both a buyer and a seller in the same transaction has always been a difficult task legally, even when both parties know the agent is doing so. It can be disastrous if both parties are unaware, which could occur unintentionally prior to the requirement for a written engagement agreement with all clients. BRRETA allows dual agency, but requires written consent to ensure each party has full disclosure and informed consent, which is intended to avoid misunderstandings. The courts will presume that the clients have consented to the dual agency if the licensee obtains a writing that contains:

(1) A description of the transactions or types of transactions in which the broker will serve as a dual agent;

(2) A statement that, in serving as a dual agent, the broker represents two clients whose interests are or at times could be different or even adverse;

(3) A statement that a dual agent will disclose all adverse material facts relevant to the transaction and actually known to the dual agent to all parties in the transaction except for information made confidential by request or instructions from another client which is not allowed to be disclosed by this Code section or required to be disclosed by this Code section;
(4) A statement that the broker or the broker’s affiliated licensees will timely disclose to each client in a real estate transaction the nature of any material relationship the broker and the broker’s affiliated licensees have with the other clients in the transaction other than that incidental to the transaction. For the purposes of this Code section, a material relationship shall mean any actually known personal, familial, or business relationship between the broker or the broker’s affiliated licensees and a client which would impair the ability of the broker or affiliated licensees to exercise fair and independent judgment relative to another client;

(5) A statement that the client does not have to consent to the dual agency; and

(6) A statement that the consent of the client has been given voluntarily and that the engagement has been read and understood.

**NO TERMINATION OF AGENCY FOR DISCLOSURES**

If a broker or licensee acting under a brokerage engagement makes disclosures allowed or required by BRRETA, any agency relationship that the broker or licensee has with a client does not end. Under general agency principles, a client may be able to terminate an agency relationship if the agent (the broker or licensee) makes disclosures that the client does not wish to be made. This situation could arise when, for example, the broker makes required disclosures about the property that one client would prefer not to be made. If the law requires that the broker make the disclosures, the principal (client) may not claim that the agency ends because of the disclosure. For example, BRRETA requires a broker to disclose any material adverse information actually known by the broker. The broker may know, for instance, that the property is subject to periodic flooding and disclose this to a buyer. The seller client may not terminate the agency relationship because the broker made this disclosure.

**TWO AFFILIATED LICENSEES REPRESENTING OPPOSITE PARTIES – DESIGNATED AGENCY**

Under many other states’ statutes, two licensees working for the same broker cannot represent opposite parties in a transaction without creating a dual agency since it is really the real estate firm that represents each party. Georgia’s BRRETA provides that the broker can assign different affiliated licensees to represent different clients in the same transaction under Designated Agency. Thus, one licensee of a firm may represent the buyer and another licensee of the same firm may represent the seller. Before doing so though, the parties must sign a written consent. The licensees may not disclose, except to their broker, information that a client wishes to remain confidential, except information that BRRETA allows or requires to be disclosed.

Designated Agency is an agency relationship under which two different Agents of the same Broker represent two different clients with opposing interests in the same transaction. BRRETA defines under 10-6A-3 (9) 'Designated agent' means one or more licensees affiliated with a broker who are assigned by the broker to represent solely one client to the exclusion of all other clients in the same transaction and to
the exclusion of all other licensees affiliated with the broker. Under BRRETA 10-6A-13.

(a) A broker may assign directly or through the adoption of a company policy different licensees affiliated with the broker as designated agents to exclusively represent different clients in the same transaction. In addition, the broker may delegate such assignment responsibility to other management level personnel acting under a company policy. Any company policy adopted to fulfill the requirements of this subsection shall contain provisions reasonably calculated to ensure each client is represented in accordance with the requirements of this chapter. A designated agent of a seller, landlord, buyer, or tenant shall owe his or her client the duties set forth in Code Section 10-6A-5, 10-6A-6, 10-6A-7, or 10-6A-8 of this chapter, respectively.

(b) If a broker appoints different designated agents in accordance with subsection (a) of this Code section, neither the broker, the broker's licensees, nor the real estate brokerage firm shall be deemed to be dual agents.

(c) When designated agents are appointed in accordance with subsection (a) of this Code section, the broker, the clients, and the designated agents shall be considered to possess only actual knowledge and information; there shall be no imputation of knowledge or information between and among the broker, the designated agents, and the clients. Designated agents shall not disclose, except to the designated agent's broker, information made confidential by request or instruction of the client whom the designated agent is representing, except information allowed to be disclosed by this Code section or required to be disclosed by this chapter. Unless required to be disclosed by law, the broker of a designated agent shall not reveal confidential information it receives from either the designated agent or the client with whom the designated agent is working. For the purposes of this Code section, confidential information shall be deemed to be any information the disclosure of which has not been consented to by the client that could harm the negotiating position of the client.

(d) The designation of one or more of a broker's affiliated licensees as designated agents shall not permit the disclosure by the broker or any of the broker's affiliated licensees of any information made confidential by an express request or instruction by a party prior to the creation of the designated agency. The broker and the broker's affiliated licensees shall continue to maintain such confidential information unless the party from whom the confidential information was obtained permits such disclosure by subsequent word or conduct, or such disclosure is required by law. No liability shall be created as a result of a broker and the broker's affiliated licensee's compliance with this subsection.

**NO IMPUTATION OF KNOWLEDGE FROM BROKERAGE RELATIONSHIPS**

BRRETA deals with another complicated feature of agency law known as *imputed knowledge*. Sometimes the law infers that a person has certain knowledge even if it is questionable whether that person has that knowledge. For example, under agency law in some states, the courts may assume that all sales licensees of the same broker have knowledge of defects in the seller's house that is listed with that Broker. BRRETA provides that each client and broker and their licensees possess only actual knowledge and information. There is no imputation of knowledge or information among the clients, brokers, or the affiliated licensees. In other words, a court should not infer that a broker, a client, or another party to the transaction
knew something just because of their relationship to another party. If a party knows something, such as a defect in a house, the courts will not impute that knowledge to anyone else who does not actually know it.

**OFFICE BROKERAGE RELATIONSHIP POLICY**

Every broker must develop and enforce an office brokerage relationship policy among sales associates that either specifically permits or rejects the practice of disclosed dual agency. The broker must disclose this policy to a prospective client prior to entering into a brokerage relationship.

**COMMON SOURCE INFORMATION COMPANIES**

BRRETA provides that a broker does not have an agency relationship with a common source information company, unless the broker has a written agreement that provides otherwise. 'Common source information companies' means any person, firm, or corporation that is a source, compiler, or supplier of information regarding real estate for sale or lease and other data and includes but is not limited to multiple listing services.

The most obvious example of a common source information company is a multiple listing service, but with the advent of new computer and television technology other companies may fit into this category in the future. A broker does not have an agency relationship with any client of another broker solely because of membership or affiliation with a common source information company. This provision should help to reduce accidental and unintended agency relationships. For example, suppose that a buyer's broker was a member of the same multiple listing service as the listing broker. If litigation resulted from the transaction, the seller could not claim that the buyer's broker was the seller's agent simply because that broker belonged to the MLS.

**BROKER REGULATION NOT LIMITED**

BRRETA does not limit the Georgia Real Estate Commission in its regulation of brokers and brokers' affiliated licensees. Chapter 40 of Title 43 and the substantive rules and regulations adopted by the Commission continue to govern licensees. Moreover, the Commission does not administer or enforce the provisions of BRRETA. BRRETA primarily addresses the private relationships among brokers, clients, customers, and other brokers.