

GEORGIA REAL ESTATE COMMISSION

Investigations and Hearing Process

Georgia's real estate license law provides that the Commission may, upon its own motion, and shall, upon the sworn written request of any person, investigate the actions of any applicant for licensure, real estate broker, associate broker, salesperson, community association manager, or real estate schools and instructors approved by the Commission." The law limits the Commission's investigative authority solely to issues related to the real estate license law.

The Commission's investigations do not determine whether a violation of any other area of the law has occurred. For example, the Commission cannot settle such issues as disputes regarding earnest money, repairs to property, or payments of fees to licensees. The law of contracts controls these issues. If the parties cannot resolve such issues themselves, they should consult an attorney or the small claims court of their county for assistance.

Anyone who files a request for investigation with the Commission and has suffered a financial loss should not wait for the results of a Commission investigation before consulting an attorney. The Commission cannot replace a financial loss. The law allows the Commission only to reprimand, suspend, or revoke a license and/or impose fines, education requirements, and/or require reports from an independent accountant.

The Commission may only investigate licensed real estate brokers, salespersons, community association managers, or unlicensed persons performing the acts of a broker. It cannot take action against an unlicensed individual who may be an owner or builder acting as a principal on his or her own property. The public and all licensees should understand the following facts regarding Commission investigations:

- (a) When the Commission initiates an investigation, no one should infer that the Commission believes a violation of the law has occurred or is charging a licensee with a violation. Only after reviewing the results of an investigation might the Commission allege that a violation has occurred and bring charges against a licensee. The Commission, not the person who requested the investigation, is the Complainant in the matter.
- (b) The investigator keeps all information that he or she gathers confidential.
- (c) The investigator reports the facts gathered in the investigation but not the names of the party or parties involved. In this way the Commission evaluates and judges only on the relative merits of the evidence.
- (d) Unless the Commission orders a formal hearing, the name of the person requesting the investigation and all other materials in the Commission's investigative file remain confidential and closed to a public.

THE INVESTIGATIVE REPORT

Upon receipt of a sworn, written request for investigation, the Investigations Area Supervisor (IAS) reviews the request and may contact the person making the request to clarify the nature of the issues involved. Then the IAS assigns the case to an investigator. The IAS normally assigns cases on a 'first come, first served' basis. The investigator assigned to the case begins the investigative process by contacting the party requesting the investigation. Then, the investigator proceeds to contact other persons who may have information relevant to the case and to gather other appropriate evidence.

If a licensee's activities become the subject of an investigation, he or she may expect the following procedures to occur. The investigator assigned to the case will contact the licensee to set an appointment at a reasonably convenient time with sufficient uninterrupted time to discuss the case. If the conference reveals the need for further meetings, the licensee and investigator again should set another time reasonably convenient to both. Upon contacting a licensee, the investigator will try to indicate what, if any, documentary material the licensee will need to have at the conference. The licensee should make every effort to make that material available or to be able to indicate to the investigator where to obtain it. If the investigator asks for copies of any documents and the licensee supplies the copies, the investigator will pay a reasonable cost for those copies if the licensee supplies a written receipt of the cost to the investigator. If it is necessary for the investigator to take the originals to another place to be copied, the licensee should ask the investigator for a receipt detailing all originals the investigator takes. Generally speaking, a licensee must produce documents related to a real estate transaction that might normally be kept in an office file (for example, listing contracts, sales contracts, closing statements, etc.) and any

documents related to an escrow account that the law requires the licensee to maintain. If the licensee has any doubt about giving any document to an investigator, he or she should consult his or her broker or legal counsel before turning over the document.

Once the investigator has completed the investigation, the IAS reviews it for thoroughness. Then, the investigator presents the results of the complete investigation to the Real Estate Commissioner. The investigator makes this report without using names. The typical report involves the investigator stating what party requested the investigation and the general nature of the problem. For example, "A purchaser alleges that the selling agent made misrepresentations concerning the amount of the monthly payment on a loan assumption." The investigator then recites the facts discovered in the investigation.

After hearing the investigation report from the investigator, the Real Estate Commissioner evaluates the facts and then must elect one of four options:

1. to require further investigation;
2. to refer the case directly to the Attorney General's office for review if it appears that a violation has occurred that raises an imminent danger to the public;
3. to recommend to the Commission to close the case if the facts clearly indicate no violation of the license law; and
4. to refer the case to the full Commission for its action if it appears that a violation of the license law has occurred.

Most cases fall into the last two categories.

When the Real Estate Commissioner refers a case to the full Commission, the investigator who handled the case follows the same procedures in making a report to the Commissioner. The investigator summarizes the case using no names. Based on the facts presented, the Commission decides whether to investigate the case further, to close it, or to send it to the Attorney General's office for a hearing.

When the Commission sends a case to the Attorney General's office, the Assistant Attorney General assigned to the Commission evaluates the case for the legal sufficiency of evidence. If the Attorney General's office finds the evidence lacking, it returns the case to the Commission for the Commission's staffs to further investigate or for the Commission to decide whether to pursue the matter further.

THE HEARING PROCESS

If the Attorney General's office finds the evidence legally sufficient, that office prepares a Notice of Hearing which sets forth the charges the Commission is making and sets a time for a formal hearing before an Administrative Law Judge (ALJ). The Office of State Administrative Hearings (OSAH) delivers that Notice to the Respondent with a letter explaining more informally the hearing process and indicating that the Respondent may shorten that process by entering into a consent settlement with the Commission. In a consent settlement, the Commission does not hold a hearing to determine specific findings of fact and conclusions of law. Instead, the Respondent and the Commission agree for the Commission to impose a sanction without holding a hearing. The sanction may be the traditional reprimand, suspension, or revocation or any other settlement to which the parties may agree; for example, requiring further education for the licensee or a fine. Of course, in seeking a consent settlement, as at any other time in the process, the Respondent may present such compelling evidence of no violation that the Commission might consent to a dismissal of the charges. If the parties do not enter into a consent settlement, then the Commission schedules a formal hearing for which the Respondent should seek legal advice from an attorney.

In some instances following the filing of a Notice of Hearing and prior to the date set for the hearing, either party may file a Motion for Summary Determination with the ALJ scheduled to hold the hearing. The granting of 'Summary Determination' means that the ALJ has determined that there is no genuine dispute about the material facts in a case and imposes a decision without hearing witnesses and evidence. The party that does not make the Motion for Summary Determination has the opportunity to make written response objecting to Summary Determination and calling for a hearing. After reviewing the positions of both parties on Summary Determination, the ALJ may elect to grant the Motion for Summary Determination and issue a preliminary decision without holding a formal hearing to hear the testimony of witnesses and receive evidence. Of course, the ALJ may also

deny the Motion for Summary Determination and hold a formal hearing as scheduled. Regardless of which decision the ALJ makes, the Respondent may elect to appeal that decision to the full Commission.

After holding the hearing, the ALJ writes an Initial Decision that includes (1) a statement of the facts in the case; (2) what laws, if any, the licensee violated; and (3) either (a) a sanction (e.g. reprimand or revocation) if the ALJ found a violation of the law; or (b) a dismissal of the charges, if the ALJ found no violation of the law. If the Respondent disagrees with the ALJ's Initial Decision, the Respondent then has the right to appear before the Commission to make an oral presentation and to present a written brief. After hearing this presentation, the Commission makes a Final Decision. If the Respondent disagrees with the Final Decision, he or she may appeal that decision to the courts. If the Respondent does not ask the Commission to review the decision within thirty days of the ALJ's rendering the Initial Decision, the decision becomes final. Within thirty days of the ALJ's Initial Decision, the Commission may also request to review that decision when it disagrees with the ALJ's findings. If the Commission alters the Administrative Law Judge's Initial Decision adversely to the Respondent, it must state precisely its reasons for doing so and afford the Respondent the opportunity to present objections to the Commission's actions.

The full process can take several months, even years, to complete; but the Commission disposes of most cases within a few months. The General Assembly established this process for all state regulatory agencies to follow to help insure due process rights for any individual against whom the state brings such an administrative action. When the hearing process ends, anyone may request to see copies of any public records in a case (e.g. the Notice of Hearing, the ALJ's initial Decision, and the Final Order). These documents are available for review in the Commission's office at no charge. Upon written request, the public may purchase copies of these public documents. Closed investigative files (that is, cases that did not result in the Commission's bringing formal charges) remain confidential by law and are not available to the public.

GEORGIA REAL ESTATE COMMISSION

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Real Estate License Law

INVESTIGATION PROCEDURES

If you request an investigation of what you believe are illegal actions by an agent in a real estate transaction, by a community association manager, and/or by a coordinator/director or school while offering a real estate course, the Commission will:

1. investigate the matter only for issues related to the real estate license law;
2. NOT settle monetary disputes regarding such matters as which party is entitled to earnest money, getting repairs done, or Commission disputes between licensees,
3. usually begin its investigation within several months of receiving your Request for Investigation;
4. have its investigator gather appropriate physical evidence and interview any persons who can shed light on possible license law violations;
5. take appropriate action if the investigation reveals sufficient evidence that a person violated the real estate license law. Such actions may include holding a formal hearing at which the Commission may subpoena you to testify under oath; and
6. notify you in writing of its final decision regarding the investigation.

You must complete the attached REQUEST FOR INVESTIGATION form if you wish the Commission to initiate such an action. You **MUST** have the Request for Investigation form notarized before a Notary Public. **If the form is not notarized, it will be returned to you.**

Request for Investigation

Mail to: INVESTIGATIONS
Georgia Real Estate Commission
Georgia Appraisers Board
Suite 1000 – International Tower
229 Peachtree Street, N.E.
Atlanta, Georgia 30303 -1605

Date: _____

Person(s) requesting investigation

Person(s) to be investigated (check one)

- Real Estate Agent or Firm Instructor
 Appraiser or School
Appraisal Management Co.

Requestor's Name (print or type)

Licensee's Name (print or type)

Address

Company

City State Zip Code

Address

Home Phone

City State Zip Code

Cell (or other) Phone

Email address

Phone Number

INCLUDE COPIES OF ALL RELEVANT DOCUMENTS IN YOUR POSSESSION!

Failure to include relevant documents will result in significant delay in conducting the investigation!

Comes now the above-named person(s) requesting an investigation and alleging that the above-named while engaged in the business and acting in the capacity of a real estate licensee did: **(Give a brief statement of the facts, with dates. Use reverse side or attach additional sheets as necessary)**

Wherefore, I ask that the Georgia Real Estate Commission/Georgia Real Estate Appraisers Board to conduct an investigation of said allegations and that it determine whether the Georgia Real Estate License Law or Georgia Appraisal Act may have been violated.

STATE OF _____, COUNTY OF _____

_____ Personally appeared before the undersigned authority the person requesting an investigation, who on oath says that the facts above stated, so far as they come within his or her own knowledge, are true; and so far as stated on information and belief, he or she believes them to be true.

Sworn and subscribed to me this _____ day of

_____, 20_____.

Person Requesting Investigation

Notary Public

My commission expires: _____

(A Notary Public may usually be found in banks, law offices, or government offices.)