

2013 Calendar

GREC Brokerage Course & Trust Accounts Class Dates:

- April 24 & 25, 2013
NAMAR
<http://www.namar.org>
- May 22 & 23, 2013
Lake Country Board
<http://www.lakecountryrealtors.com/>
- June 19 & 20, 2013
Cherokee Board
[Cherokee Association of REALTORS](http://www.cherokeerealtors.com/)

GREC Georgia Instructor Training Workshop

- [May 9 & 10, 2013](http://www.grec-git.com/)
Atlanta, GA
<http://www.grec-git.com/>
[Register Online](#)

Common Violations Class Dates:

- April 16, 2013
Golden Isles AOR
912-264-2915
- April 17, 2013
Middle GA AOR
478-471-7336

[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

Affiliated Providers

Home Warranty
Mortgage Services
Homeowners Insurance
Legal Services

This Issue:

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Affiliated Service Providers & Disclosure

Salesperson Camel was affiliated with XYZ Brokerage Solutions, a firm that has affiliated business relationships with assorted real estate settlement service providers. The joint venture service providers of the firm include mortgage services (Traditional Financial Services), home warranty insurance (Old Home Warranty), We Move U, and ABC Law Firm along with a home owners insurance and a title insurance company.

XYZ Brokerage Solutions receives monthly statements from these joint venture partners to track the funds generated from the affiliates' use of joint venture service partners. Funds are disbursed to the broker whose clients and customers utilize the services of the firm's partners.

Unrelated to the activities with joint venture partners, the Commission received a formal complaint alleging that Salesperson Camel failed to timely remit a \$2,000 earnest money check to his broker. The investigation determined that the allegation was indeed true.

Upon further investigation regarding the activities of Salesperson Camel, additional violations were uncovered. The licensee was clearly producing transactions, and it was determined that over a period of a year and a half the license was performing real estate activities while his license was on lapsed status. During that time, several transactions took place, including the following:

1. On May 9, 2010, while Salesperson Camel's license was on lapsed status, Salesperson Camel drafted a contract for 5884 Olson Drive. On June 16, 2010, the transaction closed. The *Settlement Statement* identifies the lender as **Traditional Financial Services**. The contract and *Settlement Statement* state the seller paid for a home warranty with **Old Home Warranty**. Salesperson Camel failed to disclose that the firm collected a fee from the mortgage and home warranty providers.
2. On March 4, 2011, Salesperson Camel drafted another contract that closed on May 30, 2011. The contract and *Settlement Statement* state the seller paid for a home warranty with **Old Home Warranty**. Salesperson Camel failed to disclose that the firm collected a fee from the home warranty provider.
3. Files from several other transactions did not contain any Affiliated Business Disclosures to the buyers.

Not only was the Salesperson practicing real estate with a lapsed license, but the investigation of Salesperson Camel's activities determined that **the managing broker of the brokerage firm overlooked several license law violations of Salesperson Camel for the financial gain of the firm.**

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\$10 each
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Estate & Staying
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“Being a Broker
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Affiliated Service Providers

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In addition to closing transactions and paying monthly office rent, Salesperson Camel generated income for the broker by using the firm's joint venture partners.

Salesperson Camel voluntarily surrendered his license to the GREC and GREC later revoked his license. The managing broker was subsequently investigated for other violations of the License Laws, Rules, and Regulations. The managing broker were required to pay fines, administrative and legal fees in additions to being required to take programs of education on the License Law, Rules, and Regulations.

It is a violation of the License Laws, Rules and Regulations to fail to disclose in writing to a principal in a real estate transaction any of the following:

- (A) The receipt of a fee, rebate, or other thing of value on expenditures made on behalf of the principal for which the principal is reimbursing the licensee;
- (B) The payment to another broker of a commission, fee, or other thing of value for the referral of the principal for brokerage or relocation services; or
- (C) The receipt of anything of value for the referral of any service or product in a real estate transaction to a principal; [43-40-25\(b\)\(6\)](#)

What Do You Think?

A salesperson is contacted by a buyer who wants representation in purchasing a home for an immediate relocation. To provide the licensee more incentive, the buyer offers to give 20% of the total cost of the property as commission provided the transaction closes within a certain time frame. Can a salesperson accept such an offer?

First, the broker is responsible for reviewing and approving all contracts, agency agreements, and commission structures. The salesperson may have been given authorization to negotiate commissions depending upon his/her independent contractor agreement with the broker. However, any commission must be clearly defined. There can be no open-ended or net commission. Net listings are prohibited.

If the licensee clearly states the purchase price and clearly states the commission amount or provides a method of calculating a specific commission amount, the broker could approve entering into such an agreement. The License Laws, Rules, and Regulations require that all parties must be able to clearly determine the amount of commission to be paid in the transaction.

The formula to convert a net listing price to an acceptable commission arrangement is: Price to net divided by one minus the negotiated commission percentage. For example: If a buyer is willing to pay (or a seller wants to net) \$200,000, and the negotiated commission amount is 8%, the formula is $\$200,000 / 1 - .08 = \$217,391$ which is the total price including commission. (Other costs must also be considered to determine the trust costs to the buyer or seller.)



Focus on Terminology: “chattel”

The term **chattel** refers to an item of tangible personal property, not real estate. The word chattel evolved from the word “**cattle**”. *Cattle* was one the most important personal possessions by landowners many years ago, so the word *chattel* came to be used to refer to personal property. A bill of sale is used to transfer ownership of **chattel**. The Uniform Commercial Code is used to record the sale of personal property in the county where it is located.

Source: *The Language of Real Estate*, by John W. Reilly, Fifth Edition, 2000, Dearborn Real Estate Education, page 67,



The Appraisers Page

Useful Links:

[GREAB
Web Site](#)

[Appraisal Act](#)

[GREAB
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Who can talk to whom?

By: D. Scott Murphy, SRA

I have touched upon this in previous articles but wanted to circle back and spend a little more time discussing this topic. There is a lot of confusion among agents and appraisers. The rules seem to keep changing or evolving. So let's look at where we started, the rules which were introduced, and where we are today.

Communication is a critical part of the real estate transaction. In order for it to move smoothly, all parties need to remain informed and information needs to flow between all parties. None of the past or present legislation was ever intended or meant to impede communication. The reason this is even a topic of discussion is the confusion which arose as a result of the HVCC and the Dodd Frank Act, which were federal regulations enacted in the wake of the recent mortgage crisis.

The HVCC (Home Valuation Code of Conduct) was introduced as a settlement in a lawsuit between the State of New York and the GSE's (Freddie Mac & Fannie Mae). It created a separation of the origination staff of a lender (or mortgage broker) and the appraiser. No longer could the loan officer choose who the appraiser was to be for their loan. It was to be done in an independent and random fashion. Lenders were given the alternative of using an independent AMC or create a separate department to manage the appraisal process which was completely separate from the origination department.

You need to understand that this was very positive news to most appraisers. For years and years we were constantly pressured and harassed by loan officers into raising values. We would regularly receive phone calls from loan officers stating "I need to get \$250,000 for this property, can you do it?" – we would be expected to answer then on the spot or at best get back to them within the hour. No amount of desktop research is possible for an appraiser to be able to answer that question. Furthermore, based on USPAP (Uniform Standards of Professional Practice) – if we did answer that question, even with a range of value, we had just completed an appraisal and could be held liable for those results. If the appraiser said "no, I cannot give you an answer over the phone, I need to do research, inspect the property and prepare a report" – which is the correct answer – the loan officer would hang up the phone and call another appraiser. The first appraiser would most likely not receive any more work from that loan officer and so an enormous amount of pressure was placed on the shoulders of the appraiser. What happens if he says – "yes, I can get you \$250,000" and then gets out to the property and it is not what he expected and he is unable to return a report for the predetermined value?

Many loan officers also felt it was common practice that if they ordered an appraisal, providing an estimate of value, and the resulting appraisal did not meet that value, that the appraiser should either stop as soon as he realized it would not "hit" value or that the borrower should not have to pay for the appraisal. The term "the borrower wasted their money" was most commonly used. Sorry that it did not "hit" your number but the appraiser could not know without going through all the necessary steps to complete the report – and regardless of the value the appraiser is due his fee.

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HVCC was always intended to be a temporary set of rules while congress drafted what is now called the Dodd Frank Act. The Dodd Frank Act is far more reaching than HVCC was. I have never read the entire document but it touches on many different parts of the mortgage, banking and financial markets. As it pertains to loan officers, it required them to become licensed. Most people don't realize or never thought about the fact that everyone else in the real estate transaction was licensed but the loan officer. The strict background checks weeded out a lot of loan officers. Other regulations made it virtually impossible to operate as a mortgage broker – thus the steep decline in the number of mortgage brokers.

But nowhere in the HVCC or the Dodd Frank Act does it say that the agent – or anyone else except the loan officer and production staff – can talk to an appraiser. Many appraisers either misinterpret these rules or purposely lump agents in so they do not have to talk to them.

Not only can agents talk to an appraiser – I strongly encourage them to provide any information they can to the appraiser. It is the appraisers job to collect, analyze and VERIFY all data available to them in the normal course of business. Any appraiser who purposely refuses to take information from an agent, homeowner or any other participant who might be able to supply or verify data – is in my opinion, in violation of USPAP and the Georgia Appraisers Act. We all know that certain parties will be biased in certain directions, but if the appraiser is professional, ethical and competent – he can take this into consideration, include the information and use it appropriately.

I am so tired of hearing agents tell me that the appraiser would not talk to them, would not take their information and some even state that it is illegal for them to do so - “we have a hotline to report you to” – what hotline – ASC hotline which is for reporting unethical activity of appraisers, lenders and AMC's? They do not have authority over real estate agents. Are you going to report them to the GREC? That will not do any good. Unless the agent is categorically stating that the property is WORTH x and not y; then they would be acting as an appraiser without a license but just providing information is no violation.

I am speaking to the residential appraisers – stop being so unprofessional. You do not see commercial appraisers turning down information. To the contrary, they spend an enormous amount of time soliciting information from the parties involved in the transaction. It is called verification and most residential appraisers do know what that word means. You would be amazed at how much detailed information you can get from the listing agent, selling agent, buyer or seller. Encouraging their input will make your reports so much more accurate and reliable. So please – communicate, talk to the agents, take what they have to say with a grain of salt if necessary, but don't break off ties with the very people who can assist you the most in completing an accurate appraisal report.