

2014 Calendar

GREC Brokerage Course & Trust Accounts Class

Dates:

- March 26-27, 2014
Greater Rome BOR
www.grbor.com/
- May 7-8, 2014
Middle Georgia AOR
www.mgar.org
- July 9-10, 2014
Savannah GAR
www.savannahboardofrealtors.com

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The Consultant

The term consultant can cover services in many industries. The real estate industry in particular has many professionals that refer to their services as consulting. The real estate consultant must be licensed by the Georgia Real Estate Commission. There are exceptions to this rule, but they do not apply to individuals holding an active or an inactive real estate license. The exceptions to licensure are detailed in [License Law 43-40-29](#).

The purpose of this article is to make it clear that persons performing real estate activities for another party for a fee, and who are not doing so as a full time employee of that owner, company, or individual, must obtain and maintain a real estate license in Georgia.

To further clarify, consider the following examples:

1. Consultants that negotiate and interface with property owners and landlords for locations of property, including purchases, leases, or amendments to purchases and leases or other discussions that affect rights of use of property and improvements, such as cell towers or retail space and other structures, all have to be licensed by the Georgia Real Estate Commission.
2. If a licensee wants to work as an employee for a company to locate sites, can he/she still maintain his/her real estate license on inactive status? No. the license must be surrendered to work as the full time employee performing real estate activities. Reference License Law 43-40-12(g) "Any licensee whose license has been placed on an inactive status shall not engage in the real estate brokerage business except in connection with property owned by the licensee." If the individual later wants to in real estate brokerage other than as an employee, he/she must apply for a license as an original applicant.
3. A consultant, business broker, or individual that provides services in anticipation of being paid in the sale of a business which includes the transfer of the lease on the property must be licensed as a real estate licensee.
4. A real estate licensee cannot legally share a commission in a transaction with an unlicensed person who is illegally practicing brokerage activities.

The Commission has authority to stop those practicing real estate without a license. This includes individuals practicing with an inactive license or a license that is not in good standing. The Commission issues a Cease and Desist Order to the individual practicing real estate without a license requiring him/her to Cease and Desist from any further that require a license issued by the Commission.

The Commission is authorized to impose a fine up to \$1,000.00 for each transaction constituting a violation, and each day the party continues to act in violation is considered another violation resulting in an additional \$1,000 per day. Clearly, the fines can be extensive.

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The Consultant....

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The Commission receives complaints concerning those practicing real estate without a license, and the Commission is required to investigate all Requests for Investigations.

Consider two investigations resulting in cases involving individuals operating without a license: the first is a consultant never licensed by the Commission, and the second case involves a broker whose license was inactive or lapsed. Note that a transaction does not have to be completed for a violation to occur.

Cease & Desist Order

The Commission received reliable evidence that an individual, for valuable consideration, offered, attempted, or agreed to perform, directly or indirectly, acts that require a license from the Commission. The individual advertised real estate services such as locating investment properties for investors for a fee. Therefore, he acted in the capacity of a licensee in Georgia, although he was not and had never been licensed as a real estate licensee. A Cease & Desist Order was issued and in this case the individual consented to pay \$1,000 and immediately stopped performing real estate activities. An individual in a different case continued to practice without a license after the Cease and Desist Order was in effect and as a result paid over **\$50,000** for administrative, investigative, and legal costs and expenses.

Citation to a Licensee

A commercial broker let his license lapse for 3 months, and was on inactive status for 3 months prior to that. During that time the licensee worked as a fulltime employee of an unlicensed company conducting real estate brokerage activities. A Citation was issued and the licensee was required to comply with the following:

1. Reimburse the Commission for its administrative, investigative, and legal costs and expenses in this matter in the amount of \$1,000.00 within 30 days.
2. Successfully complete a three hour course approved by the Commission on the subject of legal issues and the avoidance of license law violations.

Regarding unlicensed consultants, two key points should be made:

1. The party performing the acts of a licensee without being licensed is violating the law.
2. The broker (or any real estate licensee) who pays a consultant, subcontractor, individual, etc. that is not licensed is violating the License Law as well. [License Law 43-40-25](#). For example, if a licensee cooperates with an independent contractor that is not licensed in a real estate transaction and shares his/her commission with that unlicensed party, the licensee has also violated the license law.

[License Law 43-40-25](#). It is considered an unfair trade practice and violation to pay a commission or compensation to any person for performing the services of a real estate licensee who has not first secured the appropriate license under this chapter or is not cooperating as a nonresident who is licensed in such nonresident's state or foreign country of residence.



Focus on Terminology: "Consultant"

It is interesting to note that a dictionary states that a license is required to practice real estate services. [The Language of Real Estate](#), by John W. Reilly, now in its Seventh Edition, defines a **consultant** as **"one who gives advice in a specific area, such as a financial adviser. A real estate consultant who performs services similar to a real estate broker would have to be licensed under state law."**

Professionals who want to practice real estate brokerage must invest considerable time and money to become trained and obtain and maintain a real estate license. The Georgia Real Estate Commission is tasked with enforcing the License Laws, Rules, and regulations and protecting the public interest regarding real estate matters.

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NOTICE TO ALL GEORGIA REAL ESTATE LICENSEES

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The Georgia Real Estate Commission is proposing two changes to the current Rules of the Commission:

Advertising - The purpose of this change is to address the use of the Internet to advertise real property. This proposed Advertising Rule is a revision of an earlier proposed Rule sent to you previously.

Maintaining a License - The proposal is to increase continuing education hours from 24 to 36 over a 4 year license renewal period. Also, after July 1, 2016, continuing education shall include a mandatory 3 hours on the topic of License Law.

Note: This Rule will NOT apply to those individuals known as "Grandfathered Licensees" who were actively licensed prior to January 1, 1980. "Grandfathered Licensees" will continue to be exempt from continuing education requirements.

The proposed Rules are available for review and comment by going to www.grec.state.ga.us and following these steps:

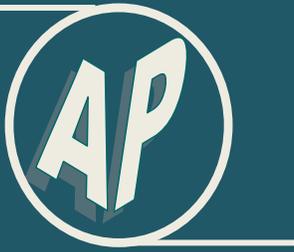
1. On the left-hand column, under "Quick Links", click on "[Real Estate License Law](#)".
2. Click on "[Proposed Rule Changes](#)".
Then click on the link to view [proposed Rule 520-1-.09 Advertising](#) and [proposed Rule 520-1-.05 Maintaining a License](#).

Any party wishing to express opinions or views on the proposed Rule listed above may do so by contacting or writing Commissioner William Rogers or Deputy Commissioner Craig Coffee at the Georgia Real Estate Commission, Suite 1000 - International Tower, 229 Peachtree Street, N. E., Atlanta, Georgia 30303-1605, no later than March 21, 2014.

Thank you,

Georgia Real Estate Commission

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



The Appraisers Page

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[Appraisal Act](#)

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Diminution in Value

By D. Scott Murphy, SRA and Hudson Holder

This month we want to discuss a complicated topic – Diminution in Value. It is also referred to as Diminished value and is a highly debated topic, particularly as it applies to real property. Real property insurance claims are typically viewed through the scope of identifiable aspects of physical loss, with particular emphasis on restoring *functionality*. The concept of diminished value has long been part of the automobile industry, wherein an insured can be entitled to physical damages to personal property in addition to post-repair economic losses/losses in market value.

To understand this concept, think about a typical automobile insurance claim. You get into an accident, there is damage to your car, an insurance claim is made and then the insurance company will issue you a check in lieu of repairing the car or completing the repairs to your car. There is an additional piece which most people do not realize or take advantage of – Diminished Value. When you go to sell this car you will have to disclose the accident and/or it will appear on a Carfax report. This will diminish the value a buyer is willing to give you. You are entitled, under most insurance policies in Georgia,

to require the insurer to pay you this diminished amount on top of the cost to repair the car. You generally have to specifically ask for this and often file data to support your claim.

The concept of Diminution in Value of real estate is a relatively new type of claim as it has not been successfully tested in the courts of Georgia – until recently. In 2012, the Georgia Supreme Court (*Royal Capital Development, LLC v. Maryland Casualty Company*) ruled that the concept of diminished value applies to real property in the same manner as it applies to the automobile industry – that first-party property insurance policies may cover stigma-related losses in addition to actual physical damages incurred.

An individual looking to “be made whole” by an insurer as the result of damages to real property typically desires to repair physical damages to restore functionality, but also to restore the property to its pre-event market value. The *Royal Capital Development, LLC v Maryland Casualty Company* ruling established the precedent regarding the latter – that the insurer has a responsibility to address and compensate for post-repair losses in market value caused by a damage event.

The concept of market value is the cornerstone of the appraisal industry and is typically defined in the context of the Uniform Standard of Professional Appraisal Practice’s elaboration of the idea:

“Market Value means the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition are the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

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1. Buyer and seller are typically motivated;
2. Both parties are well informed or well advised, and acting in what they consider their own best interest;
3. A reasonable time is allowed for exposure in the open market;
4. Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and
5. The price represents the normal consideration for the property sold unaffected by special or creative financing or sale concessions granted by someone associated with the sale.”

In an analysis of market value, practically speaking, an appraiser puts himself in the shoes of a typical buyer – that is, what is a typical buyer willing to pay for a property? The price a typical buyer will pay in the marketplace defines market value. Market values are driven by a plethora of factors, which include both physical and perceived. A perceived stigma associated with a property can certainly influence market value in the same way as an actual physical aspect of the structure. Is a post-repaired property inherently worth less than a property that never sustained any physical damage? This answer depends on the thought process of a typical buyer in the marketplace. If a buyer attaches a stigma to a property because of prior but repaired damage, it is certainly worth less. If a typical buyer does not have negative perceptions of a repaired property due to the integrity and extent of the repairs, market value has not been comprised through the event and diminished value is eliminated. As such, the diminution in value is directly related to the extent of repairs of a damaged property.

The Georgia Seller's Property Disclosure Statement explicitly requires seller's disclosures regarding major structural changes or alterations to a property (Item 4), flooding (Item 8), mold (Item 11), and prior insurance claims (Item 12). While the owner of a prior damaged property may be compensated by an insurer to repair a property and restore functionality at the time of the loss, realization of diminished value as a result of the damage may not be brought to light until the time of sale. It is our opinion that a typical buyer will not pay less for a property if they are comfortable with the integrity of the post-repaired property. If the buyer believes that the property may still be impacted by the past event despite repairs, either visibly or perceived, the buyer will tend to discount the value of the property. As such, if a damaged property is repaired to an extent that visible damages and/or perceived potential damages are eliminated, a typical buyer is not concerned about the past damage and original market value (prior to the damage) is realized. Some properties can not be repaired to the extent of the pre-event condition without some lingering stigma. A structural crack is a good example. The damage can be repaired, inspected by an engineer and even monitored over time – but the repair is still visible and a buyer may discount the property.

Arriving at the amount of stigma value or diminished value of a particular property is very difficult. There are so many factors that the appraiser must consider. This is where we need your help. If you have sold a home which had a prior significant event, with or without a lingering stigma, we would like for you to contact us. We are looking to extensively research this topic and then report back to you our findings. Please contact Hudson Holder at 678-636-4834 or hholder@dsmurphy.com