

2015 Calendar

GREC Brokerage Course & Trust Accounts Class Dates:

- October 7 & 8, 2015
Golden Isles AOR
goldenislesrealtors.com

Common Violations Class Dates:

- September 15, 2015
Columbus BOR
Columbus, GA
706-323-1701
- September 15, 2015
Hall County BOR
Gainesville, GA
770-534-1564
- October 20, 2015
Augusta BOR
Augusta, GA
706-736-0429

GREC Annual School Meeting

December 11, 2015

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Disclose, Disclose, Disclose

What form should I use? Although it may sound like a simple question, not all disclosures have to be provided on a specific form such as a Seller's Property Disclosure Statement. In fact, there is not a required property disclosure form. In Georgia the form is not actually required by the Real Estate Commission, but some states do have mandated forms.

The licensee must make disclosures for a variety of conditions and situations, but a seller property disclosure form does not actually have to be attached to a listing or a contract. Since there is no "standard" or "required" form that is required or endorsed by the Georgia Real Estate Commission, it is up to the broker to provide forms and polices to insure that the licensee is making all necessary disclosures. For example, a brokerage firm can elect to use the GAR (Georgia Association of Realtors) forms, wherein the listing form references a Seller's Property Disclosure Form. If that listing contract is used, then the disclosure should be attached unless the listing is modified by the parties. In fact, if it is a foreclosure or REO, some attorneys believe it is better not to include a disclosure statement since no one has actually been by the property, so they do not actually know the condition well enough to complete the form. If a disclosure form is completed with inaccurate information, it becomes a question of intentional misrepresentation or just bad information. But either way, the danger begins when the buyer relies on the information.

As another example, in commercial transactions the seller often does not want to attach a disclosure form, but instead uses a contract prepared by his/her attorney that addresses required disclosures and disclaimers to make the buyer responsible for due diligence. Of course the licensee and the seller must still disclose certain known conditions such as environmental contamination or known latent defects.

The following is a list of disclosures that a licensee must deal with on a regular basis; however it is certainly not a complete list.

1. **Seller's Property Disclosure:** Known adverse or latent conditions must be disclosed, even within 1 mile of the property, but there is not a specific form that must be used. **BRRETA** requires "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

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**Georgia Real Estate
Commission**

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

Disclose, Disclose, Disclose... *Continued from page 1*

- of the neighborhood or through the review of reasonably available governmental regulations, documents, records, maps, and statistics.”
2. **Lead Based Paint Disclosure:** [EPA requires that buyers are provided a specific disclosure on properties built before 1978.](#)
 3. **Agency Representation:** [BRRETA](#) requires all licensees to make a clear disclosure of agency representation including what types of agency the firm provides.
 4. **Dual Agency Disclosure:** The parties must voluntarily consent in writing to the dual agency before it occurs.
 5. **Commissions and Fees:** Disclosure is required stating who is being paid and by whom. The amount can be stipulated in a separate commission agreement.
 6. **Referrals:** Disclosure is required before the referral is made stating that the referring agent will receive a fee for the referral. It is an Unfair Trade Practice and violation of the License Law, Rules, and Regulations to fail to obtain a person's agreement to refer that person to another licensee.
 7. **Rebates** to principals must be disclosed in writing, at least on the closing statement.
 8. **Material Relationships:** The licensee must disclose any relationship, such as being a relative or family member of one of the parties that could compromise their representation in the transaction.
 9. **Environmental Conditions:** Any known environmental condition must be disclosed such as underground storage tanks or hazardous chemicals stored on the property.
 10. **Radon:** Although Georgia does not have a state-required form to disclose radon, if an existing radon condition is known, it should be disclosed.
 11. **Disclosures by a Transaction Broker:** A transaction broker who does not represent either party must still disclose all known adverse facts, or latent physical conditions within 1 mile of the property [BRRETA](#) 10-6A-14(b)
 12. **History of Property:** If a licensee is asked the history of certain events that occurred within the house, such as a violent crime or known illnesses, it should be disclosed.
 13. **Financial ability to Pay Seller Financed Loan:** In a case where the seller is financing the sale, the buyer agent is actually required to disclose if he/she actually knows that the buyer is unable to repay the loan or does not intend to live on the property. [BRRETA](#) states, “A broker engaged by a buyer shall timely disclose to a prospective seller with whom the broker is working as a customer and who is selling property which will be financed either by a loan assumption or by the seller's providing a part or all of the financing all material adverse facts actually known by the broker concerning the buyer's financial ability to perform the terms of the sale and, in the case of a residential transaction, the buyer's intent to occupy the property as a principal residence.”

The bottom line regarding property disclosures, agency disclosures, and other disclosures is: If it is a question as to whether it needs to be disclosed or not, it is probably better to disclose.



Focus on Terminology: “Lead Based Paint Pamphlet”

A licensee must provide a Lead Based Paint Disclosure pamphlet for properties, such as homes and condominiums, built prior to 1978. [Link to the EPA Disclosure Form.](#) The Environmental Protection Agency has recently updated the Lead Based Paint Disclosure Pamphlet and form as of August 13, 2015. There is a supplement that can be used with existing pamphlets. [Link for the current pamphlet.](#)

“**Note:** EPA does not require users to discard older versions of the document. EPA encourages users to exhaust their existing stock prior to printing copies of the new version. Users are encouraged to provide a [PYF supplement](#) (1 pg, 172 K) with older versions of PYF in order to ensure that current information is provided.”
<http://www2.epa.gov/lead>



The Appraisers Page

Georgia Real Estate Appraisers

August 2015

Useful Links:

[GREAB Web Site](#)

[Appraisal Act](#)

[GREAB
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FAQ

By: D. Scott Murphy, SRA

Thanks for everyone who has sent questions and article topics. Please keep them coming. This month I thought I would address the most frequently asked questions. Many of these questions relate back to full articles I have written in the past and I will try to reference the articles within my response to the question.

Without exception, the most frequently asked question I get is “what is the definition of gross living area – GLA”. Let me first start by saying there are a number of different interpretations used in the real estate industry. Assessors have a definition, which they use as their standard. It is often referred to as Gross Building Area GBA. Architects use a standard, which measures, from the center of the exterior wall to the center of the opposing wall. Appraisers adhere to the ANSI (American National Standards Institute)

definition, which measures the exterior of the home less any open space inside the home (open two story space and open foyer space). The definition separates the above grade space from the below grade space. It is very important to compare apples to apples. Think of a 3000 sf home (above grade) with a 1500 sf finished basement. Is this house worth more or less than a 4500 sf house which is all above grade? You must agree that the home with 4500 sf all above grade is more valuable. See the [December 2012 Gross Living Area](#) article and the [January 2013 Measuring a house](#) article.

What is a bedroom? For a room to be considered a bedroom it must be of adequate size (most commonly 100+ square feet) – so think of a room which is roughly 10'x10'. It must have a closet which is exclusive of the 100 sf. Minimum size is generally considered to be 2' x 4'. A bedroom must have an operable window. This means the window must open and close and some definitions go on to say that it is large enough for a fireman to enter in full gear. A bedroom must have a door for privacy. Finally, it must have adequate access to a full bath. This means a full bath on the same level, which can be accessed without going through another bedroom.

What constitutes a bathroom? A half bath has a toilet and sink. A full bath has a toilet, sink and tub or shower or a tub/shower combo.

Why did the appraiser not count all my bedrooms and bathrooms in my appraisal report? This is a very common question. When reading an appraisal report it may appear as though the appraiser did not count all the bedrooms and baths in a house with a finished basement. This is due to the fact that we must separate the above grade space from the below grade space. The space where the room count and GLA are reflected is for **above** grade space only and the form specifically says this. The basement lines of the report show the space and room count for the basement area.

How long should an appraisal inspection take? The answer will vary based on the size of the home and the complexity of the property but even the most simple ranch style home should still take 20-30 minutes. More complex homes could take 1-2 hours. Most of my appraisal inspection is complete within 30-40 minutes. The appraiser should

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take the time to walk through the house as a typical buyer would. He must make note of the overall condition, quality of improvements, various amenities, and recent upgrades. A common misconception is that we must measure each room or that it should take as long as a home inspection. The appraiser should be asking questions about the age of the mechanicals, information about recent upgrades and improvements. Access to crawl space and attics is only required for FHA and VA appraisals. He should test to make sure all utilities are operable.

Why did the appraiser use Active listings as comparables? The appraiser is required to research the subject market thoroughly. Recent sales are just part of the picture. Active listings and pending sales offer appraisers evidence of the direction the market is moving. While it is correct that an active listing should not be used as a primary comparable, good appraisers will include them as an additional comparable, separate from the closed sales used to arrive at his estimate of market value. Most lenders will require two active or pending sales be included. Pending sales are the best indicators of the current market. It is important that the appraiser make every attempt to find out what the pending sale is under contract for by contacting the listing agent.

Does the home have to have a range? No, both FHA and conventional do not require there to be a stove or range in the kitchen. However, if this or any other appliance was a built-in appliance it must be present. Both FHA and conventional are concerned with three major issues; is the house Safe, Sound and Habitable.

I receive questions about repair issues on a regular basis. What you need to remember are the three criteria – is the house safe? Are there any issues, which would be considered unsafe such as exposed wiring, missing handrails on steps or decks, uncovered holes or open pits in the yard? Is the home sound? Is the foundation cracked or leaning, are the floor joists properly spaced and in good condition? And finally is the house habitable? Is there adequate heating, water and sewage disposal, are there adequate floor coverings (we see quite often REO homes with no carpeting or flooring), are there broken windows or holes in the roof? Many are surprised to learn that these standards apply to conventional loans as well as FHA loans.

Do appraisers research permits? It is certainly within the realm of possibility that the appraiser will contact the county to verify that any recent improvements have been permitted. Most appraisers will rely upon seller's disclosure statement unless they have reason to question whether an improvement has been permitted. This is an area where I expect a rules change from the lender. We have already seen many relocation companies require appraisers to verify permits and expect this to move to the general lender world in the next 5-10 years.

How does an appraiser handle an improvement, which they find out was not permitted? If a basement is finished without a permit and this comes to the attention of the appraiser there are two options. The owner can have the area permitted by the city/county or generally most lenders will allow the appraiser to exclude this space from valuation. This works for basements or porches, however, if it is a master bedroom or bathroom (an integral part of the living area) exclusion is not an option. The owner will have to obtain a permit.